

Bosna i Hercegovina

Босна и Херцеговина



Sud Bosne i Hercegovine
Суд Босне и Херцеговине

Case No. S1 1 K 026633 17 Kri

Delivered on: 12 October 2018

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Before a Trial Panel composed of:

Judge Enida Hadžiomerović, presiding
Judge Jasmina Ćosić Dedović
Judge Darko Samardžić

PROSECUTOR'S OFFICE OF BOSNIA AND HERZEGOVINA
V.

DRAGAN JANJIĆ

JUDGMENT

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Number: S1 1 K 026633 17 Kri

Sarajevo, 12 October 2018

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 Enida Hadžiomerović, presiding, and judges Jasmina Ćosić Dedović and Darko Samardžić, *and* legal officer Samra Čardaković as the record-taker, in the criminal case against the accused Dragan Janjić for the criminal offense of Crimes against Humanity under Article 172 paragraph 1 sub-paragraphs (g) and (e) as read with Article 31 of the Criminal Code of Bosnia and Herzegovina /CC BiH/, in conjunction with Article 180 paragraph 1 and Article 29 of the CC BiH, with regard to the Indictment of the Prosecutor's Office of Bosnia and Herzegovina no. T20 0 KTRZ 0007088 13 dated 22 November 2017 (confirmed on 28 November 2017), having held an open trial at which the public was excluded in part, in the presence of the Prosecutor of the Prosecutor's Office of BiH, the accused and his counsel, rendered, and the presiding judge announced in open session on 12 October 2018, the following

J U D G M E N T

The accused:

DRAGAN JANJIĆ, son of Ratimir and Milosava née Gardović, born on 19 August 1967 in Pljevlja, Montenegro, residing in ..., municipality of ..., JMBG /Unique Master Citizen Number/ ..., of ... ethnicity, citizen of ... and of ..., literate, completed secondary school (welder), retired, married, father of two children one of whom is underage, completed his military service in Skopje in 1984/85, holds no rank, received no medals, not in the military records, indigent, has no criminal record, no other pending criminal proceedings,

IS GUILTY

Because he,

In the time period from the beginning of April 1992 until the end of September 1992, during a widespread and systematic attack by military, paramilitary and police forces of the so-called Serbian Republic of BiH (subsequently the Republika Srpska), directed against the Bosniak civilian population of Foča municipality, with knowledge of that attack and that his actions constituted a part thereof, as a member of police forces of the so-called Serbian Republic of BiH (subsequently the Republika Srpska), raped a female civilian using force and threats, specifically:

1. Sometime in early August 1992, at around 23:00 hours, the accused went to an apartment located in a building near the police station in Miljevinia, Foča municipality, where injured party B-1 and her family were staying. He knocked on the door and the mother-in-law of the injured party opened; he was looking for the injured party. Her mother-in-law told him that the injured party was not feeling well and that she could not come out; so he left. He returned to the same apartment again on the following day, sometime in the morning, took the injured party B-1 and her underage son as well as her mother-in-law and her two children out of the apartment and led them to the premises of the police station in Miljevinia; he detained the injured party and her underage son in one of the rooms, telling her mother-in-law that she was free to return home with her children. At that moment, the injured party, fearing what could happen to her and her son, grabbed her son and ran out of that room and the police station. She lost consciousness due to great fear and fell to the ground. After she regained consciousness she saw Dragan Janjić standing next to her; he started kicking her in the body. Thereafter, he took her underage son and handed him over to her mother-in-law, telling them to go home. He took the injured party to a small room inside the police station, threatening her not to try to escape and then ordering her to take off her clothes. The injured party refused, but then complied due to his aggressiveness and her fear. He then forced the injured party to perform oral sex on him, putting his penis into her mouth. After that, he took off his clothes, threw the injured party onto a metal bed located in that room, positioned himself on top of the injured party and raped her. After that, he told the injured party to put her clothes on and that she was free to go home, threatening her not to tell anyone what had happened. The injured party then left the premises of the police station.

Whereby,

he committed the criminal offense of Crimes against Humanity under Article 172 paragraph 1 sub-paragraph (g) of the CC BiH, in conjunction with Article 180 paragraph 1 of the CC BiH,

so the Appellate Panel, concerning the aforementioned criminal offense, pursuant to Article 285 of the Criminal Procedure Code of Bosnia and Herzegovina /CPC BiH/, by applying Articles 39, 40 and 48 of the CC BiH, **imposes on the accused**

SENTENCE OF IMPRISONMENT

FOR A TERM OF SEVEN (7) YEARS

Pursuant to Article 56 of the CC BiH, the time that the accused spent in pre-trial custody from 3 November 2017 onwards shall be credited towards the imposed sentence of imprisonment.

II

Pursuant to Article 284 sub-paragraph (c) of the of the Criminal Procedure Code of Bosnia and Herzegovina,

The accused Dragan Janjić,

IS ACQUITTED OF THE CHARGES

That he,

2. On 2 May 1992, at around 17:00 hours, as a police officer-member of the Police Station in Miljevina, municipality of Foča, together with another member of the police, showed up outside the house of injured party Muradif Musić in Miljevina, and, albeit knowing that there were no legal grounds, took the injured party out of the house, deprived him of liberty, put him in a police car and led him to the premises of the Police Station in Miljevina, knowing that the injured party would be transferred to and, in violation of fundamental rules of international law, detained at the KPD /Correctional Facility/ in Foča. The injured party was indeed transferred to and unlawfully detained at the KPD in Foča for an unspecified number of days.
3. On 9 June 1992 as a police officer-member of the Police Station in Miljevina, together with other members of the police, unlawfully arrested civilians of Bosniak ethnicity from the territory of Miljevina albeit knowing that there were no legal grounds for that. The following injured parties were deprived of liberty on that occasion: Samir (Hilmija) Bektović, Ramiz (Meho) Bektović, Meho (Salih) Ćemo, Edin (Meho) Ćemo, Munib (Sejmen) Divović, Hakija (Murat) Džinić, Samil (Ibro) Đozo, Sejdo (Ibro) Grbo, Sulejman (Ibro) Grbo, Mustafa (Meho) Grbo, Krajčin (Hasan) Ferid, Krajčin (Huso) Hasan, Vahid (Šerif) Mekić, Ramiz (Huso) Ramić, Nedžib (Murat) Rizvanović, Murat (Alija) Rizvanović, Salko (Halil) Subašić and Mirsad (Salko) Subašić. Thereafter, they took those people away and locked them up on the premises of the Police Station in Miljevina, knowing that the injured parties would be transferred and, in violation of fundamental rules of international law, unlawfully detained at the KPD in Foča. The injured parties were indeed transferred to and unlawfully detained at the KPD in Foča for an unspecified number of days.

Whereby

he would have committed the criminal offense of Crimes against Humanity under Article 172 paragraph 1 sub-paragraph (e) of the CC BiH, in conjunction with Article 31 of the CC BiH, all in conjunction with Article 180 paragraph 1 of the CC BiH.

III

Pursuant to Article 188, paragraph 4, and Article 189, paragraph 1, of the Criminal Procedure Code of Bosnia and Herzegovina, the accused is relieved of the obligation to reimburse the costs of the criminal proceeding.

Pursuant to Article 198 paragraph 2 of the Criminal Procedure Code of Bosnia and Herzegovina, the claim for compensation filed by the injured party B-1 is granted in part, so the accused Dragan Janjić is ordered to pay to the injured party, as non-pecuniary damage, a sum of 15,000.00 BAM, as follows:

- 9,000.00 BAM for the sustained fear, physical and mental pain on account of violation of freedom, dignity, moral and personal rights
- 6,000.00 BAM for mental pain due to reduced vital activity, coupled with statutory default interest on the said amounts as of the date of adjudication, within 30 days, or face enforced collection.

The claim filed by the injured party exceeding the awarded amount of non-pecuniary damage, which was originally set at 30,000.00 BAM, is dismissed as ill-founded, and the injured party is instructed to take civil action to pursue the remainder of her claim.

Reasons

I. INTRODUCTION AND PROCEDURAL HISTORY

1. Under the Indictment of the Prosecutor's Office of Bosnia and Herzegovina / Prosecutor's Office of BiH, Prosecution/ no. T20 0 KTRZ 0007088 13 dated 22 November 2017 (confirmed on 28 November 2017), the accused Dragan Janjić was charged with the criminal offense of Crimes against Humanity under Article 172 paragraph 1 sub-paragraph (g) of the CC BiH (the acts described in Count 1 of the Indictment) and Article 172(e) of the CC BiH as read with Article 31 of the CC BiH (the acts described in Counts 2 and 3 of the Indictment), in conjunction with Article 180(1) of the CC BiH.

2. The trial in this criminal case commenced on 24 January 2018 by reading out of the Indictment, followed by presentation of Prosecution's and Defense's opening statements.

3. The Prosecutor said in his opening statement that by presenting evidence, examining witnesses and experts and tendering documentary evidence, he would provide to the Court sufficient grounds on which the Court can base its decision regarding the responsibility of the accused for the acts charged.

4. Defense counsel noted in his opening statement that he acknowledged that the incidents charged did in fact take place, but he would show beyond any reasonable doubt

that the accused did not commit the acts described in the Indictment. Counsel added that the Defense would show that the injured party B-1 did not know the accused and that the accused Janjić was not in the territory of Miljevina municipality at the time when the incidents charged occurred.

A. EVIDENTIARY PROCEDURE

1. Prosecution's evidence

5. During the trial the Prosecution presented the following testimonial evidence: examination of protected witnesses B-1, B-2, B-3, B-4, B-5, B-6, B-7, B-9, B-10 and B-11, witness Hajra Aljukić and expert Abdulah Kučukalić.

6. Upon a Prosecutor's motion, the respective statements given by deceased witnesses B-8 and Edhem Barlov were read out in court, to which end the Prosecutor submitted the death certificates as evidence.

7. Emir Mehmedović, acting as attorney-in-fact for the injured party B-1 on behalf of the Free Legal Aid Office with the Ministry of Justice of BiH, filed a redress claim.

8. A list of documentary evidence presented and tendered by the Prosecutor can be found in the annex to the judgment and makes an integral part thereof.

2. DEFENSE'S EVIDENCE

9. The Defense presented the following testimonial evidence during the trial: the examination of protected witness O-20 and witnesses Mlađo Vučen and Vojka Tešević, and the examination of the accused as a witness.

10. A list of documentary evidence presented and tendered by the Defense can be found in the annex to the judgment and makes an integral part thereof.

CLOSING ARGUMENTS

1. Prosecutor's Office of BiH

11. The Prosecutor noted in his closing argument that the criminal responsibility of the accused Dragan Janjić for the crime with which he is charged under the Indictment has been proved in its entirety.

12. First of all, the Prosecutor submitted that all the chapeau elements of the criminal offense of Crimes against Humanity under Article 172 of the CC BiH have been proved. In that connection, the Prosecutor contended that the existence of a widespread and systematic attack directed against the civilian population of Foča municipality has been determined on the basis of the accepted established facts and testimony given by examined witnesses, and that it has been demonstrated that the acts of the accused were part of that attack and that the accused was aware that his acts were part of the attack (*mens rea*).

13. With regard to the acts under Count 1 of the Indictment, the Prosecutor primarily focused on the peculiar nature of the testimony of the witness – injured party, alleging that it needs to be given special attention taking into account all the circumstances surrounding the events about which the injured party B-1 gave evidence. The Prosecutor maintained that the manner of testimony, the witness's demeanor and other evidence suggest that this witness's testimony is credible, and that the inconsistencies in her testimony are related to peripheral issues.

14. Explaining the reasons from Counts 2 and 3 of the Indictment, the Prosecutor stated that the respective testimonies by witnesses B-10 and B-11 corroborate the allegations under Count 2. As for Count 3, the Prosecutor said that all the witnesses who were examined with respect to that count have confirmed the acts which the accused is charged with, and that the tendered documentary evidence additionally corroborates the circumstances referred to in Count 3 of the Indictment.

15. The Prosecutor also commented on the Defense's evidence, arguing that in terms of relevance and probative value such evidence does not undermine the Trial Panel's finding regarding the responsibility of the accused for the committed crime.

16. Ultimately, the Prosecutor petitioned that the Trial Panel, once it has determined the criminal responsibility of the accused for the acts charged under the Indictment and the type and length of the punishment, continue the pre-trial custody of the accused on the grounds of Article 132(1)(a) of the Criminal Procedure Code of Bosnia and Herzegovina /CPC BiH/.

2. Defense for Dragan Janjić

17. In his closing argument, attorney Slaviša Prodanović, counsel for the accused Dragan Janjić, primarily contested the applicability of the CC BiH to the present case as well as the legal qualification of the crime with which his client is charged. Furthermore, counsel said that the Prosecution failed to prove beyond reasonable doubt that the accused Janjić took part in the acts described under Counts 1, 2 and 3 of the Indictment and therefore could not have committed the crime with which he is charged.

18. With regard to the events under Count 1 of the Indictment, counsel said that the testimony by witness B-1 cannot be taken as relevant considering that in all of her statements given to various authorities and at the trial she spoke differently about certain details: namely, how the incident charged unfolded, her knowledge of the accused and his

physical appearance. In addition, counsel claimed that testimonies by other examined witnesses who had indirect knowledge are not consistent on the points of where the rape of witness B-1 took place, at what time and who the perpetrator was, and that a conviction may not be based on such statements.

19. With respect to the events described under Count 2, counsel argued that only two witnesses were examined in connection with the incidents charged and they did not confirm that the accused Dragan Janjić participated in the removal of injured party Muradif Musić, with B-11 noting that the injured party told her that Pavle Elez had brought him there and that he was the only one who could release him. Counsel claimed that witness B-10 did not know who took away injured party Musić either, adding that the Indictment wrongly identifies Miljevina (and not Pođeđe) as the place from which the accused was taken away. Counsel considers that the Prosecutor's Office of BiH failed to prove the participation of the accused Janjić in Count 3 of the Indictment, and that for a majority of civilians no evidence of them being taken away by examining their family members was presented.

20. Lastly, with reference to the injured party's claim for compensation, counsel is of the view that the information in the criminal proceedings does not provide a reliable basis to rule on the claim, and that she should be instructed to take civil action. Moreover, the grounds for the pre-trial custody of the accused no longer exist, petitioning that the pre-trial custody be terminated upon the delivery of a judgment.

PROCEDURAL DECISIONS

B. DECISION ON PROTECTION OF WITNESSES

21. On 8 November 2016, a preliminary proceedings judge issued a Decision granting protective measures to witnesses in the case against the accused Dragan Janjić, pursuant to Articles 3, 12 and 13(1) of the Law on the Protection of Witnesses under Threat and Vulnerable Witnesses. By the Decision no. S1 K 026633 17 Krn 2 dated 8 November 2016 the witnesses were assigned the following pseudonyms: B-1, B-2, B-3, B-4, B-5, B-6, B-7, B-8 and B-9.

22. In accordance with the Law on the Protection of Witnesses under Threat and Vulnerable Witnesses, at trial hearings closed for the public the Prosecutor sought protective measures for witnesses B-10 and B-11, whereas defense counsel sought protective measures for witness O-20.

23. Having heard the witnesses who sought identity protection and the submissions filed by the opposing party, the Panel ruled on the motions.

24. At the trial hearing held on 30 January 2018, the Panel assigned pseudonyms B-10 and B-11 to the Prosecution witnesses as protective measures, and they gave evidence at the trial under those pseudonyms. At the trial hearing held on 16 May 2018, a Defense

witness was assigned pseudonym O-20 as a protective measure. Another protective measure was granted to the witnesses: a ban on publishing photographs with their images.

