

SUD BOSNE I HERCEGOVINE



СУД БОСНЕ И ХЕРЦЕГОВИНЕ

COURT OF BOSNIA AND HERZEGOVINA

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Case number: X-KR-06/213

Date: 5 November 2010  
28 December 2010

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Before the Trial Panel comprised of: Judge Zoran Božić, Presiding of the Panel  
Judge Mitja Kozamernik, Member  
Judge Jasmina Kosović, Member

THE PROSECUTOR'S OFFICE OF BOSNIA AND HERZEGOVINA

vs.

GOJKO KLIČKOVIĆ  
MLADEN DRLJAČA  
JOVAN OSTOJIĆ

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VERDICT

Prosecutor of the Prosecutor's Office of Bosnia and Herzegovina: Mr. Dževad Muratbegović

Counsel for the Accused Gojko Kličković: Atty. Dušan Tomić and Atty. Hamdija Veladžić

Counsel for the Accused Mladen Drljača: Atty. Milan Trbojević and Atty. Senad Kreho

Counsel for the Accused Jovan Ostojić: Atty. Milan Romanić and Atty. Zlatko Knežević

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## IN THE NAME OF BOSNIA AND HERZEGOVINA

The Court of Bosnia-Herzegovina, in the panel of judges composed of Judge Zoran Božić as the Presiding Judge, and Judges Mitja Kozamernik and Jasmina Kosović as the Panel members, with the participation of the legal officer Lejla Haračić as the record-taker, in the criminal case against the accused Gojko Kličković, Mladen Drljača and Jovan Ostojić, for the criminal offence of Crimes against Humanity in violation of Article 172(1)(h) in conjunction with Subparagraphs a) d) e) f) g) and k), and in conjunction with Article 180(1) and (2) of the Criminal Code of Bosnia-Herzegovina (CC BiH), in view of the Indictment filed by the Prosecutor's Office of Bosnia-Herzegovina against the accused Gojko Kličković No. KT-RZ-100/06 dated 14 December 2007, confirmed on 19 December 2007, the Indictment against the accused Jovan Ostojić No. KT-19/08 dated 12 March 2008, confirmed on 13 March 2008, and the Indictment against the accused Mladen Drljača No. KT-RZ-22/08 dated 19 March 2008, confirmed on 21 March 2008, the consolidated Indictment No. KT-100/06 dated 21 August 2008, and the amended Indictment No. KT-RZ-100/06 dated 21 September 2010, having held a public main trial, parts of which were closed for the public, in the presence of the accused Gojko Kličković and his defence counsel, attorney Dušan Tomić, the accused Mladen Drljača and his defence team, attorney Milan Trbojević and attorney Senad Kreho, the accused Jovan Ostojić and his defence counsel, Milan Romanić, and in the presence of the Prosecutor of the Prosecutor's Office of BiH, Dževad Muratbegović, on 5 November 2010 publicly announces the following

## VERDICT

### The accused:

1. **Gojko Kličković**, son of Ilija and Sava, born on 25 March 1955 in the village of Donji Petrovići, Municipality of Bosanska Krupa, residing at the address Ive Andrića bb /no number/, Novi grad, PIN: 2503955111086, holder of a degree in sociology, and of a Master's degree in Socio-Economic sciences, married, father of two children, citizen of BiH, of Serb ethnicity.
2. **Mladen Drljača**, son of Stevo and Jela, born on 5 March 1958 in Bosanska Krupa, residing in Banja Luka, 93 Njegoševa St., PIN: 0503958111063, university education, lawyer by qualification, employed as secretary of the Commission for Concessions of Republika Srpska, married, father of one daughter, citizen of BiH and of the Republic of Serbia, of Serb ethnicity.
3. **Jovan Ostojić**, son of Vojin and Divka, born on 1 January 1955 in Grbavci Gornji in the

Municipality of Zvornik, residing in Banja Luka, Prote Todora Srdića 6A, ID card number 03 GCC 6554, PIN: 0101955100108, completed Military Academy for the JNA Land Army in Belgrade, left the Army with the rank of Lieutenant-Colonel, decorated with the Karađorđe's star 3<sup>rd</sup> class, married, father of two children, citizen of BiH and of the Republic of Serbia, of Serb ethnicity.

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

**ARE ACQUITTED OF THE CHARGES**

**That they:**

**The first-accused Gojko Kličković and the second-accused Mladen Drljača,**

From the beginning of April 1992, until 31 December 1992, within a widespread and systematic attack of the army and the police of the so-called Serb Republic of Bosnia Herzegovina directed against the non-Serb civilian population of the so-called Autonomous Region of Krajina, and the implementation of the state policy or the policy of a certain organization, regarding the association of Serb-populated territories in BiH, as to assert control over those territories and set up a separate state of Bosnian Serbs, from which the non-Serb population would be permanently removed, which policy came into existence as of summer 1991, planned and carried out by Radovan Karadžić, Momčilo Krajišnik, Vojislav Maksimović and other members of the Serb Democratic Party Main Board and other members of the Serb Democratic Party at the national and regional levels and with the army of Republika Srpska, having been aware of the attack and having been aware of the fact that they were participating in it, the first accused Gojko Kličković, in the capacity of the President and Vice-President of the Executive Board of the Serb Democratic Party Bosanska Krupa, President of the Executive Board of the Municipal Assembly of Bosanska Krupa, Commander of the Crisis Staff of the Serb Municipality Bosanska Krupa, President of the War Presidency of the Serb Municipality of Bosanska Krupa, member of the SDS Secretariat of the Serb Municipality of Bosanska Krupa, President of the Assembly of the Serb Municipality of Bosanska Krupa, President of the Assembly of the Serb Municipality of *Krupa na Uni*, President of the SDS Municipal Board of *Krupa na Uni*, as well as in his capacity as a member of the Main Board of the Serb Democratic Party, and the second accused, Mladen Drljača, in his capacity as a member of the Bosanska Krupa SDS Municipal Board, member of the Executive Board of the Municipal Assembly of the Serb Municipality of Bosanska Krupa, member of the Crisis Staff of the Serb Municipality of Bosanska Krupa, member of the War Presidency of the Serb Municipality of Bosanska Krupa, President of the Panel of the Provisional Military Court of the Serb Municipality of Bosanska Krupa, President of the Commission for Exchange of Prisoners of the Serb Municipality of Bosanska Krupa and member of the SDS Secretariat of the Serb Municipality of Bosanska Krupa, knowingly participated in a<sub>5</sub> Joint Criminal Enterprise, which had come into

existence as of summer 1991, together with Miroslav Vještica, Mile Drljača *a.k.a.* „Teho“, Milan Štrbac *a.k.a.* „Bijeli“, Lazar Stupar, DMITAR Ciganović, Milan Vojinović, Mirko Orelj and other SDS members in the so-called Serb Municipality of Bosanska Krupa, sharing the plan of partitioning the legally established Municipality of Bosanska Krupa, whereby they, by having committed criminal offences, created the so-called Serb Municipality of Bosanska Krupa as an area populated by an absolute Serb majority, where Serbs could assert control in all areas of power and administration, which resulted in the following:

1. On 21 April 1992, around 18.00 hrs, the members of the Podgrmeč Territorial Defense /TO/ Brigade of the Serb Municipality Bosanska Krupa and Public Security Station of the Serb Municipality Bosanska Krupa, under the effective control of the first-accused Gojko Kličković, commander of the Crisis Staff of the Serb Municipality Bosanska Krupa, launched an artillery and infantry attack directed against the non-Serb civilian population of Bosanska Krupa and Ostružnica, which lasted for several days and resulted in the death of Muslim civilians Husein Alidžanović *a.k.a.* Buko, Arif Badnjević, Smajo Čehajić, Rasim Harambašić, Emin Kabiljagić, Ferida Mulalić, Rasim Mulalić, Hilmija Musić *a.k.a.* Hilmo, Suljo Redžić, Mujo Šarić, Mithat Piralić *a.k.a.* Mito and Dževad Velagić, and extensive destruction of property not justified by military needs, whilst the forces that participated in the attack carried out a systematic cleansing policy consisting in searching Bosniak houses, looting them and setting them on fire, while the Bosniak civilians were arbitrarily deprived of their liberty or restricted in its exercise.
2. Between 21 April and 1 May 1992, members of the Public Security Station of the Serb Municipality of Bosanska Krupa, members of the military police of the Podgrmeč Brigade of the Serb Municipality Bosanska Krupa and members of the 6<sup>th</sup> Infantry Brigade JNA from Lušci Palanka, unlawfully deprived of liberty the non-Serb civilians in Bosanska Krupa: Muradif Alić *a.k.a.* Nuno, Albin Bajrambašić, Hazim Bajramović, Šerif Bajraktarević, Adem Balkić, Asim Balkić, Hamdija Balkić, Kasim Balkić, Mirsad Budimlić, Idriz Bužimkić, Abdulkadir Ćurt, Redžo Delić, Sadrija Đuđa, Nedžad Đuđa, Dževad Đuđa, Hilmija Ezić, A-3, Džemal Grošić, Dževad Grošić, Emir Hasić, Fehim Kadić, Ibrahim Krupić, Sabahudin Mahić, Nusret Malkoč, Zarif Mehić, Zuhdija Mehić, Esad Mesić, PWS-03, Ekrem Mulalić, Osman Mušić, Šefkija Osmanagić, Fikret Palić, Mirsad Palić, Osman Palić, Redžep Palić, Rifet Patković, Mirsad Piralić, Faik Redžić, PWC-31, Damir Selimagić, Zijad Selimović, Šemso Šepić, Kemal Šepić, Ferid Šertović and Silvester Štancl, and unlawfully detained them in the classrooms and gym of the *Dušan Košutić* elementary school in Jasenica, which was at first guarded by the armed civilians of Serb ethnicity, and later on by members of the military police of the Podgrmeč TO Brigade of the Serb Municipality of Bosanska Krupa, where they held them in unhygienic conditions, with not enough water, food or medical attention, during which period they:

- a) On 23 April 1992, in the *Dušan Košutić* elementary school in Jasenica, a group of about ten to fifteen armed soldiers in camouflage uniforms unobstructedly passed the guards who were securing the prisoners and entered the premises of the referenced school, even though the first-accused Gojko Kličković and the second-accused Mladen Drljača were able to reasonably predict that the referenced crime would happen as a natural consequence of the execution of the plan of the above Joint Criminal Enterprise, having thus contributed to its implementation, who then beat the prisoners A-3, Nedžad Đuda, Dževad Đuda and Mirsad Palić, by kicking them and beating them with rifle butts and inflicting stab wounds on their legs by using knife blades,
  
- b) On 24 April 1992, in Arapuša, Bosanska Krupa Municipality, which was surrounded by the members of the Podgrmeč TO Brigade of the Serb Municipality of Bosanska Krupa because Nenad Bokan and Željko Karanović, members of the reserve forces of the Public Security Station of the Serb Municipality of Bosanska Krupa, were wounded during the night between 19 and 20 April 1992 by members of the reserve forces of the police of the Bosanska Krupa Municipality, even though the first-accused Gojko Kličković and the second-accused Mladen Drljača were able to reasonably predict that this crime would happen as a natural consequence of the execution of the plan of the above Joint Criminal Enterprise, to whose implementation they contributed, on which occasion members of the paramilitary unit pillaged several Muslim houses, beat several civilians of Muslim ethnicity and killed a pregnant woman, Jasminka Čaušević, by using firearms,
  
- c) On or about 25 April 1992, in Jasenica, three or four members of a paramilitary unit unobstructedly passed the guards who were securing the prisoners in the *Dušan Košutić* school, even though the first-accused Gojko Kličković and the second-accused Mladen Drljača were able to reasonably predict that the referenced crime would happen as a natural consequence of the execution of the plan of the above Joint Criminal Enterprise, having thus contributed to its implementation, and entered the premises of the elementary school *Dušan Košutić*, where the prisoners A-3, Zarif Marić and another prisoner were severely beaten with rifle butts and kicked and punched all over their bodies,
  
- d) Between 23 April and 30 April 1992, in Jasenica, 43 prisoners from the *Dušan Košutić* elementary school in Jasenica, escorted by guards, were taken to the premises of the Provisional Military Court in Jasenica, where they were questioned by the second-accused, Mladen Drljača, as the President of the Panel of the Provisional Military Court, Dmitar Ciganović and Mirko Orelj, judges of the above referenced Court, after which 35 prisoners, escorted by members of the military police of the Podgrmeč TO Brigade from Jasenica, were transferred and unlawfully detained in the *Petar*

*Kočić* elementary school in Bosanska Krupa, whereas the other prisoners were bussed to Arapuša.

3. During the period from 1 May 1992 until 21 August 1992, in the *Petar Kočić* elementary school in Bosanska Krupa, which was secured by the members of the military police of the Podgrmeč TO Brigade of the Serb Municipality of Bosanska Krupa, later on the 11<sup>th</sup> Krupa Light Infantry Brigade, the prisoners Muradif Alić *a.k.a.* Nuno, Sabid Alijagić, Enes Arnautović, Smajil Arnautović, Emin Arnautović, A-4, Aldin Bajrambašić, Hazim Bajrambašić, Šerif Bajraktarević, Adem Balkić, Asim Balkić, Hamdija Balkić, Kasim Balkić, Mirsad Budimlić, Idriz Bužimkić, Muharem Dedić, Omer Dedić, Redžo Delić, Husein Dizdarević, Enver Ezić, Hilmija Ezić, A-3, Džemal Grošić, Dževad Grošić, Zijad Grošić, Enes Halkić, Refik Harabaš, Emir Hasić, Fadil Hasanagić, Fehim Kadić, Ismet Kasumović, Senad Kasumović, Šefkija Kozlica, Kasim Kulauzović, Nusret Malkoč, Redžep Medžedović, Esad Mesić, PWS-03, Zarif Mehić, Zuhdija Mehić, Ekrem Mulalić, Osman Mušić, Mirsad Palić, Sead Palić, Euzebijo Redžić, Ilijas Redžić, Faik Redžić, PWS-31, Nurija Rekić, Bajro Šabić, Mirsad Šabić, Salih Salkić *a.k.a.* Braco, Tofik Sedić, Suad Sefić, Jusuf Sefić, Damir Selimagić, Miralem Selimović, Zijad Selimović, Šemsa Šepić, Kemal Šepić, Silvester Štancel, Smajil Tutić, Ferid Velagić, Ibrahim Velagić, Asmir Vojić and two other unidentified men were unlawfully detained and kept under unhygienic conditions, with not enough water, with no glass on the windows, insufficient amount of food and proper medical attention, during which period:
  - a) On or about 3 May 1992, in Zalug, Bosanska Krupa Municipality, members of the Public Security Station of the Serb Municipality of Bosanska Krupa detained civilians Enes Arnautović, Smail Arnautović, Emin Arnautović, Witness A-4, Enver Ezić, Sead Palić, Euzebijo Redžić, Ilijas Redžić, Nurija Rekić, Mirsad Šabić, Salih Salkić *a.k.a.* Braco and Ibrahim Velagić, and unlawfully imprisoned them in the *Petar Kočić* elementary school in Bosanska Krupa, wherefrom they transferred them to Jasenica to the premises of the Provisional Military Court of the Serb Municipality of Bosanska Krupa, where they were subjected to examinations carried out by the second-accused, Mladen Drljača, as the President of the Panel of the Provisional Military Court, and Dmitar Ciganović and Mirko Orelj, as judges of the aforementioned Court, after which they were escorted by members of the military police of the Podgrmeč TO Brigade and returned to the premises of the elementary school *Petar Kočić* in Bosanska Krupa, where they were kept unlawfully imprisoned,
  - b) In the first half of May 1992, in Bosanska Krupa, members of the 11<sup>th</sup> Krupa Light Infantry Brigade and Serb civilians, on several occasions entered the *Petar Kočić* elementary school in Bosanska Krupa by passing unobstructedly the guards who were securing the Muslims imprisoned in the referenced school, even though the first-



accused Gojko Kličković and second-accused Mladen Drljača were able to reasonably predict that the referenced crime would happen as a natural consequence of the execution of the plan of the above Joint Criminal Enterprise, having thus contributed to its implementation, on which occasion the following prisoners were severely beaten by kicks, punches, with metal rods, cables and wooden chair all around their bodies: Šemsa Šepić, Kemal Šepić, Nusret Malkoč, Mirsad Palić, Ekrem Mulalić, Fehim Kadić, A-3, Mirsad Budimlić and Suad Sefić,

- c) Sometime between 1 May and 10 May 1992, on the premises of the elementary school *Petar Kočić* in Bosanska Krupa, guard Željko Smoljanac raped the prisoner PWS-03, even though the first-accused Gojko Kličković and the second-accused Mladen Drljača were able to reasonably predict that the referenced crime would happen as a natural consequence of the execution of the plan of the above Joint Criminal Enterprise, whose implementation they contributed to,
- d) In early May 1992, the second-accused Mladen Drljača, in the capacity of the President of the Commission for Exchange of Prisoners of the Serb Municipality of Bosanska Krupa, selected prisoners for exchange, made lists of prisoners who were supposed to be exchanged and lists of prisoners who would remain in detention, and so on 10 May 1992, in the village of Ripač near Bihać, twenty-four imprisoned Muslims were forcibly moved, namely: Kasim Balkić, Asim Balkić, Hamdija Balkić, Ekrem Mulalić, Faik Redžić, Silvester Štancel, Šerif Bajraktarević, Džemal Grošić, Dževad Grošić, PWS-03, Smajil Arnautović, Zuhdija Mehić, Adem Balkić, Elvir Rekić, Husein Dizdarević, Emir Hasić, Zarif Mehić, Damir Selimagić, Dževad Arnautović, Enes Arnautović, Salih Salkić, Emir Arnautović, Ahmet Čehajić and Nermina Čehajić, who were imprisoned in the *Petar Kočić* elementary school in Bosanska Krupa under unhygienic conditions, without enough water, no glazing on windows, lacking adequate food and proper medical attention, where they were on several occasions brutally beaten and sent to forced labour, through the exchange for twelve persons of Serb ethnicity, namely Slobodan Štrbac, Slavko Rajić, Ranko Vukojević, Borka Vukojević, Stana Prica, Boško Škoriš, Boro Prica, Mila Vejinović, Mirko Stojanović, Pero Stojanović, Marko Jovičić and Dušan Ugorčin, who were imprisoned in Cazin,
- e) On 22 May 1992, in the village of Pritoka near Bihać, the second-accused Mladen Drljača, in his capacity of the President of the Commission for Exchange of Prisoners of the Serb Municipality of Bosanska Krupa, comprised of Duško Stojisavljević and Ratko Beronja, in the presence of Ejub Topić, Ešref Hadžić and Sead Ajukić, members of the Commission for the Exchange of Prisoners, persons deprived of liberty and killed persons of the TO Staff of the Bihać county, and representatives of the International Committee of the Red Cross, took<sup>9</sup> part in the forcible transfer of 16

imprisoned civilians of Muslim ethnicity: Hilmija Ezić, Idriz Bužimkić, Redžo Delić, Hazim Bajramović, Osman Mušić, Esad Mesić, Ibrahim Velagić, Euzebijo Rekić, Enver Ezić, Ilijas Rekić, Senad Kasumović, Ismet Kasumović, Mirsad Palić, Nuriya Rekić, Sead Palić, Šemso Šepić, who were imprisoned in the *Petar Kočić* elementary school in Bosanska Krupa, where they were held under unhygienic conditions, without enough water, no glass on windows, no adequate food and proper medical attention, where they were on several occasions brutally beaten and sent to forced labour, exchanged for 15 imprisoned Serb civilians: Mirko Rašetić, Goran Kovačević, Branko Žujić, Milan Radić, Vida Radić, Desa Kašetić, Krunoslav Čulibrk, Golub Miladinović, Gina Miladinović, Maja Miladinović, Marijan Miladinović, Vojo Štrbac, Stojica Štrbac, Danica Nedimović and Radovan Stanković, who were imprisoned in Cazin.

4. During the period between 1 May and 22 June 1992, members of the military police of the Podgrmeč TO Brigade of the Serb Municipality of Bosanska Krupa, later on known as the 11<sup>th</sup> Krupa Light Infantry Brigade, on several occasions took prisoners from the *Petar Kočić* elementary school from Bosanska Krupa to do forced labour, remove corpses, dig trenches and clean up the streets, on which occasions their lives were put at risk, in so much that:

- a) Between 1 May and 22 May 1992, in Bosanska Krupa, members of the 11<sup>th</sup> Krupa Light Infantry Brigade forced prisoner Enver Ezić to hold a broom with its stick directed towards the positions of the BiH Army, simulating shooting in the direction of the BiH Army positions, even though the first-accused Gojko Kličković and second-accused Mladen Drljača were able to reasonably predict that the referenced crime would happen as a natural consequence of the execution of the plan of the above Joint Criminal Enterprise, having thus contributed to its implementation, on which occasion prisoner Enver Ezić was forced to stand still with the broom in his hands within the sight of the members of the BiH Army, and was thus exposed to possible fire from the opposite side,
- b) During the same period referenced under 4.a. of the amended Indictment, on the hill Hum, Bosanska Krupa municipality, members of the 11<sup>th</sup> Krupa Light Infantry Brigade forced prisoner Enver Ezić to stand at the balcony of a house for about half an hour, facing the direction of the BiH Army positions, even though the first-accused Gojko Kličković and second-accused Mladen Drljača were able to reasonably predict that the referenced crime would happen as a natural consequence of the execution of the plan of the above Joint Criminal Enterprise, thus contributing to its implementation, on which occasion the prisoner, Enver Ezić, was forced to stand at the balcony of a house within the sight of the ABiH members, having thus been exposed to the fire from the opposite side,

- c) On or about 14 May 1992, in Bosanska Krupa, members of the 11<sup>th</sup> Krupa Light Infantry Brigade forced prisoners Mirsad Palić and Mirsad Šabić to dig a trench on the Hum hill, which was within the sight of members of the ABiH, even though the first-accused Gojko Kličković and second-accused Mladen Drljača were able to reasonably predict that the referenced crime would happen as a natural consequence of the execution of the plan of the above Joint Criminal Enterprise, having thus contributed to its implementation, who on that occasion fired at prisoners Mirsad Palić and Mirsad Šabić and wounded prisoner Mirsad Šabić in his leg,
  - d) On 20 June 1992 in Bosanska Krupa, members of the 11<sup>th</sup> Krupa Light Infantry Brigade forced prisoner Zijad Selimović to stand on a cannon aimed at the ABiH positions, even though the first-accused Gojko Kličković and second-accused Mladen Drljača were able to reasonably predict that the referenced crime would happen as a natural consequence of the execution of the plan of the above Joint Criminal Enterprise, whose implementation they contributed to, on which occasion Zijad Selimović, Muradif Alić and Aldin Bajrambašić were shot at and killed by the opposite side.
5. On or about 24 July 1992, in the *Petar Kočić* elementary school in Bosanska Krupa, prisoner Mirsad Budimlić, who had been previously beaten on numerous occasions to the point that his wounds had become infected, was beaten by Zdravko Narančić and another unknown guard, even though the first-accused Gojko Kličković and second-accused Mladen Drljača were able to reasonably predict that the referenced crime would happen as a natural consequence of the execution of the plan of the above Joint Criminal Enterprise, whose implementation they contributed to, and soon thereafter the prisoner Mirsad Budimlić succumbed to the inflicted wounds.
  6. On or about 28 July 1992, in the elementary school *Petar Kočić* in Bosanska Krupa, unknown prisoners, who were securing the prisoners in the referenced school, forced the prisoner Suad Sefić, who had been previously beaten on numerous occasions by members of the 11<sup>th</sup> Krupa Light Infantry Brigade, to drink an unknown substance, even though the first-accused Gojko Kličković and second-accused Mladen Drljača were able to reasonably predict that the referenced crime would happen as a natural consequence of the execution of the plan of the above Joint Criminal Enterprise, whose implementation they contributed to, and the prisoner Suad Sefić died soon thereafter.
  7. On 21 August 1992, on the premises of the *Petar Kočić* elementary school in Bosanska Krupa, members of the 11<sup>th</sup> Krupa Light Infantry Brigade brutally beat the prisoners Nusret Malkoć, Ferid Velagić, Fehim Kadić, Kemal Šepić and fifteen other prisoners by punching and kicking them all over their bodies, having previously blindfolded them, even though the first-accused Gojko Kličković and second-accused Mladen Drljača were

able to reasonably predict that the referenced crime would happen as a natural consequence of the execution of the plan of the above Joint Criminal Enterprise, whose implementation they contributed to, whereupon they were transferred to the detention camp of the 2<sup>nd</sup> Krajina Corps in Kamenica, where they were detained until 3 November 1992, during which time they were further abused, and the following prisoners died as a result of the abuse: Nusret Malkoć, Ferid Velagić, Fehim Kadić and Kemal Šepić.

8. On 28 April 1992, in Bosanska Krupa, the first-accused Gojko Kličković, in his capacity of the President of the War Presidency of the Serb Municipality of Bosanska Krupa, on no grounds prescribed under international law, issued an order with no number to the commanders of 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Battalions of the Podgrmeč Brigade of the Serb Municipality of Bosanska Krupa, regarding the evacuation of the Muslim population from the Podgrmeč enclaves, in which territory the Muslims lawfully resided, in the direction of Budimlić Japra, Kamengrad and Fajtovci, whereupon on 1 May 1992 the entire Muslim population from the villages of Ostružnica, Veliki and Mali Badić, Zalin, Velika Jasenica, Arapuša, Veliki Dubovik and Potkalinje were forcibly transferred to the municipality of Sanski Most, which was under the control of the Serb forces, escorted by members of the police of the Public Security Station of the Serb Municipality Bosanska Krupa and members of the Podgrmeč TO Brigade of the Serb Municipality of Bosanska Krupa.
9. On 22 May 1992, in Bosanska Krupa, the first-accused Gojko Kličković, in his capacity of the President of the War Presidency of the Serb Municipality of Bosanska Krupa, on no grounds whatsoever prescribed under international law, issued the order number 130/92, regarding the evacuation of the remaining Muslim population from the territory of the Serb Municipality of Bosanska Krupa, in which they lawfully resided, to the territory of the Bihać municipality, whereupon on 25 May 1992 the entire civilian Muslim population from the village Zalug and the remaining Muslim civilians from the part of the town of Bosanska Krupa on the right bank of the Una River, escorted by members of the Public Security Station of the Serb Municipality of Bosanska Krupa and members of the military police of the 11<sup>th</sup> Krupa Light Infantry Brigade, were forcibly moved to the territory of the Bihać Municipality, which was controlled by the ABiH forces.

### **The third-accused Jovan Ostojić,**

In the period from 14 July 1992 to 21 August 1992, in the capacity of the commander of the 11<sup>th</sup> Krupa Light Infantry Brigade, he did not take the necessary and reasonable measures to prevent the commission of the criminal offence, or punish the perpetrators of the referenced act, even though he knew or had reason to know that his subordinates were about to commit or had committed the referenced criminal offence, in the manner described below:

10. In the period from 14 July 1992 to 21 August 1992, the following prisoners were unlawfully detained in the *Petar Kočić* elementary school in Bosanska Krupa, which was secured by members of the 11<sup>th</sup> Krupa Light Infantry Brigade, who were his subordinates: Sabid Alijagić, A-4, Mirsad Budimlić, Muharem Dedić, Omer Dedić, A-3, Zijad Grošić, Enes Halkić, Refik Harabaš, Fadil Hasanagić, Fehim Kadić, Šefkija Kozlica, Kasim Kulauzović, Nusret Malkoć, Redžep Medžedović, PWS-31, Bajro Šabić, Mirsad Šabić, Tofik Sedić, Suad Sefić, Jusuf Sefić, Kemal Šepić, Smajil Tutić, Ferid Velagić and Asmir Vojić, who were kept in unhygienic conditions, with not enough water, with no glazing on windows and without sufficient food or medical attention, during which period:

- a) On 21 and 22 July 1992, after members of the military police of the 11<sup>th</sup> Krupa Light Infantry Brigade arrested civilians Redžep Medžedović, Fadil Hasanagić, Harabaš Refik, Zijad Grošić, Kasim Kulauzović, Sabid Alijagić, Tofik Sedić and Jusuf Sefić in Skucani Vakuf, Sanski Most Municipality, they imprisoned them in the *Dušan Košutić* elementary school in Jasenica, where they interrogated them and brutally beaten them by punching and kicking them, beating them with a baseball bat, whereupon they transferred the aforementioned prisoners to the *Petar Kočić* elementary school in Bosanska Krupa,
- b) On or about 24 July 1992, in Bosanska Krupa, in the *Petar Kočić* elementary school, the prisoner Mirsad Budimlić, who had been previously beaten by the guards on numerous occasions to the point that his wounds had become infected, was beaten by guard Zdravko Narančić and another unknown guard, whereupon the prisoner Budimlić died as a result of the inflicted wounds,
- c) On or about 28 July 1992, in Bosanska Krupa, in the *Petar Kočić* elementary school, unknown guards, who were securing the prisoners in the school, forced the prisoner Suad Sefić, who had been beaten by members of the 11<sup>th</sup> Krupa Light Infantry Brigade on several occasions, to drink an unknown substance, which resulted in the death of the prisoner Suad Sefić,
- d) Between 1 August and 12 August 1992, on the premises of the *Petar Kočić* elementary school in Bosanska Krupa, Joja Plavanjac, member of the 11<sup>th</sup> Krupa Light Infantry Brigade, entered the school during the guard shift of Zdravko Narančić and killed by firearm the prisoners Nezir Kaltak, Ferid Kaltak, Rasim Kaltak, Emsud Kaltak, Enes Kaltak, Fadil Alijagić, Edin Alijagić, Rasim Nasić *a.k.a.* Rako, whom they called the *JOKS* group, and Tofik Sedić, whose bodies were during the night put onto the cargo truck and taken to the territory of Lipik, Bosanska Krupa municipality,

- e) On 21 August 1992, on the premises of the *Petar Kočić* elementary school in Bosanska Krupa, members of the military police of the 11<sup>th</sup> Krupa Light Infantry Brigade brutally beat prisoners Nusret Malkoć, Ferid Velagić, Fehim Kadić, Kemal Šepić and fifteen other prisoners, having blindfolded them first, by kicking and punching them all over their bodies, after which they, upon the order issued by the Command of the 2<sup>nd</sup> Krajina Corps, they transferred them to the detention camp of the 2<sup>nd</sup> Krajina Corps in Kamenica, where they were held imprisoned until 3 November 1992, during which period the prisoners were abused, which resulted in the death of the following prisoners: Nusret Malkoć, Ferid Velagić, Fehim Kadić, and Kemal Šepić.

**Whereby they would have committed:**

**The first-accused Gojko Kličković**, the criminal offence of Crimes against Humanity, in violation of Article 172(1)(h) of the Criminal Code of Bosnia and Herzegovina, in conjunction with

- Paragraph a) in relation to Counts 1, 2-b, 4-d, 5, 6 and 7 of the amended Indictment,
- Paragraph d) in relation to Counts 8 and 9 of the amended Indictment,
- Paragraph e) in relation to Counts 2, 2-d, 3 and 3-a of the amended Indictment,
- Paragraph f) in relation to Counts 2-a, 2-c, 3-b, 4-c and 7 of the amended Indictment,
- Paragraph g) in relation to Count 3-c of the amended Indictment, and
- Paragraph k) in relation to Counts 2, 3, 4-a and 4-b of the amended Indictment,

all in conjunction with Article 180(1) of the Criminal Code of Bosnia and Herzegovina,

**The second-accused Mladen Drljača**, the criminal offence of Crimes against Humanity, in violation of Article 172(1)(h) of the Criminal Code of Bosnia and Herzegovina, in conjunction with

- Paragraph a) in relation to Counts 2-b, 4-d, 5, 6 and 7 of the amended Indictment,
- Paragraph d) in relation to Counts 3-d and 3-e of the amended Indictment,
- Paragraph e) in relation to Counts 2, 2-d, 3 and 3-a of the amended Indictment,
- Paragraph f) in relation to Counts 2-a, 2-c, 3-b, 4-c and 7 of the amended Indictment,
- Paragraph g) in relation to Count 3-c of the amended Indictment, and
- Paragraph k) in relation to Counts 2, 3, 4-a and 4-b of the amended Indictment,

all in conjunction with Article 180 (1) of the Criminal Code of Bosnia and Herzegovina,

**The third-accused, Jovan Ostojić**, the criminal offence of Crimes against Humanity, in violation of Article 172(1)(h) of the Criminal Code of Bosnia and Herzegovina, in conjunction with:

- Paragraph a) in relation to Counts 10-b, 10-c, 10-d and 10-e of the amended Indictment,
  - Paragraph e) in relation to Count 10 of the amended Indictment,
  - Paragraph f) in relation to Count 10-a and 10-e of the amended Indictment,
  - Paragraph k) in relation to Count 10 of the amended Indictment,
- all in conjunction with Article 180(2) of the Criminal Code of Bosnia and Herzegovina.

Pursuant to Article 189(1) of the CPC BiH, costs of the criminal proceedings under Article 185(2)(a) through (f) of the Code, as well as the necessary expenditures and remuneration to the defence counsel, shall be covered from the Court's budgetary appropriations.

Pursuant to Article 198(3) of the CPC BiH, the injured parties are referred to take civil action with their claims under property law.

## **R e a s o n i n g**

Having conscientiously evaluated each piece of evidence individually and in relation to the other evidence adduced at the main trial, pursuant to Article 281 of the CPC BiH, and having prior to this analyzed the arguments of the prosecution and the defense, the Panel concluded that during the referenced proceedings it was not proved that the accused had committed the criminal offenses as charged under the confirmed Indictment.

The evidence adduced during the proceedings is specified in Annex 1, while Annex 2 contains a list of procedural decisions, all of which is a constituent part to the reasoning of the Verdict.

## **I. COURSE OF THE PROCEEDINGS**

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

1. The BiH Prosecutor's Office (Prosecution) filed against the accused Gojko Kličković Indictment number: KT-RZ-100/06 dated 14 December 2007, which was confirmed on 19 December 2007. Under the Indictment, the accused was charged that by having participated in the joint criminal enterprise at the Republic and the municipal levels he committed the criminal offenses Crimes against Humanity in violation of Article 172 of the CC BiH, War Crimes against Civilians in violation of Article 173 of the CC BIH and War Crimes against Prisoners of War, all in conjunction with Article 180(1) and (2) of the CC BiH. The accused Mladen Drljača was charged with the same criminal offenses and the participation in the joint criminal enterprise at the Republic and the municipal levels under the Indictment of the Prosecutor's Office No.: KT-RZ-22/08 dated 19 March 2008, confirmed on 21 March 2008, and the accused Jovan Ostojić, under Indictment

No.: KT-19/08 dated 12 March 2008, confirmed on 13 March 2008.

2. By the Decisions dated 22 April 2008 and 23 April 2008, the Court of BiH merged the cases and conducted joined proceedings pursuant to the referenced Indictments of the Prosecutor's Office. The main trial in these proceedings commenced on 6 May 2008 by reading the Indictments at issue. Thereupon, on 21 August 2008, the Prosecution filed joint Indictment No.: KT-RZ-100/06.

3. By its written submission dated 31 March 2009, the Prosecution stated that it had withdrawn the charges for the joint criminal enterprise as the grounds for the responsibility on the part of the accused Jovan Ostojić. At the hearing held on 15 September 2009, the Prosecutor in the case stated that the existence of joint criminal enterprise at the Republic level had not been proved. The Prosecutor maintained that the joint criminal enterprise existed at the municipal level, as subsequently presented in the joint Indictment dated 21 September 2010.

### **1. Rebuttal Evidence**

4. After the presentation of the Defense evidence, the Panel refused the Prosecutor's motion to present the rebuttal evidence dated 23 August 2010 by hearing the witnesses regarding their detention in the elementary school in Jasenice and the *Petar Kočić* elementary school in Bosanska Krupa. This was so because during the proceedings the Defense did not contest that the crimes took place, but they only contested the participation of the accused, that is, their responsibility for the committed crimes. Also, the Panel did not accept the witnesses who would testify regarding the attack on Bosanska Krupa, given that during the earlier period the Prosecution interviewed a number of witnesses regarding the same circumstance. The Panel concluded that the hearing of additional two witnesses would not essentially change the state of facts that had been earlier described by the witnesses heard.

5. Also refused were the motions to submit documentary evidence, the Witness Examination Records for Zdravko Marčeta, Đorđe Jež, Ratko Beronja and other witnesses, given that the Prosecution had an opportunity to do so during the examination of these witnesses during the main trial.

6. The Panel also considered irrelevant to summon again the expert witness, Prof. Kasim Trnka, because he had explained his finding and opinion at the main trial. Since that moment, the Prosecutor had an opportunity to cross-examine the expert witness. In addition, even then the expert witness stated that he entirely maintained the arguments presented in his expert analysis used as the evidentiary material in the ICTY case *Prosecutor vs. Emir Hadžihasanović and Amir Kubura* that was also accepted as evidence in these proceedings.



## **2. Closing Arguments**

### **(a) Prosecutor's Office**

Presentation of the closing arguments started on 5 October 2010. On this occasion, the Prosecutor in the case addressed again the testimonies of the witnesses heard and the documentary evidence adduced supporting each Count of the amended Indictment. In analyzing the elements of the criminal offense, the Prosecutor primarily analyzed the existence of a widespread or systematic attack. In this context, the Prosecutor referred to the ICTY case law and the statements of the witnesses. On this basis, the Prosecutor concluded that on 21 April 1992 the Serb forces launched an attack from the hills of Lipik, Vučijak, and the villages of Petrovići, Pučenik and Vranjska on the villages with the majority Muslim population, followed up by systematic arrests and detention of mostly civilians, burning of houses, unlawful interrogations, forced labor, torture, beating up, killing and forcible removal of the non-Serb population. According to the Prosecution, all these actions were taken with the intent to establish the Serb Municipality of Bosanska Krupa.

The view of the Prosecution is that the first-accused Gojko Kličković and the second-accused Mladen Drljača were aware of the attack on the non-Serb population of the Municipality Bosanska Krupa. This is so because, unlike the citizens, they were in a position to have an overall insight in the situation and thereby knew what was happening in the territory of the Municipality of Bosanska Krupa and the wider area. Such conclusion follows from the fact that the accused were SDS officials and were present in the places where the crimes took place. Therefore, given the functions that he held, the accused Gojko Kličković had a leading role in the implementation of the joint criminal enterprise plan in the manner that he established and controlled the system of authority in the so called Serb Municipality of Bosanska Krupa. During the critical period, the second-accused Mladen Drljača was a member of the Crisis Staff and War Presidency of the Serb Municipality of Bosanska Krupa, the President of the Provisional Military Court, President of the Commission for the Exchange of Refugees and a member of the SDS Secretariat, due to which he contributed to the establishment of the Serb Municipality of Bosanska Krupa whereby he was aware that his actions constituted a part of this attack.

Having found it proven that the accused had committed the criminal offense as charged, the Prosecution proposed that a conviction be rendered and the sentence of long term imprisonment imposed.

### **(b) The Defense for the first-accused Gojko Kličković**

7. In his closing arguments, the Defense Counsel for the accused Gojko Kličković, Attorney Dušan Tomić, submits that during the proceedings, the responsibility of the accused for

the mistreatment and killing of prisoners was not proved. This is so because the accused was not superior to the military police that secured the facilities in which those persons were detained. He was not responsible for the soldiers and had no legal obligation to supervise their work. Also, the accused cannot be held liable for something he had no knowledge of whatsoever.

8. In his closing argument, the accused Gojko Kličković primarily contests the existence of the widespread and systematic attack of the Serb forces on the non-Serb civilian population of the Municipality Bosanska Krupa. The accused submits that on 21 April 1992, a conflict arose between the Muslim and the Serb territorial defense forces. This conflict lasted for 3 or 4 days with sporadic exchanges of fire. Therefore, such an attack would not satisfy any of the statutory alternatively prescribed characteristics. The attack could not have been launched against the civilians because prior to the outbreak of the conflict almost all of them had left the town and went to the left bank of the Una river, while Serb civilians mostly went in the direction of Jasenica and the neighboring villages. The accused also contested the application of the institution of joint criminal enterprise, which is prescribed as the form of responsibility by neither the Criminal Code of Bosnia and Herzegovina, nor the CC SFRY that was in force at the time of commission of the criminal offense. Therefore, he cannot be responsible for the committed crimes. In his further presentation, the accused referred to the legal regulations that were applicable during the relevant period, in which he found the basis for his actions. Furthermore, the accused does not think that by the evacuation of the Muslim population from the places of Arapuša, Zalug, Podkalinje etc. on the right bank of the Una river he committed the criminal offense of Forcible Transfer of Population given that the evacuation was justified for military and security reasons and based on positive international and national regulations.

(c) The Defense for the second-accused Mladen Drljača

9. The Defense Counsel for the accused Mladen Drljača, Attorney Milan Trbojević, also considers unproved the allegations referenced in the amended Indictment and the participation and the responsibility of this accused for the crimes committed during the incriminating period. His participation in the Provisional Military Court cannot be categorized as any incrimination within the criminal offense of crimes against humanity, because that was but a formal taking of personal details from the detained persons. In all this, it was not proved that the accused decided on who will be brought for interrogation or on the further destiny of these persons and their unlawful detention. The participation of the accused in the exchange has a humane character and was a result of the agreement made between the two warring sides. Therefore, the Defense Counsel submits that this role of the accused is also not incriminating. Finally, the Defense Counsel concluded that no facts existed to justify the allegations on the participation of the accused in the joint criminal enterprise. With regard to the legal qualifications, there is no evidence to support that they persecuted

anybody, deprived anyone of his liberty or tortured anyone. Also, it was not proved that they planned, ordered, prepared, aided and abetted any criminal offense referenced in the Indictment.

10. In supporting the closing argument of his Defense Counsel, the accused Mladen Drljača, states that none of the witnesses heard brought him in the context of establishment of the Serb Municipality of Bosanska Krupa, albeit he participated in these activities through the Commission for Implementation of Plebiscite and Referendum. His work in the Provisional Military Court was based on taking the statements from the persons who were further referred to the relevant authorities. In doing so, he had no authority over the military police members who brought in people for interrogation, nor did he decide on the further destiny of the apprehended persons. Also, during the proceedings, the accused did not contest his participation in the Commission for the Exchange of Prisoners, but he could in no way select persons to be exchanged nor was his role decisive in any respect.

11. Pursuant to the foregoing, the Defense Counsels and the accused proposed that an acquitting verdict be rendered, and that bail and the imposed prohibiting measures be revoked.

(d) The Defense for the accused Jovan Ostojić

12. In his closing argument, the Defense Counsel for the accused Jovan Ostojić, Attorney Milan Romanić, emphasized that as the commander of the 11<sup>th</sup> Light Infantry Brigade, the accused had *de iure* but not *de facto* control over his subordinates who concealed from him the commission of crimes. The only witness who asserts that the accused was aware of one of the crimes – the killing of the JOKS group, is Zdravko Marčeta. During the proceedings, this witness gave contradictory statements directed at avoiding criminal responsibility. The Court cannot render a convicting verdict based on such testimony. Furthermore, the defense witnesses explained the manner of operations, organization and the relationship of the intelligence and security bodies toward the Commander of the Brigade, differences in reporting on prisoners of war and their treatment. The accused therefore had no knowledge about the crimes committed against prisoners, which is addressed by the ample evidence adduced, given that the leading security men in the Brigade routinely concealed this information. On the other hand, a large number of witnesses confirmed a professional relationship of Commander Ostojić to his subordinates, which is best shown by his numerous decorations, his determination in punishing even disciplinary offenses of soldiers. In the end of his closing argument, the Defense Counsel stated that the command responsibility is not part of international humanitarian law, that it is not applicable as a form of responsibility of this accused in the case at hand. He emphasized that the Prosecutor did not prove beyond any reasonable doubt any fact charged against the accused. Therefore, he proposes that pursuant to the *in dubio pro reo* principle (when in doubt, for the accused) an acquitting verdict be rendered and the imposed prohibiting measures and bail revoked.

13. The accused Jovan Ostojić supported the arguments of his Defense Counsel. He added that

he had never acted with the discriminatory intent against anyone. He expressed his regrets toward all victims who were the subject of the trial.

## **B. GENERAL EVALUATION OF EVIDENCE IN THE PROCEEDINGS**

14. Article 3(1) of the CPC BiH prescribes that the accused shall be considered innocent of a crime until guilt has been established by a final verdict.<sup>1</sup> Therefore, the Prosecutor bears the burden of establishing the guilt of the accused. Pursuant to Article 3(2) of the CPC BiH, the prosecution must establish this beyond any reasonable doubt.<sup>2</sup> The fact that the Defense did not contest certain factual allegations from the Indictment does not mean that the Panel accepted these facts as proven. The burden of proof lies with the Prosecutor for each count during the entire trial. Accordingly, in establishing whether the Prosecutor proved the case beyond any reasonable doubt, the Panel carefully evaluated if any other reasonable interpretation of the adduced evidence existed beyond the one that was accepted by this Panel when pursuant to the *in dubio pro reo*<sup>3</sup> principle it decided that the commission of the criminal offense charged against the accused was not proved.

15. Pursuant to Article 15 of the CPC BiH, the Panel is entitled to freely evaluate the evidence.<sup>4</sup> Accordingly, the charges against the accused were carefully considered, including all the evidence adduced. In evaluating the evidence adduced during the main trial, the Panel, *inter alia*, gave due respect to individual circumstances of the witnesses, their possible participation in the events and the risk of their self-incrimination, and their relations with the accused. The Panel also considered the consistency of the testimonies of each witness during the direct or cross examination and compared them with their statements given during the investigation.

