

Bosna i Hercegovina

Босна и Херцеговина



Court of Bosnia and Herzegovina  
Суд Босне и Херцеговине

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Case No. S1 1 K 012247 19 Kri

Judgment announced on: 17 May 2023

Written Judgment sent out on: 28 July 2023

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Before the Panel of Judges composed of:

Staniša Gluhajić, Panel Presiding

Vesna Jesenković, member

Šaban Maksumić, member

CASE OF THE PROSECUTOR'S OFFICE OF BOSNIA AND HERZEGOVINA

v.

RAMIZ DREKOVIĆ

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JUDGMENT

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

**Vladimir Simović**

**Defense counsel for the accused Ramiz Drekočić:**

**Mirsad Crnovršanin, attorney**

**Kadrija Kolić, attorney**

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## **IN THE NAME OF BOSNIA AND HERZEGOVINA!**

The Court of Bosnia and Herzegovina, Section I for War Crimes, the Panel composed of Judges Staniša Gluhajić, as the Panel Presiding, and Vesna Jesenković and Šaban Maksumić, as members of the Panel, with the participation of legal advisor-assistant Samira Kustura Čolić as the record-taker, in the criminal case versus the accused Ramiz Dreković charged with the criminal offense of War Crimes against Civilian Population under Article 142(1) of the Criminal Code of the Socialist Federative Republic of Yugoslavia (CC SFRY), pursuant to the Indictment filed by the Prosecutor's Office of Bosnia and Herzegovina, No. T20 0 KTRZ 0006432 13 of 14 January 2019, confirmed on 18 January 2019, after an open trial from which the public was partly excluded, in the presence of the accused Ramiz Dreković and his defense attorneys, Mirsad Crnovršanin and Kadrija Kolić, the Prosecutor of the BiH Prosecutor's Office, Vladimir Simović, after deliberation and voting delivered and, on 17 May 2023, publicly announced the following:

### **J U D G M E N T**

**The accused Ramiz Dreković**, son of Husein and mother Hatidža, née Murtizić, born on 10 May 1956 in the place of Veseniće, Tutin municipality, Serbia, residing at the address ..., retired, father of two adults, citizen of BiH and Serbia, ethnic ..., literate, graduate from the Land Force Military Academy, indigent according to his own statement, served the compulsory military service with the Yugoslav National Army (JNA) in Banja Luka and Belgrade in 1980, holds the rank of a reserve officer-1<sup>st</sup> Class Captain of the JNA and the rank of a General of the ARBiH, Personal Identification Number (PIN) ...

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

**HAS BEEN ACQUITTED OF THE CHARGES**

**That:**

During the state of war and an armed conflict in Bosnia and Herzegovina between the Army RBiH and the Army of Republika Srpska, as the Commander of the 4<sup>th</sup> Corps of the ARBiH, the accused acted in violation of the rules of international humanitarian law, specifically Article 3 of the IV Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949, Articles 51, 57 and 85 of the Protocol I additional to the Geneva Conventions of 12 August 1949 relative to the Protection of Victims of International Armed Conflicts and Article 13 of the Protocol II additional to the Geneva Conventions of 12 August 1949 relative to the Protection of Victims of Non-International Armed Conflicts, in as much as:

During the period between 21 May 1995 and 7 June 1995, the accused had ordered an attack on the majority Serb civilian population of Kalinovik, having ordered the artillery units of the 4<sup>th</sup> Corps of the ARBiH subordinated to him, deployed in the wider area of Bjelimići, Konjic municipality, to attack the civilian population by guns caliber 130 mm, howitzers caliber 105 mm, 122 mm and 155 mm, with no targets selected, but rather by shelling the area of the inhabited place of Kalinovik, which attack was aimed at and which caused the spreading of fear and horror among the civilian population of Kalinovik (terror), whereupon members of the artillery units of the 4<sup>th</sup> Corps of the ARBiH, in compliance with the referenced orders, fired the artillery projectiles of a huge destructive power on the territory of the inhabited place of Kalinovik, whereby:

1. On 26 May 1995, after the suspect had issued an order Strict. Conf., No. 3791-01 to the units of the ARBiH deployed at the forward command post (IKM) Bjelimići to fire five projectiles from a 122 mm gun-howitzer at the Kalinovik downtown, the said units complied with the order, and, at around 20:20 hrs, fired the projectiles which hit the town area, as a result of whose explosions a child M.T., born ..., from Kalinovik, was wounded, having sustained serious bodily injuries,
2. On 3 June 1995, between 07:25 hrs and 08:50 hrs, members of the units subordinated to the accused fired several artillery projectiles, hit the Kalinovik downtown, as a result of whose explosions near the "Miladin Radojević" Elementary School, across from the "Lelija" Hotel, one pupil of the 8<sup>th</sup> grade of the referenced Elementary School got killed by a shell, namely Stanislava Koprivica, born in 1980 in Sarajevo, while pupils of the 8<sup>th</sup> grade, J.B., D.N., I.K., D.M. and M.T. were injured,

3. On 22 May 1995, at around 08:30 hrs, members of the units subordinated to the accused fired several artillery projectiles which fell on the territory of Kalinovik and Bogdanovo, Kalinovik municipality, as a result of whose explosions civilian Ratko Đogić was wounded,

**Whereby** the accused Ramiz Drekočić would have committed the criminal offense of War Crimes against Civilian Population under Article 142(1) of the Criminal Code of the Socialist Federative Republic of Yugoslavia (CC SFRY).

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Pursuant to Article 189(1) of the Criminal Procedure Code of Bosnia and Herzegovina, the costs of criminal proceedings under Article 185 (2) a) through f) of the CPC BiH, as well as the necessary expenditures of the accused, the necessary expenditures and remuneration for defense counsel, will be paid from within the budget appropriations.

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Pursuant to Article 198(3) of the Criminal Procedure Code of Bosnia and Herzegovina, the injured parties are hereby instructed to pursue their respective redress claims in a civil action.

## **REASONING**

### **I. PROCEDURAL HISTORY**

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

1. The Indictment of the Prosecutor's Office of Bosnia and Herzegovina, No. T20 0 KTRZ 0006432 13 of 14 January 2019, confirmed on 18 January 2019, charged the accused Ramiz Drekočić with the criminal offense of War Crimes against Civilian Population under Article 142(1) of the CC SFRY.

2. The main trial in the case commenced on 12 March 2019 by reading out the Indictment and the Prosecution's presentation of their opening statement, and ended by reading out the closing argument of the Defense for the accused Drekočić, on 15 March 2023, whereupon the date of a judgment's announcement was scheduled.

## **A. PRESENTED EVIDENCE**

### **1. Prosecutor's Office BiH**

3. During the evidentiary proceedings, the following persons were examined as witnesses for the Prosecution: Mitar Sladoje, D.A. (D.N.), M.J. (M.T.), J.B., D.M., Lazar Gojanović, Nenad Višnjevac, Radivoje Mandić, Rajko Višnjevac, Milivoje Faladžić, M.T., Elez Stanimir, Mujo Šubara, Edin Čajić, Hamid Selimović, Esad Moro, Esad Ramić, Nedim Hodo, Esad Tokić, Muhidin Čuprija, Abdulah Čobo, Milka Koprivica, Dragan Cerovina. The examined forensic experts were Željko Karan (forensic expert in medicine), Milan Vrdoljak (forensic expert in ballistics) and Mladen Marinković (military forensic expert). The statements given by witnesses Ratko Đogić and Milivoje Sladoje during the investigation stage were also read out during the main trial.

4. The list of the presented evidence for the Prosecution, both the testimonials and the documentary evidence, is provided in Annex I to the Judgment.

### **2. Defense for the accused Ramiz Dreković**

5. During the evidentiary proceedings, the Defense for the accused Ramiz Dreković examined the following witnesses: Damir Husković, Zahid Šurković, Alija Ismet, Sead Đulić, Šefkija Kevrić, Emir Sinanović, Enver Bubalo, Hamza Ajanović, Nusret Šahić, Kemal Suljević, Nihad Šehić, Zlatko Bećović and Munib Milišić. The Defense also examined the following forensic experts: Zijad Džananović (specialist in geodesy), Vedo Tuco (forensic medicine specialist), Mustafa Polutak (military forensic expert), Berko Zečević and Jasmin Terzić (ballistic forensic experts).

6. The list of the examined witnesses, the forensic experts and the documentary evidence presented by the Defense for the accused Dreković is provided in Annex I to the Judgment.