25. Having deliberated on the proposed measures, pursuant to Articles 3, 4 and 13 of the said Law, the Panel granted protective measures in each of those cases, taking into consideration the justified reasons adduced by the witnesses, their distinctive qualities¹ and the status in the case at hand, all with a view to ensuring non-disclosure of their identity and protecting their safety and interests, and also protecting the rights of the accused.

1. Decision to grant in part the Prosecution's motion seeking acceptance of established facts in proceedings before the International Criminal Tribunal for the former Yugoslavia

26. By the Decision no. S1 1 026633 17 Kri dated 12 March 2018, the Panel granted in part the Prosecution's motion seeking acceptance of facts established by the Trial Chambers of the International Criminal Tribunal for the former Yugoslavia /ICTY/ in *Prosecutor v. Dragojub Kunarac et al.*² (Kunarac et al.) and *Prosecutor v. Milorad Krncjelac*³ (Krnjelac). The facts established by the Trial Chambers in those cases are accepted as "proven" to the extent as indicated below according to Article 4 of the Law on the Transfer of Cases from the ICTY to the Prosecutor's Office of Bosnia and Herzegovina and the Use of Evidence Collected by the ICTY in Proceedings before the Courts in Bosnia and Herzegovina /LoTC/.

Facts established in the ICTY's judgment in *Kunarac et al.* (Case No. IT-96-23-T and IT-96-23/1-T, 22 February 2001)

1. On 8 April 1992, an armed conflict between the Serb and Muslim forces broke out in Foča. (paragraph 567)
2. It took about a week for the Serb forces to secure Foča town and about ten more days for them to be in complete control of Foča municipality. (paragraph 567)
3. Before the armed conflict had started, Muslim civilians were removed from their social and professional lives, their salaries remained unpaid or they were told that their services were no longer needed. (paragraph 571)
4. Most Muslim men were disarmed. (paragraph 571)
5. Complete ostracism soon followed with their freedom to move about and to gather critically curtailed. (paragraph 571)

¹ They are direct victims of the acts charged and/or they are eyewitnesses with knowledge of incidents charged (witnesses under threat and vulnerable witnesses).

² *Kunarac et al.*, Case No. IT-96-23-T and IT-96-23/1-T, Judgment of 22 February 2001.

³ *Krnjelac*, Case No. IT-97-25-T, 15 March 2002.

6. The SDS political propaganda grew more aggressive, and the outbursts of violence and house-burning more frequent. (paragraph 572)
7. The women were kept in various detention centers where they had to live in intolerably unhygienic conditions, where they were mistreated in many ways including, for many of them, being raped repeatedly. (paragraph 574)
8. Some of these women were taken out of these detention centers to privately owned apartments and houses where they had to cook, clean and serve the residents, who were Serb soldiers. They were also subjected to sexual assaults. (paragraph 574)
9. In particular, the Trial Chamber finds that the Muslim civilians held at Kalinovik School, Foča High School and Partizan Sports Hall were kept in unhygienic conditions and without hot water. They were provided with insufficient food. Their freedom of movement was curtailed; they were not allowed to go to any other territory or to go back to their houses. Most of their houses were burnt down or ransacked. They were guarded and lived in an atmosphere of intimidation. (paragraph 575)
10. After months of captivity, many women were expelled or exchanged. (paragraph 577)
11. All traces of Muslim presence and culture were wiped out of the area. (paragraph 577)
12. Some men spent as much as two years and a half in detention for no reason other than their being Muslims. (paragraph 577)
13. All the mosques of Foča were destroyed. (paragraph 577)
14. Almost all the remaining Muslim men and women from all three municipalities were arrested, rounded up, separated and imprisoned or detained at several detention centers like Buk Bijela, Kalinovik High School, Partizan and Foča High School, as well as the KP Dom in Foča, in accordance with a recurring pattern. Some of them were killed, raped or severely beaten. (paragraph 577)
15. The sole reason for this treatment of the civilians was their Muslim ethnicity. (paragraph 577)

Facts established in the ICTY's judgment in *Krnjelac* (Case No. IT-97-25-T, 15 March 2002)

1. According to the 1991 census, the population of Foča consisted of 40,513 persons; 51.6% were Muslim, 45.3% Serb and 3.1% of other ethnicities. (paragraph 13)
2. Although ethnically mixed, individual neighborhoods in Foča town or villages in the municipality could be identified as predominantly Muslim or Serb areas. (paragraph 13)
3. The Serbs armed themselves surreptitiously at first, distributing weapons by truck in the evenings or from local businesses. Immediately prior to the outbreak of the conflict, the distribution of arms to Serbs was done openly. (paragraph 16)
4. The Serbs also began to deploy heavy artillery weapons on elevated sites around Foča, controlling not only heavy weapons which belonged to the JNA, but also the weaponry of the Territorial Defense. (paragraph 16)
5. The Serbs formed a separate local political structure, the Serbian Municipal Assembly of Foča, and both groups established Crisis Staffs along ethnic lines. (paragraph 17)
6. On 7 April 1992, following pressure from the SDS leadership, the local police were divided along ethnic lines and stopped functioning as a neutral force. (paragraph 17)
7. Immediately prior to the outbreak of the conflict, Serbs began evacuating their families and children from Foča, generally to Serbia or to Montenegro. (paragraph 18)
8. Although many Muslims had Serb friends, neighbors and relatives, few were warned about the coming attack. Even for those who did get away, leaving Foča was not easy, with frequent military checkpoints en route to different destinations. (paragraph 18)
9. On 8 April 1992, an armed conflict broke out in Foča town, mirroring events unfolding in other municipalities. (paragraph 20)
10. Roadblocks were set up throughout the town. (paragraph 20)
11. Sometime between 8.30 and 10.00 am, the main Serb attack on Foča town began, with a combination of infantry fire and shelling from artillery weapons in nearby Kalinovik and Miljevina. Serb forces included local soldiers as well as soldiers from Montenegro and Yugoslavia, and in particular a paramilitary formation known as the White Eagles. (paragraph 20)

12. Most of the shooting and shelling was directed at predominantly Muslim neighborhoods, in particular Donje Polje, but the Serbs also attacked mixed neighborhoods such as Cohodor Mahala. (paragraph 20)
13. The military attack resulted in large numbers of wounded civilians, most of them Muslims. (paragraph 20)
14. During the conflict, many civilians hid in their houses, apartments, basements of their apartment buildings, or with relatives in other areas of town; others left Foča altogether, thinking they would be safer. (paragraph 21)
15. The attack continued for six or seven days, although the worst shelling and damage took place in the first few days. (paragraph 21)
16. Foča town fell to the Serbs somewhere between 15 and 18 April 1992, with many of the Muslims who had remained during the fighting fleeing at that time. (paragraph 21)
17. Following the successful military take-over of Foča town, the attack against the non-Serb civilian population continued. (paragraph 22)
18. Outside the town, Serb forces carried on their military campaign to take over or destroy Muslim villages in the Foča municipality. (paragraph 22)
19. Villages in Foča municipality sustained attacks until sometime in early June. (paragraph 23)
20. Serb forces in Miljevina, approximately 18 kilometers from Foča town in the direction of Kalinovik and Sarajevo, set the surrounding Muslim villages on fire, and arrested male Muslim civilians. (paragraph 24)
21. Jeleč, about 22 kilometers from Foča near Miljevina, was shelled and then attacked by infantry and taken over by Serb forces on 4 or 5 May 1992. (paragraph 24)
22. When Serb forces set the village on fire, the population fled to a nearby forest. Muslims who stayed in their homes or who tried to escape were killed. (paragraph 24)
23. Other male Muslim villagers were captured and detained in the Kalinovik and Bileća barracks and then transferred to the Foča KP Dom. (paragraph 24)
24. From Jeleč it was possible to see houses burning and to see people fleeing from other villages. (paragraph 24)

25. Muslim houses in Pilipovići and the neighboring village of Paunci were burned to the ground around 25 or 26 April 1992. (paragraph 25)
26. Around 28 April 1992, Serb troops attacked Ustikolina where some Muslims had tried to form a resistance. (paragraph 25)
27. On 3 July 1992, the Muslim village of Mješaja/Trošanj, situated between Foča and Tjentište, was attacked by Serb soldiers. (paragraph 26)
28. After the Serb take-over in and around Foča, there was a noticeable presence of Serb soldiers and Serb paramilitary formations. (paragraph 27)
29. Immediately after the Serb take-over, restrictions were imposed on the non-Serb inhabitants. Muslims were referred to by Serb soldiers by the derogatory term "baliija" and cursed when being arrested. (paragraph 27)
30. Restrictions were placed on the movement of non-Serbs. A police car with a loudspeaker went through the town announcing that Muslims were not allowed to move about the town. A similar announcement was made over the radio. (paragraph 29)
31. Muslims were forbidden to meet with each other, and had their phone lines cut off. (paragraph 29)
32. In April and May 1992, Muslims stayed in apartments in Foča under virtual house arrest, either in hiding or at the order of Serb soldiers. (paragraph 29)
33. Houses such as "Planika's" and "Šandal's" were used as interim detention centers by the Serb military. (paragraph 29)
34. People wishing to leave Foča were required to get papers from the SUP (Secretariat of the Interior) permitting them to go. (paragraph 29)
35. Military checkpoints were established, controlling access in and out of Foča and its surrounding villages. (paragraph 29)
36. In April and May 1992, Muslim households were searched by the Serb military police or soldiers for weapons, money and other items. (paragraph 30)
37. Serb houses were not searched, or at most were searched superficially. (paragraph 30)
38. Muslims were ordered to surrender their weapons while Serbs were allowed to keep theirs. (paragraph 30)

39. Muslim businesses were looted or burned, or had equipment confiscated. (paragraph 30)
40. Donje Polje, the largely Muslim neighborhood of Šukovac, and Muslim houses in Kamerica and in Granovski Sokak were burned. (paragraph 31)
41. The old town neighborhood of Prijeka Caršija, with its oriental-Islamic style market, was burned down on or around 12 April 1992. (paragraph 31)
42. As Muslim houses burned, fire engines protected Serb houses. (paragraph 31)
43. Other Muslim houses were dismantled for the materials, or reallocated to Serbs who had lost their own homes. (paragraph 32)
44. The Aladža mosque dating from 1555 and under UNESCO protection was blown up, and the mosque in the Granovski Sokak neighborhood was destroyed. (paragraph 33)
45. Serb fire brigades stood by and watched as mosques burned. (paragraph 33)
46. In mid-June 1992, about 27 Muslim civilians, mostly women and children, were killed in the ethnically mixed Cohodor Mahala neighborhood. (paragraph 35)
47. More civilians were killed in Jeleč, Mješaja/Trošanj and Pilipovići. (paragraph 35)
48. The bodies of others were found floating in the Drina River. KP Dom detainees who were assigned to work duty at the riverbank were made to push bodies downstream using planks and sticks. (paragraph 35)
49. Non-Serbs were arrested throughout the municipality of Foča. Muslim men were rounded up in the streets, separated from the women and children and from the Serb population. (paragraph 36)
50. Initially there was a military order preventing citizens from leaving Foča. However, most of the non-Serb civilian population was eventually forced to leave Foča. (paragraph 49)
51. In May 1992, buses were organized to take civilians out of town, and around 13 August 1992 the remaining Muslims in Foča, mostly women and children, were taken away to Rožaje, Montenegro. (paragraph 49)
52. In exhumations conducted in the Foča area, 375 bodies were identified by the State Commission for the Tracing of Missing Persons. All but one of these were

Muslim. The remaining one was a Montenegrin who had been married to a Muslim. (paragraph 49)

53. Between 10 April 1992 and the beginning of June 1992, large-scale arrests of non-Serb civilian men, mostly of Muslim ethnicity, were carried out throughout Foča and its environs. Subsequent to their arrest, the men were transferred to the KP Dom. (paragraph 116)

27. On 24 January 2018, pursuant to Article 4 of the LoTC, the Court of BiH received the Prosecution's Motion no. T20 0 KTRZ0007088 13 seeking acceptance of facts established in ICTY's judgments in *Kunarac et al.* (Case No. IT-96-23-T and IT-96-23/1-T, 22 February 2000) and *Krnjelac* (Case No. IT-97-25-T, 15 March 2002). According to the Prosecution's motion, the facts are relevant to the current proceedings and their acceptance would contribute to efficacy and judicial economy in the case against Dragan Janjić.

28. Attorney Slaviša Prodanović, counsel for the accused Dragan Janjić, submitted his comments on the said motion, stating therein that many facts proposed are irrelevant to this case. Having indicated the indisputable facts, counsel suggested that the facts not contested by the Defense be accepted. The Defense contested the facts referred to in the Motion under numbers 3, 4, 6, 7, 9, 12, 17 (*Kunarac et al.*, Case No. IT-96-23-T and IT-96-23/1-T, 22 February 2000) and the facts referred to in the Motion under numbers 3, 4, 7, 8, 11, 12, 13, 17, 18, 20, 22, 27, 30, 34, 41, 47, 48, 49, 50, 51; fact no. 53 in *Krnjelac* (Case No. IT-97-25-T, 15 March 2002) was contested in part.

29. Article 4 of the LoTC provides: "At the request of a party or *proprio motu*, the courts, after hearing the parties, may decide 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." Rule 94(B) of the Rules of Procedure and Evidence 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 documentary evidence from other proceedings of the Tribunal relating to matters at issue in the current proceedings."

30. The LoTC is a *lex specialis* and is applicable as such in proceedings before the courts in Bosnia and Herzegovina. The underlying purpose of Article 4 of the LoTC is to achieve the principles of efficacy and judicial economy. Efficacy of proceedings implies its focus on what is essentially relevant to the proceedings, to presentation of evidence by the parties to the proceedings, which eliminates the need to prove facts that had already been established in prior proceedings. Giving a discretion to the court to accept "as proven" facts for the purpose of judicial economy also includes promoting the right of the accused to a trial within a reasonable time and respecting witnesses by reducing the number of cases in which they appear before courts to give evidence, thereby avoiding their re-traumatization.

31. However, the Panel was by all means mindful of the fact that the use of this discretion for the purpose of judicial economy may jeopardize the right of the accused to a fair trial and the presumption of innocence. In that connection, the said goals can be promoted only in a way that guarantees respect for those rights; the criteria mentioned below have been designed for that particular purpose. In exercising its discretion under Article 4 of the LoTC in adopting a decision on the issue at hand, the Panel has taken into account and has given special consideration to the rights of the accused in light of Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms /ECHR/ and Articles 3, 13 and 15 of the CPC BiH.

32. In terms of Article 15 of the CPC BiH, it is clear to the Court that it is under no obligation to base its judgment on any fact accepted as proven, considering that upon the completion of the criminal proceedings all those facts will be evaluated individually in the context of the other evidence presented at the trial, resulting in a judgment containing an evaluation of the presented evidence. The procedural and legal effect of judicially noticing an established fact is that the burden of proof in contesting a fact is shifted from prosecution to defense⁴. If during the trial the accused wishes to contest an established fact of which the court took judicial notice, the accused has a right (as a guarantee of fairness of proceedings) to present evidence contesting the credibility of the adjudicated facts.⁵ In view of the fact that neither the LoTC nor the CPC BiH contains criteria that need to be met in order to accept certain facts as being established by the ICTY, the Court, being guided by its duty to observe the right to a fair trial guaranteed by the ECHR and the CPC BiH, has applied the criteria determined by the ICTY in *Prosecutor v. Vujadin Popović et al.* (Case No. IT-05-88-T) and *Prosecutor v. Momčilo Krajišnik* (Case No. IT-00-39-T).