16. Sometimes, oral testimonies differed from the statements given by the witnesses during the investigative phase. However, it should be taken into account that eighteen years have elapsed since the events referenced in the Indictment. Therefore, it is justified to expect that the time elapsed affected the correctness and credibility of the witnesses' memories. Also, it is a fact that due to the nature of the criminal proceedings the witness at the main trial can be asked questions different from the questions asked in the earlier interviews. Therefore, after the concretization of certain

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<sup>1</sup> Article 3(1) of the CPC BiH prescribes that „A person shall be considered innocent of a crime until guilt has been established by a final verdict“. This provision is in accordance with all main human rights institutions. See the European Convention on Human Rights, Article 6(2); International Covenant on Civilian and Political Rights, Article 14(2).

<sup>2</sup> Article 3(2) of the CPC BiH prescribes that "A doubt with respect to the existence of facts composing characteristics of a criminal offense or on which depends an application of certain provisions of criminal legislation shall be decided by the Court with a verdict and in a manner that is the most favourable for accused."

<sup>3</sup> Article 3(2) of the CPC BiH.

<sup>4</sup> Article 15 of the CPC BiH prescribes that "... the existence or non-existence of facts shall not be related or limited to special formal evidentiary rules".

issues, it is justified to expect that the witness will remember additional details. Of course, the Panel carefully considered such situations in establishing the probative value of such evidence.

17. Considering the oral testimonies before the Panel, certain inconsistencies and incorrectness between the earlier statements and the oral testimony of the witness, or among different witnesses, constitute a relevant factor in the assessment of the probative value and they necessarily do not discredit the entire testimony of the witness. If the witness recounted in detail the essence of the event at issue, periphery discrepancies did not necessarily bring into question the truthfulness of such evidence. The reasons to accept certain testimonies, the evaluation of their credibility and grounds are explained in detail in the further reasoning of the Verdict.

18. The Panel also notes that in the case at hand, the documentary evidence was ample and particularly important. During the trial, certain documents were admitted into evidence and contested by the Defense, while a large number of the Prosecution evidence was admitted also as the Defense evidence. In any case, the Panel reviewed each document that was contested by the Defense in order to decide on its credibility and the probative value.

19. The newspapers articles and excerpts from the books that were proposed as documentary evidence by the first-accused Gojko Kličković were not taken into primary evaluation in rendering the verdict given that they constituted secondary sources of information representing subjective and often arbitrary understanding of the event by the author (of article or the book). As such, they are suitable only for the registration of more significant events in the period of time relevant to the Indictment. Therefore, the mentioned evidence did not decisively affect the decision of the Panel.

20. During the proceedings, the Defense principally contested the applicability of the report of the ICTY expert witness, Dorothea Hanson (an analyst of political issues of leadership and municipal bodies), and expert witness Richard Buttler (military analyst), given that neither the Prosecutor's Office nor the Court ordered expert witnesses to produce their findings and opinion, nor were the quotations from their respective reports directly related to the facts and the circumstances of this case.

21. To this end, the Panel had in mind the fact that expert witness Hanson produced her finding and opinion for the needs of the ICTY in the *Momčilo Krajišnik* case. This Finding and Opinion was subsequently revised and adjusted to the needs in the *Kličković et al.* case. The Panel finds that there are no formal obstacles to admit such evidence in the case record pursuant to Article 6 of the Law on the Transfer of Cases. This is so because the Defense was provided with a possibility to cross examine the expert witness. However, in evaluating all the evidence, also analyzed was the objectivity and impartiality of the contents of the report. It was established that these facts were imprecise and contradictory in relation to the facts established by the Panel during the evidentiary proceedings. Primarily, during the cross-examination the expert witness confirmed that in making her report she had not used the positive statutory provisions of the SFRY that were applicable at the

time included in the Indictment at issue. This should have been done in the context of establishing the lawfulness of the activities of the Crisis Staff and the War Presidency. Also, it was established during the cross-examination that the report by expert witness Hanson evolved during the time in the manner that the crisis staffs of the Serb people in BiH were transformed from an unlawful creation of the Serb Democratic Party, as initially treated, to a lawful category. This implies that their establishment was in the end not unlawful. Furthermore, the Panel finds that the report by the expert witness is incomplete because it does not include the establishment of the crisis staffs of the other party to the conflict, whereby the objectivity in producing the finding and opinion was violated. Therefore, pursuant to all specified deficiencies, the major portion of the report was eventually not used in rendering the final decision.

22. The Defense also contested the applicability of the report of Richard Buttler (a professional military intelligence officer) who is currently working for the ICTY Office of the Prosecutor. Given that he had produced the Finding and Opinion in the *Krstić, Blagojević* and *Jokić* cases and thereupon modified them to be applied in the *Kličković et al.* case, the Panel finds satisfied the requirements to accept the report of this expert witness pursuant to Article 6 of the Law on the Transfer of Cases, without disregarding the fact that the expert witness did not review the case record and does not know the circumstances of the case at issue. The report was primarily made for the Srebrenica territory during July 1995 in relation to the Bratunac and Zvornik brigades. It was initially intended for the ICTY investigators. However, the expert witness explained at the main trial that certain portions of the report and the military rules can be applied generally, in order to understand better the structure of the Army of Republika Srpska (VRS), its organization and functioning. On this basis, the expert witness gave his opinion on the organization and functioning of the 11<sup>th</sup> Krupa Light Infantry Brigade during 1992. To this end, the Panel accepted the parts of the finding and opinion in the section presenting a detailed structure of the organization and the activities of the VRS, and providing the universal rules of the organization and activities of the military pursuant to the legal regulations applicable at the critical time. The expert witness himself also clarified in his presentation that most of the report analyzed the *de iure* powers of the commander, which was relevant for reviewing the existence of the command responsibility on the part of the accused Jovan Ostojić.

23. Given that a number of expert analyses were carried out in these proceedings, it should be noted that none of them unconditionally obliged the Panel in rendering the final decision, nor was the opinion of an expert witness accepted if proven to be entirely opposite to the facts established during the evidentiary proceedings.

24. Finally, in these criminal proceedings, the accused Mladen Drljača and Jovan Ostojić exercised their right to remain silent pursuant to Article 6(3) of the CPC BiH<sup>5</sup> and Article 6 of the European Convention on Human Rights<sup>6</sup> prescribing that no accused shall be obliged to testify against himself. Therefore, the Panel finds it necessary to emphasize that no detrimental conclusions were drawn from this circumstance.

## **II. GENERAL ELEMENTS OF THE CRIMINAL OFFENSE OF CRIMES AGAINST HUMANITY IN VIOLATION OF ARTICLE 172 OF THE CC BIH**

25. In the last amended Indictment, the accused Gojko Kličković and Mladen Drljača were charged that they knowingly participated in a Joint Criminal Enterprise, which had come into existence as of Summer 1991, together with Miroslav Vještica, Mile Drljača *a.k.a.* „Teho“, Milan Štrbac *a.k.a.* „Bijeli“, Lazar Stupar, Dmitar Ciganović, Milan Vojinović, Mirko Orelj and other SDS members in the so-called Serb Municipality of Bosanska Krupa, sharing the plan of partitioning the legally established Municipality of Bosanska Krupa, whereby they, by having committed criminal offences, created the so-called Serb Municipality of Bosanska Krupa as an area populated by an absolute Serb majority, where Serbs could assert control in all areas of power and administration, which resulted in the commission of the criminal offense of **Crimes against Humanity in violation of Article 172(1)(h), as read with Subparagraphs a), d), e), f), g) and k) of the CC BiH**, which in the relevant parts reads as follows:

(1) 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:

- a) Depriving another person of his life (murder);
- d) Deportation or forcible transfer of population;
- e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
- f) Torture;
- g) Coercing another by force or by threat of immediate attack upon his life or limb, or the life or limb of a person close to him, to sexual intercourse or an equivalent sexual act (rape), sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization or any other form of sexual violence of comparable gravity;
- h) Persecutions against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, sexual or other grounds that are universally recognized as impermissible

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<sup>5</sup> Article 6(3) of the CPC BiH prescribes that “The accused shall not be bound to present his defense or to answer questions posed to him”.

<sup>6</sup> Although it is not particularly specified in Article 6 of the European Convention on Human Rights, the view of the European Court of Human Rights is that the silence and the right not to incriminate himself are generally known international standards constituting a key of the principle of a fair trial pursuant to Article 6(1) of the Convention. These rights are closely related to the principle set forth in Article 6(2), namely that a person charged with the commission of crime shall be considered innocent until proven guilty by the law. See, *Saunders vs. United Kingdom* (Appeal 19187/91), Judgment dated 17 December 1996 (1997); *R v Director of the Office for Severe Frauds, ex parte Smith*, 3 WLR 66 (1992).

under international law, in connection with any offence listed in this paragraph of this Code, any offence listed in this Code or any offence falling under the jurisdiction of the Court of Bosnia and Herzegovina;

k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to physical or mental health,

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

From the foregoing statutory definition of the criminal offense of Crimes against Humanity in violation of Article 172(1) of the CC BiH, charged against the accused, ensue the following general elements of this criminal offense:

1. there must be a widespread or systematic attack directed against any civilian population,
2. that the offense was committed as part of such an attack,
3. that the accused was aware of such an attack and that his actions constituted part of the attack

26. If any of the three foregoing general elements of this criminal is missing, the accused cannot be found guilty of individual charges, that is, the underlying acts of the crime.

**A. WIDESPREAD AND SYSTEMATIC ATTACK DIRECTED AGAINST CIVILIANS**

27. In reviewing the existence of the first and the basic element of this criminal offense, the Court was guided by the earlier accepted standards of the Court of BiH and the International Criminal Tribunal for the Former Yugoslavia. Having completed the evidentiary proceedings, the Panel did not find proved the existence of the first general element of the criminal offense charged against the accused.

28. In this context, it was necessary to review if a widespread or systematic attack of the army and the police of the so called Serb Republic of Bosnia and Herzegovina was launched in Bosanska Krupa on 21 April 1992 against the non-Serb civilian population of the so-called Autonomous Region of Krajina in the implementation of the state policy or the policy of a certain organization, with regard to connecting the Serb-populated territories in BiH, so as to assert control over those territories and set up a separate state of Bosnian Serbs, from which the non-Serb population would be permanently removed.



29. In reviewing the existence of this general element, the Panel had in mind the alternatively established characteristics of the attack, in which the element „widespread“ refers to „*the large-scale nature of the attack and the number of the victims*“<sup>7</sup>, while the element „systematic“ requires „*an organized nature of the acts and the improbability of their random occurrence*“.<sup>8</sup>

## **1. History of the events**

30. According to the arguments in the amended Indictment, a widespread and systematic attack directed against the civilian population of the Municipality Bosanska Krupa was launched on 21 April 1992. The witnesses heard are consistent in testifying that the period prior to 21 April 2010 was marked with certain incident situations which after the multipartisan elections, intensified the tensions among the population and resulted in the state of fear, tensions and uncertainty, which would culminate in a mutual conflict.

31. The Defense witness Ismet Mujanović, the then chief of the military security of the District Staff of the TO Bihać, was aware of the incidents of *security interest* that had taken place prior to the conflict outbreak. According to the information obtained from his unidentified sources, the witness knew that the accessories and the initiators of the incidents were the leaders of the SDS, primarily Miroslav Vještica and the accused Kličković. However, the evidence in support of such assertions beyond any reasonable doubt was not adduced during the proceedings. The only piece of evidence tendered by the Prosecution in terms of the existence of the SDS hostile policy was a leaflet produced by the Municipal Board of this Party. According to the Panel, it used an inappropriate and incendiary language, inviting the Serb population, under the threat of „*Lazar's curse*“ to boycott „*Alija's referendum for an independent Bosnia and Herzegovina*“. It is clear to the Panel that this is the party that won majority votes of the Serb people at the elections, and that its members were free to implement their program's goals. The View of the Panel, however, is that the foregoing could have been done in a different manner, pursuant to the morale standards of the society and the principles stated in the very Statute of the Serb Democratic Party. In his testimony, the accused Kličković also evaluated the SDS rhetoric in the same manner.

### **(a) Ban on the construction of a monument for Branko Ćopić**

32. The witnesses for both the defense and the prosecution differently testified about this incident, but did not contest that the incident had indeed occurred. The differences in their testimonies already give an image of ethnic division and the raising tensions among the population

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<sup>7</sup> Naletilić and Martinović, Trial Chamber, 31 March 2003, par. 206/sic/.

<sup>8</sup> Naletilić and Martinović, Trial Chamber, 31 March 2003, par. 236.

after the multi-party elections. According to witness Jadranko Šaran, putting up a monument to the writer Branko Ćopić was planned in a small park in Bosanska Krupa, upon an initiative of the SDS representatives. However, the municipal bodies prohibited the monument erection because no construction license had been obtained. In addition, according to witness Jadranko Šaran, a bust of Branko Ćopić had been already erected on a couple of locations and there was no need for another one. In this context, the protected witness A2 added that the reasons for refusal were not nationalistic, nor was Branko Ćopić experienced as a Serb writer exclusively. He was Krajina's writer, and in the Bosanska Krupa society he already had a place he deserved for his literary achievements. Thus, Ćopić's village was under construction, while in the town itself a literary club existed. Therefore, there were sufficient appropriate marks of the importance that he had in the literature of Bosnia and Herzegovina.

33. At the time, Miroslav Vještica, as a chief of an administrative body, nevertheless approved an unlawful erection of the bust of Branko Ćopić without a consent of the Municipality, which was opposed by the relevant authorities, while the media covered this as an incident. Contrary to this, Defense witness Miroslav Vještica submits that a proper documentation existed to erect the monument, which was stolen and hidden after the erection, which resulted in the revolt of Serb citizens. In any way, it obviously follows from the referenced testimonies that this is an incident which was among the first incidents that instigated intolerance between the Serb and the Muslim citizens.

(b) Theft of the military conscripts' records

34. As established in the accepted facts, the war and the separation of Slovenia, and particularly of Croatia, significantly affected the social and the political situation in BiH. Starting from the late summer 1991, many able bodied men in BiH received a call for mobilization into the JNA to fight in Croatia. A large number of Bosnian Serbs responded, but Bosnian Muslims and Bosnian Croats, supported with their leaders, mostly did not respond to the calls. This contributed to the raising tensions among the national groups, particularly in the region of Bosanska Krajina along the border with Croatia.<sup>9</sup>

35. Pursuant to the positive statutory regulations, the Municipal Secretariat for General National Defense was at the time responsible for keeping the records on military conscripts. This was preceded by the decision of the Federal Secretariat for General National Defense, by which the activities of the kind had to be transferred into the jurisdiction of military-territorial authorities in the Bihać, Cazin and Kladuša regions, respectively, while the executive organs to this end were supposed to be the military-territorial authorities. Pursuant to the SDA instructions, Muslims ceased

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<sup>9</sup> The fact accepted from the Judgment in the *Brđanin* case, par. 58, Decision of the Court of BiH No.: X-KR-06/213 dated 27 March 2009.

responding to the mobilization calls already in April. Some time in **August 1991**, some Muslim citizens, in cooperation with the employees of the Municipal Secretariat Bosanska Krupa, relocated the files-records of conscripts by taking it out through the windows. According to the testimonies of the witnesses, the foregoing constituted a theft for Serbs and a destruction of the earlier established system, because Serbs wanted to respond to the mobilization and go to the frontline in the R Croatia. The Republic Secretariat for General National Defense was informed accordingly, but despite this the incident caused a crisis of government, in the manner that the SDS representatives stopped attending regular sessions of the Assembly of the Municipality Bosanska Krupa, until the files were returned from Bužim, where it had been dislocated.

(c) Arrest of Milan Martić

36. According to the testimony of witness Hašim Đulić, this was an incident that significantly violated the security situation in the Municipality. The then Chief of the PS Bosanska Krupa, Šemsudin Velić, monitored the entire event. The witness clarified that already during the 1991 summer, paramilitary formations and groups of armed soldiers were frequently coming from the neighboring Republic of Croatia, causing unrest among the population. These persons carried arms illegally and behaved unlawfully. Most frequently, they stayed in Dvor at the river Una, some 20 km away from the town. A group of them, called *Martić's men*, mostly stayed in the *Splav* Restaurant. There were a number of isolated attempts to arrest them, but at the time the interventions of the SDS leaders were more frequent and if members of these units were apprehended they would not be placed into custody and their arms, if seized, would be returned to them.

37. Witness Velić testified that the arrest of Martić and his group took place on **8 September 1991**, when a number of police officers came to inform him that 6 persons were in the *Splav* Restaurant, armed with automatic rifles and machine guns. The witness ordered their apprehension because those were paramilitary formations. After they were brought to the premises of the police station, two trucks with Martić's police officers arrived, blocked the city and directed hand-held launchers and *Zolja* hand-held rocket launchers toward the police station, demanding that the arrested persons be released. After contacting the then Minister of Interior of the R BiH, Alija Delimustafić, the witness was instructed to release without resistance the arrested persons to go to Dvor on the river Una. However, the witness was informed that, after leaving the station, Martić was with his group again stopped by Muslim citizens on a bridge in Bosanska Otoka.

38. The Defense witness, Radomir Njeguš, was at the time ordered by the Regional Ministry of Interior to liberate Martić with his units. Thereafter, he set off toward Bosanska Otoka. After arriving in front of the police station in which Martić was detained, they saw around 50-60 Muslims shouting angrily and, according to his conclusion, "*intending to burst into the room and liquidate those prisoners*". At that moment, the witness received an order not to take any activities until Assistant Minister Avdo Hebib came. Thus, for a couple of hours, the facility was secured by the

active and reserve police force. According to the witness, the situation was getting worse every minute. People threw stones at them, shot in the air, and threatened that Martić would be liquidated. After his arrival, Hebیب addressed the gathered people via megaphone and tried to calm down the tensions. He failed in doing so, and thereupon police officers blocked the premises, took out Martić and his escort and drove them toward Novi Grad. Witness Njeguš was the last person to leave the spot. On this occasion, he noticed that the police vehicles were damaged by the stones thrown at them, while police officers themselves were in jeopardy due to the shots fired. After returning to the police station, the witness made a detailed report, but never found out who had ordered Martić's arrest.

39. All witnesses are consistent in testifying that after this incident tensions were intensified among the population in the Municipality due to an *'absolute lack of understanding'*. According to witness Velić, after the incident the entire Serb police left the job in the Public Security Station Bosanska Krupa and went to the newly-established dislocated department in Jasenica. Thereupon, the town was sealed off by barricades with paramilitary units located there. Thus, not even the witness, as the Chief of Police, was allowed to cross over through these check points. On the third day, he went to Jasenica in order to persuade members of the station to return to work. They did so only after certain members of the SDS had reached an agreement in the Ministry in Sarajevo. In his opinion, this was understandable because as the two leading parties at the time, the SDS and the SDA created the policy and all activities in Bosanska Krupa. According to witness Jadranko Šaran, although the police were unified again as of that moment, such joint work seemed unnatural and enforced, and as such was destined to fail.

40. Given that as the Chief of Police he still had no access to the parts of the Municipality inhabited by the Serb population, witness Velić requested an explanation from the station commander, Lazar Stupar, who responded to him by stating that *„the Serb police and the Serb Municipality Bosanska Krupa have been established“*. After a while, it was proposed that the town itself be divided.

d) Incident in the village of Arapuša

41. The last incident that took place in the territory of the Municipality, which according to the testimonies of the witnesses, immediately preceded the conflict in Bosanska Krupa, occurred at the entrance to the village of Arapuša, where a check point with Muslim members of the reserve police force was located. In the night of 19/20 April 1992, a group of Serb young men was passing by in a vehicle from which, according to the prosecution witness, they opened fire at the people manning the check point. They responded with fire and wounded three persons. On the other hand, the Defense witnesses submit that the shooting and wounding of the Serb young men was provoked with nothing. All the witnesses, however, are consistent that after the incident, members of the Serb Territorial Defense set up check points at the entrances in the village of Arapuša, the places of

Gornji and Donji Petrovići, after which, the village was, in fact, encircled.

42. The foregoing was confirmed by witness Suad Komić. At the time, as an investigative judge, he conducted an on-sight investigation in Arapuša. According to him, the on-sight investigation was carried out in compliance with the law and in a professional manner. However, after his return to the town, on Monday, in the early evening hours, around 17:00 or 18:00 hrs, he noticed tensions all over the place that also continued on the following day. On that day, around 09:00 hrs, a woman-employee from the Court Registry contacted him and informed him that men were jumping out of trucks on the hill of Lipik. Therefore the witness decided to let the employees go home. After a while, he also went to the left bank of the Una river. According to him, around 90% of the Muslim population did the same.

43. Almost all witnesses for both the Prosecution and the Defense described in the same manner the uncontrolled crossing of the population from one bank to another. It follows from the foregoing that prior to the outbreak of the armed conflict, on 21 April 1992, in the early morning hours, most citizens had already crossed to the other bank of the Una river. The reason for such removal of the population was primarily the armed groups of people who were deploying around the surrounding hills. The situation in the town had already been under tensions due to the earlier incidents that caused additional hostile tensions among the population.

44. According to the protected witness A2, *„the events that took place clearly indicated possible events, there was a mass-scale removal”*. Witness Sabahudin Mahić, as most of the others, had transferred his family to Cazin already prior to 21 April. On the day of the outbreak of the conflict *“the town was already empty at 16h”*. Witness Osman Palić also transferred his family to Cazin, as well as witness Hamdija Balkić. Witness Hašim Đulić testified that during three or four days after the commencement of the hostilities, the remaining population crossed over to the left bank of the river Una. The Serb population was also moving out on a mass-scale prior to 21 April. They went toward Podgrmeč, where they had weekend houses. The town was almost empty, particularly the Lamela neighborhood where the Serbs were in majority.

## **2. Beginning of the conflict/incident in Bosanska Krupa**

45. It follows from the testimonies of the heard witnesses that before the conflict both parties had barricades set up around the town. The witness A2 testified that General Niković, Commander of the Bihać Military District, once addressed him asking for an intervention and removal of one of the barricades located on the road toward Jasenice. According to the protected witness and Hašim Đulić, upon the order of Šemso Šepić (Civil Protection), the fortification obstacles (anti-tank barriers) were set up already on 15 April 1992 at the entrance in the town, at the directions toward Jasenice and Bihać, which the witness Sabahudin Mahić also confirmed. In this context, the Defense witness Miroslav Vještica testified that a day prior to the conflict outbreak Serb residents

of Halkići and Egrićići called the leadership of the Serb Municipality Bosanska Krupa and informed them that members of the Patriotic League were crossing the bridge on Ostružnica. On the following day, upon leaving the town, the witness and a number of other persons were stopped at Vranjska, where a checkpoint of the Green Berets was located. In addition to this place, other exits from the town toward Jasenice and Bihać were also blocked.

46. Witness Slobodan Majkić testified that on the day of the conflict outbreak in the morning hours he could not enter the town by his vehicle because the barricades were set up near the explosives warehouse at the entrance in the town and near *Hakija's inn* on the road toward Bihać, where he saw Sead Šepić deploying his men. He subsequently heard that check points also existed at the exit toward Govedarnica and the entrance to Arapuša. According to witness Mladen Štrbac, Muslim reserve police officers, whom he personally knew, were manning these check points.

47. A couple of days prior to the conflict outbreak, witness Đorđo Jež noticed that Hašim Đulić, Commander of the Staff of the Territorial Defense Bosanska Krupa, came in a camouflage uniform with the insignia that he had never had a chance to see before. He describes that lilies on a blue background were on the sleeve, and shoulder-boards with ranks on the shoulders, due to which witness Jež left the Staff. On the day of the conflict outbreak, witness Hašim Đulić was at work when around 11:00 hrs he received a call from citizens of the Mahala neighborhood, where according to witness Šaran Jadranko a check point was set up and manned by members of the Territorial Defense Bosanska Krupa. They also noticed soldiers getting off the trucks and a group of persons going toward the slopes of the Lipik graveyard, in the direction of the Alem hill. The witness personally checked this having arrived at the scene. At that moment, the witness knew that members of the Territorial Defense of the Serb Municipality Bosanska Krupa (TO SOBK) were deploying on the Lipik hill.

48. That the checkpoint on Lipik was held by the Serb forces was also confirmed by witness Dževad Jurošević. He was stopped there on his way to Jasenica, where he had been sent by Duško Kokot. At the time, Duško Kokot wore a uniform of the JNA infantry. He testified that paramilitary formations, *Arkan's* and *Šešelj's* men, had been moving around the town, because of which it was no longer safe to stay in their houses. The President of the Municipality summoned a Peoples Defense Council at which military commanders were appointed. On this occasion, witness Hašim Đulić was appointed Chief of the Staff of TO BK, while Zijad Selimović, the then retired Colonel, was appointed TO Commander.

49. During the proceedings, the defense did not contest that the conflict in Bosanska Krupa started between 17:00 – 18:00 hrs on 21 April 1992. However, the Panel could not establish based on the testimonies of the heard witnesses the exact location where the conflict started on 21 April 1992, that is, from which direction the shooting started first, and thereby establish which party actually launched the attack.

50. In this context, the prosecution witnesses were not clear either. This is so because according to Zuhdija Medić, the shooting started from Lipik and Mahala, where the Serb forces were located, and was directed at the hill of Hum. Witnesses Mirsad Šabić, Enver Ezić and Arif Arnautović confirmed this consistently.

51. According to witness Slobodan Majkić, the first shots also came from the direction of Lipik but in the direction of Vranjska and Radići, where the Serb posts were located. Contrary to this, defense witness Mirsad Suljić submits that the first grenades that fell on the street above the court building in the Mahala area came right from the direction of Vranjska.

52. If submissions of most of the witnesses that the first shots came from the hill of Lipik are accepted, it remains unclear which party fired from this location. According to Ramo Brkić, the then commander of a maneuver unit, after his arrival the members of the Municipal Staff of Territorial Defense of Bosanska Krupa held the posts in the neighborhoods of Lipik and Donja Mahala – while at the hill of Lipik itself he saw a fortified post – parapet, turned toward the town, but he did not see the forces that controlled it. After his arrival, this place was vacated until the arrival of the members of the TO BK. The foregoing is also confirmed by witness Ibrahim Međedović. This witness added that the Serb forces were also located near Lipik, but in the places of Šujinovac and Pendrekovac. Witness Ale Šiljdedić, a member of the maneuver unit, also had the same information.

53. Defense witness Dragomir Lujinović, confirmed that members of the TO SOBK held the area of Lipik, Pendrekovac, a part in Mahala (in the suburb in relation to the downtown). The witness added that there was no access to the hill of Lipik due to the combat activities from Tečija (the left bank of the river Una), where Muslim posts were located.

54. Considering such state of facts, the Panel could not establish beyond any reasonable doubt which forces held the Lipik location from which the first fire was allegedly opened. This is so because, obviously, both parties had their posts in its immediate vicinity, while the parapet, from which it was possible to open fire in the town direction, was vacated until the arrival of witness Ramo Brkić.

55. The other witnesses also could not determine the specific location where the shooting had started. Witness Osman Mušić submits that *“firstly mortars started the fire at Hum”*, while during the cross-examination he added that *“the fire was opened by Serb soldiers and it was fired back from the hospital toward Lipik”*. According to the testimony of the Defense witness Stoisavljević, there was a parapet at Hum, at the elevation toward Govedarnica that had been set up by Muslims 10-15 days prior to the conflict outbreak. This was confirmed by witness Zdravko Marčeta. From this place, according to the Defense witness Mladen Štrbac, mortars fired toward the Serb posts at Vranjska and Govedarnica, to which members of the Territorial Defense of the Serb Municipality Bosanska Krupa responded.

56. According to witness Adem Balkić, the shooting and the shelling at Krupa from the PAT and PAM weapons were coming from the place of Govedarnica. On the first day of the conflict, this witness was outside with a number of citizens from the Omladinska Street (around twenty persons). They were trying to organize a kind of resistance. He wore uniform trousers and had a hunter's rifle, while the others had some leftover weapons from the reserve police force. In total, they had around three military rifles, the rest were hunter's rifles and pistols, but they had no additional ammunition. Witness Hamdija Balkić also participated in the resistance. At the time, he had a hunter's rifle given to him by his street neighbor, Senad Ćemalović. After the fire was opened around 18:00 hrs, his group had to defend some 30m of the distance, namely the first houses against the attack.

57. The issue of the forces that were located in the hospital area and which according to the Defense witness Mušić responded to the fire was clarified by the Defense witness Dragan Lukač. The witness clarified that the Police Maneuver unit from Bihać, led by Ramo Brkić, was located there. According to the witness, this unit arrived there upon the order of the PSC Bihać just before the conflict outbreak, and at that moment *"the situation in the town streets was strange, there were no civilians and a tense atmosphere was present"*. There were other police officers from Bihać whom the witness found there. However, he did not know why they were sent there. The defense witness Slobodan Majkić also heard about the arrival of these units. He testified that a group of police officers from Bihać and Velika Kladuša were moving around the gas station area.

58. Witness Dragan Lukač further states that upon their arrival in front of the *Željeznički dom* building /Railroad House/ all members of the police were issued with camouflage uniforms with an explanation that blue standard police uniforms were not appropriate for securing the vital facilities in the town, which, according to the testimonies of the witnesses, was the main task of the Maneuver unit. During the distribution of the uniforms and the firearms, also present was Commander of the Operative Group of the Army BiH, Ramiz Drekoović, whose role at the time the witness did not know. In addition, it was strange to the witness why upon their arrival they did not report to the PSC premises as usual, but were immediately assigned to secure the upper part of the town where an infirmary was located near the partisans' graveyard. The defense witness Ramo Brkić, who led the Maneuver unit, confirmed that they did not enter the PSC premises, but that Chief Velić had been already informed about everything and he even had to assign 10 members of the police station for the Maneuver unit. However, certain misunderstandings existed to this end, for the Chief was of the opinion that it was not necessary to engage the Maneuver unit given that they had the Municipal Staff of the Territorial Defense, to which members of the police force had been re-assigned, and thus he did not know where the 10 police officers whom the witness Brkić had on his list and who were supposed to be assigned to the Maneuver unit, were deployed.

59. Those who were on the relevant day present in the Maneuver unit were assigned by witness in front of 5 vital facilities in the town: Hospital/Health Center, Post Office, Police Station and the Municipality building in which a meeting was held around 17:00. Allegedly, Commander Špiro



Niković also attended this meeting. At the time, the first shell fell and the shooting started. Thereafter, it was reported that a member of the Maneuver unit had been wounded just near the Health Center. Dragan Lukač also testified about this fact as he was assigned to secure the Health Center at the time.

60. Witness Dragan Lukač clarified that **during the afternoon hours, around 17:30 hrs**, the shooting started from all sides after he left the vehicle. After a couple of minutes, the witness saw a group of armed men who were shooting. Thereupon, when they came closer, he saw on them the lilies insignia. The wounded member of the Maneuver unit was immediately transferred to Cazin. Thereupon, the chaos started. People looked for shelter from shooting, and scattered around. Not knowing from which direction the shooting had come, witness Lukač, together with a member of the unit, Jasmin Grošić, went toward the lower part of the town. On this occasion, in the town itself, they again met armed men wearing different camouflage uniforms with the same lily insignia. Similarly to the foregoing, the initial situation after the conflict outbreak was described by a member of the same unit, Ale Šiljdedić. He was heard as a witness for the Defense. At the relevant time, he was deployed in front of the police station, inside which he saw armed groups wearing police uniforms made of wool thick fabric.

61. Intending to leave Bosanska Krupa, witness Lukač and Grošić waited to cross over to the left bank of the Una river. On this occasion, other people also gathered, including a group from Arapuša (around 10 or 12 of them). During this time, they heard firing from infantry weapons. They found armed men in uniforms after their arrival on the other side of the river. While they were looking for a transportation for Bihać, a truck came by with a tarpaulin and around 15-20 men with the lily insignia. Those men stated that they had earlier held some posts around the town and that they were going in the Stijena direction near Cazin. They went together with these men to be transported further to Bihać.

62. Prior to his crossing to the left bank of the Una river, the Commander of the maneuver unit tried to contact his superiors in order to get instructions for further deployment and actions. The shooting ceased at dusk. He had an opportunity to speak with the European Monitoring Mission that was deployed there. Thereupon, he decided to withdraw the unit to the *Stari grad* Hotel because *Željeznički dom* was unsuitable for rest. However, after a roll call, it was established that two police officers from Bihać were missing. They had left the unit of their own accord and returned to Bihać. Specifically, these police officers were Dragan Lukač and Jasmin Grošić.

63. **On the same day, around 22:00 or 23:00 hrs**, while he was in the Police Station in Krupa, Chief Šemsudin Velić was phoned by Miroslav Vještica from Jasenica who asked for a phone number of the protected witness A2. At the time, the protected witness A2 was on the left bank of the Una river. Having given him this phone number, the witness assumed that witness Miroslav Vještica and the protected witness A2 managed to reach a kind of ceasefire agreement. This is so because during the evening hours on 21 April 1992 the shooting ceased entirely. The protected

witness A2 spoke about the details of the negotiations. He clarified that in addition to him, the following persons had been present on behalf of the Muslims: Nenad Ibrahimpašić, Zijad Kadić (on behalf of the PSC Bihać) and Fikret Abdić. The Serb side was represented by the President of the Municipality of Bosanski Petrovac-Rajko Novaković, Mladen Drljača, Miroslav Vještica and General Niković. The topic of the negotiations was to try to stop the newly developed situation and to try to establish with joint police forces a sort of a *buffer zone* that would separate the two sides to the conflict. Ibrahimpašić even proposed that the Banja Luka and Bihać police force take joint actions.

64. At the meeting, Miroslav Vještica proposed that the Una river be an exclusive border. He categorically avoided the possibility to establish a *buffer zone* with mixed units as insisted on by the Muslim representatives.

65. It is obvious that it was impossible to reach an agreement between the parties to the conflict. **On the following morning of 22 April 1992**, the shelling and a „*cannonade from the infantry firearms*” was heard. During the day, the task of the members of the Maneuver unit was to eliminate snipers’ fire. When he walked in the direction of the snipers fire and reached the distance of around 50m away from the hospital, witness Ale Šiljdedić noticed a group of 5 or 6 men in uniforms made of groundsheet with the TO and lilies insignia. The witness testified that “*They were not equipped as a formation, it was more like a group of people partially in uniforms, but unorganized*”. In addition to them, after entering the building, the witness also noticed two Serb civilians. These Serbs were cursed and addressed with rude words because a semi-automatic rifle and a pistol had been found under the bed in their house. Threats were also made to them. One of the present men addressed the witness and requested that the arrested persons be taken to custody. He did so, and after their arrival in the police station, he handed them over to a duty officer. According to the subsequent information, the tests carried out showed no gunpowder traces on the hands of the arrested persons, which means that they had not fired from the weapons found in their house. On this occasion, the witness saw that another Serb was brought to the station. They were all together placed in a detention unit.

66. The described situation lasted until the units which had organized the resistance informed the Chief Velić upon their return to the police station that the Serb forces were 100 m away from the entrance in the town. Thereupon, Chief Velić and Commander of the maneuver unit, Ramo Brkić, decided to withdraw „*because of the complex situation*”.

67. The armed group from the Omladinska Street stopped offering resistance already in the early morning hours on 22 April as they had spent all the ammunition. Around 100 of them withdrew from the street, including the women and children who had not managed to leave the town earlier. According to witness Hamdija Balkić, the goal of withdrawal was to cross over the Una river. At that time, it was impossible for security reasons because it was a large group of people. Therefore, they withdrew to the court building. In front of this building, the witness noticed

around dozen armed men in blue uniforms (whom he had seen prior to this in the Omladinska street). One of them carried a hand-held rocket launcher *Zolja* or *Osa*. Soon thereafter, one of the members of the units that had offered resistance reported that a personnel carrier was entering the town. After breaking through a side door, the group went out from the court building to the registry office, in which they hid their weapons to prevent members of the TO SOBK from finding it, who soon thereafter entered the building and captured them.

68. At the time of conflict on 22 April, the Chief of Security of the OŠ TO Bihać, Ismet Mujanović, met in front of the Municipality a number of persons carrying weapons and wearing parts of uniforms. They introduced themselves to the witness as the persons who had offered resistance – Sead Šehić and Edo Dizdarević. They also told him how the attack started, that they arrested a number of snipers and took them to the police. Witness Mujanović testified that they *“had some men of theirs, some signalmen and that they had sent their men toward the confrontation lines”*. On the critical day, the witness was in the town from 10:00 to 15:00 hrs. During this period, Šehić and Dizdarević got instructions to contact the Territorial Defense Commander of Bosanska Krupa, Hašim Đulić, in order to supplement the command. However, he reported only on the following day from the left bank of the Una river.

69. In addition to Hašim Đulić, a large number of persons crossed over to the left bank, including the Chief of the Police Station and members of the Maneuver unit. During the **evening hours of 22 April**, they had an opportunity to watch the burning of the parts of the town inhabited with Muslim population. *„At first, the entire Ustikolina was on fire, mostly private Muslim houses and the trade center, while residential buildings were not fired at“*. According to witness Velić, the Police Station was not immediately set on fire, but on the following day. Each night they watched the houses being set on fire and burnt down.

70. It was already the time without any combats on the right bank of the Una river, because all Muslim forces had crossed over to the left bank where a new police station was established. Witness Velić continued performing his duties in this station. The first location of the station was in the village of Jezerski, where the Muslim population lived and where all structures necessary for this population and the regulation of civil life were established. The Una river officially became a frontline. Thereupon, witness Brkić was ordered to also relocate the Health Center. Members of the maneuver unit, who were on the left bank, provided assistance in performing this task, so the Health Center was relocated to the house of Mesud Komić. The subsequent task of Ibrahim Mededović, who had been tasked with the regulation of war deployment of members of the reserve force of the SJB Bosanska Krupa, was to find a location to remove the police station. The elementary school in Pištaline was selected for this purpose.

71. It follows from the foregoing that the two parties participated almost equally in the initial negotiations on the ceasefire by imposing their conditions. This shows that prior to this both parties had participated in the armed conflict. Obviously, they kept the posts/elevations around the town

and in the town itself, and used them as the basis for negotiations and for imposing their conditions. In this context, the assertions of witness Hamdija Kabiljagić, that the negotiations were “*a farce and that there were no sincere intentions*” are not grounded given that he was not present during the negotiations. Therefore, it remains unclear on what basis he reached such a conclusion. In addition, all the witnesses consistently testified that the ceasefire indeed started during the night hours on 21 April, that is, after the contact was made between the witness A2 and Miroslav Vještica, from whom the Defense witness Mladen Štrbac (Commander of the Brigade of the TO SOBK) received the order to cease fire.

72. Witness Jadranko Šaran spoke about the intensity of the conflict that took place in Bosanska Krupa on **21 and 22 April** (Chief of the Uniformed Police). The witness stated that during the first days of the conflict, the resistance in the town was offered by members of the PSS Bosanska Krupa (around 20-30 armed police officers). A group from Cazin and a smaller, poorly armed group of patriots came subsequently from the town itself. However, the witness is determined in testifying that there was no planned defense of the town as they lacked people and weapons. Therefore, the primary goal was to evacuate the population to the left bank. The witness A2 also confirmed this and added that Muslims mostly managed to leave the town and cross over to the left bank of the Una river.

73. Witness Velić testified about this in the same manner. The witness submitted that the defense of the town on **21 April and 22 April** was uncontrolled from the military point of view. This means that there was no chain of command and subordination. People simply defended the entrances to the town against the Serb soldiers and paramilitary formations. According to witness Hamdija Kabiljagić, the Territorial Defense was very poorly prepared. There were no connected formations and no war plans. There was no organized defense. Members of the Territorial Defense were never lined up for proper military inspection. At the time, the Serb forces had artillery weapons, while the Territorial Defense of Bosanska Krupa had only the infantry weapons and therefore could not adequately respond to the attack.

74. However, it cannot be concluded based on the evidence adduced that the initially offered resistance was completely unorganized. This is so given that during the cross-examination witness Adem Balkić confirmed that members of the Police Station from Bužim came to help the group of armed citizens. At the time, the witness himself was a member of the Patriotic League. He and witness Asim Balkić became members of the Patriotic League prior to the conflict outbreak. These witnesses testified that on the first day of the conflict, there had been infantry shooting from both sides. They also fired until they spent all the ammunition and until a decision on withdrawal was issued. Witness Abdulkadir Ćurt also confirmed this.

75. Prior to the conflict outbreak, the Muslim forces were reinforced with the men from the left bank of the Una river, that is, from the place of Stijene that was located on the border between Krupa and Cazin. Witness Ismet Kasumović clarified that it was a group of around 200 people.

Their commander was Hamdo Delalić. Around fifty members of the group had arrived in the place of Zrić, to which they were transported by a tractor, from where they continued on foot. They had the Territorial Defense uniforms made of groundsheet. They used green bands as insignia, and they had a few automatic rifles. The rest of the manpower was armed with hunter's rifles. The witness was issued with a PM 72. The task of this group was to stop the JNA members near Lipik.

76. In addition to this unit, on the day of the conflict outbreak, around twenty police officers, members of the maneuver unit under the command of Ramo Brkić, came from Bihać with the task to secure the vital buildings in the town. Subsequently, a special police unit from Bosanska Krupa was added to this maneuver unit. On the first day of the conflict, in their joint actions, they managed to arrest the snipers who were shooting around the town.

77. During the withdrawal from the town, the Defense witness Suad Komić also saw a group of men in the Prvomajska street. A half of these men were armed and in uniforms. Subsequently in a tunnel, he met a group of special forces from Bihać. Witness Slobodan Majkić testified similarly. He added that long before the conflict outbreak he was stopped in the same street by a group of police officers with the Patriotic League insignia. When asked about their insignia, they responded that these were the insignia of Bosnia and Herzegovina.

78. Also, witness Hašim Đulić, in the capacity of the Chief of Staff of the Territorial Defense, controlled a reconnaissance company with around 45 men. Prior to the conflict, their task was to raid and evacuate the Muslim population from the village of Arapuša, because after the incident (wounding of young Nenad Bokan) their movement was limited. Given that they failed to accomplish the referenced task, witness Hašim Đulić withdrew them on the day of the conflict so they arrived in the town around 18:00 hrs and went toward Lamele, where the Serb forces were also located.

79. This witness managed to cross over to the left bank of the Una river on the first day of the conflict. Given this fact, on the following day, that is, in the morning of 22 April, he tried to enter the town together with the enforcement that had come from Cazin. However, moving from the direction of the tunnel on the left bank, he met members of the reserve force who had escaped from the right bank claiming that "*Krupa was captured*". Thereupon, the units were withdrawn. After returning to Matinovac on the right bank of Una, where a defense had been organized, the enforcement that had earlier come from Cazin, started returning homes selectively so around twenty of them remained. On the following day, the witness started off again with them toward the town. This was so because in his earlier contact with the Command of the District Staff of the Territorial Defense he had received an order to defend the left bank of the Una river. In order to do so, it was necessary to regroup and join the forces.

80. There were no hostilities on 24 April 1992. Therefore, the above mentioned group led by the witness, crossed over to the right bank and entered the town. After their arrival at the Territorial

Defense Staff, the witness contacted Major Hajrudin Osmanagić who had requested that the defense be organized by establishing in the upcoming period a frontline at the level of the hill of Hum. Shortly thereafter, the witness joined the group of around twenty persons led by Sead Šehić.

81. **The Defense witnesses testified more about the details of the conflict outbreak.** Prior to the conflict, witness Miroslav Vještica was at Vranjska together with General Špiro Niković, Commander of the II Military District because the General considered that urgent negotiations with the Muslim side were necessary in order to prevent a war outbreak. From this place, he tried to contact the witness A2 and the Chief of the Police, Šemsudin Velić. However, when he tried to go to the town, fire was opened at the vehicle of General Niković, and he withdrew back to Jasenica. The Defense witness Muharem Begić testified about his attempts to calmly resolve the newly developed situation. This witness testified that he was there just when the General had started off to prevent the conflict *“however something was done against him”*. The witness added that the General’s participation in the negotiations for the Bihać territory was very significant.

82. Thereafter, according to witness Zdravko Marčeta, the then Chief of the Staff of the TO SOBK, they heard the shooting from the infantry weapons. There came the information that Serbs had been attacked at Mahala and offered resistance. The remaining men from the TO went off to help the blocked Serbs and thus *“the war in Bosanska Krupa broke out”*. Marčeta also testified on this occasion that Serbs were attacked in the area of the gas station that was 100 m away from the Vignjević family house, located in the Rasima Redžića St. At the time, witness Milan Obradović was there with several friends of his. He testified that around 18:00 hrs a loud shout was heard that *“the Green Berets are coming!”*. Thereafter, the shooting started and lasted all through the night hours. The witness’s group had automatic weapons with which they had been issued during their military training at the Željava Airport in Bihać. On this occasion, Momo Grubiša told the witness that a member of the Green Berets had been wounded. The witness thinks his name was Kasumović. He ensured that the wounded soldier be transported to Sanski Most through Šujinovac.

83. The Defense witnesses Duško Stoisavljević, Slavko Latinović and Mile Bjeljac also submit that the first shooting took place near the gas station. According to witness Štrbac, the gas station is located toward the downtown, on the transit road Novi Grad – Bihać across an iron bridge. The foregoing was also confirmed by the Defense witnesses Zdravko Marčeta and Dragomir Lujinović, the then Commander of the 1<sup>st</sup> Battalion in charge of the Vranjska and Radić parts of the town. He describes that around 18:00 or 19:00 hrs *„there was a detonation near the gas station and then fire was opened from all sides“*. Just before this, these two witnesses received an order that they should not provoke the neighboring party because, according to witness Marčeta, the RS Army was in the process of establishment. There were rumors that all disputable issues would be resolved at the highest political levels.

84. On the following day, the Commander of the Territorial Defense of the Serb Municipality Bosanska Krupa informed that a reinforcement company from the Sana Brigade would arrive soon.

The task of the company was to unblock the company that had remained in the encirclement in Mahala. This company was led by Vlado Vignjević. According to the witness, the situation was chaotic. „*There was no formation. I did not know which units I had, who was a platoon or a company leader. We all set out to reach the Una river. However, we were ordered to return or otherwise we would kill each other in the town*“. On the third day, the Commander ordered that they should reach the Una river. This was done without any major resistance. Thereupon, at the river bank itself, a frontline was established and was not significantly moved in the upcoming period.