## II. CLOSING ARGUMENTS

### **1. Closing argument of the Prosecutor's Office of Bosnia and Herzegovina**

7. In their closing argument, the Prosecutor's Office of BiH primarily referred to the relevant documents and the witnesses' evidence indicating that the underlying elements of the criminal offense charged against the accused Dreković were satisfied. The Prosecution further provided a summary of the general circumstances and the context of the critical events, and thereupon elaborated on the evidence presented for each Count of the Indictment individually and, in the Prosecution's view, the facts of decisive relevance to the Court's decision.

8. The Prosecutor's Office also referred to the evidence of the examined Prosecution's witnesses who testified about the accused's role at the time of criminal offense. According to the Prosecution, the foregoing evidence shows that, as the Commander of the 4<sup>th</sup> Corps at the critical period, the accused Dreković was the only person who had produced planned documents and, on the basis of such plans, issued orders to the units subordinated to him to shell the targets of the opposing party. The Prosecution underlined that the evidence points to the conclusion that the referenced orders had to be complied with, that the accused Dreković received reports on the execution of those orders (orally at meetings and in writing through reports), wherein there was no self-will on the part of members of the subordinated units of the 4<sup>th</sup> Corps.

9. In addition, the Prosecutor's Office presented an analysis of the Defense's witnesses examined in relation to the 4<sup>th</sup> Corps zone of responsibility during May and June 1995, the accused Dreković's conduct and character, and the presence of the VRS units in Kalinovik during the indicated period. The Prosecution argued that those witnesses' evidence is in collision with the tendered documentary evidence, and that their sole objective was not to incriminate the accused Dreković.

10. Further in their closing argument, the Prosecution referred to the forensic analyses conducted by forensic experts in medicine, military and ballistics, having briefly presented the findings made by the referenced forensic experts respectively. The Prosecution alleges that, according to the conclusion in the Findings and Opinion produced by medical forensic expert Željko Karan, all the injured parties-civilians sustained the injuries caused by explosive devices on the critical occasion. Along this

line, the Prosecution proved that howitzer projectiles (shells) had been fired from the artillery positions of the 4<sup>th</sup> Corps of the ARBiH.

11. With regard to the expertise made by military forensic expert, Mladen Marinković, the Prosecution alleges the following: that the forensic expert correctly established the organizational and formational structures of both the 4<sup>th</sup> Corps of the ARBiH and the artillery units of the 4<sup>th</sup> Corps of the ARBiH at the critical period; that he clearly defined the manner of formation of the Corps artillery Group (CAG/KAG); that pursuant to the military rules the Corps Commander establishes a KAG out of long-range and caliber artillery weapons from within the composition of the Mixed Artillery Regiment (MAR/MAP); that the forensic expert correctly concluded that, during the referenced period, the KAG had, inter alia, disposed with a howitzer caliber 122 mm, a 152 mm gun and a 130 mm gun; that they are artillery weapons of an enormous destructive power. According to the Prosecution, it was proved beyond a reasonable doubt that the range of those artillery weapons indeed includes the Kalinovik downtown, where no legitimate military targets had existed at the critical period.

12. Having referred to the forensic expertise conducted by ballistic forensic experts, Slobodan Janković and Milan Vrdoljak, the Prosecution primarily explained that the correction of their Findings and Opinion was not based on an analysis of the new evidentiary documents submitted after the filing of the Indictment at issue, but rather that only the professional parameters and the measurements were specified, without making any changes in the forensic experts' final conclusion.

13. According to the Prosecution, the objective conclusions drawn by forensic experts Janković and Vrdoljak with regard to both the direction from which the howitzer projectiles had been fired on 3 June 1995 hitting the Kalinovik downtown, and their calibers, compared with the presented documentary evidence and the witnesses' statements, point to the conclusion beyond a doubt that Kalinovik was shelled from the artillery positions of the 4<sup>th</sup> Corps of the ARBiH, that is, primarily from the IKM-1 Bjelimići firing position.

14. With regard to the Findings and Opinion produced by the forensic experts for the Defense for the accused Dreković, the Prosecution's position is that it is an

unlawful evidence considering that those forensic analyses were not conducted based on a Court's order. The Prosecution argues that forensic medicine expert Vedo Tuco mostly addressed in his Findings and Opinion the ballistic issues, which were not the subject of his forensic expertise. Specifically, the forensic expert only addressed the issue of the fired projectiles' effects, while the medical aspect of his Findings and Opinion was only based on abstractions and speculations.