33. When considering the facts, the Court has taken into account that the criteria laid down in *Krajišnik* and *Popović* are very similar, observing a tendency to further develop those criteria in *Popović*. The criteria are as follows: the fact must be distinct, concrete and identifiable; it must have some relevance to an issue in the current proceedings; it must be restricted to factual findings and not include legal characterizations; it forms part of a judgment which has either not been appealed or has been finally settled on appeal; it was contested at trial and forms part of a judgment which is under appeal, but falls within issues which are not in dispute during the appeal. Furthermore, the fact must not attest to the criminal responsibility of the accused or to the acts, conduct or mental state of the accused; it must not be based on plea agreements in previous cases and must not impact the right of the accused to a fair trial; the fact is not subject to reasonable dispute between the parties to the proceedings.

34. The referenced criteria supplement Rule 94(b) (Judicial Notice) of the ICTY Rules or Procedure and Evidence. In addition, the same criteria have already been accepted by an Appellate Panel of the Court (the judgment in *Neđo Samardžić* no. X-KRŽ-05/49 dated

⁴ Case law of the Court of BiH: Decision no. X-KR-05/58 of 5 February 2007 in *Momčilo Mandić*; Decision no. X-KR-06/298 of 27 March 2007 in *Krešo Lučić*.

Case law of the ICTY: Decision on judicial notice of adjudicated facts in *Vujadin Popović et al.* no. IT-05-88-T of 26 September 2006, elaborating on the criteria laid down in two ICTY's decisions on judicial notice of adjudicated facts in *Momčilo Krajišnik* no. IT-00-39-T of 28 February 2003 and 24 March 2005.

⁵ Article 6(2) of the CPC BiH and Article 6(3)(d) of the ECHR.

13 December 2006). Accordingly, the Court has taken into consideration the aforementioned criteria when rendering its decision as stated in the enacting clause thereof.

35. The proposed facts accepted by this Panel and referenced in the enacting clause meet all the aforementioned criteria, and the text below, with the application of the said criteria, cites reasons for which the remaining facts have not been accepted.

a) Fact must be distinct, concrete and identifiable

36. According to this criterion, a fact under consideration must be identified and may not be based on other facts that do not meet the requisite criteria. Furthermore, that fact must not be of such character so as to conceal another major fact. In order to determine whether a particular fact meets the said three requirements in the case at hand, the fact needs to be considered in the context of the judgment as a whole.

37. In that respect, the Panel has not accepted the facts referred to in the Prosecution's Motion under no. 12⁶ (paragraph 576 in the ICTY's judgment in *Kunarac et al.*) or the facts referred to in the Prosecution's Motion under no. 27⁷ and 48⁸ (respectively paragraphs 25 and 34 in the ICTY's judgment in *Krnjelac*), considering that they are not identifiable to a sufficient extent.

b) Fact must not contain characterizations of an essentially legal nature

38. According to this criterion, facts containing legal characterizations must not be accepted. To that end, the Panel refused to accept the facts referred to in the Prosecution's Motion under no. 7⁹ (paragraph 573) and 9¹⁰ (paragraph 574) of the ICTY's judgment in *Kunarac et al.*, as well as the facts referred to in the Prosecution's Motion under no. 53¹¹ (paragraph 41) and 41¹² (paragraph 31) of the ICTY's judgment in *Krnjelac*, on the grounds that those facts contain legal characterizations, namely legal findings of the Chamber.

⁶ "All this was done in full view, in complete knowledge and sometimes with the direct involvement of the local authorities, particularly the police forces."

⁷ "From there, Serb forces continued attacking and destroying Muslim villages along the left bank of the Drina, downstream from Ošanica, while the population fled or was killed."

⁸ "Following the Serb take-over of Foča town, non-Serb civilians were physically beaten by Serb soldiers and military police."

⁹ "Once towns and villages were securely in their hands, the Serb forces - the military, the police, the paramilitaries and, sometimes, even Serb villagers - applied the same pattern: Muslim houses and apartments were systematically ransacked or burnt down, Muslim villagers were rounded up or captured, and sometimes beaten or killed in the process."

¹⁰ "Serb soldiers or policemen would come to these detention centers, select one or more women, take them out and rape them. Many women and girls, including 16 of the Prosecution witnesses, were raped in that way."

¹¹ "The illegal arrest and imprisonment of non-Serb civilian males was carried out on a massive scale and in a systematic way. Hundreds of Muslim men, as well as a few other non-Serb civilians, were detained at the KP Dom without being charged with any crime."

¹² "During the attack, neighborhoods were destroyed systematically. Muslim houses were set ablaze by Serb soldiers during the battle for control of the town as well as after the town had been secured."

39. Furthermore, with regard to the facts referred to in the Prosecution's Motion under no. 19¹³ (paragraph 577 of the ICTY's judgment in *Kunarac et al.*), the Panel has not accepted them considering that they reflect a Defense's view in that case before the ICTY.

40. Having found that each of the facts referred to in the enacting clause of the decision meet certain criteria, the Panel has also ensured to achieve a balance between judicial economy on the one hand and the right of the accused to a fair trial on the other by accepting those facts. In that connection, the Panel is of the view that facts that meet all the aforementioned criteria may, at the Panel's discretion, be refused if they, as a whole, infringe on the accused's right to a fair trial.

2. Exceptions from the direct presentation of evidence

41. Pursuant to Article 273(2) of the CPC BiH, the Panel accepted the statements by, respectively, witness B-8 dated 17 May 2017¹⁴ and witness Edhem Barlov dated 22 December 2016¹⁵ be read out and admitted as Prosecution's evidence.

42. Concerning the issue that it was not possible to examine witness B-8 due to her health condition, the Prosecutor tendered a report by expert Ibrahim Gavrankapetanović, MD, dated 9 February 2018,¹⁶ at the trial hearing held on 6 March 2018 (to which the Defense did not object), while with regard to witness Edhem Barlov the Prosecutor tendered the Death Certificate no. 10-13-25815/17 dated 26 September 2017.

43. Specifically, Article 273(2) of the CPC BiH provides that, exceptionally, records of statements given during the investigative phase, and if judge or the Panel of judges so decides, may be read out and used as evidence at the trial only if the persons who gave the statements are dead or their presence is impossible, which is the situation in the case at hand.

44. The statements given by the referenced witnesses were read out and tendered into evidence on, respectively, 6 March 2018 (statement by witness B-8) and 13 March 2018 (statement by witness Edhem Barlov).

¹³ " In January 1994, the Serb authorities crowned their complete victory - their "gaining supremacy" over the Muslims as was candidly stated by the Defense - by renaming Foča "Srbinje", literally "the town of the Serbs"

¹⁴ Record of Interview of Witness B-8, State Investigation and Protection Agency /SIPA/, no. 16-06/1-04-1-588/17 of 17 May 2017 (T-4).

¹⁵ SIPA Record of Interview of Witness Edhem Barlov, 16-06 /1 – 04-2-1396/16, of 22 December 2016 (T-5).

¹⁶ Prosecution Exhibit T-4.

3. Decision to recommence the trial

45. Article 251(2) of the CPC BiH provides: *“The trial that has been adjourned must recommence from the beginning if the composition of the Panel has changed or if the adjournment lasted longer than 30 days. However, with the consent of the parties and defense counsel, the Panel may decide that in such a case the witnesses and experts shall not be examined again and that the new crime scene investigation shall not be conducted, but the minutes of the crime scene investigation and testimony of the witnesses and experts given at the prior trial shall be used”.*

46. As more than 30 days passed between the trial hearings held on 3 April and 8 May 2018, 24 May and 10 July 2018, and 10 July and 6 September 2018, the Panel, having heard and received consent of the parties to the proceedings and defense counsel, decided that the presented evidence would not be presented again but the trial would resume and the evidence from the previous hearings would be used. Namely, whenever more than 30 days have passed in between two trial hearings, the Prosecutor, the accused and his counsel gave consent from the referenced statutory provision, so the trial, after presentation of evidence, would resume without re-examining witnesses and experts but with the use of their prior testimony.

4. Decision to exclude the public

47. Having heard the parties, the Panel *ex officio* excluded the public from parts of the trial, applying Article 237 of the CPC BiH providing that *“The judge or the Panel of judges shall issue a Decision on exclusion of the public. The decision must be explained and publicly announced.”*

48. Exclusion of the public was justified by protecting the interests of witnesses, as required by Article 235 of the CPC BiH, and it occurred at the trial hearings held on 30 January 2018, 1 February 2018, 16 May 2018, 17 May 2018, 24 May 2018 and 6 September 2018.

49. The Panel excluded the public upon a Prosecutor’s motion when ruling on protective measures for witnesses B-10 and B-11 on 30 January 2018, as well as on 16 May 2018 when entertaining a Defense’s motion to grant protective measures to witness O-20. In those instances, the Panel, with the consent of the opposing party and having taken into consideration witness’s interests, found that it was purposeful and justifiable to apply Article 236 of the CPC BiH and exclude the public from parts of trial hearings at which the witness’s procedural status was being discussed.

50. During the trial, when witness B-7¹⁷ was being examined, the public was excluded for a short time to clarify certain issues relevant to the subject matter of the charge.

¹⁷ The trial hearing held on 1 February 2018.

51. Furthermore, on 17 May 2018, the Panel, upon a defense counsel's motion and having heard the opposing party, excluded the public in order for attorney Prodanović to explain his motion for reading out a witness's statement in accordance with Article 273(2) of the CPC BiH (for a more detailed explanation, see paragraphs 54 through 56.).

52. The Panel also excluded the public at the trial hearing held on 24 May 2018 for the same reasons described in the preceding paragraph. Specifically, the Panel, having heard a Defense's motion to read out a witness's statement in line with Article 273(2) of the CPC BiH and the reasons in support of that motion, instructed defense counsel to attempt to secure examination of the witness directly at the trial. In order to explain in detail the reasons for which the witness refused to testify in this case, counsel suggested that the public be excluded for a short time, and the Panel agreed.

53. On 6 September 2018, during the presentation of closing arguments, the Panel, upon defense counsel's request, decided to exclude the public because in his closing argument counsel stated certain information that was presented at parts of trial hearings closed to the public.

6. Dismissing a Defense's evidentiary motion

54. At the trial hearing held on 24 May 2018, pursuant to Article 273(2) of the CPC BiH, defense counsel suggested that the statement given by a witness in the case held before this Court against Milan Todović be read out; counsel provided the witness's particulars to the Panel on 17 May 2018 during a part of the hearing closed to the public.

55. As for the reasons, counsel said that the witness being proposed has family ties with one of the injured parties in this criminal case, so that his public testimony would place him in a difficult position because he would be presenting facts benefitting the accused.

56. Bearing in mind Article 273(2) of the CPC BiH and the accused's right to adequate defense, the Panel denied the Defense's motion seeking that the statement given by the said witness in another case before this Court be read out, finding that the reasons adduced by defense counsel are not envisaged in the referenced provision. Considering the legal value of a statement of a witness who was not examined directly in court, in the context of the evidence presented at the trial, the Panel is of the view that the refusal to read out a witness's statement does not amount to a violation of the accused's rights.

II. APPLICABLE LAW

57. First of all, the Panel has entertained the issue of applicable substantive law to the case at hand. According to the Indictment, the acts charged were committed in 1992, which is when the Criminal Code of the Socialist Federal Republic of Yugoslavia /CC SFRY/ was in effect; that Code contains a chapter entitled "Crimes against Humanity and International Law", but does not contain provisions referring directly to crimes against humanity.

58. The legal qualification of the criminal acts in the Indictment and, analogously, in the judgment is given in line with the 2003 CC BiH, a criminal code that went into effect after the Indictment period. Article 4 of that Code stipulates time constraints regarding applicability: the law that was in effect at the time when the criminal offense was committed shall apply to the perpetrator of the criminal offense; if the law was amended on one or more occasions after the criminal offense was committed, the law that is more lenient to the perpetrator shall apply.

59. Article 3 of the CC BiH lays down the principle of legality, meaning that no punishment or any other criminal sanction may be imposed on any person for an act which, prior to being committed, was defined as a criminal offense by law or international law, and for which no punishment was prescribed by law (*nullum crimen sine lege, nulla poena sine lege*). However, Articles 3 and 4 of this Code shall not prejudice the trial or punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of international law (Article 4a of the CC BiH).

60. Similarly, Article 7 of the ECHR lays down the principle of legality:

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

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

61. This provision is applicable in BiH because it is an integral part of the Constitution of BiH. According to a specific provision of Article II(2) of the Constitution of BiH, the rights and freedoms set forth in the ECHR and its Protocols shall apply directly in BiH and they shall have priority over all other law.

62. There is no doubt that at the relevant time crimes against humanity constituted a criminal offense according to the “general principles of law recognized by civilized nations”, i.e. “general principles of international law”. Therefore, while crimes against humanity were not specifically prescribed as a criminal offense in the Criminal Code in effect at the time when the crimes covered by the Indictment were committed, there is a duty to prosecute such crimes.

63. Serious violations of international humanitarian law falling under the jurisdiction of the Court of BiH can be divided into two categories. Some crimes, notably crimes against humanity, were introduced into national law in 2003.¹⁸

¹⁸ In this regard, the Court reiterates that in *Šimšić v. Bosnia and Herzegovina* (dec.), no. 51552/10, 10 April 2012, the applicant complained about his 2007 conviction for crimes against humanity with regard to acts which had taken place in 1992. The Court examined that case, *inter alia*, under Article 7 of the ECHR, and declared it manifestly ill-founded. It considered the fact that crimes against humanity had not been criminal offenses under national law during the 1992-

64. In keeping with the aforesaid, the Panel concludes that it is necessary and justifiable to apply the CC BiH in the case at hand.

65. Therefore, whether it is viewed from the point of customary international law, international contract law or “the principles of international law”, it is beyond doubt that war crimes, including crimes against humanity, constituted a criminal offense at the relevant period, which means that the principle of legality has been met.

66. Consequently, the Panel finds that the application of Article 172 of the CC BiH does not constitute a violation of the right to prohibition of retroactive application of criminal code.

III. STANDARDS OF PROOF

67. When considering and weighing the evidence presented at the trial, the Panel was guided by fundamental principles laid down in the CPC BiH.

68. 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. Therefore, the Prosecution bears the burden of proving the guilt of the accused so that, in keeping with Article 3(2) of the CPC BiH, guilt must be proved beyond reasonable doubt.

69. When weighing the evidence, the Panel was guided by the principle of free evaluation of evidence under Article 15 of the CPC BiH and was mindful of Article 290(7) of the CPC BiH; the Panel notes that in the decision-making process it did not rely on evidence irrelevant to adjudication in this criminal case. In addition to relevance, the Panel has taken into consideration the lawfulness and credibility of the evaluated evidence, noting that in its evaluation it focused only on the essential elements of the criminal offense for which the accused was on trial.

70. That said, when weighing the evidence presented at the trial the Panel gave special consideration to the testimony given by the examined witnesses. For most of the female witnesses it was exceedingly difficult and stressful to give evidence at the trial because they themselves had been victims of wartime events and had to recall particular traumatic and difficult events that they had experienced themselves.

71. When weighing the credibility of their testimonies, the Panel had an opportunity from first hand to observe the witnesses, their behavior, voice, posture, bodily and emotional reactions when answering the questions put, as well as non-verbal behavior with regard to the accused.