85. This witness clarified in more detail the deployment and the activities of the Territorial Defense of the Serb Municipality Bosanska Krupa at the time. There existed the 1<sup>st</sup> Company at Pendrekovac which was under the command of Mile Štrbac aka Rodan, the Vranjska Command commanded by Jovo Krčmar and the Radić Company. The witness and his unit were located on the other side of the hill of Hum across which the II Battalion was supposed to come. However, it could not have done so because fire was opened from Hum, a dominant elevation on Ostružnica above the town. At the time, there was a Muslim village there. The witness also testified that during the first days fire was opened toward Govedarnica where the Serbs were located. From Pendrekovac, he could see the Muslim forces that were located near a repeater. Shells were also falling in the area of the Serb settlement of Šujinovac, near the gas station. The operations were intensified on the following morning on 22 April when the firing of the Territorial Defense of the Serb Municipality Bosanska Krupa was random. As already stated, on the third day of the conflict, that is on 23 April, a reinforcement company from the Sana Brigade arrived and an order was issued to enter the town.

86. It follows from all the foregoing that most of the prosecution witnesses submit that the attack on Bosanska Krupa was initiated by the Serb side having used howitzers, with which the Territorial Defense of the Serb Municipality Bosanska Krupa had been issued, from the hill of Lipik. However, most defense witnesses opine that the conflict started with the attack of the Muslim forces on a number of members of the Serb Territorial Defense in the gas station area at the entrance in the town, and that thereupon fire was mutually exchanged from the infantry and artillery weapons.

87. The prosecution witnesses hold that it was exclusively an attack of the Serb forces, and that the resistance offered was irrelevant and inadequate because it ended up in a withdrawal. These witnesses do not contest that there was some firing back from the town itself, and that prior to the outbreak of the conflict Muslim forces had held certain positions and barricades at the exit from the town.

88. Although by its Decision the Panel has already accepted as established the fact that the armed attack on Bosanska Krupa occurred on 21 April 1992<sup>10</sup>, this did not prevent drawing a different conclusion based on the adduced documentary evidence. The Prosecutor's Office did not prove beyond any reasonable doubt that a widespread and systematic attack was launched on 21 April 1992 against the civilian population of the Municipality of Bosanska Krupa and which side started the fire.

89. In any case, there was a short conflict in the town. With regard to the duration and intensity of the conflict, the Panel upholds the opinion presented in paragraph 327 of the Second Instance Judgment in the *Brđanin* case, in which the referenced event is treated as an incident.<sup>11</sup>

90. The equipment and the organization of the two forces in this brief conflict were almost proportional. The Territorial Defense of the Serb Municipality Bosanska Krupa had the weapons with which the persons who had responded to the mobilization had been issued. On the other hand, the weapons of the Territorial Defense of Bosanska Krupa prior to the conflict outbreak was upon the Decision of the BiH Presidency given to the Police Station in Bosanska Krupa, because the reserve police force was enlarged. According to the testimony of the Chief of the PSS Bosanska Krupa, at the time, the Police had a howitzer and a recoilless gun as heavy weapons. The Police was seconded to the Territorial Defense Bosanska Krupa. However, two days later, a company from the Sana Brigade joined the conflict which was obviously a turning point, so the conflict ended already on 24 April 1992 when the members of the Territorial Defense of the Serb Municipality Bosanska Krupa entered the town and when a separation line between the two parties to the conflict was set up on the Una river.

91. It was contested during the proceedings that during the conflict certain persons were killed, which was also confirmed in the Corpses Identification Records and the Order of the War Presidency number: 100/92 dated 28 April 1992, by which it was ordered that the corpses be transported from Bosanska Krupa to a chapel at the graveyard. Given that the existence of a widespread and systematic attack was not proved, the criminal responsibility of the accused Kličković could not be established for the killing of Husein Alidžanović aka Buko, Arif Badnjević, Smajo Čehajić, Rasim Harambašić, Emin Kabiljagić, Ferida Mulalić, Rasim Mulalić, Hilmija Musić aka Hilmo, Suljo Redžić, Mujo Šarić, Mithat Piralić aka Mita and Dževad Velagić referenced in Count 1 of the amended Indictment.

92. Although the Prosecutor's Office did not prove beyond any reasonable doubt the existence of a widespread and systematic attack, as the first requirement for the existence of the criminal offense of War Crimes against Humanity in violation of Article 172(1) of the CC BiH, the Panel

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<sup>10</sup> The fact accepted from the Judgment in the *Brđanin* case, par. 103, Decision of the Court of BiH number: X-KR-06/213 dated 27 March 2009.

<sup>11</sup> The Second Instance Judgment in the *Brđanin* case IT-99-36 A dated 3 April 2001, par. 327.



nevertheless reviewed the individual incriminations as the underlying elements of the crime in order to review if the elements for a possible legal re-qualification of the criminal offense charged against the accused were satisfied.

### III. JOINT CRIMINAL ENTERPRISE

#### A. RESPONSIBILITY OF THE ACCUSED GOJKO KLIČKOVIĆ AND MLADEN DRLJAČA FOR THE ABUSE OF DETAINEES IN THE SCHOOL IN JASENICA AND PETAR KOČIĆ ELEMENTARY SCHOOL IN BOSANSKA KRUPA

93. The Indictment charged the accused Gojko Kličković and Mladen Drljača that they knowingly participated in a Joint Criminal Enterprise (JCE), which had come into existence as of Summer 1991, together with Miroslav Vještica, Mile Drljača a.k.a. „Teho“, Milan Štrbac a.k.a. „Bijeli“, Lazar Stupar, Dmitar Ciganović, Mile Vovinović, Mirko Orelj and other SDS members in the so-called Serb Municipality of Bosanska Krupa, which they established by the commission of the criminal offenses, so that as an absolute majority that the Serbs had, they could control all aspects of the authorities and the administration, which resulted in the abuse and the killing of the detainees from the Elementary School in Jasenica and the *Petar Kočić* Elementary School in Bosanska Krupa.

94. The Indictment outlines the criminal responsibility of the accused on this ground through the joint criminal enterprise. The defense for the accused contested this as a form of responsibility that was prescribed neither by the criminal law that was applicable in the period relevant to the Indictment, nor by the currently applicable Criminal Code of BiH. Although Article 180(1) of the CC BiH does not explicitly prescribe a JCE, the view of the Trial Panel is that pursuant to the case law of the Court, persons contributing to the commission of a joint criminal enterprise are subject to the criminal responsibility as a form of “commission” of the crime pursuant to Article 180(1) of the CC BiH, under certain terms.

95. In the *Tadić* case, the Appellate Chamber established, and the Court of BiH adopted, three categories of the responsibility for a JCE:

96. The first or main form of JCE concerns the cases in which all accused participate in accordance with a joint plan and possess the same criminal intent to commit a crime. In order to establish this category, it must be showed that the accused (i) willingly participated in one of the aspects of the joint criminal intent and (ii) wanted the result of the criminal offense, even if he personally did not influence it.

97. The second or systematic form of the JCE are the so called cases of “concentration camps” in which the concept of joint goal is applied in cases in which the criminal offenses referenced in the Indictment were committed by groups of persons who had acted in accordance with a joint plan. The Prosecution must show that the accused was (i) personally aware of the system of the abuse

of detainees and (ii) that he had the intent to implement this system.

98. The last, third or expanded form of the JCE concerns the cases where a common intent exists in which one perpetrator commits the criminal offense which, although being beyond the joint intent, is nevertheless a natural and predictable consequence of realization of this joint goal.<sup>12</sup>

99. The accused Gojko Kličković and Mladen Drljača are charged with the third, expanded form of the JCE which contains individual criminal responsibility for the crimes committed beyond the common purpose, but which are a natural and predictable consequence of this purpose. The intent required for the existence of this form of the JCE is two-sided. This is so because the accused must have the intent to participate in and contribute to the joint purpose, must be aware that any member of the group may commit a criminal offense and willingly take the risk of commission of such offense by joining or continuing to participate in the enterprise.

100. Therefore, when pleading any case that the crimes charged did fall within the agreed object of the joint criminal enterprise, it will be necessary for the prosecution to plead that the accused had the state of mind required for those crimes.<sup>13</sup> If the Prosecution stated that one or a number of the crimes referenced in the Indictment do not constitute a part of this joint purpose, then it must prove the intent of the accused to participate and implement the joint goal, and that each crime charged against him „*was a natural and predictable consequence*“ of this plan and that the accused consented to this risk.<sup>14</sup> These states of mind are the states of the mind of the accused that must be either *explicitly* stated or the Prosecution must specify the facts from which a conclusion about these states of mind can be drawn.

101. The Indictment explicitly stated that each accused “*knowingly participated in the joint criminal enterprise*“. The state of mind is relevant to each particular incrimination and each form of responsibility, but it must be established for each particular offense charged against the person and for each form of responsibility that is being taken into account.

102. The Panel notices that, to this end, the Indictment specifies the persons by their names as members of the joint criminal enterprise, who at the time performed their duties in the civil and the military sector. In doing so, the Indictment did not incriminate the actions taken by these persons as members of the joint criminal enterprise albeit it even summoned them in the capacity of the prosecution witnesses.

103. Also, regarding the issue of the existence of a plan, there is an obvious time discontinuity of the amended Indictment. The Indictment stated that the goal of the joint criminal enterprise, whose

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<sup>12</sup> Second Instance Judgment in the *Prosecutor vs. Tadić* case, par. 220.

<sup>13</sup> *Prosecutor vs. Radoslav Brđanin and Momir Talić*, IT-99-36-PT, Decision on Form of Further Amended Indictment and Prosecution Application to Amend dated 26 June 2001 (“Second Decision in the *Brđanin* case”), par. 41.

<sup>14</sup> Second Instance Judgment in the *Tadić* case, par. 228; Second Instance Judgment in the *Krnjelac* case, par. 32.

member the accused was, was to establish the Serb Municipality of Bosanska Krupa. This is not logical if it is taken into account that this Municipality was established in December 1991 in the manner to be described below.

**B. ESTABLISHMENT OF THE SERB MUNICIPALITY OF BOSANSKA KRUPA (SMBK)**

104. According to the amended Indictment, the goal of the widespread and systematic attack and the joint criminal enterprise in which the accused Gojko Kličković and Mladen Drljača participated, was among other things to establish the Serb Municipality of Bosanska Krupa. According to the Panel, this was not proved beyond any reasonable doubt and by its context it does not fit within the incriminating period. This is so because the establishment of the Serb Municipality was completed in December 1992, that is, a couple of months prior to the outbreak of the conflict in Bosanska Krupa.

105. In this context, the Panel took into account the period after the multi-partisan elections when the three main nationalist parties, having separate national agendas with conflicting interests, failed to reconcile their differences and started moving in opposite directions. Most importantly, they disagreed on the question of the constitutional status of BiH. While the SDA and the HDZ promoted the secession of the SRBH from the SFRY, the SDS strongly advocated the preservation of Yugoslavia as a state, in order to ensure that the Serbs would continue to live together in a single state, and would not become a minority in an independent Bosnian state. On 15 October 1991, after the Republican Assembly of the SRBH had adjourned for the day and the SDS delegation had departed, HDZ and SDA delegates reconvened without them and passed a “Declaration of Sovereignty”, a measure that moved the SRBH a step closer to independence.<sup>15</sup>

106. In early 1992, the SDA increased the pressure to secure independence of the SRBH from the SFRY. A referendum on the question of independence was held on 29 February and 1 March 1992. It was largely boycotted by the Bosnian Serbs and yielded an overwhelming majority of votes in favor of the independence of BiH. In view of the result of the referendum, on 6 April 1992, the European Community recognized BiH as an independent state. Recognition by the US followed on 7 April 1992.<sup>16</sup>

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<sup>15</sup> The fact accepted from the Judgment in the *Brđanin* case, par. 61, Decision of the Court of BiH No.: X-KR-06/213 dated 27 March 2009.

<sup>16</sup> The fact accepted from the Judgment in the *Brđanin* case, par. 63, Decision of the Court of BiH No.: X-KR-06/213 dated 27 March 2009.

107. The referendum and subsequent recognition by the international community of BiH as an independent state increased the tension between Bosnian Serbs on the one hand and Bosnian Muslims and Bosnian Croats on the other hand. The armed conflict in BiH broke out shortly after.<sup>17</sup>

108. On 24 October 1991, the SDS Deputies in the Assembly of the SRBH, in a meeting of their club, established a separate Assembly of the Serbian People in Bosnia and Herzegovina (“SerBiH Assembly”) that authorized a plebiscite of the Serbian people of BiH on the question of whether or not they wanted BiH to remain within Yugoslavia.<sup>18</sup> On 15 October 1991, the SDS Party Council discussed strategies on how to set up a Serbian government, which included establishing parallel government bodies, the regionalization of BiH and organizing militarily.<sup>19</sup>

109. According to witness Miroslav Vještica, the activities concerning the establishment of the Serb Municipality Bosanska Krupa were also carried out at the time. A plebiscite and a referendum were held at the level of the Municipality at which citizens were supposed to vote on the establishment of the Serb municipality. Such activities were primarily the result of the Declaration on the United Bosnia and Herzegovina and its secession from the SFRY, the establishment of the Assembly of the Serb Republic of BiH and the referendum for remaining within the SFRY.

110. Members of the SDS Bosanska Krupa found the basis for the establishment of the Serb Municipality in the Analysis of the Social and Economic Justifiability of the Establishment of the Serb Municipality of Bosanska Krupa, drafted in October 1991 by the Economic Issues Subcommittee of the SDS Municipal Board. The Analysis anticipated the borders of the new municipality in relation to the territories that were owned by Serbs and as such registered in the Land Register. The Analysis was also presented to the SDA representatives in the Assembly of the Municipality Bosanska Krupa, but was not accepted, nor was the proposal to make the town a joint seat of the newly-established municipalities.

111. The Defense witnesses heard, the then members of the SDA, confirmed that the division was a topic of the negotiations, but the terms of the Serb side specified in the Analysis were unreasonable and thereby unacceptable. Therefore, it was not possible to reach an agreement between the two leading parties. At the time, the protected witness A2 participated in the negotiations on behalf of the SDA. He was proposing that a possible division be discussed before the official bodies of the Republic, that is, the Municipal Council and the Municipal Executive Council. The witness was of the opinion that any other procedure would be irregular and unlawful,

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<sup>17</sup> The fact accepted from the Judgment in the *Brđanin* case, par. 64, Decision of the Court of BiH No.: X-KR-06/213 dated 27 March 2009.

<sup>18</sup> The fact accepted from the Judgment in the *Brđanin* case, par. 62, Decision of the Court of BiH No.: X-KR-06/213 dated 27 March 2009.

<sup>19</sup> The fact accepted from the Judgment in the *Brđanin* case, par. 66, Decision of the Court of BiH No.: X-KR-06/213 dated 27 March 2009.

with far reaching consequences because the Analysis on the division of the Municipality had already resulted in political turbulences and negative reactions among the population.

112. Although the leading SDS officials emphasized economic justifiability as the reason to establish the Serb municipality, it is obvious that the establishment of the municipality was not completed pursuant to a regular procedure. This was so because the SDA representatives in the Municipal Assembly had never accepted the presented Analysis. In other words, the Serb Municipality declared by the Decision No.: 17/91 dated 11 December 1991 was not the result of an agreement between the two ruling parties, albeit it was unilaterally verified at the session of the provisional assembly of the Serb Municipality of Bosanska Krupa.

113. Members of the SDA of the Bosanska Krupa Municipality, the Municipal Assembly and the Assembly of Bosnia and Herzegovina were informed about the activities that had been carried out regarding the establishment of the Municipality by the Official Letter No.: 21/91 dated 18 December 1991. An official letter with the same content was also sent to the Assembly of the Serb People of Bosnia and Herzegovina with a proposal that the Decision on the Establishment of the Serb Municipality of Bosanska Krupa be verified because it was „*illusory*” to expect that the Assembly of the R BiH would do so.

114. The foregoing was followed by the Initiative of the Executive Board of the newly-established Municipality to establish a public security station for the territory of the Serb Municipality of Bosanska Krupa. The Initiative was sent to the BiH Ministry of Interior and the Security Services Center (SSC) Banja Luka. Given the decision of the Assembly of the Serb people in BiH on the verification of the Autonomous Region of Krajina with its seat in Banja Luka, part of which was also the SMBK, it was proposed that its Territorial Defense also be organized within the Banja Luka District.

115. Given that the responsible Republic organs did not respond to the referenced official letters, the SMBK Assembly sent an Urgency to the Peoples Defense Federal Secretariat and the Republic Staff of the Territorial Defense „*because of the provocations on the political and security plan*” number: 1/92 dated 3 January 1992. According to the case record status, the last letter was sent by the accused Gojko Kličković to the President of the Assembly of the Serb People BiH Momčilo Krajišnik, insisting that the Serbs’ Constitution and other systemic requests be adopted.

116. After the Decision on the Establishment of the Assembly of the Serb People in Bosnia and Herzegovina was published in the Official Gazette of the Serb People in BiH, No. 1 dated 15 January 1992, the Presidency of the Serb Republic of BiH on 15 April 1992 issued a decision declaring an imminent danger of war and ordering the mobilization of the Territorial Defense in the entire territory of the SBiH. The same Decision regulated the obligation of all conscripts to become available to the Municipal Staffs of the Territorial Defense.

117. The Panel did not evaluate in detail the (non)legitimacy of the goals of the leading

political parties and the lawfulness of the establishment of the Serb Municipality of Bosanska Krupa, given that such an analysis would include persons who, according to the allegations in the original Indictment, were in the joint criminal enterprise with the accused, which the prosecution dismissed by filing the amended Indictment. Also, such analysis would also include complex interpretations of the constitutional and legal order of the period at issue, with the implications concerning the legitimacy of the establishment of all bodies of the then Serb Republic of Bosnia and Herzegovina, which does not fall under the jurisdiction of this Court.

118. Also, the Indictment stated that the Municipality was established by the commission of criminal offenses, albeit without specifying any particular criminal offenses, that is, which blanket norms of the then applicable positive regulations were violated. Finally, this is the period prior to the outbreak of the conflict and the commission of the crimes with which the accused Gojko Kličković and Mladen Drljača were charged based on the participation in the joint criminal enterprise. Therefore, by analyzing the legal issues to this end, the Panel would go beyond the time frame of the amended Indictment.

#### IV. INDIVIDUAL INCRIMINATIONS

119. In Counts 2 and 3 of the Amended Indictment, based on the participation in the joint criminal enterprise, the accused are charged with holding the detained civilians in unhygienic conditions, with not enough water, food or medical attention on the premises of the Elementary School *Dušan Košutić* in Jasenica and *Petar Kočić* in Bosanska Krupa. However, during the referenced proceedings, the Prosecution did not prove beyond any reasonable doubt that the accused had issued any decisions on the establishment of prisons or the conditions in which the detainees lived.

120. Furthermore, the accused Gojko Kličković and Mladen Drljača are charged based on the joint criminal enterprise also with the unlawful detention of civilians on the premises of the Elementary School *Dušan Košutić* in Jasenica and *Petar Kočić* in Bosanska Krupa, and for their abuse, torture, beating and the death of certain detainees.

121. During the referenced proceedings, the Defense for the accused did not contest that the crimes in Bosanska Krupa had been committed. However, the Defense contested the participation and the responsibility of the accused, arguing that they had not been aware of the facilities used for the unlawful detention of civilians, or of the abuse of the detainees, and therefore could not be held liable for anything.

122. The accused also did not contest the capacity they had during the relevant period. Prior to the outbreak of the conflict, the accused Gojko Kličković was the President of the Executive Board of the Municipal Assembly of Bosanska Krupa, and after the outbreak of the conflict and the establishment of the Crisis Staff, he became Commander of the Crisis Staff and thereupon

President of the War Presidency of the Serb Municipality of Bosanska Krupa. According to the testimonies of the witnesses, the accused Mladen Drljača was the President of the Provisional Military Court and a member of the Commission for the Exchange of Prisoners.

123. Accordingly, during the proceedings, the Prosecution was trying to prove that given the status they had during the critical period and the small distance of the War Presidency and the Provisional Military Court from the *Dušan Košutić* Elementary School in Jasenica, the accused were aware of the existence of the detainees, and that the crimes committed against them were a natural and predictable consequence of the joint criminal enterprise whose members they were.

124. On this ground, the Prosecution tried to prove that at the time when the conflict started, as the President of the War Presidency, the accused Gojko Kličković had effective control over the members of the army and the police, on which basis he would also be responsible for the abuse of detainees in the *Petar Kočić* Elementary School in Bosanska Krupa, their taking to perform forced labor, while the accused Mladen Drljača would be responsible for their unlawful detention.

(a) Elementary School *Dušan Košutić* in Jasenica

125. During the proceedings, it was undoubtedly established that the referenced facility had been used for detention of Muslims. Some of them were arrested during the conflict in the town itself, while the others came to Jasenica on their own initiative searching for a shelter. The witness PWS 89 submits that, in fact, most civilians came on their free will because they felt safe there. Only subsequently, persons who had been captured during the conflict in the town were brought to the school. They were brought there by the civil and military police and were all interned together because no conditions existed for the separation of civilians from the prisoners of war. According to the testimony of witness Dževad Jurošević, the apprehended persons were questioned by members of the civilian and military police on the premises which were located near the School. On one occasion, the witness recognized Egeljić who was a member of the military police, while one Zeljković was an inspector in the civil police.

126. Witnesses Adem Balkić, Hamdija Balkić, Mirsad Palić, the witness A-3, Osman Mušić, Osman Palić, the witness PWS-89, Mirko Orelj, Sabahudin Mahić, Zuhdija Mehić and the witness PWS-03 testified with regard to the circumstances referenced in Count 2-a of the Amended Indictment. They confirmed that groups of Serb soldiers with five to ten members firstly interrogated and then beat up the detainees, having cursed and insulted them at the same time. Some detainees were stabbed with knives on their thighs. The witnesses also confirmed that on such occasions none of the guards took any action to prevent the beating or to report the beatings subsequently.

127. A number of the Prosecution witnesses testified about the abuse in this School described in Count 2-c of the Amended Indictment, including Zuhdija Mehić, Osman Mušić and the witness A-

3, who described in detail the beatings committed by members of the paramilitary units, the so called *Šešelj's men*, who were prevented from further abuse by the guard-witness PWS-89, whose fair behavior toward the detainees is emphasized by a number of the witnesses heard.

128. According to witness Miroslav Stanić, Assistant to the Chief of Security of the Podgrmeč Brigade, the then person in charge of the School security was Kačavenda, Commander of the place of Jasenica. Witness Slobodan Majkić, Chief of the Police Station Jasenica, testifies that immediately after the conflict the School was under the responsibility of the military and the civil police. This was confirmed by the 8 and 9 May orders of the Public Security Station to secure the prison building. However, soon thereafter a meeting was held at which a strict division of the activities was agreed on. It was agreed that the civil police would no longer be responsible for the prisoners, and thereafter the School was secured only by the military police that used to take the prisoners to perform forced labor.

129. During this period, witness Stanić did not see the accused Kličković coming to the School nor did he hear that the accused issued any orders to the police concerning the prison that was located there. A large number of the Prosecution witnesses who were at the time detained in the *Dušan Košutić* School in Jasenica also confirmed that they had never seen the accused Kličković on the school premises. According to the witness PWS 89, the accused never entered the premises in which the police interrogated the detainees.

130. The Prosecution tried to prove that the accused was aware of the real purpose of the *Dušan Košutić* Elementary School in Jasenica given the Order of the War Presidency number: 217/92 dated 27 May 1992, signed by the accused Gojko Kličković, whereby the provisional Director is ordered to give for use the following School premises: the gym with the accompanying premises in the regional school Arapuša and the gym in the central school in Srpska Jasenica. However, the reasoning of the referenced Order also indicates that the foregoing was necessary for the purposes of relocation of the production facilities of companies due to the war activities. In addition, the fact itself that the *Dušan Košutić* Elementary School is located in the immediate vicinity of the official premises in which the accused worked, is not sufficient evidence to prove that they were aware of the unlawful detentions and the abuse of prisoners, nor can their criminal responsibility be based exclusively on this fact.

(b) Elementary School *Petar Kočić* in Bosanska Krupa

131. From the Elementary School in Jasenica, the detainees were taken to the *Petar Kočić* School in Bosanska Krupa. According to the testimonies of the witnesses for both the Defense and the Prosecution, these schools were secured by members of the military police. Most of the heard witnesses remember Željko Smoljanac. According to the witness Dževad Jurošević, he had an office in the School where he kept some lists. In addition to numerous beatings and the abuse in



which the above mentioned guard had taken the most active part, on one occasion witness Mirsad Šabić heard this guard bragging to his colleague that he had raped the witness PWS 03. This is addressed in Count 3-c of the referenced Indictment. As many other witnesses, this witness too describes Smoljanac, Narančić, Karanović and Mile Čazić as the guards with the worst reputation in the school.

132. Zdravko Narančić was also a military police officer. According to the testimonies of the witnesses, he used to take the detainees to perform forced labor together with Smoljanac. During the proceedings, it was established that not all guards were prone to abuse and beating of the detainees. Witness Jurošević testified that the detainees were not abused at the time when the unit under Momir Grubiša's command was on duty.

133. As proposed by the Prosecutor, witnesses Adem Balkić, Asim Balkić, the witness A-4, Dževad Grošić, Ismet Kasumović, Zuhdija Mehić, the witness A-3, Osman Mušić, Šefkija Kozlica, Sabid Alijagić, Kasim Kulauzović and others testified about the torture and the beatings of the detainees referenced in Count 3-b of the Amended Indictment. They were kicked, beaten by weapons, baseball bats, metal rods, chairs, electric shocks, etc.

134. Witnesses Asim Balkić, Adem Balkić, Dževad Grošić, Ismet Kasumović, Zuhdija Mehić, Hamdija Balkić, Sead Palić, Muharem Dedić, Redžep Medžedović, Šefkija Kozlica and the witness A-3 were heard regarding the circumstances addressed in Count 5 of the Amended Indictment. In their testimony, they confirmed that detainee Mirsad Budimlić was particularly beaten up by the guards in the *Petar Kočić* Elementary School, which resulted in the wounds sustained all over his body and his inability to walk. The detainees asked the guards to take Mirsad Budimlić to a doctor. However, they took him to a room that they had occupied, after which they heard Budimlić moaning with pain, after which he was returned to the cell where he died soon thereafter.

135. According to the testimony of the witnesses Šefkija Kozlica, Sabid Alijagić, Bajro Šabić, the witnesses A-5 and A-3, the detainee Suad Sefić, who according to Miroslav Stanić was "*of security interest*", was beaten on the premises of the *Petar Kočić* Elementary School in the manner described in Count 6 of the Amended Indictment by Zdravko Narančić and an unidentified guard, after which some unidentified persons gave him some liquor to drink and he died soon thereafter.

136. The protected witness A testified about the beatings of the detainees Ferid Malkoč, Fehim Kadić, Kemal Šepić and fifteen other detainees described in Count 7 of the Amended Indictment. He specified that the military police officers Luka Desnica, Narančić and Smoljanac stood out when it came to the beatings. The Prosecution witnesses, Redžep Medžedović, Kasim Kulauzović, Bajro Šabić, the witnesses A-5 and A-3, Bajro Šabić, Šefkija Kozlica and Sabid Alijagić were heard with regard to this matter. The Witness Examination Record for Muharem Dedić was also read out. The foregoing witnesses testified that on 21 August 1992, prior to being transferred from the *Petar Kočić* Elementary School to the Kamenica Corps Prison in Drvar, the remaining detainees had been

brutally beaten up by the guards.

137. Witness Miroslav Stanić, the then security officer in the Brigade, clarified the organizational scheme of the military police at the time when the detainees were beaten up. There existed three platoons of the military police. The 1<sup>st</sup> Platoon was led by Dragan Popović, while the 2<sup>nd</sup> and the 3<sup>rd</sup> Platoon were led by Momir Grubiša and Mile Ćazić respectively. Witnesses Šefkija Kozlica and Sabit Alijagić remember well Mile Ćazić who frequently visited the detainees escorted by the military police. Vlado Vignjević was Commander of the Military Police, while Mile Drljača aka Teho was the Chief of Intelligence and Security Services, whose assistant in addition to this witness was also Petar Senić.

138. The line of subordination and responsibility was established in the foregoing manner. This meant that if a member of the military police committed a criminal offense, he would accordingly inform his direct superior, that is, the Platoon Commander who was securing the Elementary School at the relevant moment. The information was thereupon furthered to the Military Police Commander who was usually located in the town itself. His obligation then was to pass the information further to the Chief of Security and Intelligence Sector in the Brigade.

139. Given the very clear and precise chain of command and the responsibility for the committed crimes, the Panel does not find that the Prosecution proved the existence of the criminal responsibility on the part of the accused Gojko Kličković and Mladen Drljača to this end because they belonged to the civil authorities structures. In other words, it is not proved that they are responsible in any manner for the committed crimes or that they had any form of control over the perpetrators.

140. In his testimony, the accused Kličković did not contest that he had been aware of the existence of the Brigade prison in the *Petar Kočić* School. However, he was determined that he had no control over this prison whatsoever. According to the accused Kličković, the referenced school was used for the accommodation of civilians and prisoners of war deprived of liberty during the conflict in Bosanska Krupa. The conditions in which they were placed were not aimed at the physical extermination of a group of people, bearing in mind that prior to the conflict the school had functioned regularly, and had never been intended to be a camp.

141. In this context, the Panel finds it useful to point to the conclusion of the Trial Panel in the *Brđanin* case, in which it is noted that insufficient evidence was presented to allow an undoubted conclusion that the conditions of life inflicted upon detainees in the detention facilities such as the Elementary School in Jasenica and the *Petar Kočić* Elementary School in Bosanska Krupa amounted to conditions calculated to bring about the physical destruction of the group in part.<sup>20</sup>

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<sup>20</sup> The First Instance Judgment in the *Brđanin* case, par. 908.

142. In its closing argument, the Prosecution did not contest the concealing of the information about the detainees either. In the end, all this implies that it is not proved beyond any reasonable doubt that the accused were aware of the number of detainees at all, and thereby of the conditions in which they lived, and of the abuse to which they were subjected. Therefore, the Panel does not find it proven that the accused were aware of the conditions in which the detainees were held, as charged under Counts 2 and 3 of the Amended Indictment, nor could they reasonably predict that crimes would be committed.

(c) Taking the detainees to perform forced labor

143. The Prosecution witnesses Adem Balkić, Asim Balkić, the witness A-4, Dževad Grošić, Hamdija Balkić, the witness A-5, Mirsad Šabić, Enver Ezić, Mirsad Palić, Redžep Medžedović, Sabid Alijagić, Slavko Ilić, Abdulkadir Čurt, Emir Hasić, the witness PWS-03 and the A-3 were heard with regard to the circumstances referenced in Count 4 of the Amended Indictment. They confirmed that during their detention in the *Petar Kočić* School the detainees were taken to perform forced labor, remove corpses, clean the town and dig trenches at the hill of Hum. On these occasions, they were subjected to the physical and verbal abuse by both the guards and civilians, while the guards offered no protection to them whatsoever. Their forced labor was secured by members of the military police who were at the same time the guards in the *Petar Kočić* School.

144. According to the witness A5 testimony, his Platoon Commander, Dragan Popović, selected the persons to be taken to perform forced labor. This was exclusively the responsibility of the Military Police. In this context, the witness clarifies that occasionally civilians also used to come to the camp asking to take out the detainees, but were not allowed to do so.

145. The evidence adduced undoubtedly shows that the detainees indeed were abused when taken to perform forced labor. Witness Mirsad Šabić testified about this. When he was digging trenches at the hill of Hum, the witness was wounded in his leg by members of the Military Police in the manner as described in Count 4-c of the Amended Indictment.

146. It is indisputable that the detainees were also used as *a human shield* on such occasions. Witness Enver Ezić was forced by members of the military police to stand on a balcony of the house which was within the sight of members of the BiH Army and thereby exposed to the fire opened from the opposite side in the manner described in Counts 4-a and 4-b of the Amended Indictment. While digging the trenches in the manner described in Count 4-d of the Indictment, Zijad Selimović, Muradif Alić and Aldin Bajrambašić were killed. Witness Šefkija Kozlica and the witness A-3 testified about this. These witnesses testified that prior to being killed, detainee Zijad Selimović had been forced by Serb soldiers to put a helmet on his head and stand near the gun that was directed at the position of the BiH Army and simulate the firing. The witness A-3 also testified that after their return from the forced labor, the detainees were ordered to go back to the hill of Hum

and pick up the body of the killed Muradif Alić.

147. The Prosecution witness Grujo Borić, who was a Commander of the 10<sup>th</sup> Corps of the JNA at the relevant time, submitted that the detainees' taking to perform forced labor was in accordance with the Geneva Conventions. However, it follows from the evidence that members of the Military Police identified the detainees' taking to perform forced labor with the abuse of detainees by using them as a *human shield*, or forcing them to dig trenches at the places where they were exposed to fire. Articles 19, 49 and 51 of the Geneva Convention on the Treatment of Prisoners of War explicitly prohibit such actions.

148. In any case, none of the witnesses heard confirmed that the accused Kličković and Drljača had in any manner selected the persons taken to perform forced labor, nor were they aware of the manner in which the detainees were treated on such occasions. Such activities were exclusively the responsibility of the Military Police that had no *de iure* or *de facto* obligation to report or ask for any approval from the civil authorities. Accordingly, the Panel concludes that there is no sufficient evidence to indicate beyond any reasonable doubt that the accused could predict the crimes that were committed against the detainees while they performed the forced labor.

(d) Incident in Arapuša – the killing of Jasminka Čaušević

149. The witness PWS 09/A1, who was in the village of Arapuša on the critical day, described the referenced incident in detail. On that day, around 14:00 hrs, a vehicle make *Lada* from which *loud music blared out* passed by him and two villagers. On this occasion, they spotted 4 armed soldiers who waived to them. After some 20-50m, the vehicle turned around and stopped near a restaurant and a store, some 10-15m above the houses. Thereupon, two soldiers in uniforms with *cockades* got out from the trunk of the vehicle, and started beating the present persons with pistols, punched and kicked them asking for money. Reserve police officer, Rifet Hasanović, was in the group with the witness. They questioned him why he wore a uniform and thereupon started hitting him and swearing his *balija's mother*. The witness and the other villager, Eso Hasanović, managed to escape behind the houses trying to return back to the village through the forest.

150. When they reached the houses, they heard shooting. When they reached the village, they heard from the villager-witness A-6, from whom the soldiers had seized DM 10.000 and 75.000.000 dinars, that Jasminka Čaušević had been killed. According to the witness A-6, the foregoing soldiers fired through the door behind which the aggrieved party was hidden. This witness submitted that the intention of the armed persons was to pillage and abuse the villagers. Having killed the aggrieved party, they went to the part of the village called Rijeka, where the family of the witness A6 was located. The soldiers lined up the women from whose ears they *pulled off* their earrings and asked them for money. A house of the Kurtović family was located across the Police Station, in which they hit a woman in her chest by a rifle butt.

151. The Command of the Territorial Defense, that is, Đorđe Jež's Battalion that had been located in Donji Petrovići, at the entrance in Arapuša, were immediately informed about the mentioned abuse of the villagers and the murder of Jasminka Čaušević. Thereafter, people were quartered in various houses. According to the witness, younger persons were in sheepfolds with the sheep, while the able bodied men organized guards in case the armed group returned to the village. The next time they passed by during the night hours on the main road by the police station. On this occasion, they fired at houses, and on their way back, they went toward the neighborhood of Rijeka and finally went to D. Petrovići. On the referenced day, after they left, the consequences of their random shooting remained visible. There were broken windows, while doctors came to the village to provide medical help to the injured villagers.

152. Thereupon, the witnesses addressed the Commanders of the Battalions located in the places of Gornji and Donji Petrovići, Đorđe Jež and Božo Erceg, asking them to be protected against any repeated surprise attack by paramilitary formations. Upon the insistence of the witnesses, Erceg provided a couple of soldiers. During the following days the situation was improved, especially after the arrival of the Red Cross Committee.

153. The witness A6 testified that just after the incident Jež stated that these were not the units under his command, but that he would try to prevent them from intimidating the population again. Witness Senad Osmanagić also heard that the Serb neighbors had tried to stop the provokers, but they threatened to kill them too.

154. The expert witness for the Prosecution, Richard Buttler, testified about the behavior of the paramilitary formations. He testified that at the beginning such units behaved willfully, and were subordinated neither to the military nor the civil authorities of the Municipality.

155. Accordingly, during the referenced proceedings, the Prosecution did not prove beyond any reasonable doubt that the accused Gojko Kličević and Mladen Drljača were responsible for the crimes committed by the paramilitary formations in the manner described in Count 2-b of the Amended Indictment.

## **V. INDIVIDUAL RESPONSIBILITY OF THE ACCUSED**

### **A. RESPONSIBILITY OF THE ACCUSED GOJKO KLIČKOVIĆ AS THE PRESIDENT OF THE CRISIS STAFF/WAR PRESIDENCY OF THE SERB MUNICIPALITY OF BOSANSKA KRUPA**

156. The Indictment also charges the Accused that, as the President of the Crisis Staff and later

of the War Presidency of the Serb Municipality of Bosanska Krupa (SMBK), he established, organized and exercised effective control over units of the Serb police and the Territorial Defense of the SMBK.

157. In order to prove the effective control that the SMBK Crisis Staff and later the SMBK War Presidency exerted over the police and the army, the Prosecution included numerous relevant orders in the documentary evidence.

158. The Accused Kličković did not contest in the course of the proceedings that in the period from 11 December 1991 to 23 December 1991 he was the President of the Executive Board of the Municipal Assembly, whereupon he became the President of the SMBK Crisis Staff and with the outbreak of the conflict on 21 April 1992 he became the President of the SMBK War Presidency. The Accused Kličković is of the opinion that those were official government bodies that are formed in times of crisis and imminent war threat, while the bodies that carried out the tasks of the War Presidency at peacetime were the Nationwide Defense and Social Self-Protection Committees, whose composition is stipulated by the 1984 Law on Nationwide Defense, which this Panel accepts. Expert witness Hanson did not take this Law in consideration when drafting her Report and she equally failed to do so with the fact that such government bodies were formed on the Bosnian Muslim and Croat side at the beginning of the conflict as well.

159. That created a foundation for the functioning of the Crisis Staffs that were active in the period of political and state crisis from October 1991 to the outbreak of the conflict on 1 April 1992. The foregoing was also confirmed in the final inference by Prosecution expert witness Dorothea Hanson, as she subsumed these bodies in the territory of the Municipality under legal category. Provisions of the SMBK Statute, tendered into the documentary evidence, regulate the matter of establishment of the Crisis Staff, which ceased operating in Bosanska Krupa on 21 April 1992 with the outbreak of the conflict, which is also clear from the Orders tendered into evidence.

### **1. Orders of the Crisis Staff**

160. In the opinion of the Panel, the Crisis Staff Order on prohibition to use firearms No. 3/91 of 23 December 1991 does not constitute interference of the civilian authorities in the work of the Public Security Station [*SJB in the vernacular; translator's note*] in Jasenica, as it authorizes the SJB Detachment to "*exercise control, seize weapons and pronounce other measures set*

*forth by the law*". Given the fact that the work of police members was clearly defined by the Law on Internal Affairs, with such orders the Crisis Staff could only remind the SJB to act in accordance with its statutory duties, without changing in any way the existing authorities of the police. The tasks referred to in the Crisis Staff's Orders constitute regular police tasks, hence the Panel is of the opinion that the issued Orders were of a declarative nature without a binding legal effect.

161. The Order of the Crisis Staff on the restricted operation of catering establishments No.4/91 of 23 December 1991 orders the closing of all cafes, inns and pubs by 22.00 hrs. The Order again authorizes the SJB Detachment officers to seize weapons and undertake measures set forth by the statute. Given the fact that by the time of the issuance of the Order there already happened some incidents and that the Municipality was a point of transit of members of the JNA and paramilitary formations, the objective of the Order was to establish order and prevent new incidents, according to the Accused Kličković, given that the Crisis Staff was actually established when the crisis and the imminent war threat emerged, during which the soldiers most often caused unrest when drunk. The Order No. 5/91 of 23 December 1992 on prohibition of wood cutting and illegal use of wood assortments had the same legal effect.

162. The last Order by the Crisis Staff, No. 9/91 of 30 December 1992, pertains to the activation of the reserve police of the SJB Detachment in Jasenica for the purpose of controlling the roads toward Radić, Vranjska, Arapuša and the Pig Farm [*Svinjogojska farma* in the vernacular; translator's note]. In his statement as a witness the Accused clarified that it was an order activating the legal obligation of the reserve police to report to the post pre-designated for extraordinary situations.

## **2. Decisions of the War Presidency**

163. The War Presidency rendered on 7 May 1992 the Decision on the organization and mode of operation of the Serb Municipality of Bosanska Krupa whose Article 2 set forth that the function of the legal organs of SMBK, that is, the Assembly, the Executive Board, administrative organs and administrative organizations, judicial bodies, companies and institutions will be taken over by the SMBK War Presidency in war time. The Decision also regulated membership in the Presidency, hence the Accused Gojko Kličković was appointed President, while Miroslav Vještica, Mladen Drljača, Milan Vojinović and Milan Štrbac were appointed its members. Article 4 of the Decision

stipulated that, with a view to carrying out the assumed competencies and offices, the War Presidency would render decisions, procedural decisions, conclusions, orders, decrees and other acts. The provisions of the Decision were to be implemented until the cessation of war threat.

164. As stipulated in the Decision, the War Presidency, headed by the Accused Gojko Kličević, issued orders. By including them in the evidentiary material the Prosecution tried to prove the existence of effective control by the Accused over the army and the police. Numerous Orders for exercising control duty to the Bosanska Krupa SJB were tendered into evidence to corroborate these averments. They list among the specific tasks a consistent implementation of the War Presidency's Order on prohibition of movement of motor vehicles, an obligation to control persons at checkpoints, adherence to the curfew and prevention of looting of property and goods in the town. Acting upon the referenced orders, the SJB officers would always state in their reports that they consistently implemented the War Presidency's order in the performance of their duty.

165. Also tendered into evidence were the Orders of the War Presidency, the most contentious being the one for the demolition of bridges No. 22/92 of 24 April 1992 forwarded to the Command of the 1<sup>st</sup> Krajina Brigade.

166. Witness Milan Štrbac, the Brigade Commander at the time, has confirmed that he did not act upon the Order and he thinks that the bridges were demolished only after Col. Daničić's arrival. He believes that the Order was a cover of a sort for the civilian authorities, as these were strategic issues exclusively falling within the army's competence. In that respect the Panel notes that the very Order reads that *"the Command is authorized to postpone the execution of the Order, if it evaluates the appropriateness and the effects of demolition primarily from the military point of view"*. Col. Daničić, who also saw the referenced Order upon arrival, considered it to be a proposal based on the old war plans, stressing that the final decision on such issues of military nature was responsibility of the Brigade Commander solely.

167. It was not contested in the course of the proceedings that the SMBK Crisis Staff, that is, the subsequent War Presidency, issued the referenced Orders. The Accused Kličević stated as a witness that the transformation of the referenced organs was regulated in Article 273 of the SRB-H Constitution, stipulating that the Presidency should be activated at the beginning of war as a political, not a military form of activity. A considerable number of Prosecution witnesses demonstrated that the Orders of the Crisis Staff and the War Presidency were indeed treated as suggestions, meaning that they served to initiate/remind of the existing legal obligation



and none of the examined witnesses considered them to be formally and legally binding.

(a) Police structure

168. The adduced evidence demonstrates that as early as in the beginning of the conflict the army and the police were integrated into a system of command organized within both the former JNA and the Army of Republika Srpska (VRS) and within the RS MUP. The foregoing was also confirmed by expert witness Butler, who said that at that time the police, as part of the armed force, stayed under the control of the Minister of Internal Affairs, that is, preserved a separate command structure. In support of this assertion is Article 14 of the Decision on the organization and mode of operation of the Serb Municipality of Bosanska Krupa in war conditions, stipulating that Public Security Stations in the territory of Bosanska Krupa Municipality in war conditions should operate in accordance with the Law on the Internal Affairs of the Serb Republic of Bosnia and Herzegovina. When examined as a witness, the Accused Kličević also referred to Article 27 of the 1990 Law on the Ministry of Internal Affairs, which was in effect at the beginning of the conflict and which set forth the obligation of cooperation on the part of the SJB and carrying out the duties and tasks it was given by the Assembly and the Executive Board, with the influence of those civilian authorities being restricted within the limits of the referenced Law.

169. Slavko Vojinović was the Police Chief at that time, Slobodan Majkić was the Commander and Branko Šarac was an Assistant to the Chief. According to witness Slavko Ilić, as soon as the conflict broke out, the Bosanska Krupa SJB became subordinated to the Banja Luka CSB [Security Service Center; translator's note] to which it sent dispatches. Witness Slavko Vojinović resolutely stated that he never answered to the civilian authorities for his work, but did inform them on the undertaken activities with the aim of coordination, which, according to expert witness Hanson, was a duty of the police even before the outbreak of the conflict. In the opinion of this Panel, the foregoing is comprehensible and acceptable, given the fact that the Crisis Staff, and later on the War Presidency, had a duty to organize civilian life in the SMBK territory, which could be done only with mutual cooperation of the military and the civilian structures.

(b) Military Structure

170. According to witness Grujo Borić, immediately after the conflict broke out the Podgrmeč Detachment of the SMBK Territorial Defense [TO] was subordinated to the 10<sup>th</sup> Corps of the JNA, deployed in the Bihać region and headed by Gen. Niković. After 15 May 1992, it was officially co-

opted into the 2<sup>nd</sup> Corps of the VRS under the name of the 11<sup>th</sup> Krupska Light Infantry Brigade.