15. The Prosecution also argues that the Findings and Opinion produced by the Defense's forensic expert in geodesy, Zijad Džananović, are incorrect and incomplete, namely that this forensic expert did not act in compliance with the given tasks. The Prosecutor argues that the deficiency of forensic expert Džananović's Findings and Opinion is primarily evident from the distance of the Gornji logor site (Upper Camp) in Kalinovik from the site of the disputed projectiles' landing, and the distance of the Upper Camp from the civilian facilities located in the Kalinovik downtown. According to the Prosecutor, the forensic expert tried to create a fabrication aimed at showing that the artillery fire had targeted the cadaster plots in Kalinovik as military targets, as well as to show that the barracks were located in the Kalinovik downtown, rather than at the distance of 1.5 km away from the urban zone of the Kalinovik municipality.

16. With regard to the forensic expertise conducted by military forensic expert Mustafa Polutak, the Prosecutor primarily argued that it was unprofessional, opposite to the presented evidence, and non-objective, particularly bearing in mind that this forensic expert had held the function of the Commander of the 4<sup>th</sup> Corps of the ARBiH since 16 August 1995, namely after the accused Dreković. The Prosecution further referred to the individual tasks of the referenced expertise, having highlighted that forensic expert Polutak drew the conclusions exceeding the framework of the tasks defined under the Order to conduct the forensic expertise.

17. Thus, the Prosecution argued that forensic expert Polutak did not establish the maneuver and the military combat deployment of the VRS formations in Kalinovik during the April-June 1995 period, but rather that he dealt with establishing the legitimate and lucrative artillery targets, all in order to be able to relieve the accused Dreković of responsibility.

18. The Prosecution further argued that forensic expert Polutak erroneously concluded that, at the critical period, Kalinovik was not within the zone of responsibility of the 4<sup>th</sup> Corps of the ARBiH. In relation to the issue of command over the Corps artillery group (KAG), the Prosecutor argued that the forensic expert tried in all possible manners to shift the responsibility to the IKM commanders and the military officers subordinated to them, although it is clear from the military theory and the military rules that the KAG is under the control and command of the 4<sup>th</sup> Corps Commander.

19. As to the forensic expert's task to show the accused's whereabouts and movement in May and June 1995, the Prosecutor argues that this task does not require any professional knowledge on the part of a forensic expert. In addition, the Prosecutor's view is that the issue of the accused's whereabouts and movement at the critical time is not so relevant to the establishment of his criminal responsibility. This is so specifically considering the conclusion ensuing from the presented evidence that the communication system had functioned perfectly at the critical period, that the accused had frequently visited the IKMs, and that, based on the regular combat reports forwarded to him via communication lines, he was informed about the status of his units and the enemy's combat deployment. According to the Prosecution, the fact that the accused Dreković had frequently visited the IKMs, particularly the IKM-1 Bjelimići, points to the conclusion that he was directly informed about the activities of his subordinated units, and that he had issued oral orders on the site.

20. In relation to forensic expert Mustafa Polutak's conclusions drawn with regard to the development of combat operations between the units of the 1<sup>st</sup> Corps of the ARBiH and the units of the VRS Herzegovina Corps during the period April-June 1995, and the relations between the 1<sup>st</sup> and the 4<sup>th</sup> Corps, the Prosecution argues that no piece of the presented evidence whatsoever correlated the shelling of the Kalinovik downtown with the units of the 1<sup>st</sup> Corps of the ARBiH.

21. In referring to forensic expert Polutak's conclusion about the position of the Command of the 4<sup>th</sup> Corps of the ARBiH on the application of the Geneva Conventions in the planning and execution of combat operations for the May-June 1995 period, the Prosecution indicated that the Attack Order and the Order to shell the Kalinovik downtown prove the opposite. According to the Prosecution, forensic expert Polutak's

evaluation of the Order to shell the Kalinovik downtown was arbitrary and not objective, all the more so because he unjustifiably claimed that the referenced Order never reached the IKM, namely that it was never executed.