72. The Panel has also considered the consistency of each witness when testifying at the trial and in their prior statements. On occasion the testimony of a witness differed from

1995 war to be irrelevant, since they have constituted criminal offenses under international law at that time. In contrast, the war crimes committed by the present applicants constituted criminal offenses under national law at the time when they were committed. The present case thus raises entirely different questions to those in the *Šimšić* case. (*Maktouf and Damjanović v. Bosnia and Herzegovina* (applications 2312/08 and 34179/08), page 23, para. 55.

the statement during the investigation. However, one should bear in mind that more than 20 years have passed since the incident they are testifying about, and it is reasonable to expect that the passage of time has affected the accuracy of their testimony. Furthermore, the fact is that due to the nature of the criminal proceedings different questions may be put to a witness as compared to the ones from previous interviews and, when some questions are specified, it is reasonable to expect that there will be certain variations from the answers given during an investigation.

73. It is beyond doubt that all the witnesses who appeared before this Panel witnessed the events that occurred in the territory of Foča municipality at the relevant time, so that recollecting and talking about such traumatic incidents can cause strong emotional responses and prevent a witness from speaking clearly about all the circumstances. In particular, it is not reasonable to expect that the witnesses, who were undergoing psychological and physical terror at that time, would pay attention to details and be able to recall in their statements all the circumstances and what they considered to be insignificant details because their attention was focused on bare survival.

74. When considering the testimony by witness B-1 (a rape victim), the Panel has taken into consideration that she is the only one who could testify about the rape because during that time she was alone in the room with the accused, fearing for herself and her family members; for those reasons, the Panel paid special attention to her testimony.

75. The Panel based its final decision primarily on verbal accounts at the trial, relying on the investigative statements to the extent used by the parties in the proceedings to point to certain inconsistencies; the Panel commented on each of them individually and in combination with the other evidence.

76. The accused in the criminal proceedings has waived his right to remain silent and gave evidence as part of Defense's case. The Panel has weighed up the testimony given by the accused as a witness as part of the body of evidence presented.

77. Furthermore, the Panel has reviewed each and every piece of documentary evidence tendered in order to rule on its reliability and probative value; the Panel will not be commenting equally on all the pieces of evidence but will reason only those findings of facts that are relevant to determining the guilt of the accused.

78. In any case, the Panel has adduced detailed reasons in support of admissibility of certain statements and has evaluated their credibility and merits in relation to each individual charge against the accused.

IV. COURT'S FINDINGS – CONVICTING PART OF THE JUDGMENT

79. The accused Dragan Janjić has been found guilty of committing the criminal offense of Crimes against Humanity under Article 172(1)(g) of the CC BiH, in conjunction with Article 180(1) thereof.

80. This provision of the substantive law reads as follows:

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

....

g) coercing another person, by use of force or by threat of a direct attack on her life or limb or the life or limb of a person close to her, to a sexual intercourse or an equivalent sexual act (**rape**), sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization or any other form of severe sexual violence;

.....

shall be punished by imprisonment for a term of not less than 10 years or a long-term imprisonment”.

81. By relying on the presented evidence, the Panel has found that at the relevant time the accused undertook acts as a perpetrator and bears individual criminal responsibility.

Article 180(1) of the CC BiH provides as follows:

“A person who planned, ordered, perpetrated or otherwise aided and abetted in the planning, preparation or execution of the criminal offenses referred to in Articles 172 (Crimes against Humanity)..... of this Code shall be guilty of the criminal offense.”

82. The Panel recalls that Article 180(1) of the CC BiH has been derived from Article 7(1) of the ICTY Statute and the two are identical. An ICTY Appeals Chamber has held that Article 7(1) “...covers first and foremost the physical perpetration of a crime by the offender himself, or the culpable omission of an act that was mandated by a rule of criminal law.”

83. The *actus reus* required for committing a crime is that “...the accused participated, physically or otherwise directly or indirectly, in the material elements of the crime charged through positive acts, or, based on a duty to act, omissions, whether individually or jointly with others. The accused himself need not have participated in all aspects of the alleged criminal conduct.”¹⁹

84. The requisite *mens rea* is that the accused acted with intent to commit the crime...²⁰ or, as in other forms of participation in the criminal acts under Article 7(1), “with an awareness of the probability, in the sense of the substantial likelihood, that the crime would occur as a consequence of his conduct.”²¹

85. Therefore, based on the foregoing, the accused Dragan Janjić, by acting with direct intent and being aware of his actions and desiring the occurrence of prohibited consequences, under Section I raped the injured party S-1, and the Court has found him

¹⁹ ICTY Trial Chamber’s judgment in *Stakić*, para 439.

²⁰ ICTY Trial Chamber’s judgment in *Limaj*, para 509.

²¹ ICTY Trial Chamber’s judgment in *Kvočka*, para 251; *Limaj* Trial Judgment, para 509.

guilty of committing the criminal offense of Crimes against Humanity under Article 172(1)(g) (coercing another to a sexual intercourse), in conjunction with Article 180 of the CC BiH.

A. CHAPEAU ELEMENTS OF THE CRIMINAL OFFENSE OF CRIMES AGAINST HUMANITY UNDER ARTICLE 172 OF THE CC BiH

86. In order to be able to characterize the acts of the accused Dragan Janjić as the criminal offense of Crimes against Humanity in accordance with Article 172 of the CC BiH, it was necessary to determine whether the following chapeau elements of this criminal offense have been met:

Existence of a widespread or systematic attack

The attack was directed against a civilian population

The accused had knowledge of an attack and that his acts were part of that attack (nexus)

1. Existence of a widespread or systematic attack

87. In the course of determining the character of the attack on the civilian population, the Panel was also mindful of the views expressed in the ICTY's judgments defining the factors in the assessment of widespread or systematic nature of the attack: "As stated by the Trial Chamber, the assessment of what constitutes a "widespread" or "systematic" attack is essentially a relative exercise in that it depends upon the civilian population which, allegedly, was being attacked. A Trial Chamber must therefore 'first identify the population which is the object of the attack and, in light of the means, methods, resources and result of the attack upon the population, ascertain whether the attack was indeed widespread or systematic.' The consequences of the attack upon the targeted population, the number of victims, the nature of the acts, the possible participation of officials or authorities or any identifiable patterns of crimes, could be taken into account to determine whether the attack satisfies either or both requirements of a "widespread" or "systematic" attack vis-à-vis this civilian population."²²

88. The phrase "widespread" refers to the large-scale nature of the attack and the number of victims." Furthermore, a crime can be widespread or committed on a large scale as a result of the cumulative effect of a series of inhumane acts or the singular effect of an inhumane act of extraordinary magnitude. The phrase "systematic" refers to "the organized nature of the acts of violence and the improbability of their random occurrence."²³

89. "The concept of 'widespread' may be defined as massive, frequent, large-scale action, carried out collectively with considerable seriousness and directed against a multiplicity of victims. The concept of 'systematic' may be defined as thoroughly organized

²² ICTY Appeals Chamber's judgment in *Kunarac et al.* (para 95).

²³ ICTY Trial Chamber's judgment in *Tadić*, para 648; *Kunarac et al.* Appeals Judgment, para 94; ICTY Trial Chamber's judgment in *Blaškić*, para 206.

and following a pattern on the basis of a common policy involving substantial public or private resources. There is no requirement that this policy must be adopted formally as the policy of a state. There must however be some kind of preconceived plan or policy".²⁴

90. In analyzing the character of the attack itself, the Panel has considered a broader context of the situation in the territory of Foča municipality in the period covered by the Indictment. The Panel was mindful of facts established in proceedings before the ICTY that have been accepted in this trial, indicating that an attack broke out in Foča on 8 April 1992, mirroring events unfolding in other municipalities. Roadblocks were set up throughout the town, and the main Serb attack on Foča began on the morning of that day; the shooting and shelling was directed at predominantly Muslim neighborhoods. The attack lasted for six to seven days, Foča fell to the Serbs sometime between 15 and 18 April 1992. Outside the town, Serb forces carried on their military campaign to take over or destroy Muslim villages in the Foča municipality.²⁵

91. Before the armed conflict had started, Muslim civilians were removed from their social and professional lives, their salaries remained unpaid or they were told that their services were no longer needed. All the mosques in Foča were destroyed. Complete ostracism soon followed with their freedom to move about and to gather critically curtailed.²⁶

92. The women were kept in various detention centers where they had to live in intolerably unhygienic conditions, where they were mistreated in many ways including, for many of them, being raped repeatedly. Some of these women were taken out of these detention centers to privately owned apartments and houses where they had to cook, clean and serve the residents, who were Serb soldiers. They were also subjected to sexual assaults.²⁷

93. Serb forces in Miljevina, approximately 18 kilometers from Foča town in the direction of Kalinovik and Sarajevo, set the surrounding Muslim villages on fire, and arrested male Muslim civilians. Other male Muslim villagers were captured and detained in the Kalinovik and Bileća barracks and then transferred to the Foča KP Dom. From Jeleč it was possible to see houses burning, and to see people fleeing from other villages. Muslim houses in Pilipovići and the neighboring village of Paunci were burned to the ground around 25 or 26 April 1992. On 3 July 1992, the Muslim village of Mješaja/Trošanj, situated between Foča and Tjentište, was attacked by Serb soldiers. After the Serb take-over in and around Foča, there was a noticeable presence of Serb soldiers and Serb paramilitary formations. In mid-June 1992, about 27 Muslim civilians, mostly women and children, were killed in the ethnically mixed Čohodor Mahala neighborhood. More civilians were killed in Jeleč, Mješaja and Pilipovići. The bodies of others were found floating in the Drina River.²⁸

94. All the examined witnesses who spoke about events in the territory of Foča municipality, particularly events in Miljevina and the surrounding villages, testified about the

²⁴ ICTR Trial Chamber's judgment in *Akayesu*, para 580.

²⁵ See: Established facts no. 24, 25, 26, 27, 30, 31 and 33 from *Krnjelac* judgment.

²⁶ See: Established facts no. 3, 5 and 13.

²⁷ See: Established facts no. 7 and 8 from *Kunarac* judgment.

²⁸ See: Established facts no. 35, 38, 39, 40, 42, 43, 61, 62 and 63 from *Krnjelac* judgment.

circumstances mentioned above. The examined witnesses were consistent about the chronology of events in the territory of Foča municipality, pointing out that they started experiencing tensions in early April, it was rumored that there were war operations pending. In April the witnesses who were living in Miljevina received information that there were war operations in Foča and that Foča was about to fall. All the able-bodied men from Miljevina and the surrounding villages were taken away in early May 1992.

95. Having spent several months “under house arrest”²⁹, the remaining residents of Miljevina were called through a PA system to gather outside the local commune; from there, they were first taken to Partizan Hall in Foča and were subsequently exchanged.

96. Witness B-7 was living with her family in Miljevina, municipality of Foča, when the conflict broke out; she stated that the clashes began in April 1992.

97. Witness B-9 – who was living with her family in Miljevina, municipality of Foča, at the relevant time – said the same thing. She stated that the war clashes in the territory of Miljevina and Foča began in April 1992, but could not specify the day; soldiers started grouping overnight and the people did not know what to do. They went to neighboring villages on the following day. They stayed there for about 10-15 days only to return to Miljevina and stay there until May, at which time people started being taken away. In addition, the witness said that Jeleč village was under a fierce attack on 4 May 1992; the Serb military was shelling the Muslim population of Jeleč, while the removal of men from Miljevina began the day prior to that attack.

98. Witness B-4 – who was living in Jeleč with her family during the war activities – also said that the attack on Jeleč began in April 1992; the villagers fled under the Husac Mountain and stayed here for about 15 days. As the witness did not have food or clothes for her two underage children, she went down to Miljevina where her parents were living. The apartment belonging to the witness's parents was in the center of Miljevina opposite from the Police Station, and there were some stores there as well. One could see the Police Station from the apartment, from the balcony. The neighbors who were there were saying that everything would be all right, but one month later chaos started, screams were heard in apartments and civilians were being taken to the Police Station.

99. Witness Hajra Aljukić said that the situation in Miljevina and the territory of Foča municipality in April was tumultuous and that it was rumored that there were war operations. She left Miljevina with her mother-in law and two children on 15 April 1992 and went to Kratine. They returned to Miljevina on or about 1 May 1992; she saw that the situation in Miljevina was bad and that there was a military staff in the motel with tanks and weapons. The witness's husband was taken away on 2 May 1992 to the Miljevina Police Station and then to the Foča KP facility; she does not know what has become of him thereafter. They took away about 60-70 men from Miljevina and surrounding villages on that day. She subsequently learned that the attack on Jeleč occurred on 2 May 1992. After her husband was taken away, the witness stayed in Miljevina under “house arrest” until September,

²⁹ According to testimony given by examined witnesses.

which is when they were told through a PA system to pack and go to the local commune building where buses would be waiting to take them away; they were then transported to the *Partizan* in Foča.

100. Witness B-10 said in his testimony that he was living in Izbišno village, municipality of Foča, prior to the war clashes; the clashes in that area began in April and May, and the arrests of people began in May.

101. Witness Edhem Barlov said in his testimony³⁰ that he was in Miljevina when the war broke out; he was living there with his family. He heard that as early as 1 May 1992 many Muslims were prohibited from going to work, that the Serb military set up roadblocks and that it was difficult to move around. The witness spent most of his time in the apartment, going outside on rare occasions.

102. Witness B-6 was living in Miljevina with her family prior to the war. She described the events in that territory as happening “overnight”; everything was under the control of Serbian forces: police, reserve police and military. The people were deprived of all rights, they could not go out and they did not have telephones. This was the situation after the attack on Foča started. The village of Jeleč was attacked in May 1992, and all the able-bodied men were taken away. That was when the witness's father and brother were taken away, allegedly to prevent any harm to them. On that day (the witness believes it was 3 May 1992) about 60 men from Miljevina were taken away.

103. Witness B-5 was living with her three children in Miljevina, municipality of Foča, prior to the war clashes. According to the witness's testimony, they started experiencing tensions in Miljevina on or about 6 April 1992; it was said that Miljevina has been captured and some people were leaving. Mićo Orlović and Pero Elez came to her apartment sometime in May 1992 and took away her daughter; she knew nothing about her fate until 1997. Mićo Orlović called the witness to hand over the two telephones that she had to the Police Station.

104. Based on the foregoing, the Panel has found that the attack in the territory of Miljevina and Foča municipality was widespread. Having analyzed the character of and circumstances surrounding the attack, the Panel has ruled out any possibility that the attack on the civilian population was random, bearing in mind that everything was unfolding according to a continuous and established pattern of conduct, meaning that it was *systematic*. The Panel has found that the attack – reflected in a selective separation of men and women, the displacement of population from their homes, the taking of women and children to collection centers, the taking of men to the KPD etc. – featured the characteristics and aspects of an organization and a prearranged system.

105. Having weighed up the accepted established facts and the testimonies by the referenced witnesses, the Panel has found that it has been proved that there was a

³⁰ SIPA Record of Interview of Witness Edhem Barlov, no. 16-06/1-04-2-1396/16 of 22 December 2016; and the Death Certificate to the name of Edhem Barlov no. 10-13-25815/17 of 26 September 2017 (T-5).

widespread and systematic attack in the territory of Foča municipality at the time covered by the Indictment.

2. The attack was directed against a civilian population

106. An attack is directed against a civilian population if that population is the primary object of the attack. The expression 'directed against' is a formulation implying that civilian population is not an incidental target of the attack, whereas the word 'population' does not mean that the entire population of the geographical entity in which the attack is taking place must have been subjected to that attack³¹.