171. In early May, Col. Daničić was appointed Brigade Commander with a task to finalize its organization, from when an even stricter distancing between the civilian and military authorities started, save for the proposing of personnel for the Brigade. Witness Daničić stated that cooperation with the civilian authorities in that respect was very useful, given that he did not know the people from the area, and stressed that membership in the SDS was not a criterion for appointment. The Accused Kličković stressed in that respect that there were some misunderstandings concerning the appointments, since the civilian authorities advocated compulsory work service for certain persons if they could contribute more efficiently to the functioning of the civilian life in the Municipality, whereas the Brigade endeavored to mobilize as many able bodied men as possible.

172. According to the expert witness Hanson, the War Presidency's influence weakened with the appointment of Col. Daničić, which she concludes on the basis of the fact that upon his arrival the Accused communicated with the Brigade by way of Proposals, not Orders, which is visible from the Proposal No. 184/92 of 25 May 1992. In that respect, Col. Daničić, examined as a Prosecution witness, claims categorically that once he arrived the War Presidency could not issue orders to the army and that, irrespective of whether the Accused called his communication proposals or orders, the witness would always treat them as non-binding, so he would *"just laugh some of them off and consider some to be useful"*. In any case, the final assessment and rendering of decision on military/combat activities was an exclusive competence of the Brigade Commander.

173. Witness Milan Štrbac a.k.a. Bijeli, who commanded the Podgrmeč Brigade of the SMBK TO prior to Col. Daničić's arrival, also confirmed that the Accused could not issue orders to the army even before Col. Daničić's arrival. When the conflict broke out he received orders from the War Presidency, but they were not of military nature, as he received such orders from 10<sup>th</sup> Corps Commander Gen. Niković. The Accused Kličković stated in his evidence that even the TO units in villages and local communities were subordinated to the Corps, while the orders that he issued had the character of political warnings so that the civilian authorities could avoid responsibility and there were no sanctions in case such orders were not accepted and carried out. The existence of military hierarchy at the initial stage stems from the Order to reinforce the units that Brigade Commander Milan Štrbac issued on 4 May 1992. The commanders of major and minor subordinate units were personally responsible for its implementation and had a duty to submit reports on the implementation of this Order as part of regular combat reports, hence the Regular Combat Reports

of 17 and 19 May 1992 were forwarded to the Command of the 1<sup>st</sup> Podgrmeč Brigade of the TO in Jasenica.

174. That the Podgrmeč Brigade was subordinated to the 10<sup>th</sup> Corps from the beginning is also visible from the fact of Col. Daničić's appointment and the Letter by Col. Grujo Borić to the Command of the 2<sup>nd</sup> Military District of 23 April 1992, in which certain materiel is approved to the SMBK TO in reference to the Order of the Federal Secretary for National Defense, Strictly Confidential No. 359-1 of 21 February 1992, and given the contemporary situation in the territory of the Municipality.

175. As a response to this request, Col. Gen. Milutin Kukanjac, Commander of the 2<sup>nd</sup> Military District, ordered that weapons, ammunition and equipment for the needs of the SMBK TO be issued from the surplus of the 10<sup>th</sup> Corps units and the available reserves. The Panel, therefore, concludes that at the very beginning of the conflict the Podgrmeč Brigade of the SMBK TO was not completely unorganized hierarchy-wise, which makes unacceptable the conclusions of Prosecution expert witness Richard Butler that military forces at the municipal level did not have a clear command in every aspect and that the military objectives were the ones set up by the Crisis Staff, that is, the War Presidency.

176. In the course of the proceedings the Prosecution tendered into evidence the War Presidency's Orders on forming commands of places, whereby it was also attempted to demonstrate the body's command role with respect to the units of the Territorial Detachment. However, the Panel concludes that it was actually an implementation of the Decision of the Ministry of National Defense of the Serb Republic of Bosnia and Herzegovina No. 1/92 of 16 April 1992, forwarded to governments and all Serb Municipalities. By this Decision the Territorial Defense of the Serb Republic of B-H was formed as the armed force of the SRB-H that would be commanded by the municipal, district and regional staffs and the Republic Staff. The reason for this was the Decision of the Presidency of the SRB-H of 15 April 1992 declaring the imminent war threat, ordering general mobilization in the whole territory of the SRB-H and the obligation to all able bodied men to place themselves at disposal of the TO Municipal Staffs.

177. After issuing the Orders on forming commands of places on 24 and 26 April 1992, the War Presidency issued the Instruction on the operation of the commands of places No. 290/93 on 29 May 1992, specifying that these were military executive organs whose obligation was to mobilize all labor capable citizens in their respective zones of operations and form labor details

(comprising up to 45 workers) which would be mobilized as required, that is, per evaluation of the command. The labor details would be engaged on the cultivation of arable land and repair of local roads. The Accused Kličković clarified in his evidence that the War Presidency was in the function of mobilization and logistics for the TO units, so in this way it acted politically with respect to response to the mobilization, as almost every member of the armed force was a member of the SDS and linked to the territory of Bosanska Krupa. Witness Kačavenda, who was appointed commander of the place of Jasenica pursuant to the order of the Accused, also states that those were military-civilian organs that operated along with the Podgrmeč Brigade. Witness Slavko Latinović was also appointed commander of the place and his task was to secure a normal civilian life, accommodation of refugees and organization of kitchen operation.

178. When it comes to the issuance of orders to members of the Military Police of the 11<sup>th</sup> Krupska Light Infantry Brigade, the Prosecution aimed to prove effective control with the Order No. 32/92 of 26 April 1992, ordering the Military Police members to apprehend Rajko Milešević from Bosanska Krupa over a number of committed unlawful actions. In that respect witness Momir Grubiša claims categorically that Kličković, as the President of the War Presidency, could issue this kind of order, but it could not be carried out without subsequent consent of the chief of security. Therefore, the Accused could not directly issue orders to the Military Police. The Military Police had to adhere to their statutory scope of duties in their work. Among the most important statutes were the Rules of Service of the Military Police of the SFRY Armed Forces of 24 September 1985 and the Instruction for application of the Military Police Rules UV 2/3 and UV 2/4 of 1986, regulating the rights and obligations of the Military Police and the tasks on which they would be employed by chiefs of security. They also clearly stipulated the operating procedures in extraordinary circumstances and treatment of military prisoners of war.

179. The Order No. 35/92 of 26 April 1992 orders Ratko Jakšić to organize, store, seize and secure the goods from private Muslim houses which should be done by a commission and the records thereof should be submitted to the War Presidency. According to witness statements, the duty of taking an inventory of and keeping the abandoned property was among the competencies of the SMBK War Presidency, which was also the case with the evacuation of the Muslim population.

180. The Order No. 29/92 of 25 April 1992 on cessation of war activities was issued on the basis of the agreement reached by political parties in Bosanski Petrovac on the cessation of hostilities, so, it is not a unilateral decision of the War Presidency and, in this Panel's opinion, the tasks stipulated in the Order No. 44/92 of 26 April 1992 on introducing a curfew constitute police tasks and

duties in regular circumstances as well. Also of similar nature is the War Presidency Order on prohibition of entering and movement of motor vehicles and trucks owned by physical persons, in whose reasoning the Presidency refers to an ever increasing looting by members of the SMBK TO due to which it was necessary to intensify control at the checkpoints. Under the Order for patrolling the town of 2 May 1992, when conducting control of vehicles, particular attention should be paid to the vehicles without registration plates and ownership proof and such vehicles should be seized from individuals with a receipt being issued. In the opinion of the Panel, the foregoing is actually a description of regular tasks of SJB officers when conducting traffic control whose objective was to prevent looting by unidentified persons in the territory of the Municipality and thefts of motor vehicles.

181. The Panel could not conclude beyond any reasonable doubt on the basis of the adduced evidence that the SDS, as the leading political party, the SMBK Crisis Staff and War Presidency, primarily had the *de iure* authorities to issue orders to the military and the civilian police forces, since these organs were directly responsible to their superiors in their respective chains of command. Also, it follows clearly from the witness statements that the relationship of the police and the Crisis Staff/War Presidency was all the time a relationship of coordination, not of subordination, while, according to witness Milovan Zeljković, even the initial joint operations of the Military Police and the civilian police were a result of an agreement, for which the rationale lay in Article 352 of the Law on the Nationwide Defense of SRB-H regulating cooperation of the civilian police with the army, according to the Accused Kličković.

182. Given the non-existence of the *de iure* authorities, the Prosecution should have documented a potential existence of *effective control* over the army and the police by these bodies and the accused persons for each individual case and each time period that the Indictment refers to, which was not done. In that respect the Panel does not disregard the status of the Accused Kličković as the President of the War Presidency, but his importance in the initial period of the conflict was most closely described by witness Jadranko Šaran, who stated that: "*Everyone listened to Kličković, he was a man of the people and he commanded authority*". Similarly, the others also regarded the Accused as a kind of authority, but such statements without clear and unambiguous documentary evidence cannot serve as indication of the effective control by the Accused. The referenced standard was also accepted in the Tribunal's case-law, so "substantial influence" as a means of exercising

command responsibility does not have the standing of a rule of customary international law, particularly a rule by which criminal liability would be imposed.<sup>21</sup>

183. It is clear from the Letter that the Accused sent as the President of the War Presidency to the 10<sup>th</sup> Corps Command a couple of days after the cessation of activities, that is, on 29 April 1992, requesting that the status of the SMBK TO be regulated as soon as possible, that he did not endeavor to take over the role of military commander over the TO units.

184. A considerable number of witnesses claim in that respect that Miroslav Vještica stood out more than the Accused among the leaders of the Municipality. In addition to the civilian sector, Vještica also showed a strong interest in combat activities, so, according to witness Grujo Borić, the 2<sup>nd</sup> Corps Commander, Vještica used to visit soldiers in trenches on the frontline. In the opinion of Defense witness Milan Štrbac, even in the beginning he wielded greater influence on the TO units than the Accused Kličković. Witnesses Ljubo Vuković and Mladen Štrbac also said that the most influential persons at that time were Miroslav Vještica, Slavko Vojinović, as the Police Chief, Dmitar Ciganović, in charge of logistics, and Mladen Drljača a.k.a. Teho, the Brigade's Chief of Security.

185. Therefore, on the basis of the adduced evidence the Panel could not conclude beyond any reasonable doubt that the Accused Gojko Kličković, as the President of the Crisis Staff and the War Presidency, exercised effective control over the civilian police units and the TO members in the period from the beginning of the conflict, 21 April 1992, to the arrival of Col. Vukašin Daničić and the transformation of the SMBK TO Podgrmeč Brigade into the 11<sup>th</sup> Krupska Light Infantry Brigade.

### **3. Evacuation of the Muslim Population**

186. The Indictment also charged the Accused Gojko Kličković that in the capacity of the President of the SMBK War Presidency without grounds permitted under international law he issued an Order with no number to the Commanders of the 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Battalions of the 1<sup>st</sup>

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<sup>21</sup> Appeals Chamber Judgment in the *Čelebići* case, para. 266.

Podgrmeč Brigade for the evacuation of the Muslim population from the enclaves of Podgrmeč, whereby he participated in a forcible transfer of the persons from the area in which they were lawfully present.

187. According to the Amended Indictment, the objective of the transfer was the implementation of the goals of a Joint Criminal Enterprise that entailed forming the territories populated exclusively by Serbs. However, the Panel observes in that context that not even the original Study on Partition of the Municipality, in whose drafting the Accused Kličković participated, did not envisage a mono-ethnic composition, while it could not be concluded beyond any reasonable doubt on the basis of the adduced evidence that the Accused Kličković's intent was to effect a forcible transfer of the Muslim population from the right bank of the Una River.

(a) Evacuation of Arapuša

188. The evacuation of the Muslim population from Arapuša in the manner described in Count 8 of the Amended Indictment started being discussed after an incident in which the *White Eagles* paramilitaries raided the village, looted it and mistreated the inhabitants on which occasion Jasminka Čaušević was killed. The following Prosecution witnesses were examined concerning this incident: Mirsad Palić, Redžep Medžedović, Kasim Kulauzović, Sabit Alijagić, Rasim Skenderović, A-1, Samir Alijagić, Ferid Šertović, Emina Kurtović, Senahid Osmanagić, Esad Hasanović, PWS-89 and PWS-92.

189. Members of the Red Cross Committee visited the village after this incident and Mirko Orelj also came with them, according to the evidence by witness PWS 09/A1. Representatives of the Arapuša inhabitants were witness A1 and Mirsad Velagić while witness A-6 and Eso Hasanović were representatives of the Local Community. A total of 12 persons attended the meeting that lasted for approximately one hour and at which requests to the Command were presented, such as a doctor's visit, re-connecting the village to electricity supply and a hot telephone line through which the inhabitants could contact the Accused Kličković in Jasenica. Re-activating the reserve police station in the village was also requested in order to provide security to the inhabitants.

190. After the requests were made, Mirko Orelj said he would support the proposal but that reconnection to electricity and telephone was not technically feasible. The foregoing was clarified by many witnesses who stated that the main sources of electricity supply, the reduction of which was carried out, were on the left bank of the Una River, as were the water reservoirs.



191. On 28 April 1992, Đoko Jež personally visited witness A6 telling him to come with two fellow citizens to Božo Erceg's house, 3 kilometers away from Arapuša, where afterward the witness and the present persons were read out the Order on evacuation to Budimlić Japra, which caused everybody's negative reaction as everybody knew it was a place that could not accommodate such a huge number of Arapuša inhabitants. That is why witness A1 and other representatives of the inhabitants requested a meeting with the Accused Kličković or Miroslav Vještica, with which intention they went to Jasenica on 29 April 1992.

192. The primary intention of the Arapuša inhabitants at that meeting was to request an extension of deadline to organize the evacuation, given the fact that there was a large number of refugees from Bosanska Krupa in Arapuša as well, and to propose the evacuation to Agići, where the majority of the relatives of the Arapuša inhabitants lived. They also intended to refuse the evacuation if they were not to be transferred all together to Bihać or some other free territory.

193. Vještica wore a military uniform on that occasion, he received the witness and the group accompanying him and stated immediately that they were embittered by the killing of Jasminka Čaušević, whereupon he listened to the conditions laid down by the Arapuša inhabitants. According to the witness, on that occasion they argued for at least an hour regarding the manner of execution of the Order, as Vještica kept on stressing that the evacuation was inevitable and that the current authorities could not secure safety to the inhabitants, especially as even more intense combat activities were being planned and Arapuša was in the immediate vicinity of the war zone. Vještica also said that he could not grant the inhabitants' request to stay in Arapuša as soldiers kept on passing through that area en route to Bosanska Krupa and might cause new incidents. This was confirmed by witness Eso Hasanović, who stated that Arapuša was on the transit road marked in those days with heavy traffic with many automobiles and buses carrying soldiers who had been on the front in Croatia. On that occasion they also discussed the property that was to be left behind, so Vještica proposed that a number of Serbs be appointed to protect it.

194. The delegation including the witness proposed on that occasion that the population be transferred either to Cazin or to Bosanska Krupa, which, according to Vještica, was not possible as long as combat activities were underway, but he added that the population would return if ceasefire were signed.

195. It was agreed at the meeting that the neighboring Local Communities should be

visited over the next two days in order to arrange for evacuation. To that end the War Presidency issued a Pass No. 150/92 of 29 April 1992 providing escort and security to a delegation of inhabitants on their visit to Donji Agići. The delegation found the president of the Local Community and the local *hoja* [Muslim cleric; translator's note], who were surprised by the arrival of the witness and the group of the Arapuša inhabitants. Within half an hour 10 people gathered in the Local Community, with whom an evacuation and accommodation of refugees were agreed.

196. Under the Order of the War Presidency, on 1 May 1992 at 10.00 hrs the population was to gather at the main street, whereupon a column was formed and the evacuation started. The use of all means of transport was previously approved and the persons who did not have their own transport means were to be provided with trucks and everything else that was necessary. According to witness A2, the inhabitants spent the whole night organizing themselves, but in the morning a truck of *Krupa Trans* arrived and the witness and the others were told that they would not be evacuated to Donji Agići, but to Sanski Most. The foregoing was confirmed by Egeljić and Jež, who came by a TAM truck escorted by 20-25 soldiers, explaining that mines were laid on the access road to Rujiška and that the Brigade could not secure evacuation in the planned direction. Witness Erceg also explained that they received threats from young men from Rujiška, who set obstacles to the road saying that there were enough Muslims in Agići and that they would prevent the arrival of new ones. Protected witness A6 testified about the negotiations and evacuation of the Muslims from Arapuša in the same manner.

197. According to witness A1, that same day the inhabitants of all the other Podgrmeč villages, Podkalinje, Zalin and others, were transferred to the villages of Sanski Most, Kamengrad, Husinovci and others. Witness A6 made a list of the deported persons from the village of Arapuša and it was tendered as Prosecution's documentary evidence.

198. Witness Đorđe Jež confirmed his participation in the negotiations and the evacuation of the Arapuša population, triggered by the raids to that area by the paramilitary formations, over which his Battalion did not have either the *de iure* or the *de facto* control. Božo Erceg, Commander of the Battalion in Gornji Petrovići, also stated that an armed group of paramilitaries only passed through their checkpoint, since nobody dared oppose them given the fact that armed groups threatened even members of the Serb TO with death.

199. When examined as a witness, the Accused Kličković cited the reasons for evacuation of the population, primarily manifested in the Defense Plan of the 10<sup>th</sup> Corps and the military order on

maintaining the defense line on the Una River, due to which they did not want anyone to be staying *behind the units' backs*. Therefore, it was a matter of an imperative military requirement, which, according to the Accused Kličković, was presented at a session of the War Presidency. The other reason for the evacuation was the assessment by the civil sector and the population's own request to move toward Cazinska Krajina, followed by the negotiations attended by the Arapuša representatives.

200. Witness Milan Štrbac remembers the evacuation of Muslims from the Podgrmeč enclaves, as he was given a task of providing security to the column just before 1 May. He thinks that Miroslav Vještica, Assistant for Moral Guidance and Religious Matters, participated in the negotiations on behalf of the Brigade Command. From the military aspect, the problem of the Muslim villages was that they were *behind the backs* of the defense, as the village of Arapuša was 12 kilometers away from the frontline, Zalin 10 km and Potkalinje 20 km. According to this witness, the referenced circumstance was not a problem in its own right, but an offensive of the Army of B-H from the areas of Cazin and Kladuša was later announced. One of the reasons was also an impossibility to provide security to Arapuša inhabitants appropriately, for which two army battalions would have been needed.

201. In the opinion of the Accused, the evacuation developed in order and none of the soldiers or the policemen entered the houses during the preparation for transportation, there were no insults or undue remarks. The video footage of the evacuation of the Muslim population played at the main trial confirms the witness' averments that the population was not mistreated on that occasion, that money and valuables or even weapons were not seized from the persons and that the able bodied men were not separated from the others.

(b) Evacuation of the remaining Muslim population on 25 May 1992

202. Following the evacuation of the referenced villages, Order No. 130/92 of 22 May 1992 was issued on the evacuation of the remaining Muslim population from the territory of SMBK.

203. The following Prosecution witnesses were examined regarding this circumstance referred to in Count 9 of the Amended Indictment: Mirsad Šabić, Enver Ezić, Abdulkadir Ćurt, Esad Arnautović, Arif Arnautović, Smajo Sefić, Vejsil Palić, Ibrahim Sivić, Emir Ezić and Vukašin Daničić. The Defense witnesses who were examined regarding this circumstance were: Miroslav Vještica, Mladen Štrbac, Milan Škrbac, PWS- 09, Đorđe Jež, Milan Vojinović, Zdravko

204. The witnesses testified about the evacuation of the inhabitants of the village of Zalug, when it was established that the villagers surrendered weapons at the Serbs' request, whereupon around 66 able bodied men were taken to Govedarnica at the order of Mile Drljača a.k.a. Teho where they were held for two days. Witness Vejsil Palić described in detail that the Zalug inhabitants were given an ultimatum to surrender weapons to Govedarnica and threatened with an attack, whereupon the weapons were collected and surrendered, but two soldiers again went from house to house and conducted searches, during which time several able bodied men were taken to interrogation. At that time the inhabitants of Zalug were guarded by the military and the police that afterward monitored the execution of the evacuation, according to witness Milan Vojinović.

205. Witness Abdulkadir Ćurt clarified that at around 10.00 hrs on 25 May 1992 a policeman came by and said that a convoy will set off from in front of the hospital and transfer the population to the free territory, so he went home to pick up his family and they all came back in front of the hospital. The convoy went via Grabež, where they were lined up briefly, but one of the escorting policemen intervened saying that search and confiscation of items from the persons should not be done there. Then two officers from Grabež came to that place and they were then dispatched to Bihać under their leadership. According to witness Ibrahim Sivić, the column was previously also halted at Vranska for rest and securing of further passage, and this witness confirmed the averments on the halt at Grabež, whereupon they were taken over by the JNA troops tasked with further escort in the direction of Bihać.

206. According to the Accused Kličković, the reason for the issuance of the referenced Orders on evacuation was the fear that the inhabitants expressed to him during the meetings, describing the insecurity they would have felt if they had stayed. In that context several examined witnesses stated that they did not want to leave their homes despite the fear for their own safety, while a certain number of witnesses thought that there was greater security in the territory under the control of the Army of B-H, or, as witness Abdulkadir Ćurt stated: *"When we arrived in Bihać we felt like we were born anew"*. Witness Hamdija Arnautović is also of the opinion that the evacuation was necessary because of the numerous paramilitary formations that moved around the Municipality and caused trouble and that it was carried out with an objective of saving lives.

207. The Accused considers that both evacuations were executed successfully and in order, given the fact that the evacuated inhabitants returned to their homes after a ceasefire was agreed. The

Accused found the legal grounds of the War Presidency's activities in that respect in the Protocol Additional to the Geneva Conventions of 12 August 1949 relating to the Protection of Victims of International Armed Conflicts, whose Article 17 stipulates: *"The displacement of the civilian population shall not be ordered ... unless the security of the civilians involved or imperative military reasons so demand"*.

208. In that context the Panel also had in mind the provision of Article 49 of the Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949, stipulating that *"the Occupying Power may undertake total or partial evacuation of a given area if the security of the population or imperative military reasons so demand. Such evacuations may not involve the displacement of protected persons outside the bounds of the occupied territory except when for material reasons it is impossible to avoid such displacement. Persons thus evacuated shall be transferred back to their homes as soon as hostilities in the area in question have ceased"*.

209. In addition to the fact that the referenced provisions are applicable only in case of international armed conflicts, the Panel nevertheless decided to provide an analysis thereof, given the fact that the evacuation in the referenced case concerned civilian population, as a category protected under the Common Article 3 of the 1949 Geneva Conventions.

210. Given the fact that the Muslim population returned to the Bosanska Krupa Municipality territory upon the cessation of hostilities, according to the witnesses' statements, the averments in the Amended Indictment that the evacuation of the Muslim population was carried out in contravention of the rules of international law cannot be accepted.

211. The Instructions on evacuation of the population with refugees from the Local Community of Arapuša of 1 May 1992, tendered as a Prosecution evidence, reads in the last count that as soon as the peace time conditions are created the Command of the SMBK War Staff will be obliged to secure a safe return of the population to Arapuša and of the refugees to Bosanska Krupa. The same provision envisages that in such situations the occupying force is obliged to carry out an evacuation under satisfying conditions with respect to health, hygiene, security and food, and that members of one family must not be separated from one another, which was adhered to in both cases.

212. The matter of the abandoned property was dealt with by the War Presidency in cooperation with the military authorities. Thus the Brigade's logistics organ placed the newly arrived refugees in

the abandoned Muslim houses while the arable land was being allocated for temporary use. According to Brigade Commander Milan Štrbac, there existed an Instruction regulating these matters, which was complied with, and the criterion for allocation was the number of household members as the objective was to introduce order and preserve the abandoned property, and individuals were warned of the duty to handle the allocated property as *good managers*.

213. The Municipality took care of the abandoned property, which is visible from the Decision of the Bosanska Krupa Municipal Assembly No. 43/92 of 10 July 1992, tendered as the Prosecution documentary evidence, declaring the complete property (immovables and movables) that belonged to the Muslim population as well as the Serb population that left the SMBK territory to be state-owned, that is, Municipality-owned property. The Decision envisaged that the relevant services in administrative bodies of the Municipal Assembly would register all the property that the Decision pertains to in an as shortest period as possible. The abandoned property was allocated for temporary use and properly registered, as indicated in the List of cattle and equipment taken over from the Muslims evacuated from the village of Arapuša, providing the names of the Serb inhabitants who were issued with cattle and farming equipment. According to witness Hamdija Arnautović, all Muslim houses in Zalug were preserved.

214. Expert witness Hanson emphasized in that respect that SMBK did not use the customary pattern used by other municipalities whereby prior to leaving the population would give statements on ceding their property to the Serb Republic, in other words, the evacuation of the population from SMBK was not conditioned with this request.

## **B. RESPONSIBILITY OF THE ACCUSED MLADEN DRLJAČA**

215. The Prosecution tried to prove in the course of the proceedings that the Accused Mladen Drljača, as a member of the Provisional Military Court in Jasenica, participated in the unlawful detention of civilians in the *Petar Kočić* Elementary School in Bosanska Krupa. However, the evidence adduced in the proceedings does not lead to such conclusion beyond any reasonable doubt.

### **1. Provisional Military Court in Jasenica**

216. The Indictment charges the Accused Mladen Drljača that, as the President of the Provisional Military Court in Jasenica, he participated in the unlawful detention of civilians.

217. According to the evidence tendered into the case file, the referenced Court was established pursuant to the Decision of the SMBK War Presidency, No. 9/92 of 22 April 1992, for the purpose of conducting legal proceedings against prisoners of war captured during the conflict. The Accused Mladen Drljača was appointed the Presiding Judge of the Trial Panel, the other two members being Mirko Orelj (as a lay judge) and Dmitar Ciganović (Captain of the SMBK TO). The Order was signed by the Accused Gojko Kličković as the President of the War Presidency.

218. In other words, some Prosecution witnesses conclude that the Provisional Military Court played a relevant role in the decision-making regarding their detention, that is, that following interrogation a selection of the interrogated persons would be made, pursuant to the Court's decision, so some persons were taken back to the premises of the Elementary School in Jasenica or taken to the *Petar Kočić* Elementary School. Witness PWS89, who took persons for interrogation, believes that a person who "*contributed*" to the conflict would be taken before the Military Court, and if it turned out that there was not sufficient ground for suspicion, the witness was authorized to release that person to the compound together with the other refugees. In the opposite case, the persons whose participation in the conflict would be established were not returned to the compound.

219. However, the foregoing only constitutes a conclusion of the witness who also stated that there was no written record of interrogation of the referenced persons, although, according to the witness statements, one Bosa Sladaković was present in the capacity of the record-taker throughout the interrogation. Some of the examined Prosecution witnesses, such as Mirsad Palić, nevertheless claim that they signed statements following the interrogation, adding that the Presiding Judge, the Accused Mladen Drljača, would previously introduce the Panel members whereupon one of the present persons would conduct the interrogation, which was mostly conducted in a fair manner. This was also confirmed by witness Emir Hasić, who identified the Accused Mladen Drljača in the courtroom as a person who interrogated him in a fair manner in the Provisional Military Court and did not find that it affected his further detention status.

220. In his evidence the Accused Kličković confirmed the establishment of the Court considering that its legitimacy could not be contested and that it could not be related to the crimes committed afterward, since the Court members did not know who would be apprehended for interrogation or what the apprehended persons' destiny would be. The Brigade's security organs decided on it, as

they conducted interrogation and selection of the military prisoners of war. Witness Momir Grubiša, who was the Commander of the Military Police Platoon at the relevant time, confirmed the manner of interrogation of prisoners of war, with respect to which issue he received orders from his immediate superiors, Company Commander Vlado Vignjević and Chief of Brigade's security organ, Mladen Drljača a.k.a. Teho, *"who could even release persons from detention"*.

221. Mirko Orelj was also a member of the Panel, in addition to the Accused. He left the Court a couple of days later having realized that his role was irrelevant and that the Court never rendered any decisions (verdicts or procedural decisions) and that records were not taken during interrogation of the apprehended persons. However, the Prosecution tendered into evidence the Record of Interrogation of Military Prisoner of War Smail Arnautović of 4 May 1992, interrogated regarding the possession of arms and participation in the conflict, and the Record of 30 April 1992 on Interrogation of Muratif Alić regarding the same circumstances.

222. In addition to this, the Panel could not conclude beyond any reasonable doubt on the basis of the adduced evidence that the Provisional Military Court in Jasenica had a decisive role in the interrogation of military prisoners of war, their selection and continued unlawful detention. The panel members could not even prevent abuse of the detainees while being taken for interrogation. Hence witness Mirsad Palić describes that the Accused Mladen Drljača once told the policeman who brought him in to take care that nobody would hear the witness, since the traces of the previous beating were visible. However, that was not complied with, so he was again beaten at the same place on the way back. It follows clearly from the foregoing that the Accused Drljača was not only unable to issue orders to the military policemen who apprehended individuals, but he did not even command any authority whatsoever with them.

223. Given the initial chaotic situation in Jasenica in those days and the movement of a large number of civilians, members of the army and paramilitary formations, the Military Police and the civilian police, as well as the persons deprived of liberty during the conflict, the Panel is of the opinion that the Provisional Military Court was established with a view to introducing order and legal security, which was not succeeded in, since the Court operated for some 10 days only, during which period not a single judicial decision was rendered that would have regulated the status of the apprehended and interrogated persons in an unquestionable manner. On that occasion the apprehended persons were not verbally informed of the decisions of the Court either, so the Panel does not find it proven beyond a reasonable doubt that the Provisional Military Court, that is, the Accused Mladen Drljača as its President, was responsible for the unlawful detention of the



apprehended persons in the manner described in Count 3-a.

## **2. Exchanges of Prisoners of War**

224. The Accused Mladen Drljača was also charged with responsibility for the forcible transfer of persons in his capacity as a member of the Commission for Exchange of Prisoners of War.

225. The Accused Kličković stated in his evidence that he was not familiar with the details of the prisoners of war exchange, as that was negotiated at the meetings held in Bihać and Bosanski Petrovac on 22 or 23 April, that is, immediately after the outbreak of the conflict, whereupon he was informed of the signing of a Protocol on cessation of hostilities and exchange of civilians who stayed in one or the other part of the Municipality. As far as he knows, the referenced meetings were attended by Bihać Municipality President Nenad Ibrahimpašić, Bosanski Petrovac Municipality President Rajko Navaković, Fikret Abdić, the then member of the Presidency of the Socialist Republic of B-H, Raković, representative of the 10<sup>th</sup> Corps Command, and representatives of the Bosanska Krupa Municipality, once it was the witness A2, the other time Kabiljagić or Šemsudin Velić. Miroslav Vještica and Mladen Drljača, as members of the War Presidency, attended the meetings on behalf of the SMBK.

226. As protagonists of the referenced Protocol these persons were to secure its implementation, while the Accused, as the President of the War Presidency, was to be informed of the foregoing in order to secure logistic support to the implementation of the agreed objectives, that is, implementation of the signed Protocol.

227. The issue of the Commission for Exchange was also regulated on that occasion, which was done on the Muslim side, too. It was a temporary (*ad hoc*) body, which conducted an exchange twice. In that period the Accused was not concerned with the essence of the issue of prisoners of war as the War Presidency's activity was reduced to the presence of certain members in the Commission, due to which witness Mirko Orelj or the Accused Drljača were its members, while the remaining members of the Commission were standing ones, such as a representative of the Brigade who was always present given that the care for prisoners of war was within its jurisdiction.

228. The foregoing was confirmed by Prosecution witness Ešref Hadžić and Defense witness Ejub Topić, who were members of the Muslim- side Commission formed in April 1992. They

explained that, after the conflict broke out, they were contacted by Hajrudin Osmanagić, Commander of the District Staff of the Bihać TO, whereupon witness Hadžić was appointed secretary of the Commission and was the first one who contacted by telephone Duško Stoisavljević, who had the same role on the Serb side, which was to gather intelligence on the prisoners, make lists and forward them to the other side and contact the Red Cross representatives. During the negotiations, priority in exchange was given to uniformed persons, deprived of liberty during the conflict, and the exchanges were on the "all for all" basis. Lists of prisoners would be finalized during preliminary talks and he would exchange the information thereof with Stoisavljević usually by fax. On the lists made by the witness there was also a number of Serb civilians, in addition to uniformed persons, and the site of exchange was Pritoka, as a neutral zone in the conflict.

229. During the Commission's work the witness took part in the exchanges of 10 and 22 May 1992, the facts of which were described in Counts 3d and 3e of the Amended Indictment. To the witness' recollection, the exchanges were attended by Dr. Ratko Beronja, Duško Stoisavljević and Mirko Orelj on behalf of the Serb side, whereas he saw the Accused Mladen Drljača only during the second exchange. Representatives of the Red Cross Committee also attended all the exchanges.

230. The witness identified the list of persons to be exchanged, tendered as documentary evidence T-163, as the final list of persons who were exchanged on 10 May 1992. The inspection of the Record taken on 10 May 1992, the authenticity of which the witness confirmed, shows that the Commission members were Mirko Orelj, as the Commission Chairman, and Duško Stoisavljević and Dr. Beronja as members, while witness Ejub Topić, Ešref Hadžić and Jusuf Ljakić were present on behalf of the Muslim side. That exchange was conducted following the 24:12 ratio in favor of the Muslim side, because, as the witness explained, given the "all-for-all" principle, the exchange was not conditioned by the number of prisoners.

231. Prior to the second exchange, the one of 22 May, preliminary negotiations were also conducted, on which occasion the witness mentioned the persons involved in the first exchange who had been subjected to abuse. Especially strong was the torture to which the Šepić couple had been subjected and on whose exchange it was insisted, to which all members of the Commission from the Serb side said that there were no abuses and that they had no information of such treatment of the prisoners of war.

232. On that occasion the Accused Mladen Drljača told the witness that he would contact his superiors regarding that matter and that he would inform the witness thereof, since he "only

implements an already rendered decision". During the negotiations, witness Hadžić gained an impression that Mirko Orelj was the Commission Chairman, while he regarded the Accused Drljača as a fair and responsible person following orders. During that time the Commission members did not discuss the terms of exchange and could not decide on people's detention or release, either, hence they could not decide on the persons that were to be exchanged. Therefore, all Commission members implemented what had previously been agreed on by the parties to the conflict, and, according to witness Stoisavljević, the Commission would get the final list of the persons to be exchanged just ahead of the departure.

233. Following these talks, just ahead of the second exchange, witness Hadžić received a list of persons made on 19 May 1992 and a list of nine persons who were to stay in detention until further notice, including Kemal and Šemsa Šepić, which list was signed by Mladen Drljača, in his opinion. On the day of the exchange Kemal Šepić was also on the list of persons to be exchanged, that is, one person that they had previously been told would be staying in detention until further notice.

234. On 22 May 1992, a Record was made on the prisoner exchange that took place that day and the witness confirmed its authenticity. It follows from the foregoing that present at the exchange were witnesses Ejub Topić, Ešref Hadžić and Sead Alukić, while those present on behalf of the Serb side were Duško Stoisavljević, Dr. Beronja and Mladen Drljača. This witness stated at the end of his evidence that the prisoner exchange commissions had a humane character, in his opinion.

235. Witness Duško Stoisavljević was early May appointed an officer for culture, moral guidance and religious matters of the Brigade, and Miroslav Vještica informed him that he would be a member of the Commission for prisoner exchange. This witness confirmed that the contacts were established upon the initiative of Ešref Hadžić, as a representative of the Commission from the Muslim side. The witness also confirmed his presence at the exchanges held on 10 and 22 May and his signature on the Records, but denied any participation in the negotiations that preceded the exchanges, which the Panel did not accept, since he himself stated that he was aware of the ongoing negotiations to have Šemsa Šepić released, which is the topic discussed exactly at the preliminary meetings. This witness contacted Miroslav Vještica after the negotiations in order to inform him thereof and during the second exchange he had an opportunity to see that Šemsa Šepić was on board the bus for exchange. He assumes that Vještica made decisions on the matters of this kind as his immediate superior who was informed of everything and who provided military escort when going to exchanges.

236. In that respect he resolutely claims that he never discussed these matters with the Accused Gojko Kličević, adding that the Commission members did not have any powers regarding the prisoners and drafting of lists for exchange. The foregoing was also confirmed by Defense witness Miroslav Stanić, Assistant to the Chief for Intelligence and Security in the Brigade, who stated that the Military Police kept records of the prisoners while the chief of security drafted lists of persons to be exchanged, so not even the Brigade Commander had all the information about these issues, let alone the Accused Kličević or the Accused Drljača.

237. The Accused Kličević contested the authenticity of the exchange lists, arguing that they were not signed, hence not even drafted by the War Presidency. Only its memorandum logo was used on the documents, since the Brigade did not have its own. Grujo Borić, Colonel of the 2<sup>nd</sup> Corps, confirmed in that respect that the War Presidency did not participate in the drafting of the exchange lists and that he was not even aware of its existence. Defense witness Ejub Topić confirmed that the military organs decided on the persons for exchange, so, in practice, the lists that the parties exchanged were compared, taken to war staffs and only after they were harmonized would the term for an exchange be agreed.

238. Therefore, the work of the commission for the exchange of prisoners of war was identical on both sides, hence the Panel does not find the Accused Mladen Drljača's participation in them to be incriminating. It also does not find it proven that with such acts he satisfied the elements of the criminal offense of forcible transfer of population.

## **VI. COMMAND RESPONSIBILITY OF THE ACCUSED JOVAN OSTOJIĆ**

239. The Indictment charges the Accused Jovan Ostojić that in the period from 14 July to 21 August 1992, in his capacity as the Commander of the 11<sup>th</sup> Krupska Light Infantry Brigade, although he had reason to know that his subordinates were about to commit a criminal offense or knew that they have committed a criminal offense, he failed to take the necessary and reasonable measures to prevent the commission of the criminal offense or have the perpetrator punished.

### **A. COMMAND RESPONSIBILITY PURSUANT TO ARTICLE 180(2) OF THE CCB-H**

240. The concept of command responsibility is set forth explicitly in Article 180(2) of the CC B-H, reading: "The fact that any of the criminal offenses referred to in Article 171 through 175 and Article 177 through 179 of this Code was perpetrated by a subordinate does not relieve his superior of criminal responsibility if he knew or had reason to know that the subordinate was about to commit such acts or had done so and the superior failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof." In addition, the understanding that persons in superior positions may be criminally responsible for the unlawful conduct of their subordinates is a well-established standard of customary and conventional international law.

241. Although Article 180(2) of the CC B-H does not give any guidelines as to what is required for a superior to be criminally responsible for the acts of his subordinates, the case law of this Court, in acceptance of international standards, sets forth the criteria as follows.

242. For the existence of command responsibility it is necessary to establish that a superior had a) legal obligation and b) material ability to take the measures with whose omission he has been charged. The identical position was taken by the International Law Commission (ILC) in Article 12 of the ILC's 1991 Draft Code of Crimes against the Peace and Security of Mankind. So, the failure of the commander to punish the perpetrators of criminal offenses implies criminal responsibility only if the commander had the legal obligation and jurisdiction to apply the rules that he has failed to apply.

243. Under customary international law, a subordinate may be held criminally responsible if the following elements are satisfied:

1. the existence of the superior-subordinate relationship between the Accused – the superior and the perpetrator of the underlying offense,
2. the superior knew or had reason to know that the subordinate would commit the crime or that he has committed it,
3. the superior did not take the necessary and reasonable measures to prevent such acts or to punish the perpetrators.

#### 1. Requirements for establishing the superior-subordinate relationship

244. The first requirement is to establish the existence of the superior-subordinate relationship, either a direct or an indirect one, between the superior (the Accused) and the subordinate who is charged with the commission of the referenced crime. It has been established that, under international law, a hierarchical relationship may exist on the grounds of a *de facto* authority of

the Accused over his subordinate, as well as on the grounds of his *de iure* position as superior.<sup>22</sup> Such relationship does not have to be formalized before the commission of the criminal offense<sup>23</sup> and a tacit or implicit understanding between the commander and his subordinates regarding their mutual position is sufficient.<sup>24</sup>

245. The existence of the *de iure* superior-subordinate relationship is not contestable in the instant case, given the fact that the Accused Jovan Ostojić assumed the duty of Commander of the 11<sup>th</sup> Krupska Light Infantry Brigade on 15 July 1992.

246. Also, the doctrine of command responsibility is to a great extent predicated upon the power of the superior to control the acts of his subordinates.<sup>25</sup> To have control means to have *effective* power over a subordinate.<sup>26</sup> In other words, for someone to be held responsible for the criminal offenses of his subordinates, it must be proven beyond any reasonable doubt that at the time of the commission the superior had *effective control* over his subordinates who committed the offenses.<sup>27</sup>

247. A true or effective control implies the lowest threshold of control over others under which a person could not be held responsible under the doctrine of responsibility of a superior. That is actually the power or the authority of a superior to control the acts of his subordinates and it consists of the power to request, expect and impose obedience concerning orders with a view to preventing and punishing criminal offenses.

248. In the course of the proceedings a large number of exhibits showed that the Accused Ostojić had effective control over the subordinate units, primarily with respect to the issuance of combat

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<sup>22</sup> Trial Chamber Judgment in the *Čelebići* case, para. 370, upheld on the Appeal; Appeals Chamber Judgment in the *Čelebići* case, paras. 205-206. The Court held that the fact that someone was formally identified as commander should not be regarded a necessary prerequisite for attributing command responsibility, since such responsibility may be imposed through the *de facto*, as well as the *de iure* position of commander. See also the Trial Chamber Judgment in the *Kordić and Čerkez* case, paras. 405-406.

<sup>23</sup> Appeals Chamber Judgment in the *Čelebići* case, para. 193; *Prosecutor v. Krnojelac*, case No. IT-97-25-T, Judgment of 15 March 2002 (Trial Chamber Judgment in the *Krnjelac* case), para. 93; *Prosecutor v. Blaškić*, case No. IT-95-14-T, Judgment of 3 March 2000 (Trial Chamber Judgment in the *Blaškić* case), para. 301; Trial Chamber Judgment in the *Kordić and Čerkez* case, para. 424.

<sup>24</sup> *Prosecutor v. Kunarac et al.*, case No. IT-96-23-T&IT-96-23/1-T, Judgment of 22 February 2001 (Trial Chamber Judgment in the *Kunarac* case), para. 397.

<sup>25</sup> Trial Chamber Judgment in the *Čelebići* case, para. 377; *Prosecutor v. Sefer Halilović*, Judgment, case No. IT-01-48-T, 16 November 2005 (Trial Chamber Judgment in the *Halilović* case), para. 57.

<sup>26</sup> Trial Chamber Judgment in the *Čelebići* case, para. 378, upheld on the Appeal; Appeals Chamber Judgment in the *Čelebići* case, paras. 256, 265-266.

<sup>27</sup> Appeals Chamber Judgment in the *Aleksovski* case, para. 76; Trial Chamber Judgment in the *Stakić* case, para. 459. It is exactly because of this relationship of subordination and control (not of influence) that a superior is held responsible for relationship of subordination.

orders, and then to disciplinary punishing of transgressors, of which numerous criminal reports that he signed are a proof. Accordingly, the majority of the examined witnesses confirmed that he was an exceptionally capable and professional commander, which was also stated by the superior Commander of the 2<sup>nd</sup> Corps, Grujo Borić, who referred to many decorations bestowed on the 11<sup>th</sup> Krupska Light Brigade, considering it one of the best in the Corps.

249. However, the fact that the Accused could direct combat activities or decide on the issues within the military structure whose members were perpetrators of crimes does not automatically imply the existence of effective control, especially if it depended on discretionary decision of others to help him.

250. In accordance with the case law of international tribunals, "effective control" means a material ability to prevent crimes and punish principal perpetrators.<sup>28</sup> The Appeals Chamber in the *Blaškić* case held that "the indicators of effective control are more a matter of evidence than of substantive law"<sup>29</sup> and that it must be established on the basis of the evidence adduced in each case. In this respect, factors indicative of an Accused's position of authority and effective control may include the official position held by the Accused, his capacity to issue orders, whether *de iure* or *de facto*, the procedure for appointment, the position of the Accused within the military structure, and the actual tasks that he performed.<sup>30</sup> The Panel had in mind the foregoing when evaluating the existence of elements of command responsibility on the part of the Accused Ostojić.

## 2. Requirement that the superior is aware of the crime

251. The second requirement is the superior's knowledge that his subordinate is about to commit or has already committed a crime. In that respect it has to be proven that the superior 1) had actual knowledge that his superiors were committing or were about to commit crimes, or 2) had the information of a nature, which at the least, would put him on notice of the risk of such crimes.<sup>31</sup>

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<sup>28</sup> Trial Chamber Judgment in the *Halilović* case, para. 58, quoting the Appeals Chamber Judgment in the *Čelebići* case, para. 256.

<sup>29</sup> Appeals Chamber Judgment in the *Blaškić* case, para. 69.

<sup>30</sup> Trial Chamber Judgment in the *Kordić and Čerkez* case, paras. 418-424.

<sup>31</sup> Appeals Chamber Judgment in the *Čelebići* case, paras. 223-241; Trial Chamber Judgment in the *Krnjelac* case, para. 94.

252. Actual knowledge is defined as "the awareness that the relevant crimes were committed or were about to be committed".<sup>32</sup> Actual knowledge cannot be assumed, but must be established through direct or circumstantial evidence.<sup>33</sup> That knowledge may be established through the evidence such as written reports informing the commander of the criminal offenses or witness statements establishing that the Accused was aware of the offenses. The knowledge that is being imputed, that is, that he "had reason to know" requires that the commander had some general information in his possession, which would put him on notice of possible unlawful acts by his subordinates<sup>34</sup>.