22. In relation to the Findings and Opinion produced by ballistic forensic experts Berko Zečević and Jasmin Terzić, the Prosecution indicated that their conclusion, that the projectiles of a 130 mm gun which exploded in Kalinovik on 3 June 1995 had been fired from the firing position of the 1<sup>st</sup> Corps of the ARBiH in the village of Dejčići, is not corroborated with the presented evidence.

23. According to the Prosecution, the foregoing conclusion is ill-founded for several reasons. Primarily, the forensic expert could not have presented such a claim by using the standard of “beyond a doubt”, because this science is exact and requires that all the mathematical analyses match the established facts. The Prosecutor further argued that the presented evidence does not show that, at the critical time, the units of the 1<sup>st</sup> Corps of the ARBiH had indeed possessed the 130 mm caliber artillery weapons at their combat posts. According to the Prosecution, forensic expert Zečević claims tendentiously that the azimuth of the effect of the 130 mm projectile fired from the post of the 1<sup>st</sup> Corps of the ARBiH is, due to a ricochet, almost identical to the azimuth of the position of a 122 mm howitzer of the 4<sup>th</sup> Corps of the ARBiH.

24. The Prosecution referred to the experimental tests of a howitzer projectile’s blast effects, presented by forensic experts Zečević and Terzić in their Findings, arguing that the dynamic effects of a howitzer projectile differ from the static effects, and that in taking dynamic parameters the degree of destruction is much lesser than in the offered forensic experts’ experiment. Therefore, according to the Prosecution, the claims of the Defense’s forensic experts regarding the intensity of the blast effect and its destruction zone are ill-founded.

25. In view of all the foregoing, the Prosecution’s position is that the theories of the Defense for the accused Dreković were not proved. On the other hand, all Counts of the Indictment were proved, namely that the accused Dreković’s acts satisfied the underlying elements of the criminal offense at issue with direct intent. The Prosecution therefore moves the Court to impose on the accused an adequate sentence after finding him guilty.

## **2. Closing argument of the Defense for the accused Ramiz Drekočić**

26. In their closing argument, the Defense for the accused Ramiz Drekočić elaborated on the evidence they have presented, which in their opinion contests beyond a reasonable doubt the factual allegations from the individual Counts of the Indictment at issue, having also pointed to the unlawfulness and authenticity of certain pieces of evidence on which the Indictment is based.

27. In relation to the critical event described in Count 1 of the Indictment, the Defense indicated that there is no doubt that, on 26 May 1995, the accused was indeed present at the command post in Jablanica. However, it is disputable for the Defense that the Order on which the Prosecution based the accused's criminal responsibility was drafted and signed by the accused at the command post in Jablanica, that it was received at the IKM-1 by Commander Esad Ramić, and ultimately that the order was carried out.

28. Along this line, the Defense referred to the evidence given by witness Esad Ramić, Commander of the IKM-1 Bjelimići at the critical period. In his testimony given during the trial, the witness confirmed that he had never seen the Order of 26 May 1995 and that he had never acted upon that Order. The Defense's military forensic expert also confirmed the foregoing, having concluded that there is no document whatsoever confirming that the disputable Order was forwarded from the command post in Jablanica and that it was received at the IKM-1 Bjelimići. Specifically, the Order of 26 May 1995, instructing that fire should be open with five howitzer 122 mm projectiles on the Kalinovik downtown was not entered in either the War Diary kept at the IKM-1 Bjelimići, or the War Diary kept at the Command of the 4<sup>th</sup> Corps. In addition, Esad Ramić, Commander of the IKM-1, did not draft any order for artillery fire based on the disputable Order.

29. In addition, reports on combat operations of the units of the 4<sup>th</sup> Corps do not mention that the Order of 26 May 1995 was executed. In addition, it does not ensue from the combat reports made for the said day by the VRS units deployed in Kalinovik that the Kalinovik downtown was hit with five howitzer projectiles. According to the

Defense, all the foregoing points to the conclusion, beyond a reasonable doubt, that the disputable Order of 26 May 1995 was not executed.