107. With regard to the issue of status of persons against whom acts were committed, the Panel primarily points to common Article 3 of the Geneva Conventions, providing that civilians include "*persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause*"³². In the event of a doubt about a person being a civilian or not, that person is to be regarded as a civilian.

108. On the basis of the facts explained in detail during the assessment of existence of the attack and its character, the Panel finds that there is no doubt that all the persons against whom the attack was directed were civilians. All the Prosecution witnesses examined confirmed that the sole target of the attack were the Muslim civilians of Miljevina municipality that did not have weapons or uniforms, nor were operating within a combat context.

109. In addition, the Panel has found that there is no doubt that the injured party B-1 is a civilian. She is a female person who was not engaged militarily; she was not in a uniform and she did not put up any resistance. She was told to show up at the Police Station in Miljevina, which she did, and the accused raped her there.

110. Based on the foregoing, the Panel finds that it has been proved that the goal of the attack – which was widespread and systematic – was the Muslim civilian population of Foča municipality.

3. The accused had knowledge of an attack and that his acts were part of that attack (nexus)

111. According to the testimonies by examined witnesses and tendered documentary evidence³³, the accused Janjić was an active-duty police officer at the Miljevina Police

³¹ See *Kunarac et al.* Appeals Judgment, para 90.

³² Article 3(1)(a) of the Geneva Convention relative to the Protection of Civilian Persons in Time of War (this article provides that this category of population shall in all circumstances be treated humanely, without any adverse distinction founded on race, color, religion or faith, sex, birth or wealth, or any other similar criteria.

³³ T-7 List of Foča SJB workers who received payments for April 1992, Foča SJB, 1 June 1992; T-8 List of Foča SJB workers as per organizational unit in May 1992, Trebinje CSB /Security Services Center/, 2 June 1992, T-9 List of workers to receive payments for May 1992, Trebinje CJB /Public Security Center/; T -10 Payroll sheets for Foča SJB workers for July 1992, T-11 List of Foča SJB workers, no. 14-3/08-120-9/92 of 1

Station at the time of commission of the crime, and that he was an active police officer in Miljevina before the war, attached to the then SJB /Public Security Station/ in Foča.

112. The accused was an active police officer at the period covered by the Indictment (from the beginning of April until the end of September 1992), as can be seen from documentary evidence: the payroll sheets covering that period.

113. Furthermore, all the examined witnesses who were residents of Miljevina confirmed that the accused Dragan Janjić was an active police officer in Miljevina and that he was a police officer in Miljevina several years before the war.

114. Witnesses used to see him in Miljevina when the war clashes began, which is when he was wearing a blue police uniform. Specifically, witness B-3 said that on one occasion, several days after her husband was taken away, reserve police officer Rade Drašković showed up at the witness's door and requested that she hand over a car, a light blue Zastava 101. Drašković said that Dragan Janjić wanted the car to be handed over to them. The witness said that the accused Janjić was not with Drašković on that occasion, but she did see him outside the building.

115. With regard to the requisite *mens rea* in the criminal offense of Crimes against Humanity, the perpetrator must possess not only intent to commit the crime but must also be aware that his acts comprise part of a pattern of widespread or systematic crimes directed against a civilian population, and that the accused must have known that his acts fit into such a pattern.³⁴ The perpetrator need not know the details of the attack or approve of the context in which his or her acts occur.³⁵ The accused merely needs to understand the overall context in which his or her acts took place.³⁶

116. Exhibit T-13 (Certificate, Foča Municipality, General Administration Section no. 04-835-1-143/17 dated 20 October 2017) also indicates that the accused was aware that he was taking part in the attack as a member of police units. According to this document, the accused Dragan Janjić was a member of the armed forces of the Republika Srpska Army in the period from 4 April 1992 until 30 June 1996, Srbinje Public Security Center.

117. If the above is regarded in the context of a large scale of the attack itself and the overall activities of Serbian forces towards Bosniak civilians, it is legitimate to deduce that the accused, as a person who was in Foča at the said period and, in particular, as an integral part of the military that carried out the attacks, was fully in the know of everyday developments in the territory of this municipality, so it can be concluded beyond doubt that the accused Janjić was aware of the existence of a series of widespread and systematic crimes directed against Bosniak civilians of Foča municipality, and there is no doubt that

September 1992, T-12 payroll sheets for September 1992, Trebinje CSB, Foča; T-14 Letter, delivery of information, MUP RS /Republika Srpska Ministry of Interior/, Foča PU /Police Department/, no. I-22-02-20/17 of 25 October 2017; T-22- Certificate by the General Administration Section of Foča Municipality, no. 4-835-1-75/11 of 27 April 2011; O-7 Decision by the Foča Municipality Secretariat of Interior, no. 09-122-12/89 of 8 May 1989.

³⁴ ICTY Appeals Chamber's Judgment in *Tadić*, para 248.

³⁵ *Limaj* Trial Judgment, para 190.

³⁶ *Ibidem*, reference to the Trial Chamber's judgment in *Kordić*, para 185.

he was aware of and desired for his acts described under Count 1 of the Indictment to be part of the attack and to contribute to such an attack against the civilian population.

118. Consequently, based on the presented evidence, the Panel has concluded that there was a widespread and systematic attack in the territory of Foča municipality in the period relevant to the Indictment (from the beginning of April 1992 until the end of September 1992); the attack was directed against the Bosniak civilians in this municipality and it was carried out by military, paramilitary and police forces of the so-called Serb Republic of BiH (and subsequently the Republika Srpska). The incident of which the accused Janjić has been found guilty was undoubtedly a part of that attack; the accused was aware of the attack and he was also aware that he was furthering the attack by his acts. Bearing in mind the aforesaid, the Panel finds that the chapeau element of the criminal offense referred to in Article 172 of the CC BiH has been proved.

B. INDIVIDUAL CHARGE UNDERLYING A CRIME AGAINST HUMANITY (SECTION 1 OF THE CONVICTING PART OF THE JUDGMENT)

Having determined the existence of chapeau elements of the criminal offense of Crimes against Humanity under Article 172 of the CC BiH, the Panel, by relying on the presented evidence, found that by his acts the accused satisfied elements of the criminal offense of Crimes against Humanity under Article 172(1)(g) as read with Article 180(1) of the CC BiH.

1. RAPE (section 1 of the convicting part of the enacting clause)

119. Rape means coercing another, by use of force or threat of assault on that person's life or limb or the life or limb of a person close to her, to a sexual intercourse or an equivalent sexual act (Article 172(1)(g) of the CC BiH).

120. Based on the said definition, rape includes the existence of two elements cumulatively:

- a) coercing another by use of force or threat of assault on that person's life or limb (...)
- b) to a sexual intercourse or an equivalent sexual act.

121. The ICTY held in *Kunarac et al.* (Appeals Chamber), 12 June 2002, paras. 127-132: "The *actus reus* of the crime of rape in international law is constituted by: sexual penetration, however slight: (a) of the vagina or anus of the victim by the penis of the perpetrator or any other object used by the perpetrator; or (b) the mouth of the victim by the penis of the perpetrator; where such sexual penetration occurs without the consent of the victim."

122. Furthermore, *Kvočka et al.*, (ICTY Trial Chamber), 2 November, 2001, paras. 175 and 180, defined rape as "a physical invasion of a sexual nature, committed on a person under circumstances which are coercive".

123. The ICTY Trial Chamber in *Furundžija* was of the view that sexual penetration will constitute rape if it is not truly voluntary or consensual on the part of the victim. The relevance of not only force, threat of force and coercion, but also of absence of consent or voluntary participation is suggested in the *Kunarac* case where it is observed that: "all jurisdictions surveyed by the Trial Chamber require an element of force, coercion, threat or acting without the consent of the victim: force is given a broad interpretation and includes rendering the victim helpless"³⁷.

124. The same case introduced the following factors that need to be met (alternatively, not cumulatively) to give rise to the crime of rape:

- the sexual activity is accompanied by force or threat of force to the victim or a third party;
- the sexual activity is accompanied by force or a variety of other specified circumstances which made the victim particularly vulnerable or negated her ability to make an informed refusal; or
- the sexual activity occurs without the consent of the victim.

125. The *mens rea* required for the crime of rape is the intention to effect sexual penetration, with the knowledge that it occurs without the consent of the victim.³⁸ Rape as a crime against humanity additionally requires that the perpetrator was aware that his acts fit into a pattern of a widespread and systematic attack against a civilian population.³⁹

(a) Section 1 of the convicting part of the enacting clause of the judgment

126. Under section 1 of the convicting part of the enacting clause of the judgment, the accused was found guilty because he, in the manner described in detail in the enacting clause of the judgment, came to the apartment in which the injured party B-1 was staying in early August 1992, then led her, her underage son, her mother-in-law and her two children outside, brought the injured party to a small room in the Police Station and raped her.

127. Considering that the injured party B-1 was the sole witness to the act of rape, the Panel has given special consideration to her testimony, combining it with the testimony given by other witnesses who testified about the circumstances prior to and immediately after the rape, in particular the respective testimonies given by witnesses B-2 and B-3, other presented evidence and the report made by Prof. Abdulah Kučukalić, MD, expert in

³⁷ See *Kunarac et al.* Trial Judgment, para 440.

³⁸ ICTY Trial Judgment in *Furundžija* (December 1998.) para 185; *Kunarac et al.* Trial Judgment (February 2001), para 460.

³⁹ *Kunarac et al.* Appeals Judgment (June 2002), para 85.

neuropsychiatry⁴⁰. The Panel's conviction of the guilt of the accused Janjić for raping witness B-1 in the manner as described in the Indictment is, first and foremost, based on the testimony given by witness B-1, the injured party in this case. The Panel finds her testimony to be detailed, clear and consistent with investigative statements with regard to decisive facts, and her testimony is substantially corroborated by the testimony of another witness: the injured party's mother-in-law.

128. When testifying at the trial⁴¹ on this matter, witness B-1 said that Dragan Janjić, an active police officer in Miljevina, showed up at her door one night at around 8 p.m. in early August 1992. The witness knew him from Miljevina, because that is a small place and the people know one another. When he showed up that night, the witness's mother-in-law came to the door and asked who was there. He introduced himself as Dragan Janjić and said that he wanted to talk. He was wearing a police uniform, he had a pistol and everything that goes with a police uniform.

129. The witness too came to the door; the accused told her that he saw her husband (who had been previously taken to the Police Station and then to the KP dom Foča), that he was safe and that he lacked nothing, and that he would come to pick her up at 11:00 in the evening and that she should be ready. She responded that she would not go with him and that she did not want that; he responded that she needed to be ready and that he would come for her at 11:00 hours.

130. When he came for her that same night, the witness's mother-in-law said that she did not allow B-1 to go outside and that she was not feeling well. The witness said that they did not open the door on that occasion and that the accused was alone on the occasion.

131. He came again on the following day at around 8 or 9 a.m. and ordered that they open the door. He told them that they needed to go with him to the Police Station immediately, so they set out with him: witness B-1 with her underage child and her mother-in-law with two of her underage children. The Police Station was in the building next to theirs, with the entrance from the main road. When they entered the building, he led all of them into an office. He ordered the witness's mother-in-law to step outside with her children.

132. Witness B1 remained with her child in that room. The accused asked her why she had not come out when he came for her, to which the witness said that she did not want to come out. The accused grabbed the witness by her arm and led her out of that room; she saw her mother-in-law in the corridor with their children. The injured party managed to wrench herself free and started running outside with her child, but she lost consciousness due to tremendous stress, and fell down to the ground.

133. The witness's mother-in-law followed her and begged the accused to let her go. The accused was kicking her and hitting her with a baton, asking her what on earth she was doing. He grabbed her again and brought her back inside together with her child.

⁴⁰ Report by Prof. Abdulah Kučukalić, expert in neuropsychiatry, of 15 May 2017, and medical documentation (T-6).

⁴¹ The trial hearing held on 6 February 2018.

134. When he brought B-1 back to the room in the Police Station, she saw that her mother-in-law was still in the corridor, begging him to let B-1 go. The accused Janjić brought B-1 into a room where there were other people from Miljevina, took her child away from her, gave the child to her mother-in-law and ordered her to go home with the children, taking B-1 to an adjacent room.

135. There was an iron bed and some music instruments in that room. When asked by the witness why she was there, the accused told her not to try to escape and ordered her to remove her clothes, which she refused. She was eventually forced to remove her clothes, and then the accused, having pushed her onto the bed, requested that she perform oral sex on him, and raped the injured party.

136. As noted above, the Panel has given special consideration to the testimony given by this witness, and analyzed in detail all the inconsistencies in her statements (discussed in more detail below), finding that the inconsistencies do not pertain to relevant parts of her testimony, and the nature of the inconsistencies does not call into question her testimony as a whole.

137. The Defense made efforts to undermine the credibility of witness B-1 by arguing that there are certain inconsistencies in her statements. Having reviewed all the statements tendered into evidence by the Defense⁴², the Panel finds that in her investigative statements the witness was consistent on the point of key facts, namely she described the incident the same as at the trial: that one day not long after the husband and the father-in-law of the injured party were taken away, the accused Dragan Janjić came twice to the apartment where she was staying with her underage child, her mother-in-law and her children, and wanted the witness to go with him because he had information about her husband, which she refused. Next, she stated that the accused Janjić showed up again on the following morning and brought all of them to the Police Station. He took the injured party to a room with a bed and raped her, having previously allowed the injured party's mother-in-law to leave with the children. The witness was also consistent in all of her statements regarding the period when the incident charged occurred, stating in all the statements that it was the beginning of August 1992, tying the incident to a brief period prior to leaving Miljevina, i.e. their deportation.

138. With regard to the time when the rape of injured party B-1 occurred, the Panel was mindful that the testimony by witness B-2 differed in that part from the testimony given by injured party B-1. Specifically, witness B-2 said that the incident occurred not long after her husband and son were taken away, which took place on 9 June 1992.

139. In this respect, the Panel has given credence to the testimony given by witness B-1, and the testimony by witness B-2 has not undermined the accuracy of the testimony by witness B-1. Namely, the Panel finds that, with regard to all the events in the territory of

⁴² Prosecutor's Office of BiH Record of Interview of Witness B-1, no. T20 0 KTRZ 0007088 13 of 12 October 2015 (O-6); Record of Interview of Witness – Injured Party, District Prosecutor's Office in Trebinje no. kt. 44/05 of 29 September 2006 (O-8) and Record of Interview of Witness B-1, Cantonal Court in Sarajevo, Kr-18 February 2002 (O-14).

Miljevina municipality and the time of their occurrence, B-1 spoke very precisely, and placed those events in a logical time sequence, and she, being the injured party in this case, remembered with certainty when the crime took place.

140. The Defense also made efforts during the proceedings to undermine the credibility of witness B-1 with regard to her conviction about the person who had raped her, and whether the accused Janjić was in fact that person, citing discrepancies regarding the description of physical appearance of the accused and his place of residence as well as certain discrepancies in prior statements by the witness. However, the Panel has found that those discrepancies in the statements do not affect essential facts and they do not call into question the witness's trial testimony.

141. The Panel finds that the inconsistencies to which the Defense pointed are negligible and do not pertain to a single relevant fact. Specifically, the place in the Police Station where the injured party was raped, whether the accused was described as a person of her height (170 cm) or of average height, whether he had fair-brown or jet-black hair..., are all facts that are not of such character as to undermine the credibility of this witness. The witness said that it was a police officer who was there before the war, that she used to see him because her mother-in-law's apartment was located opposite the Police Station, that her mother-in-law who was living there knew him and that, as also confirmed by witness B3, the accused Janjić was on the bus when they were being deported from Miljevina, concurrently describing the place where they saw him and how he behaved on that occasion.