253. The Appeals Chamber in the *Bagilishema* case made a distinction between the information that the Accused might have had about the general situation in the relevant area (which is not sufficient to consider him responsible as the commander) and the general information which put him on notice that his subordinates might commit crimes (which is sufficient to consider the commander responsible for the acts of his subordinates, if all the other requirements have been met).<sup>35</sup> Accordingly, the mental element "had reason to know" is established only by referring to the information that the superior actually had in his possession.<sup>36</sup>

254. Therefore, the commander's very awareness of the risk that his subordinates might commit a crime is not sufficient for the imposition of criminal responsibility. It must be shown that the commander was aware of the substantial likelihood that a crime would be committed as a result of his failure to act and that, although aware of that fact, he did not do anything about it.<sup>37</sup> In other words, the information in his possession must be sufficiently clear or alarming to point at the likelihood that grave crimes were committed or are about to be committed, so that it prompts the commander to carry out his duty and inquire the case further.<sup>38</sup>

255. It is also not sufficient to demonstrate that an Accused knew or had reason to know in general terms that his subordinates were about to commit or that they committed crimes,

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<sup>32</sup> Trial Chamber Judgment in the *Kordić and Čerkez* case, para. 427.

<sup>33</sup> Appeals Chamber Judgment in the *Čelebići* case, para. 241; Trial Chamber Judgment in the *Kordić* case, para. 427.

<sup>34</sup> Trial Chamber Judgment in the *Kordić* case, para. 437. It is not required that the commander actually acquainted himself with the information, but the information only needs to have been provided or available to him.

<sup>35</sup> *The Prosecutor v. Ignace Bagilishema*, case No. ICTR-95-1A-1, Judgment of 3 July 2002 (Appeals Chamber Judgment in the *Bagilishema* case), para. 42.

<sup>36</sup> Appeals Chamber Judgment in the *Čelebići* case, paras. 238-239.

<sup>37</sup> Appeals Chamber Judgment in the *Blaškić* case, paras. 41-42; Trial Chamber Judgment in the *Kordić and Čerkez* case, para. 437; Appeals Chamber Judgment in the *Čelebići* case, para. 238.



irrespective of their gravity and similarity to the ones he is charged with. Also, the Accused cannot be held responsible because he should have known of such crimes, that is, because he did not request and get the information that would have put him on notice that crimes had been committed or were about to be committed.<sup>39</sup>

256. The knowledge, actual or circumstantial, cannot be presumed on the basis of the commander's status alone.<sup>40</sup> In the absence of direct evidence of knowledge, a reasonable inference may be drawn from the available evidence that the commander knew or had reason to know, and that must be established beyond every reasonable doubt.<sup>41</sup> It does not suffice to just demonstrate that the commander was aware that there existed a risk of his subordinates' committing crimes only because there is always a risk that such acts will occur.

257. In that context the Court is obliged to consider, among other things, the education, training and experience of the Accused, as well as of the units, and the time that elapsed from the moment the Accused had taken over formal command over the units for the first time to the moment of the commission of the crimes. The Court would also have to consider each circumstance that might have prevented the Accused from executing his authorities, such as a participation of the units in combat operations in a given period.

258. In case it is proven that the Accused knew of the committed crimes, the third element of this mode of responsibility is involved. In that respect international law sets a minimum standard of conduct below which the national legislation cannot go. It concerns the obligation of taking "necessary and reasonable" measures of preventing and punishing crimes, meaning that a superior could not exonerate himself by the fact that the national legislation set forth obligations and duties for him below the minimal threshold of international law.

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<sup>38</sup> Trial Chamber Judgment in the *Kordić and Čerkez* case, para. 437; Appeals Chamber Judgment in the *Čelebići* case, para. 238.

<sup>39</sup> Appeals Chamber Judgment in the *Čelebići* case, paras. 226-239, explicitly rejecting the Prosecution submissions averring to the contrary.

<sup>40</sup> Appeals Chamber Judgment in the *Čelebići* case, para. 226; Trial Chamber Judgment in the *Kajelijeli* case, para. 776: While an individual's hierarchal position may be a significant *indicium* that he or she knew or had reason to know about subordinates' criminal acts, knowledge will not be presumed from status alone.

<sup>41</sup> Appeals Chamber Judgment in the *Blaškić* case, para. 41.

### 3. Requirement that he failed to prevent or punish crimes

259. Necessary and reasonable measures are such that can be taken within the competence of a commander as evidenced by the degree of effective control he wielded over his subordinates.<sup>42</sup> Therefore, what is necessary and reasonable depends primarily on the actually proven capacity of the commander to do something about the crimes that make the essence of the charges.<sup>43</sup>

260. A commander has the duty to prevent his subordinates from committing crimes when he knows or has reason to know that they are about to commit such offenses, and also to punish perpetrators of grave crimes when he knows or has reason to know that his subordinates have already committed such offenses. However, the duty to punish arises only after a crime has been committed. Depending on the circumstances and the commander's proven capacity to do so, his "duty to punish" may include instigating an investigation into the alleged crimes with a view to establishing the facts or reporting them to the competent authorities or taking the appropriate disciplinary measures against the perpetrators.<sup>44</sup> That is why deciding on which measures would be appropriate in the instant case is not a matter of substantive law but of evidence, and it has to be established in the context of all circumstances of the case.<sup>45</sup>

261. When establishing whether a commander took all necessary and reasonable measures, a Panel must take into account all circumstances that could prevent the commander from doing more than he actually did (for example, that he did not have enough time to take certain measures or to achieve a certain result or a lack of resources for investigation or obstructions by superior officers, disobedience of soldiers, etc.). The law prefers to hold a commander responsible for his subordinates' acts when his failure to punish *contributes to* the criminal acts of persons under his command. This is so because his subordinates may interpret his omission as a sign of his approval, perhaps even encouragement, of the commission of war crimes.

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<sup>42</sup> Appeals Chamber Judgment in the *Blaškić* case, para. 72. Trial Chamber Judgment in the *Orić* case, para. 327.

<sup>43</sup> Trial Chamber Judgment in the *Orić* case, para. 327.

<sup>44</sup> Trial Chamber Judgment in the *Kordić and Čerkez* case, para. 446.

<sup>45</sup> Appeals Chamber Judgment in the *Blaškić* case, para. 72.

## **1. Knowledge of the committed crimes**

262. It was not proven beyond any reasonable doubt during the proceedings that the Accused Jovan Ostojić, as the Commander of the 11<sup>th</sup> Krupska Light Infantry Brigade, knew of the crimes committed by the subordinates over whom he had effective control, since the information on military prisoners of war and the committed crimes were covered up by the Brigade members.

263. Before rendering this final decision the Panel deliberated on two essential issues:

1. How precise or specific must be the information obtained by the Accused so that it can be regarded as a sufficient notice of the crimes?
2. How probable must these crimes be so that it can be said that the superior had sufficient notice so as to perform his duty to act?

264. Given the scope of such responsibility, the Panel was guided by the Tribunal's case law requiring that the Accused knew or had reason to know that the accused persons committed or were about to commit "the offenses they are charged with". Therefore, it is not sufficient that he had general information of the commission of the crimes.

265. In the course of the proceedings the Defense argued that the information on the existence of prisons and prisoners of war, especially on the commission of crimes by the Brigade members, was withheld from the Accused Ostojić. The Panel, therefore, finds it useful to provide a detailed overview from the establishment of the Brigade to the Accused Ostojić's arrival to the post of the Commander, in order for the structural and functional operations of its command staff to be more clear.

## **B. PODGRMEČ BRIGADE/11<sup>TH</sup> KRUPSKA LIGHT INFANTRY BRIGADE**

266. According to witness Milan Štrbac, the first Commander of the then Podgrmeč Brigade of the SMBK TO, the Brigade was formed after companies were set up on village levels following the outbreak of the conflict, whereupon the companies merged in Battalions, and, eventually, this Brigade had approximately five Battalions. At the initial stage there was only one platoon of the Military Police commanded by Vlado Vignjević.

267. According to witness Dragan Kolundžija, the Brigade Command was deployed in Jasenica. He stressed that as Col. Daničić assumed the post of Brigade Commander, the *Dušan Košutić* Elementary School was not used for prisoners. When it comes to the existence of prison in the *Petar Kočić* Elementary School in Bosanska Krupa, witness Miroslav Stanić, Assistant to the Brigade Chief of Security, does not remember ever having seen a written order on the prison's establishment, while witness Grujo Borić, as the Corps Commander, was not aware of the existence of such prison on the Brigade level.

268. Witness Miroslav Stanić adds that the prisoners caught during the conflict were detained on the premises of the *Petar Kočić* Elementary School and in the abandoned houses in Krušnica and Mahala. At that time Milan Krnetić was the Chief of the Intelligence and Security Organ and his duties were divided as follows: witness Stanić, as the Assistant to Chief, was in charge of intelligence tasks, while Petar Senić was in charge of security tasks. The Military Police members, most often Egeljić and Šekerović, interrogated prisoners of war. The objective of the interrogation was to gather intelligence on the enemy (armament and intentions), information on military formations and other issues useful for the Brigade Command. At that time the Commanders of the Military Police platoons were Dragan Popović, Mile Čazić and Momir Grubiša, which was also confirmed by other witnesses.

269. After the arrival of Col. Daničić, witness Krnetić was told on 20 May 1992 that Mladen Drljača a.k.a. Teho would be appointed the chief of the intelligence and security organ. To begin with, all witnesses who were examined about this circumstance agree that Drljača, a.k.a. Teho, was not trained for the post of the chief of the brigade intelligence and security organs, given the fact that he was an officer in charge of nuclear-biological-chemical defense in the TO Municipal Staff. The majority of the examined witnesses believe that the chief of security behaved very autocratically, which is visible from witness Stanić's statement: "*Teho was untouchable; it*

*was easier to dismiss the Brigade Commander than him".* Witnesses Dragan Kolundžija and Branislav Gajkić know that Ostojić was dissatisfied with the manner in which Teho carried out security duties and he used to talk about it at the briefings, but, according to these witnesses, *"it was not simple to dismiss Teho".*

270. The Accused also complained regarding the referenced issue with Corps Commander Grujo Borić, which he confirmed in his evidence, explaining that at that time Ostojić could not complain and choose his staff, since a large number of professional officers returned to Serbia, so the situation on the ground had to be accepted as it was. The previous Brigade Commander, Col. Vukašin Daničić, also demonstrated distrust in Teho as the Brigade's chief of security, as on a couple of occasions he overtly confronted the witness telling the witness he was *"Tito's officer who should be under control".*

271. Prosecution witness Richard Butler provided a detailed explanation of the manner of operation of the security organ in a Brigade. Presenting his finding and report he clarified that Assistant to Commander/Chief of Security has two essential tasks: to carry out intelligence activities and be a technical expert for aspects of the Military Police operations. He also has an advisory role in terms of the most efficient engagement of these units within the implementation of Commander's orders.

272. With respect to the obligation of reporting, this expert witness agrees with the Defense witnesses that there are some counter-intelligence duties when chief of security reports directly to the Corps chief of security. *"In such case a Brigade Commander is bypassed."* According to witnesses Daničić and Grujić, these issues were regularly directly reported to the intelligence and security organs of the 2<sup>nd</sup> Corps, so security issues were reported to one Mitrović and intelligence matters to one Atlagić. The manner of such reporting and the specific features of the setup of the 11<sup>th</sup> Krupska Light Infantry Brigade were also explicitly explained by expert witness Slobodan Kosovac, whose finding and opinion were evaluated together with the Defense witnesses' statements, from which they did not deviate in important segments, hence the Panel did not elaborate on the acceptance of the finding.

273. However, expert witness Butler also explained in his statement what the commander had to do in order to obtain the information on the existence of prisoners of war, which duty he had to carry out with "due diligence" in order to discover such things, but added that he was not expected

to be "clairvoyant". In any case, the expert witness is of the opinion that the Commander should have known what his logistics staff did.

274. In any case, there was also another specific feature regarding the reporting in the 11<sup>th</sup> Krupska Light Infantry Brigade established by witness Daničić when he took up the post of the Commander. He was mostly interested in combat activities due to which he instructed that daily briefings be held with commanders of the Battalions and independent units who were to inform him directly on the situation on the frontlines and the combat readiness, while the intelligence and security organ headed by Drljača a.k.a. Teho was to report to the Chief of Staff.

275. The witness explained that the reason for this was the fact that the defense line, that is, the Brigade's zone of responsibility was around 50-km-long and numbered 2,500 troops who had to be commanded, so he had to rely on his subordinates in the exercise of his duty, primarily on the Chief of Staff, which in this case was witness Zdravko Marčeta. According to the witness, he was supposed to be *"the Commander's right-hand man"*, meaning that he was to inform the Commander on all relevant events in the Brigade which did not fall under the regular combat reporting by the subordinate units. The referenced cooperation had to be efficient, given that the Commander *"is responsible for the situation in the Brigade, but even in ideal situations there are certain things that remain unknown and in that he has to rely on his aides"*.

276. However, the Corps Commander also mentions the poor compliance with the duty to report to one's superiors in his Report on the situation in the units, forwarded to the General Staff of the Serb Republic Army, str.pov. [strictly confidential; translator's note] No. 590-1 of 16 December 1992, warning of *"the insufficiently developed system of reporting in the Army, which is almost absent from the top down to the troops level, and the lack of quality staff in these organs"*.

277. The manner in which reporting to the Commander in the 11<sup>th</sup> Krupska Light Infantry Brigade was organized is a very important circumstance, primarily in view of the fact that only one man was at the helm of the intelligence and security organ of the Brigade, while the military rules required the establishment of two separate organs. The consequence of the foregoing was that the obligation of reporting on prisoners of war and committed crimes was left to the discretion of one man alone, with whom not only Commander Ostojić was dissatisfied, but also numerous other Brigade members.

278. Witness Daničić, as the Brigade Commander, and witness Borić, as the Corps

Commander, agree that it was a duty of security officer to inform the Commander on potential problematic situations regarding the prisoners of war or the criminal offenses against the prisoners of war committed by the Brigade members. The foregoing was also made specific in the Letter of the 2<sup>nd</sup> Krajina Corps Command to subordinate units pov.br. 307-2 of 5 August 1992, which was forwarded from the level of the Command of the 11<sup>th</sup> Krupska Light Infantry Brigade on 8 August 1992 further down to the Commanders of the Battalions and independent units upon Commander Ostojić's order. It can be seen from it that the Accused Ostojić, with which Corps Commander Grujo Borić also agreed, only exceptionally envisaged the holding of prisoners of war at the level of the unit that captured them, but no longer than 48 hours, after which they were to be transferred to the Corps prison. The chief of security had to report to the Commander about every potential noncompliance with the referenced order or in case of an extraordinary situation, and on the basis of the information thus obtained the Commander could launch an investigation, that is, inquire whether some of his subordinates committed a criminal offense or was about to commit it, in which case it would be mandatory for him to prevent or punish the perpetrators.

279. However, the Panel inferred on the basis of the adduced evidence that the reporting on prisoners of war followed a completely separate line and that all information in that respect was being concealed from Commander Ostojić. Witness Miroslav Stanić, Assistant to Chief for Intelligence at the relevant time, confirmed that all reports forwarded to the Corps via Brigade Commander were coded. So, he once had a conflict with Chief of Security Teho as he mistakenly enabled Commander Ostojić to see one such coded report that was to be sent to the Corps organs. Immediately after that event Teho engaged Milan Vojinović's son, with whom he had family ties, whereby, in the opinion of the witness, he attempted to control the witness' work and prevent the Commander from seeing some similar message again.

280. The manner of the coded communication between the Brigade's security organs and the Corps can be seen in the Letter No. 247/45 of 15 December 1992, tendered into evidence as the Prosecution exhibit. On the other hand, the Regular Combat Reports to the Brigade Commander of 15 July and 24/25 June 1992, tendered as the Prosecution exhibit, do not mention prisoners of war. To that purpose the Defense tendered into evidence a large number of Regular Combat Reports signed by Ostojić, from which it is also visible that he did not have the information that there were prisoners of war in the *Petar Kočić* School and that the prisoners were not the subject of these Reports. Neither the School nor the prisoners of war were mentioned in the Regular Combat Reports sent by the 2<sup>nd</sup> Krajina Corps Command to the VRS General Staff, either.

281. The adduced evidence also shows that the Brigade Chief of Security had close cooperation in that respect with his other assistant, Security Officer Petar Senić, who was convicted by the final Verdict of the Military Court in Banja Luka No. IK No. 94/95 of 4 August 1995, because as the Brigade's Security Officer he requested and received money on several occasions, but in return did not carry out the acts he was supposed to carry out as an official and responsible person. The consequence of the foregoing was a cover-up of a considerable number of criminal acts committed by the Brigade members. Many Defense witnesses also confirmed Senić's inclination to cover up crimes.

282. After his arrest, witness Miroslav Egeljić assumed the position of Security Officer. He said that when he arrived he did not find any written information or data on the existence of a prison in the *Petar Kočić* School or records with the number or the treatment of prisoners. So, he once interrogated one Đukić, whom Senić and Teho arbitrarily detained in the military hold-up underneath the court building without a written approval or knowledge of the Commander, where he had spent almost nine months. The witness had disagreements with the Chief of Security, who detained soldiers without reason: *"He was strange, insolent; he used to detain whomever he wanted"*.

283. This witness stated that the Accused Ostojić never requested from him to conceal or cover up anything and he signed around 500 criminal reports that he composed. That the Accused Ostojić, as the Commander, processed every breach of discipline, inherently also criminal acts, is also visible from some exhibits of the Prosecution, including the Criminal Report No. 189/42 of 21 October 1992 against Rajko Milešević, and the Decision ordering custody of up to three days No. 190/92 of 21 October 1992.

284. When rendering the final decision the Panel had in mind the fact that the previous Commander, Col. Daničić, also subsequently learned of the existence of prisons and prisoners in Bosanska Krupa from his subordinates and that he never saw the prisoners personally. Commander Ostojić's personal driver emphasized in that context that he never drove the Commander to visit the prison in Bosanska Krupa since combat activities were his priority, so they were mostly in the field visiting troops, which was particularly intensified in the first 10 days following the duty handover. According to the witness, at that time *"there was neither a Sunday nor a holiday; we would tour the lines even for 24 hours non-stop"*.

285. It is important to point out in that context that crimes against the prisoners of war



happened exactly at that time, that is, some 10 days following the assuming of the command by the Accused Ostojić, and the time period that the Accused had for duty handover was too short and not insignificant [as rendered in the original text; translator's note]. In the opinion of the previous Commander, Vukašin Daničić, the period was insufficient but justified in the war circumstances, so during the two or three days that the handover lasted, Col. Daničić attempted to convey as much information as possible to the Accused, but he is not sure if he informed him of the existence of the prison. On that occasion the emphasis was on the combat activities and the units' deployment, while the Commander was to get the other information from his subordinates later. Prosecution expert witness Butler also thinks that the handover in this case lasted too short for getting acquainted with all important segments of the Brigade. The best indication of how fast the assuming of the duty happened is the fact that the Accused only subsequently returned what he had been issued with as the Assistant Commander of another Brigade, in Kupres.

286. In addition to this, according to the evidence of witness Kasim Kulauzović as well as of the other examined witnesses, when international humanitarian organizations or the Red Cross Committee used to visit, the prisoners would be relocated from the school premises in order not to be registered. Hence, on one occasion one military policeman explained to witness Sabit Alijagić the reasons of the prisoners' relocating to the cinema not far from the school saying that the Red Cross Committee was visiting Bosanska Krupa with the task of making a record of prisons in Bosanska Krupa. This witness emphasized that the Committee officials registered the prisoners only after their transfer to the Corps prison in Kamenica (Drvar), and even then individuals were relocated on several occasions, thus witness Samir Alijagić was registered only on 15 December 1992.

287. Therefore, the Panel considers that during the proceedings no evidence was adduced indicating beyond any doubt that the Accused Jovan Ostojić knew or had reason to know about the existence of prison in the *Petar Kočić* school, hence also about the abuse of the prisoners.

288. On the other hand, the conduct of the Accused Ostojić toward the prisoners in cases when he was aware of their existence was described by witness Rajko Radaković, who was present in the capacity as the Commander's driver during the visit of the 1<sup>st</sup> Battalion Command in Šabići, some time in the summer or fall of 1993. The Accused Ostojić learned in the course of the ride that five persons were captured because they had been halted in a minefield and they subsequently admitted where they had hidden the weapons they had had on them. Upon their apprehension one of the soldiers said that they should be "*questioned and then killed*", with Commander Ostojić

responding that they could do so *"only over his dead body"*. He then ordered that the captured persons be handed over to the Military Police for questioning and that one of them who was wounded be taken to be administered aid, which caused great disapproval of the troops, given the fact that at that time the Brigade also suffered gasoline shortage. However, the Accused Ostojić categorically ordered them: *"As long as there is one drop of gasoline you must drive!"*

289. Although the referenced period deviates from the timeframe relevant to the Indictment, the Panel finds the referenced event to be relevant to the evaluation of the fair conduct of the Accused, Commander Ostojić, toward the prisoners that he knew of.

### **1. Individual Charges**

#### **(a) Abuse of prisoners**

290. The following witnesses were examined upon the proposal of the Prosecution on the circumstances referred to in Count 10a) of the amended Indictment: Redžep Medžedović, Kasim Kulauzović, Sabid Alijagić, Miroslav Stanić and Ilija Jakšić. They confirmed the detention of civilians in the gym of an elementary school in Jasenica and their beating and transfer to Bosanska Krupa on 24 July 1992. According to the evidence by Defense witnesses Miroslav Stanić and Ilija Jakšić, the persons referred to in this Count of the Amended Indictment were apprehended as they were suspected of hiding weapons.

291. The following persons were examined as Prosecution witnesses about the torture of prisoner Mirsad Budimlić referred to in Count 10b) of the Amended Indictment: Redžep Medžedović, Kasim Kulauzović, Bajro Šabić, Šefkija Kozlica, Sabid Alijagić and witness A-3. They stated that this victim was particularly abused and beaten up, so he had wounds all over his body and could not walk.

292. The following Prosecution witnesses were examined on the detention and abuse of Suad Sefić, the facts of which were described in Count 10c) of the Amended Indictment: Miroslav Stanić, Šefkija Kozlica, Sabid Alijagić, Bajro Šabić, A-5 and A-3. They confirmed that the victim was captured in his village and taken to the premises of the *Petar Kočić* Elementary School, where he was continually abused by guards, who once gave him a glass of some medicine to drink whereupon he died. Witness Miroslav Stanić was present once during an interrogation of

victim Suad Sefić whom Duško Zmijanac, commander of snipers, pricked in his knee with a knife. Given that Petar Senić was also present at these interrogations, the witness believes that that Chief of Security Mladen Drljača a.k.a. Teho was being informed about everything, but he is not sure whether Commander Ostojić knew of the interrogations of the prisoners or of such treatment they received in the prison. In that context witness Daničić answered a question of the Defense Counsel for the Accused why he did not dismiss Teho who carried out his duties unprofessionally: *"Perhaps I should have; he did not actually report about the prisoners every day."* Therefore, the Chief of Security did not carry out his duties diligently, not even with respect to Col. Daničić, who came to the Brigade in order to introduce order and hierarchy in the Brigade's functioning, and Drljača's carelessness only increased when the Accused Ostojić assumed the post of the Commander.

293. The Defense did not contest during the proceedings that the referenced crimes happened, but the Panel again notes that it concerns the period from 21 to 28 July, that is, only some 10 days after the Accused Jovan Ostojić took up the post of Brigade Commander, during which period the Commander intensely attempted to familiarize himself with the combat readiness of the Brigade and the subordinate units. At that time the matter of prisoners of war was within the jurisdiction of the chief of the security organ who concealed the data on the number and treatment of prisoners and the crimes committed by the Brigade members. The foregoing should be regarded in correlation with the specific attitude of distrust and initial animosity toward Commander Ostojić as a reserve officer of the JNA.

294. In addition to the suspicion toward everyone who was not an SDS member, some members of the Brigade and the police also had family ties, especially Police Chief Milan Vojinović, Milorad Kotur and Mladen Drljača a.k.a. Teho. This circumstance was certainly not insignificant and negligible, since Commander Ostojić came to a rather small and unknown community in which he *"had to accept the situation he found"*, according to witness Grujo Borić. All the foregoing reasons undoubtedly lead to the conclusion that the Prosecution did not prove beyond any reasonable doubt that at the time relevant to the referenced Counts in the Amended Indictment the Accused knew or had reason to know about the commission of criminal offenses by his subordinates.

(b) The killing of the *JOKS* Group

295. The following Prosecution witnesses were examined about the circumstances surrounding the killing of a group of prisoners called *JOKS*: Slobodan Majkić, Milovan Željковиć, A-5, Miroslav Stanić, Dušan Stojisavljević, A-3, Redžep Medžedović, Kasim Kulauzović, Bajro Šabić, Šefkija Kozlica, Sabid Alijagić, Ilija Jakšić, Slavko Ilić, Mile Mudrinić, Zdravko Marčeta, Grujo Borić and Vukašin Dančić. According to the witnesses, this group was abused the most; its members were held in inhumane conditions, stripped to the waist, barefoot and with four *S* letters carved in their backs.

296. The witnesses also confirmed that on 31 July 1992 in Jasenica, Brigade member Predrag Praštalo killed Savka Plavanjac, mother of Joja Plavanjac, whereupon Praštalo was relieved of duty the same day and apprehended in the *Petar Kočić* Elementary School in Bosanska Krupa, to which Joja Plavanjac came in the evening, accompanied by his father, and killed members of the *JOKS* group and Tofik Sejdić, whereupon the prisoners were ordered to wipe off the blood and human tissue remains in the cell where the killings took place.

297. Witness Šefkija Kozlica described the details of the committed crime stating that it was a group of young men who were detained in a separate room and were often beaten by the guards. The witness had an opportunity to see them when bringing them lunch, but they could not eat because of the sustained injuries. They did not give them water, probably in order to exhaust them even more. When this group was brought in they were all in civilian clothes, but later the guards ordered them to take their T shirts off, so they were always stripped to the waist. They wrote *JOKS* on their backs with a spray and above that carved four *S* letters with a knife.

298. Thus the witness had an opportunity to see when Joja, whom Refik Harbaš from Jasenica recognized, came on the relevant night. Guard Narančić, who testified at the main trial, communicated with him. According to the witness, Joja insisted that Narančić should let him into the school, probably looking for his mother's murderer Predrag Praštalo. Having failed to find him, Joja entered the room in which a group of 11 prisoners (the *JOKS* group) were and killed them on that occasion, whereupon his father took out Tofik Sedić and killed him. According to witness Narančić, the Plavanjac family had had some disagreements with Sedić from before. Military Police Platoon Commander Mile Čazić came after the killings and ordered that Joja be taken away.

299. Later during the night, between 21.00 and 21.30 hrs, witness Kozlica noticed the arrival of a military truck, a gray *FAP 1005*, whereupon members of the Military Police entered the school, took out the lifeless bodies of the young men and loaded them onto the truck. A couple of days later the witness and other prisoners were ordered to wipe off the traces of blood in the corridor and the traces of human tissue from the walls. Witness Narančić confirmed the foregoing, specifying that Joja entered the prison making threats and that, in addition to Joja, his father (the late Savka's husband) also shot at the prisoners and personally killed Tofik. After the trucks drove away the lifeless bodies of the killed, Čazić told witness Narančić: *"Keep quiet for the time being and we shall see later"*. So, the witness avoided talking about the event in the subsequent period and soon afterward he joined another platoon and spent more time on the frontline.

300. Witness Kozlica never heard that anyone conducted an investigation into the referenced event. The Corps Military Police only asked the prisoners while they were being transferred to Kamenica where members of the *JOKS* group were, but the prisoners dared not tell what had happened fearing they, too, would be killed.

301. In the course of the proceedings the Defense primarily contested Joja's status as a member of the Brigade at the time of the commission, stating that he was relieved of the duty of Deputy Commander of the Jasenica Battalion after the wounding, and referring to the presence of the Accused Ostojić in the Brigade Command on the day of the killing of Joja's Mother, Savka Plavanjac, and the Accused's awareness of the committed crimes.

302. On the basis of the adduced evidence it was concluded beyond a doubt that upon the outbreak of the conflict Joja Plavanjac was appointed the Deputy Commander of the Jasenica Battalion where he stayed for some 15 days. Witness Rađenović, who was engaged to the post of security officer in the Battalion of witness PWS-92 with the outbreak of the conflict, moved to a logistics company after 15-20 days. At that time he knew Joja Plavanjac with whom he once went to pick up mattresses from the *Jasenica* hotel, after which he no longer saw him and did not know whether he was a Brigade member in the subsequent period. Shortly afterward there was a transformation of the units, so the 4<sup>th</sup> Battalion was renamed the 3<sup>rd</sup> and the Vojovačka Company was also added, whereupon witness PWS 92 appointed Joja the operations officer in the Battalion, although the referenced position was not envisaged in the formation.

303. The Prosecution adduced ample documentary evidence in that respect, attempting to confirm Joja's engagement in the Brigade at the time of the commission. Documents were

tendered to that end, including a Review of Commanding Officers of the Brigade, listing Joja Plavanjac under number 25 as the Commander of the Jasenica Command Company, and a Personal File, showing that he was engaged in the army in the period from 21 April to 31 December 1992.

304. During the proceedings the Defense denied that Unit Files and Personal Military Records of the 8<sup>th</sup> Brigade were updated regularly, averring that numerous omissions were made there, which is also visible from Commander Ostojić's Order pov.br. 556-1/92 of 21 October 1992, noting the incomplete and irregular registering of conscripts, and ordering the taking of disciplinary and other responsibility measures against persons who contribute to the bad situation by disseminating incorrect data and misinformation.

305. The Prosecution also considered that Joja's membership in the Brigade followed from the request for assistance that he forwarded to the Executive Board of the Assembly of the Municipality of Krupa na Uni [Krupa on the Una River; translator's note] on 10 February 1994, requesting the allocation of funds for the purchase of fuel and treatment of his sick child in Belgrade. However, an inspection of the Decision of the Executive Board of 28 February 1994 granting his request shows that Joja is not referred to as a member of the Brigade in the relevant period.

306. Defense witnesses, such as Duško Stoisavljević, consider that Joja was fictitiously registered as a member of the Brigade. This witness never personally saw him in the Headquarters Administration. The then Commander Daničić does not remember the referenced appointment, nor does Headquarters Administration Commander Dragan Kolundžija, who states resolutely that Joja was not on his unit's strength, but he did see him in a uniform in the vicinity of the Command, which many other witnesses also stated. Witness Gajkić, who followed Zdravko Marčeta in the post of the Chief of Staff, claims categorically that the Brigade did not have a Command Company/Headquarters Administration and that he never saw Joja at the briefings that he would have attended if he had been the commander of one such company. Witness PWS 92 also confirmed that he did not see Joja at the briefings in the Brigade, based on which he concluded that he was not militarily engaged after the wounding.

307. Given the referenced inconsistencies among the examined witnesses and the imprecision of the tendered documentary evidence of the Prosecution, the Panel does not consider it proven beyond any reasonable doubt that at the time of the commission of the crime against the *JOKS* group Joja Plavanjac was a Brigade member. Therefore, with respect to this Count of the Amended

Indictment, the first element of command responsibility that implies the superior-subordinate relationship is not satisfied.

308. In addition to this, the Panel also touched on the Prosecution evidence with which it attempted to prove that the Accused Ostojić knew about the referenced murders, given the fact that the members of the *JOKS* group were arrested at the time of the combat activities when some Serb soldiers were wounded. However, the Regular Combat Reports from the previous period do not mention any captured persons. The arrest of a group of eight persons under the name of *JOKS* is only mentioned in the letter of 12 July 1992, sent directly by the Brigade's security organ (Mladen Drljača a.k.a. Teho) to the Corps' intelligence and security organ (Atlagić-Mitrović). The subsequent report of the chief for intelligence and security of 13 July 1992 also gives information on the arrest, whereas the Commander's Regular Combat Report of the same date again makes no mention of any extraordinary events.

309. The only Regular Combat Report that mentions the arrest of the group of eight persons is the one made by Col. Daničić on 15 July 1992 just ahead of his departure, but he is not sure whether he informed the Accused Ostojić of the foregoing.

310. The majority of the examined Prosecution witnesses, except for witness Marčeta, only conclude that in his capacity as the Commander the Accused Ostojić must have been informed of the killings committed by Joja, since different versions of the incident were being told at that time. However, the Panel does not think that the Accused Ostojić as the Commander could act on the basis of informal stories circulating around, given the fact that the rights and duties of Brigade members are clear and unequivocal, thus the Commander is also obliged only by what he learned as official information from his subordinates' reports.

311. The only witness who states resolutely that the Accused Ostojić knew of the commission of the crime is witness Zdravko Marčeta, the Brigade Chief of Staff at the time. He stated that a few days after the killing of Savka Plavanjac, the Accused Jovan Ostojić called him and informed him that Joja Plavanjac committed the killings. The witness came across him when he came to the Commander's office as Plavanjac allegedly did not want to speak without the witness' presence.

312. However, the Panel could not trust this witness, primarily having in mind his unprofessional attitude toward the Brigade Commander whose closest aide he should have been. As the witness stated himself, at that time he was appointed the chief of a department in the Ministry of Defense,

so he did not really focus on the duties in the Brigade, although he was officially its member on 1 August 1992 as well, which can be seen in the Letter 11. l.kr.p.br. No. 253-1/92, tendered as a documentary evidence of the Prosecution. In that respect, even the Prosecution expert witness Butler judged his attitude as unprofessional given that *"Chief of Staff is the key person that a Commander relies on"*.

313. Also, under the 1984 infantry brigade organization scheme, included in the evidentiary material, the line of responsibility of the Military Police goes through the security organ toward the Headquarters Administration/Company Command, whose superior is the Chief of Staff. This was also confirmed by witness Daničić, due to which the Panel finds witness Marčeta's statement that the Commander knew of the committed crimes to be tendentious, as it was obviously given with a view to avoiding or reducing personal responsibility. In that context, the witness could not explain in the cross-examination why he personally did not report the commission of the criminal offense afterward if he saw that the Commander was not taking the "necessary and reasonable" measures. The fact that this witness had the best-man ties with the perpetrator of the crime does not play into his hands, either.

314. According to witness Predrag Bjeljic, Marčeta once even had a personal conflict with Commander Ostojić, whom he insulted and physically assaulted. It was established afterward that he was under the influence of alcohol, whereupon Commander Ostojić rendered a decision to keep him in custody. However, he was released in the evening, exactly upon the order of security officer Teho.

315. Also, on the basis of the adduced evidence the Panel inferred that the Accused Ostojić was not in the Brigade on the day of Savka Plavanjac's killing, which was confirmed by witnesses Predrag Bjeljic and Commander's driver Ranko Radanović, who were together with the Accused in a Brigade at Kupres for returning the issued equipment. On the other hand, on the day of Savka Plavanjac's killing, witness Marčeta was in the Command in Jasenica where, as the Deputy Commander, he signed a decision on discharge of Predrag Praštalo, which is another indication that Commander Ostojić indeed was not present in the Command on the day concerned.

316. Witness Marčeta's statement was refuted by almost all other Defense witnesses, who learned of the commission of crime against the *JOKS* group a couple of years after the end of the war. Witness Miroslav Vještica also learned subsequently of the abuse of prisoners in the *Petar Kočić* School, which, according to him, was never discussed in the Brigade Command.



317. In accordance with the foregoing, the Panel concluded that the crime that Joja committed against the prisoners was covered up. Thus Predrag Praštalo, who was arrested and taken to custody after having been relieved of duty, was taken out of the custody before Commander Ostojić's return to Jasenica. Also, the bodies of the killed were transported to an unidentified location in the night, and the Commander of the Military Police Platoon ordered that the incident must not be talked about.

318. Having in mind all the foregoing circumstances, the Panel concluded that no sufficient evidence was adduced in the proceedings that would have indicated beyond a doubt that the Accused knew of the crime described in Count 10d) of the Amended Indictment or that the perpetrator, Joja Plavanjac, was at that time a member of the Brigade commanded by the Accused Ostojić.

(c) Transfer of prisoners to the Kamenica Corps Prison

319. The last Count in the Amended Indictment, Count 10e), concerns the transfer of prisoners from the *Petar Kočić* Elementary School to the Kamenica Corps Prison in Drvar. The prisoners were beaten by guards and forced to sing Serb songs and blindfolded all that time. The following witnesses were examined about this event: Redžep Medžedović, Kasim Kuluzović, Bajro Šabić, A-5, A-3, Šefkija Kozlica, Sabid Alijagić, Miroslav Stanić and Zdravko Marčeta. The witnesses also confirmed that prisoner Kemal Šepić was beaten to death on 3 November 1992 and that prisoners Nusret Malkoč, Ferid Velagić and Fehim Kadić disappeared from the Kamenica prison in Drvar.

320. The prison in Kamenica was established upon the Order of Col. Grujo Borić, Commander of the 2<sup>nd</sup> Krajina Corps, str.pov.br. 307-1 of 5 August 1992, stipulating that the camp's deputy commander and guards would be appointed by the Military Police Battalion Commander, and that cooperation with the military security organ would be achieved with a view to securing the functioning of the camp.

321. The evidence adduced in the proceedings indicates that the transfer of the prisoners happened on 21 August 1992, of which the Commander was not informed, according to witness Mladen Štrbac, who explained that prisoners were not normally mentioned to the commander at the briefings. According to witness Đorđe Jež, that was a responsibility of the Brigade's security officer. Details of the prisoners' transfer were clarified by witness Miroslav Stanić, security

officer, who stated that the Corps Military Police originally came to Jasenica looking for Vlado Vignjević's Military Police. They then said that their task was to transfer the prisoners to the Corps prison in Kamenica, so the witness instructed them to go to Bosanska Krupa, where the Military Police headquarters was. This witness is also not familiar with the details of the transfer and he believes that Brigade Commander Ostojić was not informed about it, either. Ostojić does not mention any transfer of prisoners in his Regular Combat Report of 21 August 1992, stating that "*there are no other extraordinary events*". Grujo Borić, Commander of the 2<sup>nd</sup> Krajina Corps, under whose order the prison in Kamenica was established, did not know about the transfer of the prisoners, either. He considers that it was a competence of the Corps security organs, who would inform him only in case of unforeseen situations.

322. Given that in the instant proceedings the Prosecution did not prove beyond any reasonable doubt that the Accused Jovan Ostojić was aware of the existence of the prison in the *Petar Kočić* Elementary School in Bosanska Krupa, hence also of the conditions in which the prisoners lived and the abuse they were subjected to, the Panel rendered a decision as quoted in the operative part of the Verdict in application of the principle of deciding in the manner more favorable for the accused when there is a doubt (*In dubio pro reo*).

323. Therefore, during the proceedings the Prosecution did not prove the criminal responsibility of the accused persons for the individual charges that make the underlying acts of crimes against humanity, hence conditions for changing the legal definition of the criminal offense they were charged with were not met.

324. When rendering the Verdict, the Panel also evaluated the other pieces of evidence adduced at the main trial, but they were not expounded on separately, as they did not have a decisive influence on the finally established state of the facts and the conclusions that the Panel reached based on the evidence evaluated in detail in the Verdict.

## **VII. DECISION ON THE CRIMINAL PROCEEDINGS COSTS**

325. Pursuant to Article 189(1) of the CPC B-H, the costs of the criminal proceedings referred to in Article 185(2)(a)-(f), and the necessary expenses and remuneration of the Defense Attorneys, shall be paid from the Court's budget.

## **VIII. DECISION ON THE CLAIMS UNDER PROPERTY LAW**

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

**Record-taker:**

*[signature affixed]*

**Lejla Haračić**

**Legal Advisor – Assistant**

**PRESIDING JUDGE**

*[signature affixed]*

**Zoran Božić**

**Legal Remedy:** An appeal from this Verdict shall be allowed with the Appellate Division of Section I of the Court of Bosnia and Herzegovina within 15 (fifteen) days from the receipt of a written copy thereof. The Appeal shall be filed with this Court in a sufficient number of copies.\*

Annexes I and II, containing the procedural decisions and a list of the adduced evidence, constitute a component part of this Verdict.