30. The Defense also indicates that the combat report made by the 4<sup>th</sup> KAG at the IKM-1 in Bjelimići on 27 May 1995 (Prosecution's Exhibit T-14) is not a proof that the order at issue was indeed executed. Specifically, the referenced report indicates that, on 26 May 1995, a 122 mm howitzer had fired four projectiles at the target No. 110. The Defense, however, underlines that the target No. 110 is not related to the Kalinovik downtown, but rather to the military target of the 4<sup>th</sup> Corps, namely the howitzer combat position in Dubrave, which ensues from the supplemented tabular review of artillery fires of the 4<sup>th</sup> MAP.

31. In addition, the Defense also indicated that Exhibit T-174 shows that, on the critical day, the injured party M.T. sustained injuries caused by a NUS (non-exploded lethal device) at the Oglavak site, wherein there were no eye-witnesses, other than the injured party M.T., to the circumstances pertaining to the critical event.

32. The Defense also underlined that, after the projectile's explosion on the critical day and the related wounding of the injured party M.T. as argued by the Prosecution, no crime-scene investigation was conducted, no photo-documentation made of the crater caused by the projectile's explosion, no shell fragments/shrapnel found, there were no damaged facilities, nor any documented traces of explosions of the projectiles which had hit Kalinovik on the referenced day. For the foregoing reasons, ballistic forensic experts for the Prosecution did not make any forensic analysis of the critical event of 26 May 1995.

33. According to the Defense, all the foregoing, particularly the inconsistencies regarding the decisive facts, and the absence of any subjective relation between the accused and the critical event, require that the standard of *in dubio pro reo* be applied in favor of the accused Dreković.

34. With regard to the critical event alleged in Count 2 of the Indictment at issue, the Defense indicated that the Prosecution did not present any piece of evidence whatsoever proving that the accused Ramiz Dreković had indeed ordered the shelling of any civilian targets in Kalinovik on 3 June 1995. According to the Defense, such a conclusion cannot even be drawn based on the Report by the IKM-1 of 3 June 1995,

made by Esad Moro, KAG Commander. The Report noted that, on the referenced day, among other targets, the KAG units had also fired around Kalinovik. Along this line, the Defense primarily pointed to the conclusion drawn by the military forensic expert that, in such case, the subject of artillery fire were planned military targets, as well as that the 4<sup>th</sup> Corps Command was not at all notified of the referenced activity of the KAG.

35. According to the Defense, the foregoing points to the conclusion that, on the critical day, units of the 4<sup>th</sup> KAG had independently and of their own initiative fired at the planned military targets pursuant to the "Treskavica '95" artillery fire plan.

36. The Defense elaborated on the evidence questioning the manner, the place and the time of the injured parties' wounds described in Count 2 of the Indictment. Specifically, according to the Defense, the referenced evidence proves that the injured parties were victims of the shelling of the wider Kalinovik area at the time of mutual artillery attacks between the units of the VRS Herzegovina Corps and the units of the 1<sup>st</sup> Corps of the ARBiH. Along this line, the Defense pointed to the findings of the Defense's military forensic expert, Mustafa Polutak. The forensic expert concluded that, on 3 June 1995, at around 04:00 hrs, the joined units of the 1<sup>st</sup> Corps of the ARBiH had launched an offensive at the Treskavica mountain, that heavy fighting lasted through 21:00 hrs, as well as that, during the fighting, they also spent large quantities of the artillery ammunition, also fired at the targets in Kalinovik.

37. The Defense further pointed to the combat reports made by the VRS Herzegovina Corps VRS and the 1<sup>st</sup> Guard Motorized Brigade of the VRS for 3 June 1995. The referenced reports indicated that, on the referenced day, at around 09:30 hrs, four projectiles had landed in the wider Kalinovik area and caused the wounding of four children and the death of Stanislava Koprivica.

38. According to the Defense, that the injuries sustained by the victims I.K., M.T., D.N., J.B., D.M. and Stanislava Koprivica were not caused by shell explosions in the Kalinovik downtown, as alleged by the Prosecution, is confirmed by the Findings and Opinion produced by forensic expert Vedo Tuco. The forensic expert confirmed that all the injured parties would have certainly sustained lethal injuries had they indeed

been present near the landing site of a 122 mm howitzer projectile. Forensic experts Slobodan Janković and Berko Zečević have also confirmed the foregoing theory.