142. Witness B-2, mother-in-law of injured party B-1, corroborated witness B-1's allegations about relevant events. When testifying at the trial, B-2 described the accused Janjić coming for B-1, B-1 being taken to the Miljevina Police Station and the events that ensued.

143. The testimony given by witness B-2 corroborates the testimony given by injured party B-1 in its entirety. Furthermore, B-2 described injured party B-1 upon her return to the apartment where they were staying, saying that she was all red, broken up and beside herself. When B-2 asked her what had happened, the injured party replied "Why do you ask when you know?"⁴³

144. The Panel has also weighed up certain inconsistencies in the respective testimonies by witnesses B-1 and B-2, but their character does not call into question their testimonies on the subject of relevant facts. Specifically, the discrepancy in their testimonies is reflected in the fact that witness B-1 said that she ran out of the station with her child, that the two of them fell and that the accused Janjić hit her after he caught up with her, after which he brought her back to the Police Station. B-1 further said that her underage child was with her, that the accused took the child away from witness B-1, handed over the child to the witness's mother-in-law and ordered her to go home.

⁴³ Transcript of testimony by witness B-2, 22 February 2018, page 40.

145. However, witness B-2 gave a slightly differently account of events after the injured party ran out of the station, stating that after B-1 ran out of the Police Station with her child, the witness took the child from her and then went to her sister's place.

146. Witness B-2 was not sure whether the accused Janjić, having arrived in the evening, came for them on the following morning to take them to the Police Station, but she did say that when he came to their home on that occasion at around 11 o'clock in the evening and when B-2 did not allow the injured party to go anywhere, he said "all of you will be interrogated tomorrow: you, the children and she."

147. As for the accused's arrival, witness B-1 gave a different account, saying that the accused Janjić arrived there in the morning hours, at around eight or nine, "ordered that the door be opened and that they needed to accompany him to the Police Station immediately."⁴⁴

148. In the Panel's view, what was not clarified at all was whether the accused Janjić accompanied the injured party, witness B-2 and the children to the Police Station; the examined female witnesses were not asked detailed questions in that regard either. The Panel finds that that fact is not relevant to the determination of the circumstances, bearing in mind that, according to examined witnesses, the Police Station is right next to the building from which the injured party and B-2 were taken away, and that they even share a yard.

149. With regard to those facts, the cited discrepancies are completely acceptable and understandable for the Panel given the passage of time and the very atmosphere and circumstances in which witnesses B-1 and B-2 were at the time, those being the reasons why their accounts do not fully match with regard to particular peripheral circumstances.

150. Witness B-3, witness B-2's cousin, corroborated the respective testimonies by witnesses B-1 and B-2. Following the events referred to in Count 1 of the Indictment, witnesses B-1 and B-2 moved to the apartment owned by B-2's sister (mother of witness B-3) with whom she was in the apartment at the time. Witness B-3 said that in late August B-1 and B-2 were evicted from the apartment in which they were staying and went to the witness B-3's mother.

151. In connection with what happened to the injured party, witness B-3 said that B-1 and B-2 told her and her mother what had happened to B-1. She said that the accused Janjić came for them and took them to the Police Station in Miljevina across from their building, and raped the injured party B-1 there. In her trial testimony witness B-3 made clear how she and her mother learned about what had happened to B-1. Namely, her mother had learned about it from her sister (witness B-2), and then her mother told her. When she met the injured party B-1 in her mother's apartment, she confirmed to witness B-3 everything that she had heard from her mother.

152. With regard to the identity of the person who committed the rape, witness B-3 said that B-1 had told her that that had been done by Dragan Janjić, a police officer from

⁴⁴ Transcript of testimony by witness B-1, 6 March 2018, page 13.

Miljevina. When asked by the Prosecutor if she knew whether B-1 and B-2 knew Dragan Janjić, witness B-3 said: "They knew him the same as I did, seeing him every day while going home from work. They passed by the Police Station".⁴⁵

153. That the accused Janjić raped the injured party B-1 after he led her into a room in the Miljevina Police Station has been determined on the basis of the testimony by witness B-1. As noted above, the Panel has given full credence to her testimony, finding the victim's testimony to be quite sufficient to convict the accused of that charge. In doing so, the Panel was mindful of the case law of the ICTY and Article 96 of the ICTY Rules of Procedure and Evidence, indicating that the testimony by a rape victim requires no additional corroboration primarily for the reason that, as a rule, in an act of rape the victim has been the only person present (other than the particular accused) when the incident charged is alleged to have taken place, which has been the case here.⁴⁶

154. When assessing whether the sexual intercourse between the injured party B-1 and the accused was involuntary, the Panel has considered all the circumstances, including the actions of the accused prior to the incident itself, the accused's conduct during and after the incident itself and the overall situation in Miljevina at the time, and found beyond reasonable doubt that the sexual intercourse between the accused and the injured party B-1 occurred without her consent and that during the rape the injured party was not able to put up any resistance in order to successfully foil the accused in his intention. The witness was in a room with the accused who was armed, violent and aggressive; he threatened her not to try to escape, she feared for her life and that of her child, he forced her to perform oral sex on him and then raped her. Based on the foregoing, it can be clearly concluded that the sexual intercourse was not consensual.

ACCUSED'S ALIBI

155. The accused Dragan Janjić presented evidence in order to demonstrate that he was not in the area of Miljevina at the time covered by Count 1 of the Indictment. He examined witnesses Mlađo Vučen and Vojka Tešević regarding his alibi. Counsel for the accused Dragan Janjić tendered a number of pieces of documentary evidence concerning his temporary assignment to the Foča CJB. The accused Dragan Janjić testified to that end in his case, explaining the circumstances due to which he was assigned from the Miljevina Police Station to Foča.

156. When giving evidence, the accused said that he was assigned to perform the duties of a police officer at Miljevina Police Station in 1989, and he was there when the war broke out. The accused further spoke about a verbal altercation between him and Pero Elez's brother, and that after that incident Pero Elez took the accused's service pistol and the accused was banished from Miljevina. The accused said that that occurred on or about 20

⁴⁵ *Dragan Janjić* trial transcript, S1 1 K 026633 17 Kri, 22 February 2018, page 13.

⁴⁶ Consistent with the ICTY's view in *Kunarac et al.* Trial Judgment of 22 February 2001, para 566.

June 1992, whereafter he was assigned to perform duties of a police officer at the Foča SJB by a decision issued by Mićo Stanišić.

157. To support the contention that the accused Janjić was transferred to the Foča CJB following the altercation, the Defense tendered two pieces of documentary evidence⁴⁷: a decision dated 23 June 1992 whereby the accused was temporarily assigned to the Foča CJB as a police officer, and a notice by the Foča PU indicating that Dragan Janjić is the only employee of the Foča CJB who was issued a decision on the temporary transfer.

158. With regard to those circumstances, the Defense examined witnesses Mlađo Vučen and Vojka Tešević.

159. During the war witness Mlađo Vučen was engaged at the Foča SJB as a reserve police officer and assigned to the post of driver and vehicle maintenance. The witness knew the accused Dragan Janjić, he was assigned as a cadet, he was at the station for a while, and was deployed to Miljevina, police detachment. The witness recalled one occasion during the armed conflict when the accused Janjić was brought in to the Foča Correctional Institution (KP Dom), because the then Commander Miodrag Mastilo called the witness to go by car. They were accompanied by Chief Gagović to the KP Dom because the accused had been brought in. Seven days later he again went with Commander Mastilo to the KP Dom Foča and from there they took the accused to the Foča CJB.

160. In the Panel's view, it is beyond dispute that the said incident took place as described by Defense witness Mlađo Vučen: the accused Janjić was brought in to the KP Dom Foča and that witness Mlađo brought him there. However, the Panel is not satisfied that after that incident the accused Dragan Janjić was "banished" from Miljevina, and that he never returned there, for the reasons given in the paragraphs below.

161. Witness Vojka Tešević, who was in Miljevina during the war, also testified about the circumstances surrounding the altercation between the accused Dragan Janjić and Pero Elez. During the wartime clashes, she and some other women were invited to join the army to work in gardens and kitchens and be on clean-up duty. The witness was tasked with working at the checkpoint on the point of exit from Foča. Soldiers were stationed there; they had a container, a desk and chairs, and they were supposed to write down who was entering and leaving. They received the order from Commander Pero Elez whom the witness met at that time. She recalled one occasion; it was early evening and Commander Elez came to ask if police officer Dragan Janjić had entered there. She said that the only Dragan Janjić she knew was from Budnjo and he was a teacher. According to the witness, Elez was rude and threatened her on that occasion, but she insisted that Janjić did not pass through because they wrote down all those who were passing through.

162. With regard to the accused Dragan Janjić's alibi, the Panel could not reliably find on the basis of the presented evidence that the accused Janjić never visited Miljevina following his altercation with Pero Elez's brother. The Panel has arrived at this finding following a

⁴⁷ O-12 Decision of the Ministry of Interior Sarajevo, no. 10-2004 of 23 June 1992; O-13 Notice by Foča PU 22-08-101.1 of 24 January 2018.

comprehensive analysis and evaluation of the testimonial and documentary evidence tendered by the Defense in that regard, as well as Prosecution's evidence – examined witnesses and documentary evidence.

163. However, the Panel is of the view that the Defense's evidence has not shown that the accused never returned to Miljevina following the altercation with Pero Elez or that it undermined the Prosecution's evidence, and finds that the respective testimonies by Defense witnesses and the accused were clearly intended to alleviate the position of the accused in the criminal trial.

164. In that respect, the Court has credited Prosecution witnesses, primarily witness B-3 who said that the accused, after her husband had been taken away, showed up with Rade Drašković to take their car.

165. Witnesses B-1, B-2, B-3 and B-7 confirmed that the accused Janjić escorted the bus that transported them from Miljevina towards the Partizan Sports Center, which occurred in early September 1992.

166. Based on the foregoing, the Panel finds that the presented Defense evidence lacks sufficient conviction to be relied on to make a finding that the accused did in fact leave Miljevina following the described altercation, that he never went back there and that ultimately he did not commit the crime of which he has been found guilty.

167. In saying so, the Panel considers that it is important to stress that it does not call into question the incident about which the accused Janjić and Defense witnesses testified, namely his altercation with Pero Elez. However, the Panel considers that the scale of that altercation was not so large that the accused was in fact outside of Miljevina following the altercation. Furthermore, the Panel does not question the temporary transfer of the accused Dragan Janjić to the Foča SJB either. However, bearing in mind the wartime factors as well as the territorial and jurisdictional connection between Miljevina and Foča, the Panel holds that the accused's alibi is not convincing.

168. The Panel has taken into account that witnesses B-3 and B-2 testified that the accused Dragan Janjić was residing in the Miljevina Police Station, which was challenged by the Defense. In that regard, the Panel was mindful of the testimony by the accused Janjić and Defense Exhibit O-9 (Notice by Foča PU no. 22-08-207.3-106/18 dated 15 March 2018), the latter indicating that the accused's registered residence in 1992 was Beogradska Street No.10, Foča Municipality.

169. This fact has not undermined the credibility of respective testimonies by witnesses B-3 and B-2, bearing in mind the nature of work of police officers, work in shifts and frequent duty assignments, so it stands to reason that the witnesses got the impression that the accused Dragan Janjić was residing in the Police Station. Taking into consideration the distance between Foča and Miljevina (according to examined witnesses⁴⁸ and the accused, it is about 12 kilometers) and that the accused could reach Miljevina in a relatively short

⁴⁸ Cite the witnesses who spoke about the distance between Miljevina and Foča.

time, the conclusion by the witnesses who claimed that he was residing in the Station is legitimate.

170. That there were premises in the Police Station in which one could sleep is also confirmed by witness B-1. This witness said that the accused Janjić led her into a room with some musical instruments and an iron bed, which is where the accused raped the injured party.

V. ACQUITTING PART

1. In general

171. At this juncture, the Panel will not be examining in detail the existence of chapeau elements of the criminal offense of Crimes against Humanity, considering that the accused has been acquitted of the criminal acts referred to in sections 2 and 3 of the acquitting part of the judgment, and the Panel considers that it is not necessary to elaborate either on the issue of existence of a widespread or systematic attack or the *mens rea* of the accused towards that attack⁴⁹, particularly bearing in mind that the Panel addressed these issues in the convicting part of the judgment.

2. Individual sections of the acquitting part of the judgment

(a) Section 2 of the acquitting part of the judgment

172. According to Count 2 of the Indictment, the accused Dragan Janjić is charged as follows:

On 2 May 1992, at around 17:00 hours, as a police officer-member of the Police Station in Miljevina, municipality of Foča, together with another member of the police, showed up outside the house of injured party Muradif Musić in Miljevina, and, albeit knowing that there were no legal grounds, took the injured party out of the house, deprived him of liberty, put him in a police car and led him to the premises of the Police Station in Miljevina, knowing that the injured party would be transferred to and, in violation of fundamental rules of international law, detained at the KPD /Correctional Facility/ in Foča. The injured party was indeed transferred to and unlawfully detained at the KPD in Foča for an unspecified number of days.

173. With regard to those circumstances, the Prosecution examined witnesses B-11 and B-10 and tendered a piece of documentary evidence⁵⁰, the latter indicating that the injured party Muradif Musić from Miljevina was detained at the Foča KPD.

174. Witness B-11, wife of injured party Muradif Musić, said in her testimony that police officer Dragan and reserve police officer Rade Drašković arrived in a police car in front of their house in Miljevina at 17:00 hours on 2 May 1992. Dragan was wearing a blue police

⁴⁹ This view of the Panel is consistent with the view of the Appellate Division Panel in *Rajko and Ranko Vuković* (no. X-KR-07/405), Judgment no. X-KRŽ-07/405 of 30 June 2009, para 32.

⁵⁰ List of persons detained at Foča KPD 01391821.

uniform, whereas Drašković was in plain clothes. Upon their arrival at the house, Dragan put the injured party into the car, despite the protests by witness B-11; he threatened her. She was told the reasons for which her husband was being taken away; the only thing that was said was that he would be interrogated.

175. The witness further testified that her husband was taken to the Police Station in Miljevina and spent the night there, whereafter he was taken to the KP Dom in Foča. As for what happened to her husband after he was taken away, the witness learned that from a female neighbor of hers because in the evening the witness's husband asked the neighbor through a window to give him some bread.

176. B-11 did not know who took her husband to the KP Dom on the following day, she did not know the reason for which he was taken away, they never told her anything except that he was being interrogated. While her husband was in detention, the witness visited him once and they spent five minutes together. As a guard was present during the visit, they did not say anything specific. The only thing that the injured party told her was that he had been detained there by a next-door neighbor of theirs and that he was the only one who could release him; the neighbor to whom he was referring was Pavle Elez. After that encounter, the witness said that she never again saw her husband and that his mortal remains were recovered from an open-cut mine in Miljevina.

177. Witness B-10, brother of injured party Musić, also gave a similar account of the events referred to in Count 2 of the Indictment, thereby corroborating witness B-11's testimony. When giving evidence at the trial, B-10 said that on the same day his brother was taken away he visited his brother's wife and daughter, who told him that his brother had been taken away by Dragan Janjić. He learned that his brother had spent a day or two at the Police Station in Miljevina and was thereafter transferred to the KP Dom in Foča where he spent about eight months.