## IX. ANNEX 1 – PROCEDURAL DECISIONS

### A. DECISION ON ADMISSION OF ESTABLISHED FACTS

Deciding on the Motion of the BiH Prosecutor's Office for Admission of the Established Facts No. KT-RZ-100/06 dated 12 December 2008 and the Motion of the Accused Gojko Kličković dated 25 February 2009, pursuant to Article 4 of the Law on Transfer of Cases from the ICTY to the Prosecutor's Office of BiH and the Use of Evidence collected by the ICTY in Proceedings before the Courts in BiH, on 27 March 2009 the Panel rendered the Decision partly admitting the said Motions, so the facts established in the final and legally binding ICTY judgments in the *Prosecutor v. Radoslav Brđanin* No. IT-99-36-T dated 1 September 2004 and the *Prosecutor v. Milomir Stakić* No. IT-97-24-T dated 31 July 2003 were admitted as established to the extent as follows below:

1. The census in April 1991 recorded that 43.7 percent of the residents of Bosnia and Herzegovina were ethnic Muslims, 32.4 percent were Serbs and 17.3 percent were Croats. [§29 *Stakić*]
2. The SRBH was the only republic without a single majority nationality. It was populated primarily by Bosnian Serbs, Bosnian Muslims and Bosnian Croats. While there were differences in their cultural heritage and religious tradition, the three groups had much in common and peacefully coexisted for most of the time. [§54 *Brđanin*]
3. In November 1990, the first multi-party elections were held in BiH, whereby the people voted for the Assembly of the SRBH, the Presidency of the SRBH and the municipal and local Assemblies in all the municipalities in BiH. The SDA, SDS and HDZ collectively won an overwhelming majority of the votes. The vote accurately portrayed the polarisation amongst the ethnic communities taking place in BiH at the time. {...} [§56 *Brđanin*]
4. Cooperation among the three nationalist parties was initially good, even enthusiastic, in the euphoria that followed the defeat of the League of Communists. However, the break-up of the SFRY commencing in 1991 resulted in the deterioration of both the situation in BiH in general and the relations between the ethnicities in particular. {...} [§57 *Brđanin*]
5. The war and the secession of Slovenia and in particular of Croatia had a significant impact on the socio-political situation in BiH. From late summer 1991, many military aged men from BiH were mobilised to join the JNA in order to fight in Croatia. A large number of Bosnian Serbs responded, but Bosnian Muslims and Bosnian Croats, supported by their respective leaders, generally did not. This led to increased<sup>100</sup> tension between the ethnicities, especially

in the Bosnian Krajina region bordering Croatia. [§58 *Brđanin*]

6. In this atmosphere of tension the three main nationalist parties, having separate national agendas with conflicting interests, failed to reconcile their differences and started moving in opposite directions. Most importantly, they disagreed on the question of the constitutional status of BiH. While the SDA and the HDZ promoted the secession of the SRBH from the SFRY, the SDS strongly advocated the preservation of Yugoslavia as a state, in order to ensure that the Serbs would continue to live together in a single state, and would not become a minority in an independent Bosnian state. On 15 October 1991, SDS President Radovan Karadžić made an impassioned speech before the Assembly of the SRBH in Sarajevo, indicating the possibility that Bosnian Muslims could disappear as a group if they declared the independence of the SRBH from the SFRY. SDA President Alija Izetbegović responded that Karadžić's threatening message and its method of presentation illustrated why the SRBH might be forced to separate from the SFRY. After the Republican Assembly of the SRBH had adjourned for the day and the SDS delegation had departed, HDZ and SDA delegates reconvened without them and passed a "Declaration of Sovereignty", a measure that moved the SRBH a step closer to independence. [§61 *Brđanin*]
7. On 24 October 1991, the SDS Deputies in the Assembly of the SRBH, in a meeting of their club, established a separate Assembly of the Serbian People in Bosnia and Herzegovina ("SerBiH Assembly") and elected Momčilo Krajišnik as its President.<sup>118</sup> The SerBiH Assembly authorised a plebiscite of the Serbian people of BiH on the question of whether or not they wanted BiH to remain within Yugoslavia. On 9 and 10 December 1991, the Bosnian Serbs voted overwhelmingly to remain a part of the SFRY. [§62 *Brđanin*]
8. In early 1992, the SDA increased the pressure to secure independence of the SRBH from the SFRY. A referendum on the question of independence was held on 29 February and 1 March 1992. It was largely boycotted by the Bosnian Serbs and yielded an overwhelming majority of votes in favour of the independence of BiH. In view of the result of the referendum, on 6 April 1992, the European Community recognised BiH as an independent state. Recognition by the US followed on 7 April 1992. [§63 *Brđanin*]
9. The referendum and subsequent recognition by the international community of BiH as an independent state increased the tension between Bosnian Serbs on the one hand and Bosnian Muslims and Bosnian Croats on the other hand. The armed conflict in BiH broke out shortly after. [§64 *Brđanin*]
10. On 15 October 1991, the SDS Party Council discussed strategies on how to set up a Serbian government, which included establishing parallel government bodies, the regionalisation of BiH and organising militarily. [§66 *Brđanin*]

11. In a speech given on the occasion of the “Plebiscite of the Serb People” in Sarajevo in November 1991, Radovan Karadžić instructed SDS members representing the municipalities to impose complete Bosnian Serb authority in their respective municipalities, regions and local communities. On 11 December 1991, the SerBiH Assembly voted to recommend the establishment of separate Serbian municipalities. {...} [§68 *Brđanin*]
12. On 19 December 1991, the Main Board of the SDS issued a document entitled “Instructions for the Organisation and Activity of Organs of the Serbian People in Bosnia and Herzegovina in Extraordinary Circumstances” (“Variant A and B Instructions”). These instructions provided for the conduct of specified activities in all municipalities in which Serbs lived, and essentially mapped out the take-over of power by Bosnian Serbs in municipalities where they constituted a majority of the population (“Variant A”) and where they were in a minority (“Variant B”). The stated purpose of the Variant A and B Instructions was “to carry out the results of the plebiscite at which the Serbian people in Bosnia and Herzegovina decided to live in a single state” and to “increase mobility and readiness for the defence of the interests of the Serbian people”. [§69 *Brđanin*]
13. The Variant A and B Instructions included, amongst others, the directive that the SDS Municipal Boards should form Crisis Staffs of the Serbian people in their respective municipalities. {...} [§70 *Brđanin*]
14. In early 1992 the Bosnian Serb leadership enforced its plan to separate the territories claimed by them from the existing structures of the SRBH and to create a separate Bosnian Serb State. On 9 January 1992, the SerBiH Assembly proclaimed the SerBiH, which on 12 August 1992 was renamed Republika Srpska (“RS”). It was composed of so-called Serbian autonomous regions and districts, which included the ARK. [§71 *Brđanin*]
15. At the 12<sup>th</sup> session of the SerBiH Assembly, held on 24 March 1992, Radovan KARADŽIĆ stated that: “At a desired moment ... we can form whatever we want. There are reasons why this could happen in two or three days... At that moment, all the Serbian municipalities, both the old ones and the newly established ones, would literally assume control of the entire territory of the municipality concerned... Then, at a given moment... there will be a single method used and you will be able to apply it in the municipalities you represent, including both things that must be done as well as how to do them. How to separate the police force, take the resources that belong to the Serbian people and take command. The police must be under the control of the civilian authority, it must obey it, there is no discussion about that – that’s the way it must be”. [§73, footnote 136 *Brđanin*]

16. [During the 16<sup>th</sup> session of the SerBiH Assembly] a fundamental step towards the

implementation of the Strategic Goals was also taken: the establishment of the Army of the Serbian Republic of Bosnia and Herzegovina (“VRS”), which was put under the supreme command of the Presidency of the SerBiH. General Lieutenant Colonel Ratko MLADIĆ accepted the position as Commander of the Main Staff of the VRS {...} [§78 *Brđanin*]

17. In September 1990, the JNA had ordered that weapons be removed from the depots under control of local TO units and moved to its own armouries. Therefore, when the tension between the ethnic groups increased, local communities throughout BiH did not have a significant number of weapons at their disposal. However, in late 1991 and early 1992, all three national parties began arming themselves. [§87 *Brđanin*]

18. {...} The JNA systematically supplied light arms to local SDS committees in Bosnian Serb claimed municipalities of the Bosnian Krajina as well as to Serbian paramilitary groups. Distribution to Bosnian Serb civilians was carried out by the local communes and was supervised by the SDS, with the support of the JNA and the local police. The arming of Bosnian Serb villages was well-organised and involved the use of trucks and occasionally even helicopters. The JNA also engaged in redistributing weapons to Serbian TO units in predominantly Bosnian Serb populated areas. [§88 *Brđanin*]

19. Muslims were also preparing for a war and correspondingly arming themselves. In June 1991, SDA leaders formed the ‘Council for National Defence of the Muslim Nation’ with the Patriotic League as its paramilitary arm. However, the Bosnian Muslims’ efforts to procure and distribute weapons were nowhere near as successful as those of the Bosnian Serbs, both in terms of the number and the quality of the obtained weapons. This was due in part to the fact that Bosnian Muslims mainly procured their weapons on an individual basis. Some obtained their weapons by buying them from Bosnian Serbs returning from the front line in Croatia. On a number of occasions, Bosnian Muslims purchasing weapons in this way were identified and later arrested. Equally, the Bosnian Croat population’s endeavours to arm themselves fell far short of the arming efforts conducted by the Bosnian Serbs. [§89 *Brđanin*]

20. While the arming operations were taking place, public announcements were made through the media that illegally possessed weapons had to be returned to the TO staffs or to the local police by a certain deadline. While some of these announcements were formulated in a neutral manner, asking all paramilitary groups and individuals of all ethnicities to return illegally possessed weapons, on other occasions only Bosnian Muslims and Bosnian Croats were urged to hand in their weapons. In some cases it was announced that deadlines for the return of weapons would be followed by house searches. Some announcements went so far as to threaten that villages would be attacked or that people would be killed in the event that weapons were found during such searches. {...} [§90 *Brđanin*]

21. In BiH, the JNA gradually changed from being the Yugoslav Peoples' Army and representing all ethnic groups and nationalities in the SRFY to becoming a *de facto* Serbian army. Already by early 1991, some ninety per cent of high ranking officers were Serbs and Montenegrins and not a single general was of Muslim ethnicity. [§91 Brđanin]
22. At the same time, an international arms embargo was in force with respect to BiH. This embargo affected the Bosnian Muslims the most, as the Bosnian Croats managed to illegally procure weapons through neighbouring countries and the Bosnian Serbs had access to JNA and later VRS weaponry. {...} [§92 Brđanin]
23. The Constitutions of the SFRY and the SRBH provided that in state of war or imminent threat of war, emergency governments could be established at both the republic and municipal level. These emergency governments, called Crisis Staffs or War Presidencies, would take over the functions of the Assembly if the latter was unable to sit. {...} [§94 Brđanin]
24. {...} In 1992, members included the respective President of the Municipal Assembly or the President of the Municipal Executive Committee (Variant A) or the President of the SDS Municipal Board (Variant B), the commander of the Municipal TO staff, and the Chief of the police. In addition, municipal Crisis Staff meetings were regularly attended by representatives of the army. {...} [§95 Brđanin]
25. By the spring of 1992, a number of Serb paramilitary groups had been formed in BiH or had arrived from Serbia. Some of these paramilitary groups were trained and equipped by the JNA and were closely associated with it or with the SDS. [...] Serbian paramilitary groups also participated in combat operations of the 1st Krajina Corps of the VRS throughout the ARK, and from mid June 1992 onwards, they were formally incorporated into the structure of the VRS and put under its command. {...} [§97 Brđanin]
26. The armed attack on Bosanska Krupa took place on 21 April 1992 {...} [§103 Brđanin]
27. In the spring of 1992, camps and other detention facilities were established throughout the territory of the Bosnian Krajina in army barracks and compounds, factories, schools, sport facilities, police stations and other public buildings. These camps and detention facilities were set up and controlled by the Bosnian Serb army, civilian authorities or the Bosnian Serb police. Non-Serb civilians were arrested *en masse* and detained in these camps and detention facilities. {...} [§115 Brđanin]
28. Already before the outbreak of the armed conflict in BiH, Bosnian Muslims and Bosnian Croats living in the Bosnian Krajina were feeling increasingly insecure and started leaving the region in convoys. As the events in the Bosnian Krajina developed, from the spring of



1992 onwards, active and systematic repression and expulsion of Bosnian Muslims and Bosnian Croats was carried out by the Bosnian Serb authorities throughout the Bosnian Krajina. Convoys of buses and trains were organised by the Bosnian Serb authorities to drive tens of thousands of men, women and children out of Bosnian Serb claimed territory to either Bosnian Muslim held territory within BiH or to Croatia. {...} [§116 Brđanin]

29. After 19 May 1992, the FRY provided the VRS with three main types of operational support: logistics, personnel and training. [T]he FRY provided considerable quantities of military equipment, fuel and ammunition to the VRS and [...] the latter was almost entirely dependent on this procurement. {...} [§145 Brđanin]

30. Further [...], after the JNA had officially withdrawn from BiH and the VRS had been formally established, FRY continued to provide support to the Bosnian Serb armed forces through the payment of salaries and pensions and the sending of troops. [§146 Brđanin]

31. The FRY, through the VJ, assisted the VRS by maintaining a significant role in the training of VRS military personnel throughout the armed conflict. {...} [§147 Brđanin]

32. {...} in the Bosnian Krajina {...} by the end of 1992, nearly all Bosnian Muslims and Bosnian Croats had been dismissed from their jobs in, amongst others, the media, the army, the police, the judiciary and public companies. Numerous crimes were committed against Bosnian Muslims and Bosnian Croats, including murder, torture, beatings, rape, plunder and the destruction of property. Villages were shelled, houses were torched and looted. In the spring of 1992, a number of detention camps where Bosnian Muslim and Bosnian Croat civilians were arrested and detained *en masse* were established throughout the ARK. In several instances, mass killings of civilians took place. {...} Indeed, tens of thousands of Bosnian Muslims and Bosnian Croats were forcibly expelled from the ARK by the Bosnian Serbs and taken in convoys of buses and trains to Bosnian Muslim held territory in BiH or to Croatia. {...} [§159 Brđanin]

33. On 7 April 1991, the SDS Regional Board decided to create the Community of Municipalities of Bosnian Krajina ("ZOBK"). [...] The ZOBK was composed of sixteen municipalities from the Bosnian Krajina, all of which, except Ključ, had substantial Bosnian Serb majorities. [§165 Brđanin]

34. At its 7th session, held on 16 September 1991, the ZOBK Assembly transformed itself into the Autonomous Region of Krajina ("ARK"). The decision in question states that the ARK was being established "as an inseparable part of the Federal State of Federative Yugoslavia and an integral part of the Federal Unit of BiH". On the same date, the Statute of the ARK, which was almost identical to the ZOBK Statute, was adopted. Like the ZOBK, the ARK had its seat in Banja Luka. [§166 Brđanin]

35. In the autumn of 1991, four other Serbian Autonomous Districts were created in SRBH. These were the Serbian Autonomous District of Herzegovina, the Serbian Autonomous District of Romanija-Birač, the Serbian Autonomous District of Semberija and the Serbian Autonomous District of Northern Bosnia. [§167 *Brđanin*]
36. The Variant A and B Instructions included the directive that the SDS Municipal Boards should form Crisis Staffs of the Serbian people in their respective municipalities. {...}[§188 *Brđanin*]
37. On 16 April 1992, the Ministry of National Defence of the SerBiH declared an imminent threat of war. {...}[§189 *Brđanin*]
38. On 5 May 1992, the ARK Executive Council, headed by Nikola Erceg, issued a decision on the formation of the ARK Crisis Staff. {...}[§190 *Brđanin*]
39. The ARK Crisis Staff exercised the powers and functions of the ARK, with the proviso that its decisions had to be ratified by the ARK Assembly on 17 July 1992, {...} [§196 *Brđanin*]
40. {...} between 5 May 1992 and 17 July 1992, when the ARK Crisis Staff/War Presidency stopped functioning, the ARK Crisis Staff and later the ARK War Presidency were organs of authority in the ARK {...} [§197 *Brđanin*]
41. [In the ARK, during the period between April 1992 and December 1992] at least 1669 Bosnian Muslims and Bosnian Croats were killed by Bosnian Serb forces, all of whom were non-combatants. [§465 *Brđanin*]
42. At the beginning of May 1992, detainees from Jasenica school were transferred to the Petar Kočić school on the outskirts of Bosanska Krupa. At least 50 Bosnian Muslims were detained at the school. {...} [§492 *Brđanin*]
43. {...} The expulsions and forcible removals were systematic throughout the ARK, in which and from where tens of thousands of Bosnian Muslims and Bosnian Croats were permanently displaced. {...} Those who were not expelled and did not manage to escape were subjected to intolerable living conditions imposed by the Bosnian Serb authorities, which made it impossible for them to continue living there and forced them to seek permission to leave. Bosnian Muslims and Bosnian Croats were subjected to movement restrictions, as well as to perilous living conditions; they were required to pledge their loyalty to the Bosnian Serb authorities and, in at least one case, to wear white armbands. [§551 *Brđanin*]
44. Even when Bosnian Muslims and Bosnian Croats attempted to leave the area, they had to contend with departure procedures established by Bosnian Serb authorities

that restricted one's right to leave. Procedures for leaving included signing statements that the individual left voluntarily and relinquishing their property to Bosnian Serb authorities. [P]eople did not in fact sign such documents voluntarily, but did so in order to escape the intolerable living conditions which were forced upon them. [P]ermission to leave was not always granted, however, and that in some cases, military-aged Bosnian Muslims and Bosnian Croats were, at least initially, prevented by the authorities from leaving. [§553 Brđanin]

- 45.** Bosnian Muslims and Bosnian Croats in the municipalities of the ARK were arbitrarily arrested and detained in camps and other detention facilities for a considerable length of time. Most of them were never informed of the charges against them, and, in addition, were never charged before a court. In fact, there was a near-total absence of judicial process, including the right of access to a court. [§1044 Brđanin]

Having considered the Prosecution Motion and that of the Accused Gojko Kličković as well as the responses of the parties to the proceedings and the defence attorneys, the Court rendered the decision as articulated in the operative part placing its reliance on Article 4 of the Law on the Transfer of Cases which stipulates that *“At the request of a party or proprio motu, the court, 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.”* The first formal requirement of the cited regulation was met by hearing the parties to the proceedings.

The Law on the Transfer of Cases is *lex specialis* and is as such applicable in the proceedings before the courts in Bosnia and Herzegovina. The main purpose of Article 4 of the Law on the Transfer of Cases is to ensure judicial expediency and economy, but being aware of the importance of approaching the application of this provision cautiously and observing the principle of fairness of the proceedings concerned, the Court will not admit those facts that would directly or indirectly incriminate the Accused.

Likewise, the Panel believes that its ruling does not shift the burden of proof nor does it violate the provisions of the European Convention on Human Rights to the detriment of the Accused, as it recognizes the relevant jurisprudence of the European Court of Human Rights which endorses such an approach on the proviso that the Accused can challenge the admitted facts,<sup>46</sup> which was ensured during the proceedings, thus satisfying the principle of adversarity, verbal and direct presentation of evidence, fairness and equality of arms.

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<sup>46</sup> Judgment of the European Court of Human Rights in the *Salabiaku v. France* case, rendered on 7 October 1988, 13 EHHR 379, para 28-29.

In addition, the Trial Panel in this case was not obliged to base its verdict on a fact established in the ICTY judgment, since the admitted facts were the subject of consideration in the context of all the evidence adduced at the trial, in accordance with the principle of discretionary evaluation of evidence as stipulated in Article 15 of the CPC BiH, thereby meeting the fundamental principle of the presumption of innocence, enshrined in Article 3(1) of the CPC BiH and Article 6(2) of the ECHR.

Given that the Law on the Transfer of Cases does not provide for the criteria based on which a fact would be regarded as “adjudicated”, in examining the facts the Panel took into consideration the criteria set by the ICTY in its Decision of 28 February 2003 in the *Prosecutor v. Momčilo Krajišnik* case, taking into account the rights of the Accused guaranteed by the ECHR and the BiH CPC. According to the decision taken in the case against Momčilo Krajišnik, at the request of a party or *proprio motu*, the Trial Panel, after hearing the parties, may decide to take judicial notice of the adjudicated fact if it is: distinct, concrete and identifiable, relevant to an issue in the current proceedings, restricted to the factual findings and does not include legal characterizations, is part of the verdict which was not subject to appeal or it was finally decided on appeal or refuted at the trial and is subject of pending appeal but is among the issues that are not in dispute on appeals. Furthermore, these facts must not attest to the criminal responsibility of the accused and must not be based on plea agreements in previous cases and affect the right of the accused to a fair trial. These criteria supplement Rule 94(b) (judicial notice) of the ICTY Rules of Procedure and Evidence. Moreover, the same criteria have already been accepted by the Court’s Appellate Panel<sup>47</sup>.

The facts that were not accepted by the Panel do not satisfy these criteria or are not relevant to the present case as they contain too many details, or are repetitive or pertain to other municipalities and as such cannot apply to the case at hand. To that effect, the facts from the Prosecution Motion under numbers 61, 67-87, 90-169, 176, 186-197, 200, 201, 203-214, and the facts from the Motion of the Accused Kličković listed under numbers 2, 56, 58 and 61 were refused. Under the same criteria, the Panel refused the facts it considered indistinct or incomprehensible such as those listed under numbers 18, 21-24, 34, 42-44, 46, 50, 51, 64, 66, 198, 199, 202 in the Prosecution Motion, and those under numbers 7, 27, 32, 63, 69, 70, 71 and 81 in the Motion of the Accused Kličković.

It is evident that the criteria relied upon by the Panel are numerous and set highly restrictive as to avoid, by achieving the principle of judicial economy, jeopardizing the Accused’s right to a fair trial.

## **B. TRIAL WITHOUT THE PRESENCE OF THE ACCUSED GOJKO KLIČKOVIĆ**

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<sup>47</sup>See the verdict in the *Nedo Samardžić* case No. X-KRŽ-05/49 dated 13 December 2006.

On 17 February 2010 the Panel rendered the decision that the main trial against the Accused Gojko Kličković, Jovan Ostojić and Mladen Drljača would be held without the presence of the Accused Gojko Kličković whenever he refuses to attend the scheduled hearings to which he was duly and timely summoned. In this way the Accused was not deprived of his right of access to the Court at any time, under Article 6 of the European Convention on Human Rights, while the hearings held in his absence could be attended by his defence team. The same decision stated that the Court would without delay inform the Accused of the development of the proceedings by providing him with the record of the complete hearing on the same day on which the hearing was held, while the Court would throughout the proceedings re-examine the decision and assess its further application.

The Accused Gojko Kličković was ordered into custody pursuant to Articles 123 and 131 of the BiH CPC for the purpose of ensuring his presence and a successful conduct of the proceedings in question and at that time he was in the detention unit of the Court of Bosnia and Herzegovina. On 16 February 2010 the Court received a letter from the Accused Kličković in which he seeks dismissal of attorneys - his *ex officio* defence attorneys - Hamdija Veladžić and Duško Tomić, as he intended not to attend the trial or take active part in the preparation of his defence in the instant case. In accordance with the position taken, the Accused did not attend the hearing for the main trial held on 17 February 2010.

At the hearing, the President of the Trial Panel informed the defence team of the Accused of the Court's possibility to rule to hold the trial in the absence of the Accused, whereupon the Accused Kličković was left with the possibility to make his submission on the further course of presentation of the defence evidence by 23 February 2010 when the following hearing was set. It was further ordered that the second-Accused would proceed with the presentation of evidence should the first-Accused refuse to appear or authorize his defence team to finalize the defence evidentiary procedure on his behalf.

The Court rendered this decision having considered the Prosecution and the Defence positions and being mindful of the fact that the Accused Gojko Kličković did not attend the main trial hearing although duly informed about it and about all the following scheduled hearings before the Court. Thus the Accused was provided with access to the Court but he voluntarily decided not to attend any of the scheduled hearings or take active part in the preparation of his defence.

The Panel placed its reliance for such ruling primarily on the fact that during the hitherto proceedings the Accused Gojko Kličković has been informed of the charges against him and he attended the main trial hearings to all of which he was duly summoned including the ones he did not attend. Furthermore, he was cautioned of the consequences of failure to appear, yet he refused to appear, whereby he consciously and voluntarily waived his right to be present during the proceedings. The Court noted that the Accused's defence team attended the hearing of 17 February 2010, thus they could also in the future act on behalf of the Accused should he agree to that. In this way, the Court respected the whole time all the procedural rights of the Accused, informing him regularly about the development of the criminal proceedings against him.

In the present case, the Panel found justified to proceed with the trial without the presence of the Accused, given that his failure to appear was motivated exclusively by personal and subjective reasons, without any objective obstacle preventing him from attending the trial.

The provisions of the Criminal Procedure Code do not provide for a situation where an Accused refuses to attend the scheduled hearing or special provisions precluding the Court from proceeding with the trial in such a situation even without the presence of the Accused. However, this procedural situation calls for the consideration of the fundamental rights and freedoms of an Accused from the aspect of other national and international legal principles and case law.

Thus Article 247 of the BiH CPC mandates that “*An Accused may never be tried in absentia*”. However, the analysis of this provision points to a conclusion that the notion *in absentia* relates to the cases of a total absence of an accused from the proceedings, either by reason of impossibility to secure his presence in the proceedings or his unavailability to the prosecution authorities for particular reasons, e.g., his being at large or in hiding, or his whereabouts being unknown or his being uninformed of the proceedings being conducted against him, or if there are other difficulties related to informing him of the proceedings or securing his presence.

In the instant case, there are clear differences between the notions of the trial *in absentia* and the trial without the presence of the accused, as the trial *in absentia* implies a situation where the presence of the accused is impossible for the reasons which he cannot manage or are beyond his control, while the trial without the presence of the accused implies that the accused is able to attend but refuses to do so. In the present case, the Accused has attended the proceedings hitherto, so it is obvious that his free will is the only reason for which the trial proceeded without his presence. Thus, the free will and the choice of the Accused not to attend the trial are the only obstacle, the removal of which rests exclusively under his control.

The Court nonetheless sent a letter to the Accused on 17 February 2010 inviting him to reconsider the justification of his decision, advising him to fully use his right to a defence, which is not only in his interest but also in the interest of the other accused persons in the instant case who were now placed in an unfavourable position by a sudden change in the order of the presentation of evidence.

The postponement of the proceedings until the Accused changes his mind would, on the other hand, be totally contrary to the interests of fairness, especially because the other two Accused in the case enjoy the guarantees to a fair trial within a reasonable time, in terms of Article 6(1) of the ECHR and duly respond to the Court’s summonses and attend each hearing.

The Court concluded from the letter dated 16 February 2010 that the absence of the Accused and his refusal to attend the trial hearings arose out of his objections against the arguments from the last

Decision on Review of Justification of Custody dated 10 February 2010 which the Panel could not treat as a good cause for absence, since the said Decision could be subject to review in appellate proceedings before the Court's Appellate Panel.

The Court further examined the totality of the circumstances surrounding the case, including the behaviour of the Accused when he decided to absent himself from the trial, in particular if his behaviour was deliberate and voluntary, resulting in the waiver of his right to attend the trial; the fact as to whether the postponement of the trial would make the Accused voluntarily attend it; the eventual length of such postponement; whether the Accused, albeit absent, is or wishes to be legally represented at the trial, or he, by his actions, waived his right to representation; whether the legal representatives of the absent Accused could during the trial receive instructions from the Accused and to what extent they are able to present his defence; how prejudicial is it for the Accused that he cannot present his view on an event, bearing in mind the nature of the evidence against him, the balance between the general public interest and the special interest of the victims and witnesses that the trial be held within a reasonable time.

In this respect, it should be recalled that the European Court of Human Rights has repeatedly clearly emphasized that the presence of an Accused at his trial is considered of crucial importance<sup>47</sup>, but likewise the European Court of Human Rights has never found a violation of the Convention in cases where the Accused was properly informed of the forthcoming trial but voluntarily decided not to attend it, yet the trial proceeded. The Court emphasizes that the presence of the Accused at the trial is in principle understood as being his right rather than his obligation, thus according to the Strasbourg Tribunal the proceedings were fair in all the situations where the Accused was duly informed and the proceedings began or proceeded unimpeded.

Therefore, in cases when the Accused has all the guarantees to exercise his right to attend and intervene during the trial, it is unreasonable to consider the trial in his absence a violation of the Accused's rights. The practical interests of fairness therefore uphold the decision to start or continue the criminal proceedings without the presence of the Accused. Such a decision is consistent with the "rule of law" requirements and the fundamental ideas of the Council of Europe and European Convention on Human Rights - fairness, democracy, respect for human rights and public interest.

The foregoing substantiates the argument that not a single criminal and legal system must be open for the possibility that the Accused willfully obstructs his trial, since the Court, while complying with the principle of equality of arms, is obliged to ensure fairness not only to the Defence but also to the Prosecution.

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<sup>47</sup> See e.g. *Poitrimol v. France*, Judgment of 23 November 1993 para. 35; *Pelladoah v. Netherlands*, Judgment of 22 September 1994, para. 40; *Lala v. Netherlands*, Judgment of 22 September 1994, para. 33;

Taking into consideration all the foregoing circumstances, the Court is of the opinion that the person who deliberately decides not to exercise his right cannot complain of having lost the privileges he could have had if he had decided to avail himself of that right. In case where the Accused refuses legal aid and insists to defend himself, he cannot challenge the fairness of trial arguing that his defence was presented in a less effective manner compared to the representation by a professional defence attorney. If and when the Accused receives professional advice and decides to defend himself in this way, he cannot challenge the fairness of trial with arguments that the Court has never heard his view of the facts. If he voluntarily decides not to exercise his right to attend the trial, the Accused cannot challenge the fairness of trial by reason that the trial took a course different from that which it would have had if the Accused had attended it.

For that reason, the Court holds that if the Accused who is of age and of sound reason, knowing of the forthcoming trial, decides of his own will not to attend it, there is in principle no objective reason for his decision to halt the criminal proceedings for as long as he decides to attend the trial.

Given the foregoing, the Court concludes that the Accused Gojko Kličković had the right to attend the trial, however, although being duly informed and aware of the consequences of failure to respond, he voluntarily waived that right, expressing his general disagreement with the development of the criminal proceedings, which was no justification for not attending the trial, so the Panel ruled to proceed with the trial without his presence in all such instances, and it shall not be treated as a trial *in absentia*, in terms of Article 247 of the BiH CPC. However, after the said decision was rendered, the Accused attended all the following hearings.

### **C. EXCEPTIONS FROM THE DIRECT PRESENTATION OF EVIDENCE**

Article 273(2) of the BiH CPC provides for the exceptions from the principles of direct and oral presentation of evidence at the main trial. The same provision provides for the possibility that the witnesses' records of testimony given at the investigative stage may be read or used as evidence at the main trial only if the persons who gave the statements are dead, affected by mental illness, cannot be found or their presence in Court is impossible or very difficult due to important reasons.

During the proceedings in question, the statements of the deceased witnesses Šerif Bajraktarević, Ibrahim Krupić, Zarif Mehić, Muharem Dedić, Ferid Šertović, Esad Arnautović, Muhmed Kaljković, Emir Ezić, Nuriya Rekić were read out at the hearings.

In addition to the fact that the requirements from the quoted provision of the BiH CPC were satisfied for the said statements to be read, a different probative value of such evidence cannot be ignored in that the defence was precluded from cross examining the witnesses and challenging the truthfulness of their



allegations or their credibility. Accordingly, while deciding, the Panel was mindful of the fact that that was evidence on which it could not solely or to a decisive extent base its verdict.

#### **D. DECISION TO EXCLUDE THE PUBLIC AND GRANT WITNESS PROTECTIVE MEASURES**

During the proceedings in question, pursuant to Article 235 of the BiH CPC, the public was excluded on several occasions in the interest of the protected witnesses. These were brief exclusions of the public from the main trial, lasting only while the President of the Panel checked the personal details of the previously protected witnesses who were illiterate, as there was no other way to ascertain their identity or while the witness was examined in relation to the circumstances due to which the protective measures were sought, as was the case with the hearing of 19 August 2008 at which the Motion to Order Protective Measures was deliberated upon.

The public was excluded from the trial whenever the situation demanded so for the protection of interests and other witnesses enjoying protective measures, so on 17 June 2008 the public was excluded while the witness was giving the full names of the persons (some of which are protected witnesses) who were with him during an exchange, thus preventing the disclosure of their identity. During the examination of protected witnesses the public was also excluded when they provided details about their close relatives, which was aimed at protecting their identity, and each time the defence teams agreed to that.

On 8 July 2008 the decision was made to exclude the public during the testimony of the protected witness PWS 89. At the same hearing the decision was made that the personal details of this witness, pursuant to Article 13(1) of the Law on the Protection of Witnesses Under Threat or Vulnerable Witnesses (the Law on the Protection of Witnesses), were to remain confidential 15 years after the finality of the decision in this case. The public was also excluded from the trial during the testimony of the protected witness PWS 03.

On 19 July 2008, the proposed witness was granted protective measures by being assigned pseudonym A5, on 16 September 2008 the witness's personal details were protected, while at the hearing of 24 September 2008 it was announced that the full name of the witness who gave a testimony at the Court that day was not to be published in print or electronic media. On the same day, pursuant to Article 75 of the ICTY Rules of Procedure and Evidence, it was decided that the protective measures afforded to the Witness A3 before the ICTY were to remain in force.

Prior to their examination, in closed session, each protected witness had the opportunity to briefly inform the President of the Panel of the reasons for which he sought protective measures, or if they were already ordered they had the possibility to propose additional protective measures for their

testimonies at the trial. In that context, following the witnesses' submissions and those of the parties to the proceedings and the defence counsels, the Panel complied with Article 12 of the Law on the Protection of Witnesses, where the measures were not previously ordered, thus witnesses A4, A6, A7 and A8 were granted protective measures at the hearings of 10 February, 24 June 2009 and 16 March 2010 respectively. This type of measures ensured the non-disclosure of witnesses' identifying information where it was justified. It should, however, be emphasized that each particular case was given special attention, bearing in mind not only the witnesses' protection but also the procedural rights of the Accused.

In cases where the non-disclosure of witnesses' identifying information (personal details) was already ordered in the investigation, the Panel assessed the justification of applying Article 13 of the Law on the Protection of Witnesses which provides that 'The Court may, after hearing the parties and the defense attorney, decide that the identity of the witness is not disclosed by allowing the witness to testify behind a screen or utilizing electronic distortion of the voice of the witness or the image of the witness, or both the image and the voice, by using technical means for transferring image and sound.'

In this way the witnesses were afforded additional protection but it was granted only in some cases where a witness expressed a justified fear for their personal safety or the safety of their families, as a result of testifying in the case, and such fear is based on concrete reasons. During the trial, the witnesses were assigned pseudonyms as follows: PWS-03, PWS-31, PWS-89, PWS-92, PWS-09/A1, PWS-14/A2, PWS-35/A3, PWS-79, A4, A5, A6, A7, A8 and A9.

The Panel has in each particular instance comprehensively assessed the necessity for granting protective measures to the witnesses and the justification for excluding the public from the trial. Nonetheless, both the defence counsels and the accused had the possibility to cross examine such witnesses and were, prior to the examination, disclosed sufficient information to prepare for cross examination, thus ordering protective measures has not in any way diminished or violated the right to a defence.

Prior to the examination of the protected witnesses at the main trial, the Panel warned the public that the disclosure of any information which may tend to reveal a protected witness identity is strictly prohibited and constitutes a criminal offence, as stipulated in Article 24 of the Law on the Protection of Witnesses.

## **X. ANNEX 2 - PRESENTED EVIDENCE**

### **A. PROSECUTION WITNESSES**

<b>Name of the witness</b>	<b>Date of testimony</b>
1.Hašim Đulić	13 May 2008
2.Šemsudin Velić	14 May 2008
3.Jadranko Šaran	20 May 2008
4.Slobodan Majkić	21 May 2008
5.A-2 (PWS- 14)	27 May 2008
6.Milovan Zeljković	28 May 2008
7.Hamdija Kabiljagić	3 June 2008
8.Sabahudin Mahić	3 June 2008
9.Osman Palić	4 June 2008
10.Adem Balkić	17 June 2008
11.Asim Balkić	17 June 2008
Reading the statements of Šerif Bajraktarević, Ibrahim Krupić and Zarif Mehić	18 June 2008
12.A-4	24 June 2008
13.Dževad Grošić	25 June 2008
14.Ismet Kasumović	1 July 2008
15.Zuhtija Mehić	1 July 2008
16.Emir Hasić	2 July 2008
17.PWS-89	8 July 2008
18.Mirko Orelj	8 July 2008
19.PWS-03	18 July 2008
20.Hamdija Balkić	18 August 2008
21.A-5	19 August 2008
22.Nikica Egeljić	19 August 2008
23.Miroslav Stanić	16 September 2008
24.Mirsad Palić	17 September 2008
25.Mirsad Šabić	23 September 2008
26.Enver Ezić	23 September 2008
27.Sead Palić	24 September 2008
28.Ešref Hadžić	8 October 2008
29.Dušan Stojisavljević	14 October 2008

30.A-3 (PWS- 35)	14 October 2008
31.Osman Mušić	21 October 2008
32.Redžep Mededović	28 October 2008
33.Bajro Šabić	28 October 2008
34.Kasim Kulauzović	28 October 2008
35.Salih Salkić	4 November 2008
36.Šefkija Kozlica	4 November 2008
37.Sabid Alijagić	5 November 2008
38.Slavko Ilić	11 November 2008
39.Mile Mudrinić	11 November 2008
40.Ilija Jakšić	12 November 2008
42.Zdravko Marčeta	2, 3 and 9 December 2008
45.Richard Butler-expert witness	9 and 10 December 2008
46.Grujo Borić- video link	17 December 2008
47.Vukašin Daničić	14 January 2009
48.Vještak Dorothea Hanson	27 and 28 January 2009
49.Rasim Skenderović	4 February 2009
50.A1 (PWS 09)	10 February 2009
51.A6	10 February 2009
52.Samir Alijagić	11 February 2009
53.Emina Kurtović	24 February 2009
54.Božo Erceg	24 February 2009
55.Senad Osmanagić	25 February 2009
56.Abdulkadir Ćurt	3 March 2009
57.Arif Arnautović	4 March 2009
58.Smajo Sefić	10 March 2009
59.Esad Hasanović	10 March 2009
60.Vejzil Palić	17 March 2009
61.Ibrahim Sivić	17 March 2009

## **B. PROSECUTION DOCUMENTARY EVIDENCE**

**Exhibit T-1-**Order dated 3 October 1990 - document *Collection and surrender of the remaining weapons in the JNA warehouse*

**Exhibit T-2-**Request for distribution of weapons and military equipment of the Bosanska Krupa Territorial Defence no. 20/92 dated 5 April 1992

**Exhibit T-3-** Order no. 27/92 dated 5 April 1992, signed by G. Kličković

**Exhibit T-4-**Record of examination of witness Hašim Đulić, no. KT-RZ-1/05 dated 26 February 2008

**Exhibit T-5-**Record of examination of witness Šemsudin Velić dated 13 April 2008, no. KT-RZ-

- 1/05 (exhibit tendered into evidence at the hearing of 20 May 2008)
- Exhibit T-6**-The population in inhabited settlements by ethnic structure from 1991 (exhibit tendered at the hearing of 20 May 2008)
- Exhibit T-7**-Decision by the Transitional Assembly of the Serb People of Bosanska Krupa, No. 7/91 dated 25 October 2008 (exhibit tendered at the hearing of 20 May 2008)
- Exhibit T-8**-Call to boycott the referendum – signed by M. Vještica (exhibit tendered at the hearing of 20 May 2008)
- Exhibit T-9**-Excerpt from the Report on Social and Economic Justification for Forming the Serb Municipality \_\_\_\_\_, Bosanska Krupa, October 1991 (exhibit tendered at the hearing of 20 May 2008)
- Exhibit T-10**-Statement of witness Jadranko Šaran given to the Hague investigators of 27 August 1999 and 7 December 1999 (exhibit tendered at the hearing of 20 May 2008)
- Exhibit T-11**-Record of examination of witness Jadranko Šaran, no. KT-RZ-1/05 dated 13 April 2005 (exhibit tendered at the hearing of 20 May 2008)
- Exhibit T-12**-Record of examination of witness Slobodan Majkić, no. KT-RZ-1/05 dated 21 April 2005
- Exhibit T-13**-Copy of the newspaper's article *Blue and Green Land*- confidential exhibit
- Exhibit T-14**-Statement of witness A-2 given to the ICTY investigators – dated of the interview 26 August 1999 and 3 November 1999-confidential exhibit
- Exhibit T-15**- Record of examination of witness A-2 before the investigative judge of Bihać Cantonal Court, no. Ki: L/97- RZ dated 27 September 2000 – confidential exhibit
- Exhibit T-16**-Record of examination of witness A-2, no. KT-RZ-1/05 dated 11 February 2005-confidential exhibit
- Exhibit T-17**-Order no. 100/92 dated 28 April 1992, signed by Gojko Kličković
- Exhibit T-18**-Record of Investigation made on 18 October 1992 at Osretak regarding the murder of Uroš Milešević
- Exhibit T-19**-Receipt on temporary seizure of items from Ilija Milešević, VP 7542, Drvar, dated 18 October 1992
- Exhibit T-20**-Receipt on temporary seizure of items from Ranko (Lazo) Milešević, VP 7542, Drvar, dated 18 October 1992
- Exhibit T-21**-Decision ordering custody of up to three days, no. 190/92- ovr, dated 21 October 1992, signed by Commander Jovan Ostojić
- Exhibit T-22**-Criminal report against Rajko Milešević no. 189/42-ovr, dated 21 October 1992, signed by Commander Jovan Ostojić
- Exhibit T-23**-Accompanying letter to the criminal report, no. 191/92-ovr, dated 21 October 1992, signed by Jovan Ostojić
- Exhibit T-24**- Record on identification of a body Id-2/92 of 29 April 1992
- Exhibit T-25**- Record on identification of a body Id-3/92 of 29 April 1992
- Exhibit T-26**- Record on identification of a body Id-4/92 of 29 April 1992
- Exhibit T-27**- Record on identification of a body Id-5/92 of 30 April 1992
- Exhibit T-28**- Record on identification of a body Id-6/92 of 30 April 1992

**Exhibit T-29-** Record on identification of a body Id-7/92 of 30 April 1992

**Exhibit T-30-** Record on identification of a body Id-8/92 of 30 April 1992

**Exhibit T-31-** Record on identification of a body Id-9/92 of 30 April 1992

**Exhibit T-32-** Record on identification of a body Id-10/92 of 30 April 1992

**Exhibit T-33-** Record on identification of a body Id-11/92 of 1 May 1992

**Exhibit T-34-** Record on identification of a body Id-12/92 of 2 May 1992

**Exhibit T-35-** Excerpt from the Log book of the mortuary, stamp of the Bihać Cantonal Hospital *Dr.*

*Irfan Ljubijankić*, Patology Ward- signature and stamp of Head Doctor Semira Mešić-Pašalić

**Exhibit T-36-** Criminal report against Predrag Praštalo, no. KU-13/92 of 1 August 1992

-exhibit T-36-a-Official Note of 31 July 1992, signed by Mile Mudrinić

-exhibit T-36-b-Decision no. 253-1/92 of 31 July 1992 on cessation of military duty for Predrag Praštalo, signed by Jovan Ostojić

- exhibit T-36-c-Report on holding up Predrag Praštalo, no. 4715- Bosanska Krupa

- exhibit T-36-d-Receipt on entering the apartment and other premises of Predrag (Lazo) Praštalo, no. 73/92

-exhibit T-36-e- Decision on confiscation of items no. 210/92 of 31 July 1992

-exhibit T-36-f- Sketch of the scene, murder of Savka Plavanjac, date of taking photographs 31 July 1992, done by Đuro Majkić

-exhibit T-36-g- Official Note of 1 August 1992, signed by Milovan Zeljković

-exhibit T-36-h-Official Note of 31 July 1992 on conducted interview with Drago Jelača – signed by Mile Mudrinić

-exhibit T-36-i- Official Note of 31 July 1992 on conducted interview with Sava Jelača maiden Kadrić, signed by Mile Mudrinić

-exhibit T-36-j-Decision ordering custody of Predrag Praštalo no. 3/92 of 1 August 1992, signed by Mile Vojinović

**Exhibit -T-37-**video record presented at the trial on 3 June 2008

**Exhibit T-38a-**Photograph of the school at Jasenica – the wall with the windows and the stall bar and the wall without doors and windows

**Exhibit T-38b-**photograph of the school at Jasenica- the wall without the windows and the wall with the entrance door

**Exhibit T-39-**Letter addressed to M. Vještica or G.Kličković

**Exhibit T-40-**Record on exchange of prisoners dated 10 May 1992

**Exhibit T-41-**Photograph of the building with the red roof and white-yellow facing

**Exhibit T-42-**Record from the Register of Deaths for Šerif Barjaktarević, no. 08/13-5-79096/08 of 21 March 2008

**Exhibit T-43-**Record from the Register of Deaths for Zarif Mehić, no. 03/2-11-13-84/08 of 29 February 2008

**Exhibit T-44-**Record from the Register of Deaths for Ibrahim Krupić, no. sl/2008 of 11 February 2008

**Exhibit T-45-**Record from the Register of Deaths for Nurija Rekić, no. 2003-12-4839/2007

- Exhibit T-46**-Record of examination of witness Šerif (Meho) Barjaktarević before the investigative judge of the Bosanska Krupa Basic Court made on 29 July 1992
- Exhibit T-47**-Record of examination of witness Barjaktarević (Meho) Šerif before the investigative judge of the Bihać Higher Court made on 19 August 1993
- Exhibit T-48**-Record of examination of witness Ibrahim (Husein) Krupić before the investigative judge of the Bosanska Krupa Basic Court made on 6 August 1992
- Exhibit T-49**-Record of examination of witness Zarif (Hasan) Mehić before the investigative judge of the Bosanska Krupa Basic Court made on 14 July 1992
- Exhibit T-50**-Record of examination of witness Nurija (Zaim) Rekić before the investigative judge of the Bosanska Krupa Basic Court made on 7 July 1992
- Exhibit T-51**-Record of examination of witness Dževad Arnautović, no. KT-RZ-01/05 made on 7 February 2008 in Bosanska Krupa
- Exhibit T-52**-Photograph of the museum exhibits
- Exhibit T-53**-Photograph of a dilapidated building
- Exhibit T-54**-Record of examination of witness Osman Palić before the investigative judge of the Bosanska Krupa Basic Court made on 4 August 1992
- Exhibit T-55**-Record of examination of witness Osman Palić no. KT-RZ-01/05 made on 15 February 2008 in Sarajevo
- Exhibit T-56**-Photograph of the motel in Bosanska Krupa
- Exhibit T-57**-Order on prohibition to use firearms, no. 3/91 of 23 December 1991
- Exhibit T-58**-Order on limited work of bars, no.4/91 of 23 December 1991, no. 4/91 of 23 December 1991
- Exhibit T-59**-Order on prohibition of felling and illegal use of forests no. 5/91 of 23 December 1991
- Exhibit T-60**-Order to activate police reserve forces no.9/91 dated 30 December 1991
- Exhibit T-61**-Photograph in front of the school in Jasenica
- Exhibit T-62**-Decision to form a Provisional Military Court of the Serb Municipality of Bosanska Krupa, no. 9/92 dated 22 April 1992
- Exhibit T-63**-Record of examination of military prisoners of war, statement of Smail Arnautović of 4 May 1992
- Exhibit T-64**- Photograph-witness A-5 identified as the seat of the military police
- Exhibit T-65**- Announcement by SDS, Municipal Board B. Krupa dated 3 June 1991
- Exhibit T-66**-Report on the annual work of the B.Krupa SDS Municipal Board dated 26 July 1991, without signature
- Exhibit T-67**-Decision on inauguration of the Transitional Assembly of the Serb people in B.Krupa municipality, no. 67/1, dated 25 October 1991, signed by Lazar Kovačević, President of the Municipal Board Assembly
- Exhibit T-68**- Decision declaring territories populated by Serbs which belong to the Serb people for the state territories of the Serb people, no. 1/91 of 25 October 1991, signed by the President of the Transitional Assembly, Mile Vojinović, without a hand signature and stamp

- Exhibit T-69**-Decision to conduct plebiscite no. 2/91 of 25 October 1991, signed by Milan Vojinović, without a hand signature and stamp
- Exhibit T-70**-Decision by the Transitional Assembly of the Serb People of B. Krupa to conduct referendum for establishment of the Municipality of Serb People of B. Krupa dated 25 October 1991, with Milan Vojinović as the signatory, without a hand signature and stamp
- Exhibit T-71**-Decision by the Transitional Assembly of the Serb People of B. Krupa to appoint the commission for conducting plebiscite and referendum, no. 4/91 of 25 October 1991, with Milan Vojinović as the signatory, without a hand signature or stamp
- Exhibit T-72**-Decision by the Transitional Assembly of the Serb People of B. Krupa appointing the commission no. 5/91 of 25 October 1991, with Milan Vojinović as the signatory, without a hand signature and stamp
- Exhibit T-73**-Decision by the Transitional Assembly of the Serb People of B. Krupa to conduct a public debate, no. 6/91 of 25 October 1991, with Milan Vojinović as the signatory, without a hand signature and stamp
- Exhibit T-74**-Report on the results of the referendum of B. Krupa Municipality, signed by M.Drljača, dated 11 November 1991
- Exhibit T-75**-Report on the conducted plebiscite and referendum of the Serb People of the B. Krupa Municipality, dated 2 December 1991, certified copy, signed by M.Drljača
- Exhibit T-76**-It is noted that the Decision on adoption of the Report to conduct the referendum of the Serb People to establish the Serb Municipality of B. Krupa, no. 16/91, dated 11 December 1991, is tendered into evidence
- Exhibit T-77**-Decision on proclamation of the Serb Municipality of B. Krupa, no. 17/91 dated 11 December 1991 - original document, signed by the President of the B. Krupa Municipality
- Exhibit T-78**-Decision on verification of declared Serb Municipality of B. Krupa, no.18/91, original document
- Exhibit T-79**-Certified copy of the Statute of the Serb Municipality of Bosanska Krupa, no. 19/91, November 1991
- Exhibit T-80**-Decision appointing Mile Štrbac Vice-president of the executive Board of the Serb Municipality of B. Krupa, no. 29/91 dated 11 December 1991, the authenticity of the copy certified by Rajko Kličković, the signature of M. Vojinović missing
- Exhibit T-81**-Decision appointing the representatives of the Serb Municipality of B. Krupa to the Autonomous Region of *Krajina*, the authenticity of the copy certified by Rajko Kličković, the signature of M. Vojinović missing
- Exhibit T-82**-Excerpt from the Minutes of the 2nd Session of the Transitional Assembly of the Serb Municipality of B. Krupa, certified copy without the signature of the president and the minutes-taker
- Exhibit T-83**-Excerpt from the Minutes of the 1<sup>st</sup> session of the Executive Board of the Serb Municipal Assembly of B. Krupa held on 15 December 1991, certified copy without the signature of the president and the minutes-taker
- Exhibit T-84**-Excerpt from the Minutes of the 2<sup>nd</sup> session of the Executive Board of the Serb



Municipal Assembly of B. Krupa held on 17 December 1991- two identical excerpts from the Minutes, on one the name of Mile Vojinović added in hand signature and on the other the name of Mirko Orelj. The excerpts are not signed by the President of the Executive Board or the minutes-taker.