39. In addition to the foregoing facts, the Defense pointed to certain deficiencies related to the crime-scene investigation conducted by the relevant police authorities after the fact: no shrapnel was deposited after the crime-scene investigation; no video-recordings made in relation to the crime-scene investigation; and the Record on the crime scene-investigation was not signed by all the persons allegedly present during the investigation.

40. The Defense ultimately indicated that the factual description under Count 2 of the Indictment is untenable, namely that it remains unclarified which specific units of the 4<sup>th</sup> Corps of the ARBiH were directly subordinated to the accused Dreković, exactly who commanded over those units, from which location the artillery had fired, and by which projectiles' type and caliber.

41. The Defense indicated that the Prosecution did not examine any direct witness with regard to the circumstances pertaining to the event factually described in Count 3 of the Indictment. The Prosecution also did not clarify the decisive fact, namely it did not establish precisely the subjective identity of the person injured on 22 May 1995 by the projectile's explosion. Along this line, the Defense pointed to the Prosecution's Exhibits T-1a, T-7, T-180, T-181 and T-182 related to different persons. To this effect, the Defense also presented the theory that the injured party Ratko Đogić was not wounded on 22 May 1995, considering that Exhibit T-36 shows that only material damage was made during the shelling of Kalinovik on the referenced day.

42. The Defense also indicated that there were no shrapnel, craters or other traces of projectile explosions; no photo-documentation in relation to the crime-scene investigation conducted after the critical event; no evidence proving that the accused Dreković had indeed ordered the use of artillery on the referenced day, or that the artillery units of the 4<sup>th</sup> Corps had fired in the Kalinovik direction at the time. The Defense also highlighted that the Prosecution did not prove the positions from which Kalinovik had been shelled on 22 May 1995, with which type and caliber of projectiles.

43. The Defense's theory is that no artillery was opened at Kalinovik, as concluded in the Indictment, but rather that fights were ongoing in the area of Đoko's tower in the

direction of Kalinovik, and that combat operations in that direction were strictly carried out by the units of the 1<sup>st</sup> Corps of the ARBiH. The Defense corroborated the foregoing theory with Exhibits O-297, O-300, O-301, O-302, O-303, O-310, O-426, O-427, O-428 and O-429.

44. Further in their closing argument, the Defense addressed the control and command system over the artillery within the 4<sup>th</sup> Corps of the ARBiH. The Defense gave an analysis of the presented evidence from which it concluded that, during the “Treskavica 95” and “Borašnica 95” combat operations at the critical period, the commanders of the IKMs and the chief of artillery had independently issued orders to the artillery units for artillery attacks on the military targets existing at the time in the Kalinovik territory.

45. Along this line, the Defense particularly pointed to the Findings and Opinion produced by military forensic expert, Mustafa Polutak, from which it ensues that, during the “Treskavica 95” and “Borašnica 95” combat operations, the units deployed in the IKMs’ zones of responsibility, including the artillery units, were under the direct command of the commanders of the IKMs.

46. On the other hand, the Defense emphasizes that the manner of the artillery use and the system of command and control over the artillery are regulated by combat rules and instructions, and that the Command of the 4<sup>th</sup> Corps, headed by the accused Ramiz Dreković, had fully used them and acted in compliance with them. The foregoing has therefore excluded any subjective relations between the accused Dreković and the act of commission of the criminal offense at issue.

47. In their closing argument, the Defense referred to the Prosecution’s closing argument, indicating that most of the positions presented by the Prosecution regarding the evaluation and the relevance of the evidentiary substratum are incorrect, as well as factually and legally untenable. The Defense particularly underlined that, in the present criminal proceedings, the Prosecution did not prove that the accused Dreković had indeed ordered with intent the shelling of Kalinovik, while intending to violate international humanitarian law. The Defense referred to the standards established in the proceedings before the ICTY.

48. Considering the above presented arguments, the Defense moves the Court to acquit the accused Ramiz Dreković of the charges pursuant to Article 284 of the CPC BiH.

### **3. Closing argument of the accused Ramiz Dreković**

49. The accused Ramiz Dreković also briefly addressed the Court with his closing argument, having thereby tried to explain briefly his acts from the critical period.