178. However, neither of the two witnesses mentioned the accused Janjić in the context of what subsequently happened to the injured party, except that he was the one who apprehended and took the injured party to the Police Station in Miljevina. Witness B-11 testified that it was the accused who took the injured party to the Police Station, whereas witness B-10 had only indirect knowledge of what transpired when his brother was being taken away. Neither of the two witnesses testified explicitly and indubitably about the participation of the accused Janjić in the subsequent events.

179. In the Panel's view, it is beyond dispute that the accused apprehended and took the injured party Muradif Musić to the Police Station. However, with regard to the act of aiding in the commission of the criminal offense under Article 172(1)(e) of the CC BiH (with which the accused is charged), the evidence presented at the trial has not proved awareness on the part of the accused Janjić that he was aiding in the unlawful deprivation of liberty.

180. On that occasion, the accused Janjić was wearing a police uniform and was in the presence of a reserve police officer who was in plain clothes. In the Panel's view, this does not indicate an organized and pre-planned operation for the purpose of unlawful conduct

under sub-paragraph (e), particularly if all the men from Miljevinina who had been detained were released in that period.

181. On the other hand, both witnesses confirmed the role played by Pero Elez as well as his power and importance in Miljevinina at that time.

182. Witness B-10, who was detained at Foča KP Dom, said that he saw through a window his brother and a group of 12 people being taken away. However, on that occasion the witness did not mention that the accused Dragan Janjić was present when the injured party Musić was being taken away.

183. Based on the foregoing, the Panel has found no causal link between the acts of the accused Janjić and the fate of the injured party Muradif Musić. According to testimonies given by examined witnesses, the accused Janjić came to the injured party's house and took him to Miljevinina Police Station for interrogation, which is where the injured party spent one night. Thereafter, he was taken to the Foča KP Dom where he spent some time and was then taken out of there with a group of people.

184. The Panel finds that the act undertaken by the accused towards the injured party has no bearing on what happened to him after he was taken to the Police Station; the accused can neither be charged with those events nor can those events be imputed to him.

185. Consequently, given such a state of matters, as the acts of the accused cannot be linked to the fate of the injured party, and as the participation of the accused in the subsequent events involving the injured party has not been proved, the Panel applied Article 284(c) of the CPC BiH and acquitted the accused of this charge.

(b) Section 3 of the acquitting part of the judgment

186. According to Count 3 of the Indictment, the accused Dragan Janjić is charged as follows:

On 9 June 1992 as a police officer-member of the Police Station in Mi.jevina, together with other members of the police, unlawfully arrested civilians of Bosniak ethnicity from the territory of Mi.jevina albeit knowing that there were no legal grounds for that. The following injured parties were deprived of liberty on that occasion: Samir (Hilm.ja) Bektović, Ramiz (Meho) Bektović, Meho (Salih) Ćemo, Edin (Meho) Ćemo, Munib (Sejmen) Divović, Hak.ja (Murat) Džinić, Samil (Ibro) Đozo, Sejdo (Ibro) Grbo, Sulejman (Ibro) Grbo, Mustafa (Meho) Grbo, Krajčin (Hasan) Ferid, Krajčin (Huso) Hasan, Vahid (Šerif) Mekić, Ramiz (Huso) Ramić, Nedžib (Murat) Rizvanović, Murat (Al.ja) Rizvanović, Salko (Hali) Subašić and Mirsad (Salko) Subašić. Thereafter, they took those people away and locked them up on the premises of the Police Station in Mi.jevina, knowing that the injured parties would be transferred and, in violation of fundamental rules of international law, unlawfully detained at the KPD in Foča. The injured parties were indeed transferred to and unlawfully detained at the KPD in Foča for an unspecified number of days.

187. With regard to those circumstances, the Prosecution examined witnesses Hajra Aljukić, B-1, B-2, B-3, B-4, B-5, B-6, B-7 and B-9, read out the respective statements given by witnesses B-8 and Edhem Barlov, and tendered documentary evidence⁵¹.

188. Specifically, witness Hajra Aljukić stated that she knew that on two occasions Muslim men from Miljevina were taken away and detained, first in the Miljevina Police Station and then in the KP dom Foča.

189. When giving evidence at the trial, witnesses B-4 and B-6 too stated that some of their family members were taken away in early June 1992. Witness B-6 could not say exactly who it was that came for her father and brother other than it was a man whose mother owned a café in Miljevina. As for witness B-4, this witness said that the persons who took her father away included an unknown person and Krsto Skakavac aka Krle.

190. Witness B-3, who testified about her husband being taken away, stated that as early as the beginning of May Muslim men were being taken away to the Police Station in Miljevina and from there to the KP Dom Foča. That group was released about seven days later: men were again taken away on 8 or 9 June 1992. The following witness B-3's family members were taken away: husband, an uncle (mother's brother), another uncle and his son.

191. Witnesses B-1 and her mother-in-law (B-2) also testified about their family members who were taken away: husband and father-in-law of B-1 and son and husband of witness B-2. Specifically, B-1 stated that sometime in early May 1992 a man known to the witness as 'Jegulja' showed up at her door and said that her husband and father needed to report to the Police Station within half an hour. They were taken from the Miljevina Police Station to the KP Dom Foča; they spent seven days there and were released thereafter. The witness said that her husband and father-in-law were taken away again on 9 June 1992 by persons wearing uniforms. The testimony by witness B-1 has been corroborated by witness B-2, the latter indicating that in addition to her son and husband more than 25 people from Miljevina were taken away.

192. All the examined witnesses gave similar accounts of events in the territory of Miljevina municipality, stating that the first instances when Muslim men of Miljevina were taken away occurred in early May 1992 and they were subsequently taken to the KP dom Foča. One group of detainees was released seven days later only to be taken away again on or about 9 June 1992.

193. However, a majority of the examined witnesses did not mention the accused Dragan Janjić at all as a person who undertook any actions towards the injured parties, or that he was even present when the injured parties were being taken away. The only two witnesses who mentioned the accused Dragan Janjić in the context of men being taken to the Police Station are witnesses B-8 and B-9.

⁵¹ Information pertaining to the detention facilities in the territory of Foča municipality 0561-8089 (T-20); Extract from a Book on Missing Persons in BiH, 15 December 2005 (T-21); List of persons detained at Foča KPD 01391821 (T-22).

194. Specifically, in her read-out statement witness B-8⁵² said that one day after the Muslims of Miljevina were taken away for the first time and Muslim houses searched she saw through her window the accused Dragan Janjić and police officer nicknamed 'Krmača' leading Muslims out of their houses and apartments in Miljevina. The witness said in the part of her statement that was read out that she knew that the men were taken to the Police Station in Miljevina because police officer Krmača told them that everyone needed to give a statement at the Police Station. Regarding the Muslim men who were taken away, she said that they never really learned and it has remained unknown exactly who had led them out of the Police Station or where they were killed.

195. Having reviewed witness B-8's statement, the Panel observes that it does not contain a time reference for the activities she was testifying about, primarily the ones referring to Muslims being taken away by Dragan Janjić. In his statement the witness started from the fall of Foča and that the relations became strained in Miljevina at that time, but offered no precise reference when exactly it was that she allegedly saw the accused.

196. In addition, the witness said further down in her statement that she knew that the men had to go to report to the Police Station because that was what they were told by police officer nicknamed Krmača, without mentioning the accused Janjić.

197. Bearing in mind that the statement by this witness was read out and that the Panel was not in a position to possibly clarify the parts of the statement quoted in the paragraphs above by putting questions, the Panel has ruled that the statement given by this witness does not have a decisive influence on the guilt of the accused with regard to Count 3.

198. Only witness B-9 mentioned that men were taken away the day prior to the attack on Jeleč village (the attack occurred on 4 May 1992) and that she heard that the accused Dragan Janjić took part in that as a police officer. As for the persons who took away men on the second occasion, the witness said that they were the same persons who took them away on the first occasion.

199. However, when asked specifically by defense counsel, she said that she did not personally see the accused Dragan Janjić taking men away but heard stories about that, told by family members of injured parties. Furthermore, when specifically asked by one of the judges during her examination at the trial hearing held on 6 February 2018 whether the accused Dragan took part in taking people away, she said "I cannot say, I cannot recall."

200. In view of the fact that the examined witnesses did not state that the accused Dragan Janjić was the person who took away their family members, that in most cases witnesses knew the accused from Miljevina since he was an active police officer prior to the conflict and would have been able to identify him if he had taken part in taking people away, the Panel has found that there is no sufficient evidence that the accused Janjić took part in the abduction of the persons referred to in Count 3 of the Indictment.

⁵² SIPA Record of Interview of Witness B-8, no. 16-06/1-04-1-588/17 of 17 May 2017; Report by expert Ibrahim Gavrankapetanović, MD, Sarajevo, 9 February 2018 (T-4).

VI. SENTENCING

201. The purpose of punishment is laid down in Article 2 of the CC BiH, providing that the prescription of criminal offenses, as well as the types and range of criminal sanctions, shall be based upon the necessity of criminal justice compulsion and its proportionality to the degree of the danger against personal liberties, human rights and other basic values. Having found beyond doubt that the accused Dragan Janjić committed the crime of which he has been found guilty by this judgment, the Court has taken into consideration the circumstances bearing on the magnitude of punishment when meting out the punishment.

202. With regard to the criminal sanction, the Panel is of the view that a punishment imposed under the provisions of the CC BiH for war crimes may not be heavier than the one stipulated by the code in effect at the time the crime was committed (CC SFRY). According to that Code, the maximum punishment was 20-year prison sentence, while the minimum punishment was 5-year prison sentence for the gravest forms of crimes. This would go to the detriment of the accused who was being held responsible under the provisions of the CC BiH, prescribing long-term imprisonment for a term of 45 years as the maximum punishment and 10-year prison sentence as the minimum punishment.

203. When ruling on the punishment, the Panel was also mindful of the basic provisions of the CC SFRY applicable at the relevant period in terms of prescribing the minimum and maximum prison sentences for crimes committed in the territory of the SFRY (specifically, Article 38(1) of that Code), and has found it was possible to determine the imposed prison sentence in the instant case in accordance with the then applicable legislation.

204. The Panel acted in compliance with Article 39 of the CC BiH when meting out the punishment for the crime of which the accused Janjić has been found guilty by this judgment.

205. With regard to the criminal offense of Crimes against Humanity under Article 172 of the CC BiH, the Panel has considered a punishment that is necessary and adequate to statutory goals, as well as relevant statutory elements, taking into account all the circumstances and particular aspects of the acts of which the accused Dragan Janjić has been found guilty.

206. In light of the established facts and the ensuing consequences, the Panel sentenced the accused to seven (7) years' imprisonment, considering that the imposed criminal sanction is proportional to the gravity of the crime and the role of the accused, and that it will meet the general purpose of pronouncement of criminal sanctions and the purpose of punishment under Articles 39, 42 and 48 of the CC BiH.

207. When meting out the punishment, the Panel was mindful of all the circumstances bearing on the magnitude of punishment contained in Article 48 of the CC BiH. In the case in question, the Panel has found that the fact that the accused Janjić does not have a criminal record is an extenuating factor, while there were no aggravating factors on the part of the accused.

208. The accused's decorum during the trial was exemplary, appropriate and in line with the Panel's expectations, which in itself is neither an aggravating nor an extenuating factor.

209. Therefore, bearing in mind the concrete acts of perpetration of the crime by the accused, i.e. taking into consideration his individual contribution to the occurrence of the prohibited consequence, this Panel holds that the imposed imprisonment for a term of seven (7) years has been meted out properly, and that it can achieve the purpose of punishment laid down in Article 39 of the CC BiH in its entirety from the aspect of both specific and general deterrence.

210. The suffering of and consequences for the injured party as a result of the accused's acts are real and constant, which was addressed by both the injured party and the expert Kučukalić. It clearly ensues therefrom that the acts of the accused brought about far-reaching consequences for the injured party that have been present to this day, affecting her way of life as a whole.

211. Based on the foregoing, the Panel has found that the imposed punishment will meet specific and general deterrence goals alike.

212. Namely, the specific deterrence requirements are twofold: individual deterrence and preventing the perpetrator from committing a crime again (...), and rehabilitating the perpetrator for a life without a crime (reform, resocialization).⁵³

213. In that connection, the Panel finds that the type and length of the punishment will deter the accused from committing crimes in the future and that it will encourage his reform, i.e. that the imposed punishment will meet the specific deterrence goals in their entirety.

Furthermore, the Panel finds that the imposed punishment is a proper reflection of condemnation of the crime by the social community in general and will, as such, send a clear message to all potential offenders that even in the event of a war they will not avoid punishment and that they are not above the law or justice, considering that each individual has an obligation to observe law and universally acknowledged rules and customs of conduct not only during peacetime but also during the hostilities.

VII. DECISION ON THE REDRESS CLAIM

214. As the accused has been found guilty of committing the crime by the acts described in detail in the enacting clause of the judgment, the requirements to rule on the redress claim filed by injured party/witness B-1 have been met.

215. The injured party B-1 has filed a redress claim through her attorney-in-fact, Ms. Emir Mehmedović. On 24 May 2018, the attorney-in-fact indicated that he stood by the written petition on which its well-foundedness is based, thereby meeting a statutory

⁵³ I. Bojanić, M. Mrčela, *The Purpose of Punishment in the Context of the Sixth Amendment to the Criminal Code*, Croatian Chronicle for Criminal Law and Case Law, Zagreb (vol. 13), no. 2/2006, page 436.

requirement to rule on the claim. The Panel has found that it is legitimate to entertain such a request, finding that it will not considerably prolong the proceedings, which is a negative requirement under Article 193(1) of the CPC BiH.

216. First of all, the Panel notes that according to Article 195(3) of the CPC BiH the person authorized to submit the petition must state their claim specifically and submit evidence. Furthermore, according to paragraph 4 of the same article, if the authorized person has not filed the petition to pursue their claim for compensation in criminal proceedings before the Indictment is confirmed, they shall be informed that they may file that petition by the end of the trial or sentencing hearing.

217. The aforementioned provisions stipulate that the person authorized to submit the petition must state their claim specifically, which has been the case here.

218. Injured party B-1, through her attorney-in-fact, filed a petition to pursue her claim for compensation of non-pecuniary damage caused by the crime in question. In that connection, in her claim the injured party sought 45,000.00 BAM as non-pecuniary damage, as follows: a sum of 20,000.00 BAM for sustaining fear, physical and mental suffering as a result of violation of freedom, dignity, morale and personal rights; and a sum of 25,000.00 BAM for mental suffering resulting from reduced vital activity.

219. When ruling on the validity of the claim, the Panel was primarily mindful of the report made by expert Abdulah Kučukalić, MD⁵⁴, composed upon reviewing the medical documentation of the injured party and upon examining the injured party; the Panel was also mindful of what the expert witness said at the trial, including his examination by the Defense.

220. It is indicated in the written report by expert Abdulah Kučukalić, MD, dated 15 May 2017, that the report has been composed in connection with determining the influence of forced sexual act with the injured party on her personality, sexuality and her general vital activity, as well as in relation to all the parameters pertaining to the scope and intensity of the sustained physical and mental suffering and fear as reduced life and work capacity experienced by the accused as a result of a violent sexual act committed by the accused, all with a view to specifying the injured party's redress claim. To that end, the report covers the injured party's medical history and notes that during the examination the injured party provided extensive medical documentation for review. The report further notes the medical documentation in question and the mental state of the injured party.

221. Based on the foregoing, it is concluded in the report that the injured party experienced a permanent personality change following the appalling events caused by psychological, physical and sexual ill-treatment, i.e. ... As part of a permanent personality change, the injured party has reduced her social activities and become ..., her ... are low and she is experiencing a feeling of

⁵⁴ Report by Prof. Abdulah Kučukalić, MD, expert in neuropsychiatry, of 15 May 2017 and medical documentation (T-6).