**Exhibit T-85**-Letter of the Assembly of the Serb Municipality of B. Krupa addressed to SDA, no. 21/91 dated 18 December 1991

**Exhibit T-86**-Letter of the Serb Municipality of B.Krupa addressed to the Assembly of the Serb People of BiH, no. 22/91 dated 18 December 1991 - original

**Exhibit T-87**-Letter of the Serb Municipality of B.Krupa addressed to the Assembly of BiH, no. 23/91 dated 18 December 1991

**Exhibit T-88**-Letter of the Executive Board of the Serb Municipality of B. Krupa sent to the MoI BiH and Security Service Centre B. Luka, no. 1/91 dated 23 December 1991

**Exhibit T-89**-Initiative regarding the execution of tasks relating to military duty and forming of units, institutions and territorial defence HQ in the territory of the B. Krupa Municipality, no. br. 37/91 dated 24 December 1991, original, signed by M. Vojinović

**Exhibit T-90**-Excerpt from the Minutes of the 3<sup>rd</sup> Session of the Executive Board of the Serb Municipal Assembly of B. Krupa held on 24 December 1991, without signature

**Exhibit T-91**-Rush note on (non)execution of tasks relating to military duty and forming of territorial defence in the territory of Serb Municipality of B. Krupa, no. 1/92 dated 3 January 1992

**Exhibit T-92**-Request for financial assistance to the newly formed Municipality of B. Krupa – in handwriting

**Exhibit T-92a**- Request for financial assistance to the newly formed Municipality of B. Krupa, no. 3/92 dated 13 January 1992 – in printed text

**Exhibit T-93**-Letter to all local communities in the territory of the B. Krupa Municipality, original, without registration number, dated 28 January 1992

**Exhibit T-93a**-Letter to all local communities in the territory of B. Krupa Municipality, certified copy, no. 9/92 dated 28 January 1992

**Exhibit T-94**-Rush note relating to the initiative of the Serb Municipality of B. Krupa, in handwriting, no. 14/92 of 11 February 1992

**Exhibit T-94a**-The same document in printed text

**Exhibit T-95**-Letter to the Assembly of the Serb people of BiH, no. 19/92 dated 24 February 1992, certified copy, signed by Gojko Kličković

**Exhibit T-96**-Request for the arming of the territorial defence, no. 21/92, B.Krupa dated 10 March 1992, signed by G.Kličković-certified copy

**Exhibit T-97**-Order by the Crisis Staff no. 25/92 of 5 April 1992, signed by G.Kličković-certified copy

**Exhibit T-98**-Order by the Crisis Staff no. 26/92 of 5 April 1992, signed by G.Kličković-certified copy

**Exhibit T-99**-Order by the Crisis Staff, in handwriting, no. 28/92, without date, signed by G.Kličković- certified copy

**Exhibit T-99a**-The same Order by the Crisis Staff, in printed form, no. 28/92, without date, signed by G.Kličković

**Exhibit T-100**-Request by the Command of the 9<sup>th</sup> Corps, Strictly confidential no. 4-49 dated 3 April 1992 – certified copy

**Exhibit T-101**-Decision by the War Presidency on organizing and work of the Serb Municipality of B. Krupa no. 1/92 dated 7 May 1992 - certified copy

**Exhibit T-102**-Letter by the War Presidency in handwriting - Request for the change of deployment of Borislav Kačavenda, a reserve lieutenant, signed by Gojko Kličković – certified copy

**Exhibit T-102a**-Letter by the War Presidency in printed text - Request for the change of deployment of Borislav Kačavenda, a reserve lieutenant, signed by Gojko Kličković – certified copy

**Exhibit T-103**-Authorization 16/92 dated 24 April 1992, signed by G. Kličković-certified copy

**Exhibit T-104**-Order by the War Presidency of the Serb Municipality of B.Krupa, signed by G.Kličković, no. 22/92 dated 24 April 1992 – certified copy

**Exhibit T-105**-Order on Cessation of Combat Operations, no. 29/92 dated 25 April 1992, signed by M. Drljača

**Exhibit T-106**- Order on Cessation of Combat Operations, no. 30/92 dated 25 April 1992, original, with the stamp

**Exhibit T-107**-Order by the War Presidency of the Serb Municipality of B.Krupa, no. 32/92 dated 26 April 1992, signed by G.Kličković, certified copy

**Exhibit T-108**-Order by the War Presidency of the Serb Municipality of B.Krupa, no. 33/92, dated 26 April 1992, signed by G.Kličković, certified copy

**Exhibit T-109**-Order no. 35/92 dated 26 April 1992, signed by G.Kličković, certified copy

**Exhibit T-110**-Letter from the War Presidency of the Serb Municipality of B.Krupa to the Logistics Base of the 10<sup>th</sup> Corps, no. 134/92 dated 29 April 1992, signed by G.Kličković-certified copy

**Exhibit T-111**-Requisition no. 140/92 dated 29 April 1992, signed by G.Kličković, certified copy

**Exhibit T-112**-Letter from the War Presidency of the Serb Municipality of B.Krupa sent to the Command of the 10<sup>th</sup> Corps, no. 141/92 dated 29 April 1992-Regulating the status of the territorial defence units

**Exhibit T-113**-Requisition no. 205/92 dated 1 May 1992, signed by G.Kličković, certified copy

**Exhibit T-114**-Order by the Municipal Assembly of Bos. Krupa, no. 259/92, dated 8 May 1992

**Exhibit T-115**-Pass for the use of the TAM-2001 truck, no. 9/92 dated 9 May 1992, certified copy

**Exhibit T-116**-Order by the War Presidency of the Serb Municipality of B.Krupa no. 266/92 dated 9 May 1992, certified copy, signed by G.Kličković

**Exhibit T-117**-War Presidency document, List of persons being taken to B. Petrovac, no. 26/92 dated 25 April 1992

**Exhibit T-118**-War Presidency document, List of persons being taken to B. Petrovac, no. 36/92 dated 26 April 1992

**Exhibit T-119**-Pass no. 37/92 dated 26 April 1992 issued by the War Presidency, certified copy, signed by G.Kličković

- Exhibit T-120**-Pass no. 43/92 dated 26 April 1992 issued by the War Presidency, certified copy, signed by G.Kličković
- Exhibit T-121**-Handwritten Pass, no. \_\_\_\_, dated 26 April 1992, issued by the War Presidency, certified copy, signed by G.Kličković
- Exhibit T-122**-Order no. 44/92 dated 26 April 1992 introducing curfew-certified copy
- Exhibit T-123**-Pass no. 88/92 dated 28 April 1992, issued by the War Presidency, certified copy, signed by G.Kličković
- Exhibit T-124**-Pass no. 88/92 dated 130/92 dated 29 April 1992, issued by the War Presidency, certified copy, signed by G.Kličković
- Exhibit T-125**-Pass no. 88/92 dated 133/92 dated 29 April 1992, issued by the War Presidency, certified copy, signed by G.Kličković
- Exhibit T-126**-Special pass no. 133/92 dated 4 May 1992, issued by the War Presidency, certified copy, signed by G.Kličković
- Exhibit T-127**-Special pass no. 134/92 dated 4 May 1992, issued by the War Presidency, certified copy, signed by G.Kličković
- Exhibit T-128**-Instruction for the work of the town command for the area of Serb Municipality of B.Krupa, no. 290/92 dated 29 May 1992
- Exhibit T-129**-Instruction for the work of the SDS and its organs in circumstances of the immediate war threat, printed name of G.Kličković and hand signature and stamp, B.Krupa 1992, certified copy
- Exhibit T-130**-Excerpt from the Minutes of the Serb Municipality of B. Krupa SDS Inaugural Conference dated 3 June 1992-certified copy
- Exhibit T-131**-Minutes of the 4<sup>th</sup> Session of the Assembly of the Serb Municipality of B. Krupa held on 4 June 1992-certified copy
- Exhibit T-132**-Request for issuing weapons to the citizens exiled from the left bank of the Una river with the enclosed statement no. S-1 dated 6 August 1992 sent to the Command of the 11<sup>th</sup> Infantry War Brigade, signed by Žarko Čulibrk, original document
- Exhibit T-133**-Sketch made by witness Miroslav Stanić during the January interview at the Prosecutor's Office of BiH – *confidential exhibit*
- Exhibit T-134**-Document sent to the 2<sup>nd</sup> Krajina Corps, 11<sup>th</sup> Light Brigade of B. Krupa, strictly confidential, no. 166-1/92 dated 15 July 1992, signed by the chief of security
- Exhibit T-135**-Record of handover of the documents regarding the return of items issued to Miroslav Stanić and Petar Senić dated 15 January 1993 – *confidential exhibit*
- Exhibit T-136**- Report on interrogation of captive Suad /Aema/ Sefić made by 1<sup>st</sup> Podgrmeč Brigade, Army Post Office Serb Municipality of B.Krupa, dated 30 May 1992
- Exhibit T-137**-Photograph of the house recognized by witness Mirsad Palić
- Exhibit T-138**-Examination of persons deprived of liberty on 21 and 22 April 1992 during the war in B. Krupa
- Exhibit T-139**-Shorthand notes from the Assembly of the SDS BiH held at the Holiday Inn Hotel in Sarajevo on 12 July 1991

- Exhibit T-140**-Official Gazette, Year I, number 1, dated 15 January 1992
- Exhibit T-141**-Instruction for the Organization and Activity of the Organs of the Serb people in BiH in extraordinary Circumstances dated 19 December 1992
- Exhibit T-142**-Press release by the Assembly of the Serb people in BiH, National Security Council, dated 4 April 1992, Sarajevo
- Exhibit T-143**-Decision Declaring the Imminent Threat of War and Mobilization of Territorial Defence issued by the Presidency of the Serb Republic of BiH no. 03-11/92 dated 15 April 1992
- Exhibit T-144**-Decision by the Ministry of National Defence of the Serb Republic of BiH no. 1/92 dated 16 April 1992
- Exhibit T-145**-10<sup>th</sup> Corps Command, strictly confidential no. 19/31-442 dated 23 April 1992
- Exhibit T-146**-Telegram of the 10th Corps Command, strictly confidential no. 19/81-442 dated 23 April 1992
- Exhibit T-147**-Inspection of the issued weapons, 1<sup>st</sup> Krajina Corps Command, strictly confidential no. 18-168/1 dated 31 August 1992
- Exhibit T-148**-Letter from the War Presidency of the Serb Municipality of B. Krupa sent to the presidents of the municipalities of Bihać, Cazin, Velika Kladuša and Bužim no. 330/92 dated 4 June 1992
- Exhibit T-149**-Conclusions from the meeting of the SUB region dated 7 June 1992
- Exhibit T-150**-Intermunicipality agreement of Sana-Una area, Krčanica, 14 June 1992 at 12:00 hrs
- Exhibit T-151**-Decision by the Assembly of the Serb Municipality of B. Krupa no. 32/92 dated 10 July 1992
- Exhibit T-152**-Decision by the Municipal Assembly of B.Krupa no. 43/92 dated 10 July 1992
- Exhibit T-153**-Excerpt from the Minutes of the 5<sup>th</sup> Regular Session of the Serb Municipality of B. Krupa dated 10 July 1992
- Exhibit T-154**-Decision on determining names of the high school in B.Krupa and primary school in Arapuša dated 21 August 1992
- Exhibit T-155**-Decision by which the members of the SDA, the members of its executive board, the members of the Muslim military units and Green Berets are declared enemies and are prohibited from returning to the area of the Serb Municipality of B. Krupa issued by the Serb Municipality of B. Krupa, no. 65/92 dated 21 August 1992
- Exhibit T-156**-Cover letter by the Commission for the exchange of prisoners, persons deprived of liberty and killed persons
- Exhibit T-156a**-List of persons in detention
- Exhibit T-156b**-List of persons wanted by the opponent party Commission for exchange of prisoners
- Exhibit T-156c**-List of killed persons that were not taken over
- Exhibit T-157**-A handwritten list of persons who are looked for
- Exhibit T-158**-A handwritten list of persons to be exchanged, displaced persons, detained wounded persons and persons who are staying at home
- Exhibit T-159**-A printed list of 170 persons for exchange
- Exhibit T-160**-A printed list of persons who expressed their wish to return to Podgrmeč area, certified

copy

- Exhibit T-161**-List of prisoners for exchange, 28 persons, certified copy
- Exhibit T-162**-List of persons, printed to number 28 and continued in handwriting
- Exhibit T-163**-List concluded with number 38
- Exhibit T-164**- List of persons, printed, with 8 persons added in handwriting
- Exhibit T-165**-List of persons wanted for exchange, dated 18 May 2008
- Exhibit T-166**-Statement of Zdravko Krnetić, dated 21 May 1992
- Exhibit T-167**-List of prisoners offered for exchange no. Sl/92, dated 19 May 1992
- Exhibit T-168**-List of persons who will remain in custody until further notice, dated 19 May 1992
- Exhibit T-169**-List of persons who are detained until further notice for examination
- Exhibit T-170**-List of persons included in the exchange, dated 22 May 1992
- Exhibit T-171**-Record of exchange of prisoners made on 22 May 1992 at Pritoka settlement
- Exhibit T-172**-Letter from the 3<sup>rd</sup> Battalion Command, Šolaje mine, no. 50-3/92 dated 15 July 1992 –  
Regular Combat Report
- Exhibit T-173**- Record of examination of witness Dušan Stojisavljević no. KT-RZ-1/05 dated  
23 January 2008
- Exhibit T-174**-List of persons for exchange, War Presidency, no. 549/92 dated 3 July 1992
- Exhibit T-175**-Copy of the register of deaths for Milan Lović under number 495
- Exhibit T-176**-Report from the 2<sup>nd</sup> Battalion Command, 11<sup>th</sup> Krajina Brigade, Report for 24/25 June  
1992
- Exhibit T-177**-Excerpt from the Minutes of the 6<sup>th</sup> Session of the Assembly of the Serb Municipality of  
Bosanska Krupa held on 21 August 1992
- Exhibit T-178**-Order by the War Presidency of the Serb Municipality of Bosanska Krupa no. 1533/92  
dated 14 September 1992
- Exhibit T-179**-Decision by the Serb Municipality of B. Krupa to change the names of the streets on the  
right bank of the Una river, no. 80/92 dated 21 October 1992
- Exhibit T-180**-Excerpt from the Minutes of the 7<sup>th</sup> Session of the Assembly of the Serb Municipality of  
B. Krupa held on 21 October 1992
- Exhibit T-181**-Delivery of Decision and request no. 76/92 dated 23 October 1992
- Exhibit T-182**-Delivery of Proposal for medals and awards no. Pov.8-3/93 dated 7 January 1993
- Exhibit T-183**-Analysis of the activities and combat operations for 1992, addressed to the Brigade  
Commander, strictly confidential no. 164/3 dated 24 February 1993
- Exhibit T-184**-Analysis of the activities and combat operations for 1992 in handwriting – certified copy  
(*original document submitted to the Court at the trial of 4 November 2008*)
- Exhibit T-185**-CD-record of the convoy
- Exhibit T-186**-Newspaper article *Medals on the Chests of Krajina People* and subtitle *From  
Grmeč to 11<sup>th</sup> Light Brigade*
- Exhibit T-187**-Invitation to the 8<sup>th</sup> Session of the Municipal Assembly of Krupa na Uni, no. 23/93 dated  
14 April 1993
- Exhibit T-188**-Excerpt from the Minutes of the 8<sup>th</sup> Session of the Municipal Assembly of Krupa

na Uni dated 28 April 1993

**Exhibit T-189**-Delivery of Report – Information on activity for the period from 21 April 1992 to 20 April 1993, no. 30/93 dated 29 April 1993

**Exhibit T-190**-Work Report of the Municipal Assembly and War Presidency for the period from 1 January 1992 to 20 April 1993

**Exhibit T-191**-Decision removing Gojko Kličković from the position of the President of the Municipal Assembly of Krupa na Uni, no. 95/93 dated 12 October 1993

**Exhibit T-192**-Decision removing Gojko Kličković from the position of the President of the SDS Municipal Board of Krupa na Uni, no. 112/94 dated 29 June 1994

**Exhibit T-193**-Shorthand notes from the 2<sup>nd</sup> session of the Assembly of the Serb people in BiH dated 21 November 1991

**Exhibit T-194**-Shorthand notes from the 11<sup>th</sup> session of the Assembly dated 18 March 1992

**Exhibit T-195**-Order on evacuation of Muslim population from Podgrmeč enclave, no. \_\_\_\_/92 dated 28 April 1992

**Exhibit T-196**-Minutes of the 16<sup>th</sup> session of the Serb people in BiH held on 12 May 1992 in B.Luka

**Exhibit T-197**-Order on the evacuation of the remaining Muslim population from the area of the Serb Municipality of B.Krupa no. 130/92 dated 22 May 1992

**Exhibit T-198**-Proposal to the 1<sup>st</sup> Krajina Podgrmeč Brigade at Srpska Jasenica no. 184/92 dated 25 May 1992

**Exhibit T-199**-Warning regarding the behaviour and interference of certain command departments with the civilian sector, signed by G.Kličković

**Exhibit T-200**-Rush note for provision of oil derivatives, issued by the War Presidency of the Serb Municipality, no. 254/92 dated 28 May 1992

**Exhibit T-201**-Supplement order to the logistics, strictly confidential no. 313-1/12 dated 26 August 1992

**Exhibit T-202**-Magnetic tape recorder record of the 50<sup>th</sup> session of the National Assembly held on 15 and 16 April 1995 at Sanski Most

**Exhibit T-203**-Record of examination of prisoners of war dated 30 April 1992

**Exhibit T-204**-Handwritten list of prisoners of war dated 4 May 1992

**Exhibit T-205**-Photograph marked with number 37- showing the area in front of the school P.Kočić (identified by witness Mededović)

**Exhibit T-206**-Photograph marked with number 41- showing the interior of the school P. Kočić (identified by witness Mededović)

**Exhibit T-207**-Official Gazette of the Serb people in BiH no. 4, dated 23 March 1992 - Relevant Article 27, page 77, part of the Law on the Interior

**Exhibit T-208**-Instruction for work of the police detachment members, Executive Board of the Serb Municipality of B. Krupa, ICTY certification, signed by G. Kličković

**Exhibit T-209**-Order by the War Presidency of the Serb Municipality of B.Krupa no. 121/92 dated 3 May 1992

**Exhibit T-210**-Order for patrolling no. 544/92 dated 28 June 1992 with the accompanying report

**Exhibit T-211**-Order by the PS B.Krupa on prohibition of entry and movement of motor vehicles, certified copy, signed by Gojko Kličković

**Exhibit T-212**-Order by the War Presidency of Bosanska Krupa, no. 405/92 dated 2 June 1992  
*certified copy*

**Exhibit T-213**- Set of 89 orders by specification, with accompanying reports

**Exhibit T-214**- Order for patrolling no. 42/92 dated 2 May 1992

**Exhibit T-215**- Order for patrolling no. 59/92 dated 4 May 1992

**Exhibit T-216**- Order for check-point service with accompanying report no. 63/92 dated 5 May 1992

**Exhibit T-217**- Order for check-point service with accompanying report no. 115/92 dated 11 May 1992

**Exhibit T-218**- Order for check-point service with accompanying report no. 404/92 dated 13 June 1992

**Exhibit T-219**-Order for check-point service no. 493/92 dated 23 June 1992 with accompanying report

**Exhibit T-220**-Order by the War Presidency no. 660/92 dated 13 July 1992, signed by M.Drljača on behalf of G.Kličković

**Exhibit T-221**-Sketch of the P.P.Njegoš school in B.Krupa

**Exhibit T-222**-Record from the register of deaths for Muharem Dedić, no. 07-1-13-3-675/2008 dated 21 March 2008

**Exhibit T-223**-Record of examination of witness Muharem Dedić before the investigative judge of the Bihać Cantonal Court no. Ki 1/97-RZ dated 18 May 1995

**Exhibit T-224**-Order to provide security no. 101/92 dated 8/9 May 1992, with a report on the back

**Exhibit T-225**-Order to provide security with a report on the back side no. 102/92 dated 9 May 1992

**Exhibit T-226**-Order for patrolling no. 99/92 dated 9 May 1992 with a report on the back

**Exhibit T-227**-Order for patrolling no. 125/92 dated 12 May 1992

**Exhibit T-228**-Order for patrolling no. 216/92 dated 22/23 May 1992

**Exhibit T-229**-Official Note of 16 July 1992 regarding the visits to Bosanska Krupa to find extremists

**Exhibit T-230**-Official Note of 16 July 1992 regarding the surrender of Ferid Velagić

**Exhibit T-231**-List of wanted conscripts strictly confidential no. 100-18/92 dated 26 May 1992

**Exhibit T-232**-Report of 26 June 1992 on meeting with part of the 3<sup>rd</sup> Company

**Exhibit T-233**-List of the 3<sup>rd</sup> Territorial Defence Battalion

**Exhibit T-234**-Order-confidential no. 349-1/92-Establishment wise appointment to 2<sup>nd</sup> Krajina Corps and 11 Krupa Light Brigade dated 18 August 1992

**Exhibit T-235**- Requisition Order for the stationary from the 4 July book store no. 520/92 dated 24 August 1992

**Exhibit T-236**-Order for patrolling no. 1113/92 for 10 October 1992 with a report on the back

**Exhibit T-237**-Review of the Brigade commanding staff

**Exhibit T-238**-Personnel file for Joja Plavanjac

**Exhibit T-239**-Request for aid by Joja Plavanjac dated 10 February 1994

**Exhibit T-240**-Decision no. 35/94 dated 28 February 1994

**Exhibit T-241**-Information by the Banjaluka District Prosecutor's Office dated 23 January 2007

**Exhibit T-242**-Record from the register of deaths for Muradif Alić, no. 386, Bihać, 10 January 2001

**Exhibit T-243**-Record from the register of deaths for Albin Bajrambašić, no. 03/10-13-2000  
B.Krupa dated 23 November 2000

**Exhibit T-244**-Record from the register of deaths for Zijad Selimović, no. 317, Bihać, dated  
10 January 2001

**Exhibit T-245**-Letter from the 11<sup>th</sup> Krupa Light Infantry Brigade no. 247/45 dated 15 December 1992

**Exhibit T-246**-Official Note by the Bihać Higher Court no. Ki 1/96- RZ dated 8 February 1996  
*(confidential exhibit)*

**Exhibit T-246a**-Record from the register of deaths for Mirsad Budimlić, no. 03-13-230/01, Stijeni,  
23 January 2001

**Exhibit T-247**-Record from the register of deaths for Suad Sefić, no. 6763/2008 dated 11 September  
2008, Bihać

**Exhibit T-248**-List of the identified bodies issued by the 3<sup>rd</sup> Police Department Sanski Most, no. 05-  
1/08-1-233/08 dated 8 September 2008

**Exhibit T-249**-Decision by the S. Most Municipal Court no. R-697/97 dated 16 December 1997

**Exhibit T-250**-Record by the Bihać Cantonal Court no. KRI-21/01 dated 17 April 2001

**Exhibit T-250a**-Autopsy Record by the Bihać Cantonal Hospital Patology Ward for corpse no. 2,  
Golubnjača pit

**Exhibit T-250b**-DNA report for corpse no. 2, namely Ferid Velagić, date 8 November 1993

**Exhibit T-250c**-Autopsy Record by the Bihać Cantonal Hospital Patology Ward for corpse no. 3, issued  
to the name of Kemal Šepić, Jama Golubnjača, date 14 May 2001

**Exhibit T-250d**-DNA report for the corpse of Kemal Šepić

**Exhibit T-250e**-Autopsy Record by the Bihać Cantonal Hospital Patology Ward for corpse no.  
7, Jama Golubnjača, date 14 May 2001

**Exhibit T-250f**-DNA report for corpse no. 7 (original is in English, document translated) dated  
13 November 2006

**Exhibit T-250g**-Autopsy Record by the Bihać Cantonal Hospital Patology Ward for corpse no.  
18, date 15 May 2001

**Exhibit T-250h**-DNA report for corpse no. 18 in the name of Nusret Malkoč

**Exhibit T-251**-Decision no. 35/91 dated 11 December 1991 appointing Zdravko Marčeta commander of  
the territorial defence

**Exhibit T-252**-Information by the War Presidency no. 157/92 dated 23 May 1992, regarding the  
correction of the document no. 94/92 dated 19 May 1992

**Exhibit T-253**-Regular Combat Report to the 1<sup>st</sup> Podgrmeč Brigade Command dated 17 May 1992 at  
Jasenica

**Exhibit T-254**-Regular Combat Report to the 1<sup>st</sup> Podgrmeč Brigade Command dated 19 May 1992 at  
Jasenica



**Exhibit T-255**-Regular Combat Report no. 1 for 30 June/1 July 1992 dated 1 July 1992, signed by Vukašin Daničić

**Exhibit T-256**-Report by Colonel Daničić in handwriting no. 107-8 dated 13 July 1992

**Exhibit T-256a**-Report by Colonel Daničić in printed text no. 107-8 dated 13 July 1992

**Exhibit T-257**-Order for reinforcement of unit combat readiness, strictly confidential, no. 01/1-92 dated 4 May 1992

**Exhibit T-258**-Order for treatment of prisoners of war, 2<sup>nd</sup> Krajina Corps Command, confidential, no. 307-2 dated 5 August 1992

**Exhibit T-259**-Order for treatment of prisoners of war, 11<sup>th</sup> Light Infantry Brigade Command, Bosanska Krupa, confidential, no. \_\_\_\_\_ dated August 1992

**Exhibit T-260**-Order for treatment of prisoners of war, 11<sup>th</sup> Light Infantry Brigade Command, Bosanska Krupa, confidential, no. 306-2/92 dated 8 August 1992

**Exhibit T-261**-Letter from the 11<sup>th</sup> Light Infantry Brigade Command, Bosanska Krupa, no. 253-1/92 dated 1 August 1992

**Exhibit T-262**-Report on command responsibility in the RS Brigade

**Exhibit T-263**-Order by the 2<sup>nd</sup> Krajina Corps, strictly confidential, no. 32-1 dated 2 June 1992

**Exhibit T-264**-Order to the units of the 2<sup>nd</sup> Krajina Corps, strictly confidential, no. 2-72 dated June 1992

**Exhibit T-265**-Decision on establishment and jurisdictions of military courts and military prosecutor's offices, Official Gazette of the Serb people in BiH, No. 8, dated 8 June 1992

**Exhibit T-266**-Order for establishment of camps for prisoners of war, strictly confidential, no.153-1 dated 25 June 1992

**Exhibit T-267**-Order – Organization of the functioning of the camps for prisoners of war, strictly confidential, no. 307-1, dated 5 August 1992

**Exhibit T-268**-Information-Receipt of International Red Cross teams and foreign reporters, strictly confidential, no. 307-3 dated 5 August 1992

**Exhibit T-269**-Order by the War Presidency of Bosanska Krupa Municipality, no. 217/92 dated 27 May 1992

**Exhibit T-270**-Response to the objection of the War Presidency no. 200/92 dated 25 May 1992

**Exhibit T-271**-Letter from the SDS Municipal Board no. 12/93 dated 27 April 1993

**Exhibit T-272**-Order by the War Presidency of Bosanska Krupa, no. 12/92 dated 24 April 1992

**Exhibit T-272a**-Order by the War Presidency of Bosanska Krupa, no. 42/92 dated 26 April 1992

**Exhibit T-272b**-Order by the War Presidency of Bosanska Krupa, no. 47/92 dated 26 April 1992

**Exhibit T-272c**-Order by the War Presidency of Bosanska Krupa, no. 48/92 dated 26 April 1992

**Exhibit T-272d**-Order by the War Presidency of Bosanska Krupa, no. 49/92 dated 26 April 1992

**Exhibit T-272e**-Order by the War Presidency of Bosanska Krupa, no. 50/92 dated 26 April 1992

**Exhibit T-272f**-Order by the War Presidency of Bosanska Krupa, no. 52/92 dated 26 April 1992

**Exhibit T-273**-Order by the War Presidency of Bosanska Krupa, dated 28 April 1992, with ICTY certification

**Exhibit T-274**-Military unit file for Momo Grubiša

**Exhibit T-274a**-Military unit file for Mile Ćazić

**Exhibit T-274b**-Military unit file for Mile Ćazić

**Exhibit T-274c**-Military unit file for Petar Senić

**Exhibit T-274d**-Military unit file for Željko Smoljanac

**Exhibit T-274e**-Military unit file for Narandžić Zdravko

**Exhibit T-275**-Finding and opinion of expert witness – graphologist Zlatko Dugandžić, relating to the handwriting of M. Drljača dated 10 November 2008

**Exhibit T-276**-Document on appointment, strictly confidential, no. 11/15-154 dated 4 May 1992

**Exhibit T-277**- Regular Combat Report, strictly confidential, no. 107-9 dated 16 July 1992

**Exhibit T-278**- Regular Combat Report, strictly confidential, no. 107-10 dated 17 July 1992

**Exhibit T-279**-Report of expert witness Dorothea Hanson

**Exhibit T-280**-Order by the 1<sup>st</sup> Krajina Brigade Command, no. 100-02 dated 7 May 1992

**Exhibit T281**-Report of the 11<sup>th</sup> Light Brigade Command, no. 154-1/92 dated 13 July 1992

**Exhibit T282**-Diary of Mitar Ciganović-2 parts from the diary: on top of page-15 February 1992, the exhibit relates to the part from 14 June 1992; on top of page 14 April 1992, exhibit relates to the part from 30 July 1992

**Exhibit T283**-Diary of Milan Vojinović-parts of the diary

**Exhibit T284**-Pass of the War Presidency of Bos. Krupa, nor. 150/92 dated 29 April 1992  
*confidential exhibit*

**Exhibit T285**-Certificate of Bos. Novi Municipal Assembly, no. 60/92 dated 30 April 1992  
*confidential exhibit*

**Exhibit T286**-Instruction for the evacuation of the population from the Arapuša local community  
*confidential exhibit*

**Exhibit T287**-List of the refugees from B.Krupa accommodated in Arapuša local community  
*confidential exhibit*

**Exhibit T288**-List of the refugees from B.Krupa accommodated in Arapuša local community –  
*confidential exhibit*

**Exhibit T289**-List of citizens from the Arapuša local community

**Exhibit T290**-List of the people from Arapuša accommodated in S.Most

**Exhibit T291**-List of refugees from B.Krupa as of 26 May 1992

**Exhibit T292**-Photograph of Jasminka Čaušević's house and a photograph of the staircase of the same house from 2008

**Exhibit T293**-Record from the register of deaths for Ferid Šertović, no. sl72008 dated 11 February 2008

**Exhibit T294**-Record of examination of witness Šertović Ferid, no. KT-RZ-1/05 dated 14 April 2005

**T295**-Order by the War Presidency of Bos. Krupa, no. 23/92 dated 24 April 1992

**T296**-List of civilian weapons from Arapuša

**T297**-Inspection of the cattle and equipment taken over in Arapuša

**T298**-Report by Bihać Security Service Centre, no. 12-91/92 dated 21 April 1992

**T299**-Record from the register of deaths for Esad Arnautović, no. 2003-12-4836 dated 13 February 2008

**T300**-Statement of witness Esad Arnautović no. Ki 9/92 dated 4 September 1992

**T301**-Record from the register of deaths for Mehmed Kaljković, no. 2003-12-4838/2007 dated 13 February 2008

**T302**-Statement of witness Mehmed Kaljković no. Ki 9/92 dated 20 June 1994

**T303**-Approval by the War Presidency of the Bos. Krupa Municipality no. 55/92 dated 27 April 1992

**T304**-1x DVD-Record of the TV Banja Luka and the transcript of the record

**T305**-Letter from the Krupa na Uni Municipality, no. 84/93 dated 27 August 1993

**T306**-Letter from the war presidency of the Bos. Krupa Municipality, no. 76/92 dated 27 April 1992

**T307**-Biography of Gojko Kličković

**T308**-Information of the Intelligence-Security Agency of BiH, Sarajevo (OSA) no. 04/5-2096/09 dated 20 February 2009, Decision of 23 August 1991 no. 04-72/01 and 04-358 dated 8 April 1991

**T308a**-1xCD-telephone conversation between Radovan Karadžić and Dobrica Ćosić and transcript of the record of 8 June 1991

**T308b**-1xCD-telephone conversation between Radovan Karadžić and Momčilo Krajišnik and transcript of the record of 9 September 1991

**T-309**-Statement of witness Emir Ezić given to the Prosecutor's Office of BiH, no. KT-RZ-1/05, dated 7 February 2008

**C. DEFENCE WITNESSES**

<b>Name of the witness</b>	<b>Date of testimony</b>
1. Gojko Kličković– first accused	7 April 2009 8 April 2009 14 April 2009 15 April 2009 21 April 2009 22 April 2009 13 May 2009 19 May 2009 20 May 2009 26 May 2009 27 May 2009
2.Miroslav Vještica	2 June 2009 10 June 2009 16 June 2009

3.Fikret Abdić (video link)	3 June 2009
4. Mile Mudrinić	16 June 2009
5.Sead Komić	17 June 2009
6.Lazar Stupar	23 June 2009
7.Šemso Velić	24 June 2009
8.Slobodan Majkić	30 June 2009
9. Dragan Lukač	30 June 2009
10. Božo Pilipović	1 July 2009
11. Ramo Brkić	7 July 2009
12. Muharem Begić	25 August 2009
13. Mirsad Suljić	25 August 2009
14. Fahrudin Dizdarević	9 September 2009
15. Radomir Njeguš	22 September 2009
Avdo Hebib (appeared but not examined, the defence withdrew this witness at the hearing)	22 September 2009
16. Ejub Topić	14 October 2009
17. Jovo Pilipović	14 October 2009
18. Fuad Muzaferović	27 October 2009
19. Hajrudin Osmanagić	27 October 2009
20. Ale Šiljdedić	28 October 2009
21. Ismet Mujanović	28 October 2009
23. Slavko Drašković	3 November 2009
24. Duško Stojislavljević	3 November 2009
25. Nenad Bokan	4 November 2009
26. Dragan Japundža	4 November 2009
27. Mladen (Gojko) Štrbac	10 November 2009
28. Đorđe Jež	10 November 2009
29. PWS 92	11 November 2009
30. Expert witness Radoslav Radinović	17 and 18 November 2009
31. Dragomir Luinović	8 December 2009
32. Đuro Grbić	8 December 2009
33. Ibrahim Međedović	8 December 2009
34. Mile Štrbac (video link)	15 December 2009
35. Miroslav Stanić	22 December 2009
36. Mićo Luinović	22 December 2009
37. Mile Vojinović	26 January 2010
38. Milan Krnetić	27 January 2010
39. Slavko Ilić	27 January 2010

40. Mladen Štrbac	2 February 2010
41. Ljubomir Vuković	3 February 2010
42. Miroslav Kljajić	3 February 2010
43. Zdravko Marčeta	9 February 2010
44. Witness A7	10 February 2010
45. Dmitar Ciganović	16 February 2010
46. Refik Tatlić	23 February 2010
47. Mirko Orelj (I and II accused )	8 March 2010
48. Witness A8	16 March 2010
49. Milan Ljubović	23 March 2010
50. Marijan Šimić	23 March 2010
51. Mićo Kačavenda	24 March 2010
52. Dragomir Damjanić	24 March 2010
53. Goran Jerković	6 April 2010
54. Radomir Mandić	6 April 2010
55. Momo Grubiša	6 April 2010
56. Ramiz Drešković	7 April 2010
57. Slavko Latinović	7 April 2010
58. Mile Bijeljac	14 April 2010
59. Drago Vržina	20 April 2010
60. Brane Babić	21 April 2010
61. Drago Keča	21 April 2010
62. Brane Rađenović	27 April 2010
63. Ratko Beronja	27 April 2010
64. Milan Obradović	28 April 2010
65. Rajko Senić	11 May 2010
66. Duško Ljepoja	11 May 2010
67. Rade Milešević	11 May 2010
68. Brane Kljajić	11 May 2010
69. Željko Zorić	18 May 2010
70. Miroslav Drljača	18 May 2010
71. Ešref Hadžić (I and II)	18 May 2010
72. Jasmin Ramić	25 May 2010
73. Kasim Trnka (expert witness)	26 May 2010
74. Božo Erceg	26 May 2010
75. Zdravko Latinović	26 May 2010
76. Đorđe Latinović	26 May 2010
77. Boško Plavšić	26 May 2010

78. Zoran Sofilj	1 June 2010
79. Rajko Kličković	8 June 2010
80. A-9	9 June 2010
81. Radomir Lukić (expert witness)	15 June 2010
82. Dragan Kolundžija (III)	29 June 2010
83. Branislav Gajčić (III)	29 June 2010
84. Duško Srdić (III)	30 June 2010
85. Milorad Rađenović (III)	30 June 2010
86. Lazo Radošević (III)	6 July 2010
87. Savan Knežević (III)	6 July 2010
88. Lazo Beslać (III)	6 July 2010
89. Mile Vujanović (III)	17 August 2010
90. Drago Kačevanda (III)	17 August 2010
91. Miroslav Egeljić (III)	17 August 2010
92. Predrag Bljelac (III)	18 August 2010
93. Ranko Radanović (III)	18 August 2010
94. Mladen Skenderija (III) video link	24 August 2010
95. Zdravko Naračić (III) video link	24 August 2010
96. Milovan Drlijača (III) video link	24 August 2010
97. Boško Klačnja (III)	25 August 2010
98. Dane Marić (III)	25 August 2010
99. Slobodan Kosovac (III) expert witness	14 September 2010 15 September 2010

#### **D. DEFENCE DOCUMENTARY EVIDENCE**

##### **1. EXHIBITS OF THE ACCUSED GOJKO KLIČKOVIĆ**

**O-I – 1** Report on gathering and manoeuvring

**O-I – 2** Exhibit already tendered as Prosecution Exhibit T-2

**O-I – 3** Exhibit already tendered as Prosecution Exhibit T-8.

**O-I – 4** Exhibit already tendered as Prosecution Exhibit T-7

**O-I – 5** Exhibit already tendered as Prosecution Exhibit T-13

**O-I – 6** Exhibit already tendered as Prosecution Exhibit T-1

**O-I – 7** Exhibit already tendered as Prosecution Exhibit T-75

and is also tendered as Exhibit of Defence for the second accused as O-II-1

**O-I – 8** Exhibit already tendered as Prosecution Exhibit T-140

**O-I – 9** Exhibit already tendered as Prosecution Exhibit T-72

**O-I – 10** Exhibit already tendered as Prosecution Exhibit T-71

- O-I – 11** Exhibit already tendered as Prosecution Exhibit T-68
- O-I – 12** Exhibit already tendered as Prosecution Exhibit T-76
- O-I – 13** Exhibit already tendered as Prosecution Exhibit T-69
- O-I – 14** Exhibit already tendered as Prosecution Exhibit T-70
- O-I – 15** Exhibit already tendered as Prosecution Exhibit T-95.
- O-I – 16** Exhibit already tendered as Prosecution Exhibit T-143.
- O-I – 17** was not tendered as Prosecution Exhibit  
Proclamation to the Serb People of Bosnia and Herzegovina – we had our plebiscite
- O-I – 18** Exhibit already tendered as Prosecution Exhibit T-148
- O-I – 19** Exhibits not tendered as Prosecution exhibits, the cover letter marked as O-I-19 and the appeal as O-I-19 b.
- O-I – 20** – Set of exhibits
- Decision on verification of the Serb Municipality of B. Krupa – O-I-20c
  - Report on the plebiscite results – O-I-20a
  - Document of the Serb Municipality of Bos. Krupa – O-I-20d
  - Decision on proclamation of the Serb Municipality of Bos. Krupa – O-I-20b
  - Report on results of the plebiscite of non-Serb population – O-I-20e
  - Record from conducting the plebiscite – O-I-20h
  - Record from conducting the plebiscite – O-I-20f
  - Minutes of the Municipal Commission of Bos. Krupa – O-I-20g
- O-I – 21** Document “What means living in the modern Bosnia”
- O-I – 22** Excerpt from the book *Untold Defence* by Momir Bulatović, p. 85
- O-I – 23** Excerpt from the book *Untold Defence*, pp. 98 i 99
- O-I – 24** Excerpt from the book *Untold Defence*, pp. 86, 89,90
- O-I – 25** Excerpt from the book *Untold Defence* pp. 78, 79
- O-I – 26** Excerpt from the book *Untold Defence*, pp. 46,47,49
- O-I – 27** Excerpt from the book *Untold Defence*, pp. 34, 35, 38,39
- O-I – 28** Excerpt from the book *Untold Defence*, pp. 105,108, 116, 119, 120,121, 137
- O-I – 29** Excerpt from the book *Untold Defence*, pp. 197,198, 199, 200, 201, 202, 203, 204, 205, 207
- O-I – 30** Excerpt from the book *Untold Defence*, p. 73,
- O-I – 31** Excerpt from the book *Untold Defence* pp. 250,251,252, 253, 254
- O-I – 32** Excerpt from the book *Untold Defence* pp. 25,26
- O-I – 33** Excerpt from the book *Untold Defence* p. 14
- O-I-34** Record of examination of witness Muharem Begić no. KT-RZ-1/05 dated 15 April 2005
- O-I-35** Excerpt from the book by Dobrica Ćosić, newspaper clipping from the *Večernje Novosti* entitled *All Serbs to be together*
- O-I-36** Newspaper clipping from the *Večernje Novosti* dated 5 August 2008, entitled *The concept of Great Serbia*

- O-1-37** Newspaper clipping from the *Novosti* dated 10 August 2008 entitled *What kind of BiH we want*
- O-1-38** Newspaper clipping from the *Večernje Novosti*, Letter from Radovan Karadžić to Slobodan Milošević entitled *You turned your back to the Serbianhood*
- O-1-39** Newspaper clipping from the *Novosti* dated 16 August 2008, entitled *Mradić – I am not your wife*
- O-1-40** Newspaper clipping from the *Večernje Novosti*, dated 15 October 2008 entitled *Aptman: The document existed*
- O-1-41** – Excerpt from the book by Hasan Efendić *Who defended Bosnia*, p. 118
- O-1-42** – Excerpt from the book by Ševko Hodžić *Bosnian Warriors*, pp. 37 and 38
- O-1-43** – Excerpt from the book by Sefer Halilović *The Cunning Strategy*, p. 23
- O-1-44** – Excerpt from the book by Sefer Halilović *The Cunning Strategy*, p. 55
- O-1-45** – Excerpt from the book by Nedžad Ajdandžić *Defence of Sarajevo*, pp. 62, 63, 64
- O-1-46** – Excerpt from the book by Nedžad Ajdandžić *Defence of Sarajevo*, p. 112
- O-1-47** - Excerpt from the book by Nedžad Ajdandžić *Defence of Sarajevo*, p. 113
- O-1-48** - Excerpt from the book by Nedžad Ajdandžić *Defence of Sarajevo*, pp. 110, 111
- O-1-49** -Newspaper clipping from the *Oslobođenje* dated 27 February 1992, p. 5, entitled *The Brifisli preceded Lisbon*
- O-1-50** -Newspaper clipping from the *Oslobođenje* dated 6 March 1992, p. 6, *What did the functioners say*
- O-1-51** -Newspaper clipping from the *Oslobođenje* dated 10 March 1992, p. 1, *First round of Brussels talks finished*
- O-1-52** –Newspaper clipping from the *Oslobođenje* dated 20 March 1992, p.1, *Cutilhero's plan made difficult*
- O-1-53** –Newspaper clipping from the *Oslobođenje* dated 7 March 1993, *Finding common ground*
- O-1-54** - Newspaper clipping from the *Oslobođenje* dated 7 March 1993, *Talks on finding common ground continue*
- O-1-55**- Newspaper clipping from the *Oslobođenje* dated 5 March 1992, *On the threshold of a political solution*
- O-1-56** - Newspaper clipping from the *Oslobođenje* dated 1 April 1992, *Minor correction of Lisbon paper*
- O-1-57** - Newspaper clipping from the *Oslobođenje* dated 1 April 1992, *Brussels calls for peace*
- O-1-58** -Newspaper clipping from the *Oslobođenje* dated 8 March 1992, *Door closed to the curious*
- O-1-59** - Newspaper clipping from the *Oslobođenje* dated 19 March 1992, *Statement on the principle for Dayton Constitution*
- O-1-60** - Newspaper clipping from the *Oslobođenje* dated 2 April 1992, *Praise to BiH agreement*
- O-1-61** – Newspaper clipping from the *Oslobođenje* dated 20 March 1992, *Swiss model for BiH*
- O-1-62** -Newspaper clipping from the *Oslobođenje* dated 11 March 1992, *State with units*
- O-1-63** Newspaper clipping from the *Oslobođenje* dated 12 May 1992, *Request to urgently continue the conference*
- O-1-64** Newspaper clipping from the *Oslobođenje* dated 21 May 1992, *Europe nearly shocked*



- O-1-65** Newspaper clipping from the *Oslobođenje* dated 1 May 1992, *Maps on the table*
- O-1-66** Newspaper clipping from the *Oslobođenje* dated 20 May 1992, *Negotiations even without cease fire*
- O-1-67** - Newspaper clipping from the *Oslobođenje* dated 2 April 1992, *Agreement on paper*
- O-1-68** - Newspaper clipping from the *Oslobođenje* dated 25 March 1992, *Armed conflict, mixed groups formed to pacify the situation*
- O-1-69** - Newspaper clipping dated 22 March 1992 *Provocation and incidents*
- O-1-70** - Newspaper clipping *Armed conflict, the operation can begin*
- O-1-71** - Newspaper clipping dated 15 January 1999 *Why Podrinje fell*
- O-1-72** - Newspaper clipping dated 11 March 1992 *Foreign mercenaries, Sarajevo does not need mercenaries*
- O-1-73** - Newspaper clipping dated 11 March 1992 *Honour and duty of the decision*
- O-1-74** - Newspaper clipping dated 31 March 1992 *Attitude towards the peace plan, Sarajevo agreement is on*
- O-1-75** - Newspaper clipping dated 27 February 1992 *Position of the Islamic Community for BiH, Muslims, vote Yes*
- O-1-76** - Newspaper clipping dated 20 May 1992 *Support to the BiH Confederation from Croatia, Split Agreement*
- O-1-77** - Newspaper clipping dated 20 September 1992 *Bosanska Dubica unlucky day*
- O-1-78** - Order by the RH Ministry of Defence dated 15 November 1993
- O-1-79** - Letter from the Friends of Bosnia sent from the RH Ministry of Defence – *Volunteers accepted for training*
- O-1-80** - Order by the Croatian Ministry of Defence dated 12 January 1992
- O-1-81** - Excerpt from the book *The Cunning Strategy* authored by Halilović
- O-1-82** - Letter from Fikret Abdić dated 6 August 1992
- O-1-83** - Letter to the 3<sup>rd</sup> Corps Command dated 18 September 1992
- O-1-84** – Agreement on Friendship and Cooperation between RBiH and RH
- O-1-85** - Notice of the 5<sup>th</sup> Corps dated 2 June 1993
- O-1-86** – Opinion on Engagement of the 5<sup>th</sup> Corps dated 18 September 1995
- O-1-87** – Izetbegović's Double Game, newspaper clipping from the *Glas Srpske* dated 23 July 1998
- O-1-88** – Newspaper clipping from the *Večernje Novosti* dated 23 October 1997, *What does the coup train*
- O-1-89** Newspaper feuilleton from the *Večernje Novosti* published on 15, 20, 21, 22 and 24 October, from the book *Counter-attack - How Yugoslavia fell apart* by Veljko Kadijević
- O-1-90** Newspaper feuilleton from the *Večernje Novosti* dated 6 August, from the book *Culprit on some other address*
- O-1-91** Decision on Consolidation of All Armed Forces in the Territory of the Republic of Bosnia and Herzegovina
- O-1-92** Page 194 from the book
- O-1-93** Corps Command Order dated 15 May 1990