222. Finally, it is concluded in the report that, as a result of the said psychological difficulties, sexual abuse, violation of reputation and honor, violation of freedom, rights and dignity of a person and reduction of vital activity, the injured party experienced high-intensity mental pain for three months, followed by medium-intensity pain for one year, and after that mild-intensity pain on a permanent basis.

223. The injured party experienced high- and medium-intensity primary fear as an emotional response to an immediate life threat and danger, which was present throughout the time spent in house arrest and during the coercive sexual intercourse, with the intensity changing depending on the intensity of stressors and immediate life threat. A secondary medium-intensity fear due to poor somatic and gynecological condition was present for five months upon her arrival in the free territory. The medical documentation confirms the degree and seriousness of somatic injuries and illnesses sustained by the injured party during house arrest and rape, causing her to experience high-intensity physical pain for seven days, medium-intensity pain for 15 days, and low-intensity pain for one month. The vital activity of the injured party has been

224. When examined before this Court, expert witness Kučukalić⁵⁵ stood by his previously submitted report and additionally explained the allegations made therein.

225. To that end, the expert first of all said that he employed a universally recognized methodology when examining such cases, took the injured party's case history, assessed the personality structure and mechanisms used in stressful situations, and assessed her mental health and psychological functions. Thereafter, he reviewed extensive medical documentation. He also used diagnostic tests to assess the intensity, frequency and duration of the trauma, followed by a review of the remaining documentation submitted by the Prosecutor's Office of BiH pertaining to the status of the injured party as a civilian casualty of war.

226. Having accepted the expert's report and his trial testimony as truthful, reliable and based on the rules of profession and science, bearing in mind that he has been a court expert for many years, that his findings and conclusions are based on the presented medical documentation of the civilian victim of war as well as the results of the performed examination of and interview with the injured party, the Panel has concluded that the injured party, as a result of commission of this crime, showed symptoms of a ...following a

227. When ruling, the Panel was mindful of the fact that the injured party had submitted extensive medical documentation attesting to the consequences of the crime on the injured party and continuous medical treatment the injured party has undergone since 2006. In saying so, the Panel finds that it is not necessary to comment on the contents of or refer to the said medical documentation considering that the submitted medical documentation was analyzed by Abdulah Kučukalić, MD.

228. Therefore, bearing in mind the redress claim dated 23 March 2018 as well as the fact that the Panel has found that the injured party had sustained considerable damage as

⁵⁵ The expert was examined at the trial hearing held on 13 March 2018.

a result of the crime committed by the accused, reflected in mental and physical suffering, fear and ... (with the data collected during the proceeding offering to this Panel a reliable basis to rule on the claim), the Panel has granted a specified claim by the injured party in the total amount of 15,000.00 BAM. For sustaining mental and physical suffering and fear, violation of freedom, dignity, morale and rights of a person, the Panel awarded a sum of 9,000.00 BAM to the injured party, and for sustaining mental suffering due to reduced vital activity, the Panel awarded a sum of 6,000.00 BAM to the injured party. The Panel has found that the said single amount constitutes a fair compensation to the injured party.

229. The Panel stresses that in the process of ruling on the injured party's claim it was mindful of provisions of the Law on Obligations (as a *lex specialis* law in this context), taking into consideration the significance of the injured object and the purpose of the compensation.

230. Furthermore, in the decision-making process, the Panel had in mind that monetary (financial) satisfaction exists when a violation of a right of a person (violation of honor, reputation, freedom, disfigurement, reduction of vital activity etc.) has caused physical and mental suffering and fear, and the Court finds under the circumstances that the intensity of the pain and fear justify so, and awards a fair compensation to an injured party. A characteristic of monetary satisfaction is that it can only be awarded if the physical and mental pains and fear have a causal link with a violation of a right of a person, meaning that such a case involves a cumulated satisfaction⁵⁶.

231. To that end, the Panel is of the view that, pursuant to Article 202 of the Law on Obligations, the right to cash compensation due to suffered mental pain also belongs to a person against whom some other act of crime against the personal dignity and morale was committed.

232. In the case in question, according to this Panel, the individual charge underlying Crimes against Humanity - rape, consistent with the views taken in case law, constitutes a criminal offense against dignity of person and morale. In criminal offenses against dignity of person and morale, the right to a monetary satisfaction is given by the criminal judgment itself⁵⁷, with a civil court (this Court having the same authority in criminal proceedings) determining the existence of non-pecuniary damage, i.e. sustained mental pain and fear as a consequence of the crime at issue, as well as the amount of compensation.

233. As noted above, these views are recognized by case law, the relevant part of which reads as follows: "*A person who was subjected to a violent sexual act is entitled to compensation of non-pecuniary damage for sustained mental pain and fear*⁵⁸", as is the case here.

⁵⁶ Vilim Gorenc, *Zakon o obveznim odnosima s komentarom* (Law on Obligations with a commentary), 1998, page 287.

⁵⁷ *Ibid*, page 293.

⁵⁸ Vs, Gž-264/78 of 1 January 1979 and VS, Gž-674/78 of 17 January 1977, PSP-15/33, the view referenced in: Vilim Gorenc, *Zakon o obveznim odnosima s komentarom*, 1998, page 294.

234. Consequently, the Panel finds that the injured party is entitled to compensation for non-pecuniary damage due to suffered mental pain resulting from a violation of freedom or rights of a person under Article 202 of the Law on Obligations. This compensation is awarded in a single amount, and the only other compensation that can be combined is compensation for mental pain due to reduction of vital activity.

235. With regard to compensation of damage for sustaining mental pain resulting from a violation of freedom or rights of a person (which, according to the views expressed above, includes sustained fear), the Panel has found that the acts of the accused referred to in the enacting clause of the judgment placed the injured party in a state of subordination, and the accused committed statutory rape, resulting in the accused experiencing mental pain.

236. When determining the amount of monetary compensation of non-pecuniary damage, the Panel was also mindful of Orientation Criteria and Amounts for Determining Fair Compensation of Non-Pecuniary Damage (Criteria), considered and accepted by the Civil Division of the Supreme Court of the Republika Srpska and the Supreme Court of the Federation of BiH.

237. When applying the Criteria, the Panel was aware that they apply to all civil procedures for compensation of non-pecuniary damage, specifying: amounts for determining compensation for sustained physical pain per day, a fair compensation for sustained fear, amounts for determining compensation for reduced vital activity. In this context, the Panel particularly held, in line with the case law of the Supreme Court of the RS and the Supreme Court of FBiH, that: *"the orientation criteria do not represent a formula that is automatically used to calculate a fair compensation, but one must always be mindful of all the circumstances surrounding a case. In that connection, the duration and intensity of physical and mental pain and fear are but particularly important factors, but they are not the only ones that a Court must take into consideration when determining the amount of a fair compensation."*

238. Therefore, the Panel fixed a sum of 9,000.00 BAM as a fair compensation for sustained fear, physical and mental pain due to violation of freedom, dignity, morale and rights of a person, bearing in mind expert witness Kučukalić's report in that regard.

239. Furthermore, when weighing on the amount of fair compensation, the Panel was mindful of the lasting consequences of this crime that, according to the expert witness (both written report and the expert's testimony) have reduced the vital activity of the injured party ..., as reflected in the fact that For all those reasons, the Court set 6,000.00 BAM as compensation for this type of damage (mental pain due to reduction of vital activity).

240. Based on the foregoing, the Panel granted in part the injured party's redress claim in the aforementioned manner, awarding her a sum of 15,000.00 BAM. The Panel has found that this sum constitutes a fair compensation, bearing in mind that the injured party had other similar experiences following the incident described under Count 1 of the Indictment, and that all the consequences cannot be attributed to the accused Janjić.

241. The Panel notes that during the proceedings the injured party petitioned the Panel to award default interest on the awarded sum for non-pecuniary damage, running from the date of adjudication, within 30 days under threat of enforcement. Pursuant to Article 277 of the Law on Obligations, as the debtor who is late with fulfilling his/her commitments owes the penalty interest along with the principal sum, the Court ruled that the accused would pay default interest in case of failure to pay the awarded sum within the set deadline.

242. Lastly, the Panel finds that awarding compensation to a victim of a crime (as is the case here) is in line with the principle of social justice. From the sociological point of view, the principle of indemnification to a victim should be as important as the principle of punishment as a form of social reaction to a criminal activity. Namely, the purpose of a court trial should not focus only on repression towards the perpetrator of the crime but must aim for a complete restoration of the state disturbed by the crime⁵⁹.

243. The claim filed by the injured party exceeding the awarded amount of non-pecuniary damage, which was originally set at 30,000.00 BAM, is dismissed as ill-founded, and the injured party is instructed to take civil action to pursue the remainder of her claim.

DECISION ON THE COSTS

244. Pursuant to Article 188(4) and Article 189(1) of the CPC BiH, the Panel has found that it is justified to relieve the accused of the obligation to reimburse costs of the criminal proceedings because the data in the case file indicate that the accused is indigent, that his ex officio counsel is paid from within the Court's budget and the Prosecution was successful only in part because the accused has been acquitted on two counts of the Indictment and has been convicted under one count of the Indictment. The Panel relieved the accused of the obligation to pay costs of the criminal proceedings, finding that payment of those costs would jeopardize his sustenance even in the percentage for which he has been convicted.

RECORD-TAKER

Legal officer

Samra Čardaković

PRESIDING JUDGE

Enida Hadžiomerović

LEGAL REMEDY: An appeal against this judgment may be filed within 15 (fifteen) days after service of a written copy of the judgment.

⁵⁹ Consistent with a view taken in the judgment of this Court no. K-76/08 dated 11 September 2009.

VIII. ANNEX I

<u>Name of the witness</u>	<u>Date of the examination</u>
1. Hajra Aljukić	24 January 2018
2. B -11	30 January 2018
3. B -10	
4. B - 7	1 February 2018
5. B – 4	6 February 2018
6. B – 9	
7. B - 5	20 February 2018
8. B - 6	
9. B -2	22 February 2018
10. B -3	
11. B -1	6 March 2018
12. Reading out of a statement by witness B-8	
13. Abdulah Kučukalić, MD, expert in neuropsychiatry, and reading out of a statement by witness Edhem Barlov who has died	13 March 2018
14. Emir Mehmedović, chief administrative inspector with the Ministry of Justice of BiH and the Free Legal Aid Office	24 May 2018

Examined witnesses for the Prosecution

Tendered evidence of the Prosecution

Exhibit no.	Contents
T-1	SIPA Record of Interview of Witness B-10, no. 16-06/1-04-1-248/17 of 22 February 2017
T-2	Record of Interview of Witness B-9, Cantonal Court in Sarajevo, Ki-311/00 of 20 March 2001
T-3	SIPA Record of Interview of Witness B-5, no. 16-06/1-04-1-17/17 of 12 January 2017
T-4	SIPA Record of Interview of Witness B-8, no. 16-06/1-04-1-588/17 of 17 May 2017; Report by expert Ibrahim Gavrankapetanović, MD, Sarajevo, 9 February 2018
T-5	Death Certificate to the name of Edhem Barlov, no. 10-13-25815/17 of 26 September 2017

	SIPA Record of Interview of Witness Edhem Barlov, 16-06 /1 – 04-2-1396/16 of 22 December 2016
T-6	Report by Prof. Abdulah Kučukalić, MD, expert in neuropsychiatry, of 15 May 2017 + medical documentation (nos. 21 through 75 in the Indictment) – a total of 55 medical reports.
T -7	List of Foča SJB workers who received salaries for April 1992, Foča SJB, of 1 June 1992
T -8	List of Foča SJB workers as per organizational unit in May 1992, Trebinje CSB, of 2 June 1992
T -9	List of workers to receive payments for May 1992, Trebinje CJB
T -10	Payroll sheets for Foča SJB workers for July 1992
T -11	List of Foča SJB workers, no. 14-3/08-120-9/92 of 1 September 1992
T -12	Payroll sheets for September 1992, CBS Trebinje, Foča
T -13	Certificate, Foča Municipality, General Administration Section, no. 04-835-1-143/17 of 20 October 2017
T -14	Letter, submission of information, MUP RS, PU Foča, no. I-22-02-20/17 of 25 October 2017
T -15	List of reserve police officers who were engaged in the Foča SJB in June 1992, Foča SJB, no. 14-3/08-120-9/92 of 21 July 1992
T -16	Report by a War Crimes Commission on the arrests in the territory of Foča Municipality
T -17	Report on rapes committed in the territory of the Republic of Bosnia and Herzegovina, State Commission for Gathering Facts on War Crimes, Sarajevo, 23 February 1995
T -18	State Commission for Gathering Facts on War Crimes, of 22 February 1995
T -19	List of persons – potential perpetrators of war crimes from the territory of Foča Municipality 00372086
T -20	Information pertaining to detention facilities in the territory of Foča Municipality 0561-8089
T -21	Extract from a Book on Missing Persons in the Territory of BiH, issue of 15 December 2005
T -22	List of persons detained at Foča KPD 01391821

IX. ANNEX II

List of Defense witnesses

<u>Name of the witness</u>	<u>Date of the examination</u>
1. Dragan Janjić – as a witness	24 January 2018
2. O-22	30 January 2018
3. Mlađo Vučan 4. Vojka Tešić	1 February 2018

Tendered evidence of the Defense

Exhibit no.	Contents
O-1	SIPA Record of Interview of Witness B-11, no. 16-06/1-04-1-15/17 of 9 January 2017
O-2	Prosecutor's Office of BiH Record of Interview of Witness B-7, T20 0 KTRZ 0007088 13 and T20 0 KTRZ 0010438 16, of 1 April 2016
O-3	Prosecutor's Office of BiH Record of Interview of Witness B-5, no. T20 0 KTRZ 0007088 13 of 26 November 2015
O-4	Prosecutor's Office of BiH Record of Interview of Witness B-6, no. T20 0 KTRZ 0007088 13 of 26 November 2015
O-5	Prosecutor's Office of BiH Record of Interview of Witness B-2, T20 0 KTRZ 0007088 13 of 3 November 2015
O-6	Prosecutor's Office of BiH Record of Interview of Witness B-1, no. T20 0 KTRZ 0007088 13 of 12 October 2015
O-7	Decision of the Municipal Secretariat of Interior, Foča, no. 09-122-12/89 of 8 May 1989
O-8	Record of Interview of Witness-Injured Party, District Prosecutor's Office in Trebinje, no. kt. 44/05 of 29 September 2006
O-9	Notice by Foča PU, no. 22-08-207.3-106/18 of 15 March 2018
O-10	Prosecutor's Office of BiH Record of Interview of Witness B-4, T20 0 KTRZ 00070788 13 of 22 December 2015
O-11	Certificates issued by the Crisis Staff of the Serbian Municipality of Foča 49/92 and 48/92 of 9 May 1992 to Nedžib Rizvanović and Murat Rizvanović
O-12	Decision by the Ministry of Interior Sarajevo, no. 10-2004 of 23 June 1992
O-13	Notice by Foča PU 22-08-101.1 of 24 January 2018
O-14	Record of Interview of Witness B-1, Cantonal Court in Sarajevo, Kr- 18.2.2002
O-15	Decision of the Ministry of Interior Sarajevo, no. 09/3-120-2389 of 15 August 1994

O-16	Report of the Ministry of Interior, Goražde PU, no. 07/I-5-04-156/18/EM of 9 January 2018