**O-1-94** Review of reserve and active components of the PSS Bosanska Krupa until April 1992

**O-1-95** Statute of the Serb Municipality of Bosanska Krupa, November 1991

**O-1-96** Study by Dr Milivoje Ivanišević *Important events in the Krupa na Uni Municipality*

**O-1-97** Pages 77, 78, 80, 81 and 82, *The Strategy*

**O-1-98** Excerpt from the book *The Extraordinary Circumstances* by General Todorović

**O-1-99** Order for attack dated 17 August 1995 (5<sup>th</sup> Corps)

**O-1-100** Exhibit already tendered as Prosecution Exhibit T-36

**O-1-101** Exhibit already tendered as Prosecution Exhibit T-105 and T-106 (orders on ceasefire)

**O-1-102** Document of 7 January 1992

**O-1-103** Exhibit already tendered as Prosecution Exhibit T-280

**O-1-104** Warning against behaviour and interference of certain military command departments with the civilian sector

**O-I-105** Special pass no. 133/92 dated 4 May 1992

**O-I-105** Special pass no. 134/92 dated 4 May 1992

**O-1-106** Tendered as Prosecution Exhibit T-103

**O-1-107** Authorization no. 16/92 dated 4 April 1992

**O-1-108** Order 266/92 dated 9 May 1992

**O-I-109** Statement on items misappropriated by the Green Berets no. 156/92 dated 23 May 1992

**O-I-110** Decision of appointment no. 126/92 dated 4 May 1992

**O-I-111** Instruction for work of police members RR167 168,

**O-I-112** Review of statements taken from people living at Zalug

**O-I-112** Request for assignment of weapons to citizens no. S1 dated 6 August 1992

**O-I-113** Order no. 1533/92 dated 14 September 1992

**O-I-114** Agenda 009004501,

**O-I-115** List of injured and wounded persons in the area of Bosanska Krupa as of 25 April 1992

**O-I-116** Letter to the Corps Command Banja Luka no. 10/92 dated 22 April 1992

**O-I-117** Excerpt from the Minutes of the session of the Executive Board of the Assembly of the Serb Municipality of Bosanska Krupa held on 17 December 1991

**O-I-117** Excerpt from the Minutes of the session of the Transitional Assembly of the Serb Municipality of Bosanska Krupa held on 11 December 1991

**O-I-118** Decision no. 0009004457

**O-I-119** Letter to all local communities in the Serb Municipality of Bosanska Krupa no. 9/92, dated 28 January 1992

**O-I-120** Rush note no. 1/92 dated 3 January 1992

**O-I-120** Initiative no. 37/91 dated 24 December 1991

**O-I-121** Request for aid in fuel no. 06/92 dated 28 April 1992

**O-I-122** Requisition – tendered as Prosecution Exhibit T-111

**O-I-123** Need for heavy machinery no. 134/92 dated 29 April 1992

**O-I-124** Requisition no. 140/92 dated 29 April 1992

**O-I-125** Request for arming the territorial defence no. 21/92 dated 10 March 1992

**O-I-126** Regulating the status of the territorial defence units no. 141/92 dated 29 April 1992

**O-I-127** Request of the 9<sup>th</sup> Corps Command, strictly confidential no. 4-49 dated 3 April 1992, no. 31/101-230 dated 7 April 1992

**O-I-128** Rush note in the case of the Initiative of the Serb Municipality of Bosanska Krupa no. 14/92 dated 11 February 1992

**O-I-129** Certificate no. 60/92 dated 30 April 1992

**O-I-130** Order no. 35/92 dated 26 April 1992

**O-I-131** Pass 133-92 dated 29 April 1992

**O-I-132** Letter to the 2<sup>nd</sup> Military District Command no. 19/31-442 dated 23 April 1992

**O-I-133** Pass no. 59/92 dated 27 April 1992

**O-I-134** Request for change of the assignment – tendered as Prosecution Exhibit T-102 a)

**O-I-135** Request for change of the assignment of Borislav Kačavenda, Reserve Lieutenant

**O-I-135** Request for change of the assignment of Borislav Kačavenda, Reserve Lieutenant

**O-I-136** Initiative no. 1/01 dated 23 December 1991

**O-I-137** Decision no. 35/91 dated 11 December 1991

**O-I-138** Order on limited work of bars and restaurants no. 4/91 dated 23 December 1991

**O-I-139** Order on prohibition of felling and illegal use of forests no. 5/91 dated 23 December 1991

**O-I-140** Census of the population on ethnical structure in populated settlements

**O-I-141** Delivery of documents on the establishment of the Serb Municipality of Bosanska Krupa no. 21/91 dated 18 December 1991

**O-I-142** Order no. 28/17-373 dated 7 October 1993

**O-I-143** Newspaper clipping from the *Oslobođenje* dated 8 April 1992

**O-I-144** Decision no. 34/91 dated 11 December 1991

**O-I-145** Newspaper clipping

**O-I-146** Newspaper clipping from the *Oslobođenje*

**O-I-147** Newspaper clipping

**O-I-148** Newspaper clipping

**O-I-149** Field Visit Report

**O-I-150** Newspaper clipping

**O-I-151** Rules of Procedure of Crisis Staff P0002200,

**O-I-152** Order 23/92 dated 24 April 1992

**O-I-153** Instruction for organization and activity of Serb people in BiH in extraordinary circumstances dated 19 December 1992

**O-I-154** Order no. 42/92 dated 26 April 1992

**O-I-155** Assignment of senior officers by establishment posts, no. 253-1/92 dated 1 August 1992

**O-I-156** Order no. 2-72 dated 5 June 1992

**O-I-157** Criminal case no. 222/92 dated 26 October 1992 and no. 47/92 dated 8 December 1992

**O-I-158** Feuilleton from the *Večernje Novosti*, 14 August 2008

**O-I-159** Record of Exchange of Captured Persons made on 10 May 1992

**O-I-160** Letter from Špiro Nikolić to M. Vještica

- O-I-161** Review of persons deprived of liberty on 21 and 22 /*the month missing*/ 1992 during the war in Bos. Krupa
- O-I-162** Agreement at the Army Command HQ of the Serb Municipality of Bosanska Krupa
- O-I-163** Newspaper clipping from the *Večernje Novosti* dated 7 September 2008
- O-I-164** Newspaper clipping from the *Novosti* dated 11 August 2006
- O-I-165** Excerpt from the book p. 103,
- O-I-166** Excerpt from the magnetic tape recorder record of the session of the Presidency of RBiH held on 20 June 1992
- O-I-167** Guidelines for organization of the voluntary departure of the people who want to leave Banja Luka area
- O-I-168** Newspaper article from the *Oslobođenje*
- O-I-169** Newspaper article
- O-I-170** Newspaper article
- O-I-171** Letter to the Crisis Staffs no. 03-129/92 dated 30 April 1992
- O-I-172** Order to carry out combat operations
- O-I-173** Newspaper article from the *Oslobođenje* entitled *Massacre at Sijekovac*
- O-I-174** Newspaper article *Serbs moving out, Muslims moving out*
- O-I-175** Newspaper article *RTVSA occupied*
- O-I-176** Newspaper article *Order to cease fire*
- O-I-177** Newspaper article *Arrested with ballots*
- O-I-178** Newspaper article *Terror becomes unbearable*
- O-I-179** Newspaper Cartoon
- O-I-180** Excerpt from the book authored by Sefer Halilović
- O-I-181** Order no. 35/92 dated 26 April 1992
- O-I-182** Order on prohibition of entry and movement of motor vehicles and privately owned trucks
- O-I-183** Decision no. 1/92 dated 16 April 1992
- O-I-184** Press release dated 4 April 1992
- O-I-185** Letter no. 514-011-1/91 dated 26 July 1991
- O-I-186** Decision no. 67/1 dated 25 October 1991
- O-I-187** Order dated 26 April 1992 (A), Order dated 28 April 1992 (B),  
Order dated 14 May 1992 (C)
- O-I-188** Official Gazette dated 31 October 1977
- O-I-189** Provisional Rules of Procedure dated 11 December 1991
- O-I-190** Minutes of the session of the Transitional Assembly of Bosanska Krupa no. 12/91
- O-I-191** Record of examination of Luinović Dragomir dated 20 November 2007
- O-I-192** Record of examination of Jovo Obradović dated 23 November 2007
- O-I-193-** SDS documents (tendered as Prosecution exhibits T-63,T-65, T-66 and T-130 )
  - O-I-193 a** Municipal Board Annual Work Report
  - O-I-193 b** Work Program for the period from 10 August 1991 to 10 August 1992
  - O-I-193 c** SDS announcement dated 3 June 1991

- O-I-193 d** Instruction for the work of the SDS
- O-I-193 e** Excerpt from the Minutes of the session of the SDS of the Serb Municipality of Bosanska Krupa
- O-I-194** Work Report of the Municipality and War Presidency for the period from 1 January 1992 to 20 April 1993
- O-I-195** Official Gazette of the Serb people in BiH
- O-I-196** Newspaper clipping from the *Novosti* - Feuilleton Nikola Koljević
- O-I-197** Newspaper clipping from the *Press*
- O-I-198** Newspaper clipping from the *Novosti* – Feuilleton from 16 January 2009
- O-I-199** Newspaper clipping, Feuilleton - *Tuđman offers the sea*
- O-I-200** Newspaper clipping, Feuilleton – *The war could have been avoided*
- O-I-201** Decision to form the territorial defence units
- O-I-202** Official Note Ibrahim Čisić
- O-I-203** Enclosure – addition from the *NIN*
- O-I-204** Verdict in the *Vuković* case
- O-I-205** The Law on Change of the Name of Bosanska Krupa to Krupa na Uni
- O-I-206** Excerpt from the war diary
- O-I-207** Decision on establishment of the Assembly of Serb people of BiH, Official Gazette dated 15 January 1992 ( T-140 )
- O-I-208** Conclusions of the SDS Municipal Board dated 27 April 1993
- O-I-209** Theft of weapons from Veliki Dubovik
- O-I-210** Statement of Jasmin Ramić dated 29 May 1993
- O-I-211** Record from examination of Rifet Hasanović dated 10 June */the year missing/*
- O-I-212** Excerpt from the war diary of Nikola Koljević
- O-I-213** Excerpts from the war diary of Nikola Koljević (three parts)
- O-I-214** Excerpts from the war diary of Nikola Koljević (three parts)
- O-I-215** Excerpt from the war diary of Mitar Ciganović, marked as TOP20/3
- O-I-216** Diary of witness Milan Vojinović (not physically tendered since the original is with the Prosecutor's Office)
- O-I-217 3 x** Record of examination of witness Milan Vojinović – BiH Prosecutor's Office dated 20 April 2005, 3 December 2007 and 17 April 2008
- O-I-218** Record of examination of witness Milan Krnetić – BiH Prosecutor's Office, dated 10 December 2007
- O-I-219** Record of examination of witness Ljubomir Vuković no. KT-RZ-100/06, dated 4 December 2008
- O-I-220** Record of examination of witness Zdravko Marčeta at the BiH Prosecutor's Office no. KT-RZ-100/06 dated 7 December 2007 (exhibit will be tendered also for the defence of the third accused-exhibit number O-3-10)
- O-I-221** Record of examination of witness Dmtar Ciganović dated 8 April 2008
- O-I-222** Letter, confidential, no. 23-1/92 dated 23 July 1992, signed by Dmtar Ciganović

- O-1-223** Letter no. 457/92 dated 23 June 1992, signed by Gojko Kličković
- O-1-224** Order dated 25 May 1992, signed by Dmtar Ciganović
- O-1-225** Letter, confidential, no. 514/92 dated 24 August 1992, signed by Dragan Ciganović
- O-1-226** Letter no. 04/3-952-3/93 dated 10 May 1993, signed by Mladen Štrbac
- O-1-227** Order to the logistics, strictly confidential, 100-55/92 dated 20 June 1992
- O-1-228** Warning against behaviour, signed by Gojko Kličković
- O-1-229** Order no. 200-458/92 dated 7 August 1992, signed by Dmtar Ciganović
- O-1-230** Allegations regarding the errors in the application of the law with reference to Article 5 of the Statute
- O-I-231** Allegations regarding the errors in the application of the law with reference to Article 5 of the Statute
- O-1-232** Study *The Command Responsibility* by Dr Milna Škulić
- O-1-233** Book *The Basic Principle Issues of the Command Responsibility*
- O-1-234** Instruction for the evacuation of the population with refugees from the Arapuša local community
- O-1-235** Order for further action
- O-1-236** Order of the Commander of the 2<sup>nd</sup> Krajina Corps, General Grujo B.
- O-1-237** Document no. 172/1 dated 26 February 1993
- O-1-238** Document of the Command no. 307/2 dated 5 August 1992
- O-1-239** Document of the Security Service Centre no. 11-169 dated 30 July 1992
- O-1-240** List of residents of Arapuša
- O-1-241** List of persons for exchange
- O-1-242** Handwritten document dated 26 April 1992-meeting
- O-1-243** Diary of Miroslav Vještica in handwriting
- O-I-244** Order to demolish the bridges (Prosecution already tendered T-104 )
- O-I-245** Regular combat report dated 7 July 1992
- O-I-246** Excerpt from the diary
- O-I-247** Plan for the evacuation of population dated 9 August 1995
- O-I-248** Excerpt from the book by Veljko Kadijević (from the *Novosti*) *Milošević's dual game*
- O-I-249** Regular Combat Report, dated 9 June 1992; Proposal of mobilization assembly points no. 100-94/92 dated 7 July 1992; Order dated 3 August 1992
- O-I-250** Request for consolidation of the Brigade by formation, no. 100-12/92 dated 15 May 1992 and Order of the Main HQ of the Army of SRBiH dated 23 May 1992
- O-I-251** Order by the Command of the 2<sup>nd</sup> Krajina Corps, strictly confidential, no. 307-1 dated 5 August 1992 and Order dated 26 May 1992, strictly confidential, no. 153-1
- O-I-252** Defence Orders (2) of the Podgrmeč Territorial Defence Command, dated 4 May 1992
- O-I-253** Proposal of the War Presidency of the Serb Municipality of Bosanska Krupa, no. 184/92 dated 25 May 1992
- O-I-254** Letter no. 76/92 dated 27 April 1992 to the 4<sup>th</sup> Battalion Command
- O-I-255** (T-99) Order on the mobilization of the territorial defence from 1992

**O-I-256** (T-195) Order on the evacuation of the Muslim population from the Podgrmeč enclave

**O-I-257** Decision of the Assembly of the Serb Municipality of Bosanska Krupa dated 21 August 1992

**O-I-258** Decision on the control of the use of the property that belonged to the Muslim population

**O-I-259** Letter from Gojko Kličković to the Public Security Centre Banja Luka dated 18 January 1993

**O-I-260** Conclusions from the meeting

**O-I-261** Unit personal file of Milan Štrbac

**O-I-262** Decision on the seat of the Municipality of Serb people

**O-I-263** Certificate on the election of the councilmen no. 13/91 dated 11 December 1992

**O-I-264** Order of the War Presidency no. 263/92 dated 29 May 1992

**O-I-265** Order of the War Presidency no. 262/92 dated 29 May 1992

**O-I-266** Supply of material, Command of the 1<sup>st</sup> Podgrmeč Brigade, confidential, no. 100-26/92 dated 7 June 1992

**O-I-267** Conclusions from the meeting held with the town commanders on 16 November 1992

**O-I-268** Report on the analysis of the documents found in the house of Mladen Stojanović

**O-I-269** Statement of Slobodan Vojinović

**O-I-270** Regular combat report of the 2<sup>nd</sup> Command of the Krajina Corps dated 13 July 1993 (T-256)

**O-I-271** Letters from the Command, Order to collect the spoils of war

**O-I-272** Order to reinforce the combat readiness of the units, strictly confidential, no. 01/1-92 dated 4 May 1992

**O-I-273** Order to appoint the command of the Podgrmeč Brigade

**O-I-274** Response of the BiH Prosecutor's Office to the Request of the accused Kličković for submission of documents

**O-I-275** Information on reported criminal offences

**O-I-276** Basic information on the PSS of the Serb Municipality of Bosanska Krupa

**O-I-277** Decision to ban hunting, 5 August 1991, SDS Executive Board

**O-I-278** Decision no. 3/90 dated 8 September 1990

**O-I-279** Decision no. 67/91 dated 17 September 1991

**O-I-280** Organization on establishment dated 23 July 1991

**O-I-281** Statutory decision dated 10 August 1991

**O-I-282** Statute of the SDS of BiH dated 12 July 1991

**O-I-283** Orders by the War Presidency: Order no. 318/92 dated 3 June 1992, Order no. 317/92 dated 3 June 1992, Order no. 1462/92 dated 6 September 1992

**O-I-284** Instruction for the work of town commands in the area of the Serb Municipality of Bosanska Krupa no. 290/92 dated 29 May 1992

**O-I-285** Decision on the organization and method of work 2/92 dated 7 May 1992 ( t-101 )

**O-I-286** Decision of the Municipal Assembly no. 43/92 dated 10 July 1992 ( t-152 )

**O-I-287** Decision of the Municipal Assembly no. 65/92 dated 21 August 1992 ( t-155 )

**O-I-288** Order by the War Presidency of the Serb Municipality of Bosanska Krupa no. 32/08 dated 26 April 1992 (T-107)

- O-1-289** Order by the War Presidency of the Serb Municipality of Bosanska Krupa no. 660/92 dated 13 July 1992
- O-1-290** Order (in handwriting) no. 27/92 dated 5 April 1992
- O-1-291** Second page of the session ?
- O-1-292** Order no. 130/92 dated 22 May 1992
- O-1-293** Letter to the Command of the 3<sup>rd</sup> Corps of the Armed Forces of R BiH dated 19 December 1992
- O-1-294** Publication or excerpt from the *Dani* magazine, feuilleton Green Berets – *How Were the Weapons Obtained*, publication or excerpt from the *Dani* magazine, feuilleton Green Berets – *How to Choose the Coat of Arms*, (a total of three excerpts from the *Dani*) and three clippings from the *Oslobodjenje*
- O-1-295** Statement of witness Mićo Kačavenda given at the BiH Prosecutor's Office on 31 January 2008
- O-1-296** Record of examination of witness Mile Bijeljac at the BiH Prosecutor's Office dated 15 November 2007
- O-1-297** Record of examination of witness Emir Ezić at the BiH Prosecutor's Office dated 7 February 2008 (tendered as Prosecution exhibit T-309)
- O-1-298** Information dated 12 March 1992
- O-1-299** Memo of the Bihać Security Centre
- O-1-300** Memo of the Bihać Security Centre dated 23 April 1992
- O-1-301** Memo by the Ministry of Internal Affairs dated 10 September 1991
- O-1-302** Document sent to the Ministry of 18 December 1991
- O-1-303** Excerpt from the book *To Forget a Crime is a Crime* by Zilhad Ključanin, pp. 270-275
- O-1-304** Record of examination of witness Brane Babić dated 15 November 2007
- O-1-305** Decision to suspend the activity of political organizations
- O-1-306** Enclosures (feuilletons from the *Oslobodjenje*), fragments from the book of the Patriotic League, 4 enclosures
- O-1-307** Newspaper clippings from the *Oslobodjenje* regarding the Green Berets (in two copies)
- O-1-308** Excerpts from the book *Defence of Sarajevo* by Nedžad Ajnadžić
- O-1-309** Excerpts from the book by Sefer Halilović *The Cunning Strategy*
- O-1-310** Excerpts from the book by Šefko Hodžić *Who Defended Bosnia / Bosnian Warriors*
- O-1-311** Excerpts from the book by Hasan Efendić *Who Defended Bosnia*
- O-1-312** Decision by Bihać Cantonal Court no. KPS-32/04 dated 6 December 2004
- O-1-313** Copy of the military ID booklet in the name of Gojko Kličković
- O-1-314** Indictment sent to the Bihać Cantonal Court
- O-1-315** Letter correcting an error
- O-1-316** Unit personal file of Mile Drljača
- O-1-317** Note by Miroslav Vještica written at 12:00 hrs of 14 April 1992
- O-1-318** Notes from the negotiations dated 25 and 26 April 1992, typed text
- O-1-319** Text – Miroslav Vještica comes forward in the Assembly, the topic is the referendum



**O-1-320** Law Amending the Law on All People's Defence  
**O-1-321** Expert analysis by Richard Butler  
**O-1-322** The 1974 SRBiH Constitution and amendments  
**O-1-323** Letter from the Una Sana Cantonal Prosecutor's Office to the BiH Prosecutor's Office  
**O-1-324** The 1984 Law on All People's Defence and Self-Protection  
**O-1-325** Article from the *Nezavisne Novine*  
**O-1-326** Decree on Criteria for Deployment of Working People and Citizens  
**O-1-327** Excerpt from the book authored by Praljak  
**O-1-328** Transport lists with specification of goods  
**O-1-329** Letter from the Army of RBiH no. 01/7251/-3 dated 10 November 1994  
**O-1-330** Law on the Rights of Demobilized Defenders and Their Families  
**O-1-331** Decree  
**O-1-332** Official Gazette no. 13 dated 9 June 1992  
**O-1-333** Decree on Preparation and Carrying Out Mobilization in Social and Political Communities  
**O-1-334** Instruction for Planning Security and Self-Protection Measures in Defence Plans  
**O-1-335** Decision on Basics of the Unique Methodology, Official Gazette No. 11/86 dated 7 April 1986  
**O-1-336** Law on Military Service dated 2 December 1985  
**O-1-337** Articles from the SFRY Constitution, Official Gazette No. 9 dated 21 February 1974  
**O-1-338** SFRY Criminal Code  
**O-1-339** Constitution of the Serb Republic of BiH, 16 March 1992  
**O-1-340** Islamic Declaration of Alija Izetbegović  
**O-1-341** Report on Interrogation of Captive Suad Sefić  
**O-1-342** Minutes of 4 June 1992  
**O-1-343** Decision to hold a public debate  
**O-1-344** Minutes of the 1<sup>st</sup> session of the Executive Board of the Assembly of the Serb Municipality of Bosanska Krupa  
**O-1-345** Decision on Election of the President of the Government, National Assembly and Representatives (3 decisions)  
**O-1-346** Decree to carry out Republic referendum  
**O-1-347** Rulebook of the BiH Prosecutor's Office  
**O-1-348** The Law on Internal Affairs, Official Gazette No. 18  
**O-1-349** Exodus of Serbs from Western Krajina Municipalities  
**O-1-350** Instruction for the work of commands and HQs of JNA high military schools  
**O-1-351** Instruction for the work of defence commands  
**O-1-352** Minutes of the 6<sup>th</sup> Assembly of the Serb Municipality of Bosanska Krupa  
**O-1-353** Record of examination of witness Hamdija Arnautović no. KT-RZ-01/05 dated 7 February 2008 and Finding and Opinion of Court Expert Dr Marija Kaučić-Komšić on the health condition of witness Hamdija Arnautović dated 28 April 2010

**O-1-354 Minutes of the sessions of the SRBiH Presidency (39 Minutes):**

1. Minutes of the 2<sup>nd</sup> session of the Presidency of the Socialist Republic of Bosnia and Herzegovina held on 8 January 1991
2. Minutes of the 3<sup>rd</sup> session of the Presidency of the Socialist Republic of Bosnia and Herzegovina held on 21 January 1991
3. Minutes of the 6<sup>th</sup> session of the Presidency of the Socialist Republic of Bosnia and Herzegovina held on 28 February 1991
4. Minutes of the 9<sup>th</sup> session of the Presidency of the Socialist Republic of Bosnia and Herzegovina held on 18 March 1991
5. Minutes of the 11<sup>th</sup> session of the Presidency of the Socialist Republic of Bosnia and Herzegovina held on 5 April 1991
6. Minutes of the 12<sup>th</sup> session of the Presidency of the Socialist Republic of Bosnia and Herzegovina held on 19 April 1991
7. Minutes of the 13<sup>th</sup> session of the Presidency of the Socialist Republic of Bosnia and Herzegovina held on 26 April 1991
8. Minutes of the 14<sup>th</sup> session of the Presidency of the Socialist Republic of Bosnia and Herzegovina held on 30 April 1991
9. Minutes of the 16<sup>th</sup> session of the Presidency of the Socialist Republic of Bosnia and Herzegovina held on 29 May 1991
10. Minutes of the 17<sup>th</sup> session of the Presidency of the Socialist Republic of Bosnia and Herzegovina held on 9 June 1991
11. Minutes of the 18<sup>th</sup> session of the Presidency of the Socialist Republic of Bosnia and Herzegovina held on 26 June 1991
12. Minutes of the 19<sup>th</sup> session of the Presidency of the Socialist Republic of Bosnia and Herzegovina held on 28 June 1991
13. Minutes of the 21<sup>st</sup> session of the Presidency of the Socialist Republic of Bosnia and Herzegovina held on 5 July 1991
14. Minutes of the 22<sup>nd</sup> session of the Presidency of the Socialist Republic of Bosnia and Herzegovina held on 8 July 1991
15. Minutes of the 24<sup>th</sup> session of the Presidency of the Socialist Republic of Bosnia and Herzegovina held on 14 July 1991
16. Minutes of the 25<sup>th</sup> session of the Presidency of the Socialist Republic of Bosnia and Herzegovina held on 19 July 1991
17. Minutes of the 33<sup>rd</sup> session of the Presidency of the Socialist Republic of Bosnia and Herzegovina held on 19 September 1991
18. Minutes of the 35<sup>th</sup> session of the Presidency of the Socialist Republic of Bosnia and Herzegovina held on 21 September 1991
19. Minutes of the 37<sup>th</sup> session of the Presidency of the Socialist Republic of

Bosnia and Herzegovina held on 30 September 1991

20. Minutes of the 38<sup>th</sup> session of the Presidency of the Socialist Republic of Bosnia and Herzegovina held on 2 October 1991
21. Minutes of the 39. session of the Presidency of the Socialist Republic of Bosnia and Herzegovina held on 3 October 1991
22. Minutes of the 40<sup>th</sup> session of the Presidency of the Socialist Republic of Bosnia and Herzegovina held on 8 October 1991
23. Minutes of the 44<sup>th</sup> session of the Presidency of the Socialist Republic of Bosnia and Herzegovina held on 6 November 1991
24. Minutes of the 46<sup>th</sup> session of the Presidency of the Socialist Republic of Bosnia and Herzegovina held on 11 December 1991
25. Minutes of the 47<sup>th</sup> session of the Presidency of the Socialist Republic of Bosnia and Herzegovina held on 13 December 1991
26. Minutes of the 49<sup>th</sup> session of the Presidency of the Socialist Republic of Bosnia and Herzegovina held on 29 December 1991
27. Minutes of the 50<sup>th</sup> session of the Presidency of the Socialist Republic of Bosnia and Herzegovina held on 10 January 1992
28. Minutes of the 51<sup>st</sup> session of the Presidency of the Socialist Republic of Bosnia and Herzegovina held on 20 January 1992
29. Minutes of the 55<sup>th</sup> session of the Presidency of the Socialist Republic of Bosnia and Herzegovina held on 27 February 1992
30. Minutes of the 56<sup>th</sup> session of the Presidency of the Socialist Republic of Bosnia and Herzegovina held on 2 March 1992
31. Minutes of the 57<sup>th</sup> session of the Presidency of the Socialist Republic of Bosnia and Herzegovina held on 11 March 1992
32. Minutes of the 58<sup>th</sup> session of the Presidency of the Socialist Republic of Bosnia and Herzegovina held on 19 March 1992
33. Minutes of the 60<sup>th</sup> session of the Presidency of the Socialist Republic of Bosnia and Herzegovina held on 22 March 1992
34. Minutes of the 62<sup>nd</sup> session of the Presidency of the Socialist Republic of Bosnia and Herzegovina held on 25 March 1992
35. Minutes of the 63<sup>rd</sup> session of the Presidency of the Socialist Republic of Bosnia and Herzegovina held on 26, 27 and 28 March 1992
36. Minutes of the 64<sup>th</sup> session of the Presidency of the Socialist Republic of Bosnia and Herzegovina held on 3 April 1992
37. Minutes of the 65<sup>th</sup> session of the Presidency of the Socialist Republic of Bosnia and Herzegovina held on 4, 5, 6 and 8 April 1992
38. Minutes of the 67<sup>th</sup> session of the Presidency of the Socialist Republic of Bosnia and Herzegovina held on 10 and 11 April 1992
39. Minutes of the 69<sup>th</sup> session of the Presidency of the Socialist Republic of

- Bosnia and Herzegovina held on 13 and 14 April 1992
- O-1-355** – Decree on Adoption of Law no. 2, dated 11 April 1992
- O-1-356** – Decree on Adoption of Criminal Code no. 2, dated 11 April 1991
- O-1-357** – Decree on Defence, Official Gazette of RBiH, no. 4, dated 20 May 1992
- O-1-358** – Decree Amending the Decree on the Application of the Criminal Code Adopted as the Republic Code During the Time of Imminent Threat of War and During the State of War, Official Gazette of RBiH, dated 12 July 1992
- O-1-359** – Decree on the Service in the Army, Official Gazette of RBiH dated 1 August 1992
- O-1-360** – Decree on Military Service, Official Gazette of RBiH dated 1 August 1992
- O-1-361** – Decree on the Armed Forces of RBiH, Official Gazette no. 12 dated 13 August 1992
- O-1-362** – Decree on the Armed Forces, Official Gazette of RBiH dated 20 May 1992
- O-1-363** – Decree on Internal Affairs, Official Gazette no. 14 dated 18 August 1992
- O-1-364** – Decree on Functioning of Local Communities at the Time of War, Official Gazette of RBiH dated 18 September 1992
- O-1-365** – Decree on Armed Forces, Official Gazette of RBiH No. 19, dated 26 October 1992
- O-1-366** – Convention for the Protection of Human Rights and Fundamental Freedoms, Rome 4 December 1950
- O-1-367** – European Convention on Extradition, Articles 12, 13 and 16
- O-1-368** – Letter from the Una Sana Cantonal Prosecutor's Office Bihać no. KT-147/92-RZ dated 22 June 2006 to the BiH Prosecutor's Office, Letter from the BiH Prosecutor's Office to the ICTY dated 30 June 2006, Letter from the BiH Prosecutor's Office to the BiH Ministry of Justice dated 3 July 2006, Official Note of the BiH Prosecutor's Office dated 12 July 2006, UN Letter no. KT-RZ 100/06 sent to Mr. Marinko Jurčević, Letter from the Ministry of Justice of the Republic of Serbia to the BiH Ministry of Justice dated 29 November 2006, Letter from the BiH Prosecutor's Office no. 07-14-7058/06 dated 14 December 2006, Letter from the BiH Ministry of Justice sent to the BiH Prosecutor's Office no. 07-14-7058/06 dated 26 December 2006, Letter from the BiH Prosecutor's Office to the BiH Ministry of Justice no. KT-RZ 100/06 dated 28 December 2006, Letter from the BiH Prosecutor's Office to the BiH Ministry of Justice no. KT-RZ-100/06 dated 25 January 2007, Letter from the Ministry of Justice of the Republic of Serbia to the BiH Ministry of Justice dated 26 February 2007, Letter from the BiH Ministry of Justice to the BiH Prosecutor's Office dated 3 July 2007, Letter from the BiH Prosecutor's Office to the BiH Ministry of Justice dated 12 March 2007, Decision of the Ministry of Internal Affairs of the Republic of Serbia and Decision of the Belgrade Supreme Court no. KŽ II 1839/06
- O-1-369** Protocol No. 6 to the Convention for the Protection of Human Rights and Fundamental Freedoms concerning the abolition of the death penalty of 28 April 1983, Article 1 Abolition of the death penalty and Article 2 Death penalty at time of war
- O-1-370** Protocol No. 7 to the Convention for the Protection of Human Rights and Fundamental Freedoms
- O-1-371** Law Amending the Criminal Procedure Code of Bosnia and Herzegovina, Official Gazette

- of BiH, No. 16 dated 24 February 2009
- O-1-372** Document of the PSS Prijedor no. 11-12-3822 dated 9 September 1991
- O-1-373** -Letter from the Sokolac Basic Court to the Special Department for War Crimes of the Prosecutor's Office of Bosnia and Herzegovina
- O-1-374** - Finding and Opinion of Prof. Dr Radovan Radinović *Managerial Authority of Gojko Kličković in 1992*
- O-1-375** - Law on the All People's Defence from SFRY, Articles 453 through 459, published in the Official Gazette of SFRY dated 23 April 1982
- O-1-376** -Protocol I Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts
- O-1-377** - Geneva Convention on the Treatment of Prisoners of War of 12 August 1949
- O-1-378** -Record of examination of suspect Miroslav Vještica no. KT-RZ-1/05, dated 4 May 2005, made by the Prosecutor's Office of Bosnia and Herzegovina and transcript of the interview with Miroslav Vještica conducted on 27 February 2003
- O-1-379** – Topographic map of the right bank of the Una River of the Bosanska Krupa Municipality
- O-1-380** – Master file in the name of Gojko Kličković
- O-1-381** – Unit personal file in the name of Milan Štrbac
- O-1-382** – Unit personal file in the name of Milan Vojinović
- O-1-383** – Unit personal file in the name of Miroslav Vještica
- O-1-384** – Articles 136 and 138 from the Law on All People's Defence
- O-1-385** – International Covenant on Economic, Social and Cultural Rights from 1966
- O-1-386** - Excerpts and studies by John Schindler *Unholy Terror – Role of Bosnia in Global Jihad*
- O-1-387** - Order on representing 1<sup>st</sup> Podgrmeč Brigade Command dated 28 May 1992
- O-1-388** - Third Amended Indictment against Radovan Karadžić of the ICTY Office of the Prosecutor
- O-1-389** - Map of the inhabited town of Krupa
- O-1-390** - Finding and Opinion of professor Kasim Trnka. Part entitled *Constitutional Position and Functioning of the Municipalities at Time of Peace and War*
- O-1-391** Record of examination of witness Božo Erceg at the BiH Prosecutor's Office, no. KT-RZ-01/05 dated 27 July 2005
- O-1-392** Certificate on Registration of SDS of BiH at the Sarajevo Higher Court no. R-I-18/90 dated 17 August 1990, Official Gazette of BiH no. 39 dated 12 December 1990
- O-1-393** List of confiscated military weapons at Zalug, dated 23 April 1992
- O-1-394** Excerpt from the chronicle of Duboka Krajina village, pp. 339 and 340.
- O-1-395** Copy of the protocol book of the outpatient department of the Bihać Cantonal Hospital in the name of Nenad Bokan
- O-1-396** Unit records of the 11<sup>th</sup> Krupa Infantry Brigade
- O-1-397** Excerpt from the book *Krupa County from 1945 to 1955*
- O-1-398** Document of the Main HQ of the Army of the Serb Republic of Bosnia and Herzegovina, strictly confidential, dated 28 July 1992, information on paramilitary formations in the area of the Serb Republic of Bosnia and Herzegovina

- O-1-399** Document of the Commander of the Territorial Defence of the Bosanska Krupa Municipality, Zdravko Marčeta
- O-1-400** Order to implement the Decision of the Presidency of the Republic of Bosnia and Herzegovina no. 02-11-327/92
- O-1-401** Publication by Branko Bokan *Genocide against the Serbs of Bosanska Krajina*
- O-1-402** Letter sent to the priest of the Serb Orthodox Church in Bosanska Krupa
- O-1-403** ICTY Judgment in the *Brđanin* case
- O-1-404** Video record from the SDS Inaugural Assembly
- O-1-405** Finding and Opinion of Expert Radomir Lukić from May 2010

## **2. EXHIBITS OF THE ACCUSED MLADEN DRLJAČA**

- OII-1** Exhibit already tendered as Prosecution Exhibit T-75  
and as the exhibit of the defence for the first accused O-I-7
- OII-3** Exhibit already tendered as the exhibit of the defence for the first accused O-I-192
- OII-4** Exhibit already tendered as the exhibit of the defence for the first accused O-I-405

## **3. EXHIBITS OF THE ACCUSED JOVAN OSTOJIĆ**

- O-III - 1** Statement of examination of witness Božo Pilipović
- O-III - 2** Statement of examination of witness Duško Stojisavljević
- O-III - 3** Statement of examination of witness Đorđe Jež
- O-III - 4** Statement of examination of witness PWS-92
- O-III - 5** Statement of examination of witness Dragomir Lujinović
- O-III - 6** Statement of examination of witness Miroslav Stanić dated 21 February 2009
- O-III - 7** Statement of examination of witness Miroslav Stanić dated 17 and 24 January 2008
- O-III - 8** Statement of examination of witness Milan Krnetić given to attorney Milan Romanić dated 22 January 2010
- O-III-9** Statement of examination of witness Slavko Ilić given to attorney Milan Romanić dated 26 March 2009
- O-III-10** Record of examination of witness Zdravko Marčeta at the BiH Prosecutor's Office, no. KT-RZ-100/06 dated 7 December 2007 (the same exhibit is with the defence for the first accused - no. O-1-220)
- O-III-11** Statement of examination of witness Dragan Kulundžija dated 28 November 2008
- O-III-12** Statement of examination of witness Branislav Gajčić dated 9 April 2010
- O-III-13** Statement of examination of witness Duško Srdić dated 13 March 2010
- O-III-14** Record of examination of witness Milorad Rađenović dated 13 November 2008
- O-III-15** Statement of examination of witness Lazo Radošević dated 20 February 2009
- O-III-16** Statement of examination of witness Savan Knežević dated 24 April 2009
- O-III-17** Statement of examination of witness dated 27 February 2009

- O-III-18** Record of examination of witness Mile Vujanović, no. KT – RZ 100/06 dated 15 December 2008
- O-III-19** Statement of examination of witness Drago Kačavenda dated 25 March 2009
- O-III-20** Record of examination of witness Miroslav Egeljić, no. KT – RZ 100/06 dated 15 January 2001
- O-III-21** Statement of examination of witness Miroslav Egeljić dated 28 February 2009 given to attorney Milan Romanić
- O-III-22** Record of examination of witness Predrag Bljeljac dated 28 April 2002
- O-III-23** Record of examination of witness Ranko Radanović dated 26 March 2009
- O-III-24** Regular Combat Report, strictly confidential, dated 16 July 1992
- O-III-25** Regular Combat Report dated 17 July 1992
- O-III-26** Regular Combat Report dated 18 July 1992
- O-III-27** Regular Combat Report dated 19 July 1992
- O-III-28** Regular Combat Report dated 20 July 1992
- O-III-29** Regular Combat Report dated 21 July 1992
- O-III-30** Statement of examination of witness Mladen Skenderija dated 15 December 2008
- O-III-31** Statement of examination of witness Zdravko Narančić dated 7 March 2010
- O-III-32** Statement of examination of witness Milovan Drljača dated 20 May 2010
- O-III-33** Statement of examination of witness Dane Marić dated 3 May 2010
- O-III-34** Statement of examination of witness Boško Klašnja dated 14 March 2009
- O-III-35** Regular Combat Report, no. 147-22 dated 22 July 1992
- O-III-36** Regular Combat Report, no. 147-23 dated 23 July 1992
- O-III-37** Regular Combat Report, no. 147-25 dated 24 and 25 July 1992
- O-III-38** Regular Combat Report, no. 147-26 dated 30 July 1992
- O-III-39** Regular Combat Report no. 107-23 dated 31 July 1992
- O-III-40** Regular Combat Report, no. 107/24 dated 1 August 1992
- O-III-41** Regular Combat Report, no. 107-25 dated 2 August 1992
- O-III-42** Regular Combat Report, no. 283-1/92 dated 3 August 1992
- O-III-43** Regular Combat Report, no. 107-54/92 dated 3 August 1992
- O-III-44** Regular Combat Report, no. 107-27/92 dated 4 August 1992
- O-III-45** Regular Combat Report, no. 107-28 dated 5 August 1992
- O-III-46** Regular Combat Report, no. 107-29 dated 6 August 1992
- O-III-47** Regular Combat Report, no. 107-30 dated 7 August 1992
- O-III-48** Regular Combat Report, no. 107-31 dated 8 August 1992
- O-III-49** Regular Combat Report, no. 107-32 dated 9 August 1992
- O-III-50** Regular Combat Report, no. 107-33 dated 10 August 1992
- O-III-51** Regular Combat Report, no. 107-34 dated 11 August 1992
- O-III-52** Regular Combat Report, no. 107-35 dated 12 August 1992
- O-III-53** Regular Combat Report, no. 107-36 dated 13 August 1992
- O-III-54** Regular Combat Report, no. 107-37 dated 14 August 1992

- O-III-55** Regular Combat Report, no. 107-38 dated 15 August 1992
- O-III-56** Regular Combat Report, no. 107-39 dated 16 August 1992
- O-III-57** Regular Combat Report, no. 107-40 dated 17 August 1992
- O-III-58** Regular Combat Report, no. 107-41 dated 18 August 1992
- O-III-59** Regular Combat Report, no. 107-42 dated 19 August 1992
- O-III-60** Regular Combat Report, no. 107-43 dated 20 August 1992
- O-III-61** Regular Combat Report, no. 107-44 dated 21 August 1992
- O-III-62** Regular Combat Report, no. 107-47/92 dated 24 August 1992
- O-III-63** Regular Combat Report, no. 107-48/92 dated 25 August 1992
- O-III-64** Regular Combat Report, no. 107-49/92 dated 26 August 1992
- O-III-65** Regular Combat Report, no. 107-50/92 dated 27 August 1992
- O-III-66** Regular Combat Report, no. 107-51/92 dated 28 August 1992
- O-III-67** Regular Combat Report, no. 107-52/92 dated 29 August 1992
- O-III-68** Regular Combat Report, no. 107-53/92 dated 30 August 1992
- O-III-69** Regular Combat Report to the VRS Main HQ, no. 2-203 dated 25 August 1992
- O-III-70** Regular Combat Report, no. 166-1/92 dated 15 July 1992
- O-III-71** Regular Combat Report, no. 2-200 dated 15 July 1992
- O-III-72** Regular Combat Report, no. 154-1/92 dated 13 July 1992
- O-III-73** Regular Combat Report, no. 2-195 dated 13 July 1992
- O-III-74** List of military personnel of the Krupa Light Infantry Brigade
- O-III-75** List with the names of Joja Plavanjac and Milorad Rađenović
- O-III-76** Proposal for the appointment of senior officers, no. 323-1/92 dated 15 August 1992
- O-III-77** Order by the 11<sup>th</sup> Krupa Light Infantry Brigade Command, no. 349-1/92 dated 18 August 1992
- O-III-78** Order by the 11<sup>th</sup> Krupa Light Infantry Brigade Command, no. 760-1/92 dated 20 December 1992
- O-III-79** Order by the 11<sup>th</sup> Krupa Light Infantry Brigade Command, no. 281-1/92 dated 3 August 1992
- O-III-80** Letter from the 2<sup>nd</sup> Krajina Corps Command, no. 307-3 dated 5 August 1992
- O-III-81** Letter from the 2<sup>nd</sup> Krajina Corps Command, no. 2-72 dated 5 June 1992
- O-III-82** Order by the 11<sup>th</sup> Krupa Light Infantry Brigade Command, no. 306-2/92 dated 8 August 1992
- O-III-83** Copy of the military ID booklet in the name of Lazo Radošević issued on 27 February 1976
- O-III-84** Letter from the 2<sup>nd</sup> Krajina Corps Command, no. 590-1 dated 16 December 1992
- O-III-85** Judgment of the Banjaluka Military Court no. I K 94/95 dated 4 August 1995 with accompanying documents (parts of certified file of the Supreme Military Court)
- O-III-86** Excerpts from the Rules of Service of the Armed Forces of the Federal Secretariat of National Defence, parts governing the handover of duty, military detention and military prison.
- O-III-87** Document of the 2<sup>nd</sup> Krajina Corps Command to the Main HQ of the Army of the Serb Republic of BiH dated 1 June 1992 – establishment of the military court
- O-III-88** Document of the 2<sup>nd</sup> Krajina Corps Command to the Main HQ of the Army of the Serb Republic of BiH no. 11-43 dated 10 August 1992 – Judicial Work Report



**O-III-89** Order by Commander Jovan Ostojić no. 556-1/92 dated 21 October 1992

**O-III-90** Document of the 2<sup>nd</sup> Krajina Corps, strictly confidential, no. 128-1 dated 23 November 1992  
Order to use the unit for combat

**O-III-91** Military expertise by military expert Slobodan Kosovac (tendered in electronic form as well)

**E. COURT EVIDENCE**

**S-1** Finding and Opinion of expert Senad Pešta on the health condition of witnesses Vejsil Palić, Ibrahim Sivić and Emir Ezić.