50. The accused indicated that, during the war in BiH, he had performed the most responsible command duties; that during 1992 and 1993, he had performed the duties of the Commander of the 5<sup>th</sup> Corps, while during 1994 and 1995, he had performed the duties of the Commander of the 4<sup>th</sup> Corps. The accused indicates that he had performed his duties as a young but professionally qualified soldier, with the required qualified knowledge, fully aware of his responsibilities inherent in the duty of the Corps Commander. The accused underlined that, as the Corps Commander, he acted within the scope of his powers, in compliance with all the valid documents, instructions and regulations of the former JNA, in which manner he had also acted during the critical period, being aware of his conduct and everything he had done during combat operations.

51. Further in his address, the accused indicated that he asked his defense attorneys to pose open questions to the witnesses - members of the 4<sup>th</sup> Corps subordinated to him at the critical period, who had performed responsible duties at the IKM-1 Bjelimići. Those questions were related to the issue as to whether he had ever ordered opening of any non-selective fire from guns and howitzers, or fire without selected targets on the Serb population in the inhabited places of the Kalinovik municipality. The accused also referred to the disputable Order of 26 May 1995, indicating that none of the examined witnesses confirmed that such an order had ever been either received or executed at the IKM-1.

52. The accused particularly underlined that he had issued dozens of orders underlying in them that the Geneva regulations and international humanitarian war law had to be complied with, and that he had prohibited any retaliation. The accused indicated that he had acted identically also during the period when the towns and the

villages under the 4<sup>th</sup> Corps zone of responsibility had been under artillery fire of the VRS units.

53. The accused further indicated that the overall Command of the 4<sup>th</sup> Corps and all its bodies, chiefs of services and staffs, had participated in drafting the planned combat documents, which were delivered not only to the IKMs' commanders but rather to the other subordinated units of the 4<sup>th</sup> Corps. Considering that the zone of responsibility of the 4<sup>th</sup> Corps covered the surface of around 140 km, which is why a total of 3 IKMs were established. The accused underlined that he had transferred powers to the IKMs' commanders in order that he be able to efficiently follow-up and participate in control and command.

54. Along this line, the accused underlined that, based on the planned combat documents, he made responsible the commanders of the IKMs, their associates and the commanders of the units subordinated to them, having again emphasized the mandatory compliance with the Geneva regulations and the treatment of civilian population. The accused Dreković particularly emphasized that he has never ordered non-selective shelling of the Serb civilian population in Kalinovik, as well as that civilian targets were never defined in any document, but rather strictly military targets.

55. The accused ultimately indicated that the artillery groups within the zones of responsibility of the IKMs, including the IKM-1 Bjelimići, were under the command of the authorized IKMs' commanders, who had in practice executed and issued orders on the ground, pursuant to the planned combat documents.

56. In view of the foregoing, the accused indicated that the Prosecution's allegation that no projectile in the overall zone of responsibility of the 4<sup>th</sup> Corps of the ARBiH could have been fired without his personal approval, is incorrect.

### **III. PROCEDURAL DECISIONS**

#### **1. Decision to partly exclude the public from the main trial**

57. At the hearing held on 5 July 2021, with the consent of the parties and defense attorneys, the Panel closed the session for the public during the discussion as to

whether to grant protective measures to the Defense's witness during his testimony in the present criminal proceedings.

58. The Panel decided to exclude the public from the trial after hearing the parties and defense counsel. The Panel found that the reasons to do so in the present case were justified, namely that the requirements set forth in Article 235 of the CPC BiH were satisfied considering that it was necessary to do so for the purpose of protection of the interests of the witness at issue.

## **2. Decision to resume the main trial (Article 251(2) of the CPC BiH)**

59. Due to the expiry of a 30-day legal deadline between the hearings held on 11 June 2019 and 16 July 2019, 16 July 2019 and 27 August 2019, 10 March 2020 and 24 June 2020, 6 July 2020 and 3 September 2020, 15 February 2021 and 10 May 2021, 5 July 2021 and 25 August 2021, 19 January 2022 and 16 March 2022, 20 July 2022 and 14 September 2022, 14 September 2022 and 11 January 2023, and finally between 8 February 2023 and 15 March 2023, the Panel decided to recommence the main trial pursuant to Article 251(1) of the CPC BiH. Pursuant to Article 251(2) of the CPC BiH, with the consent of the parties and defense attorneys, the Court did not present the evidence again, but rather admitted all the previously presented evidence and used it in the resumed trial.

## **3. Exemptions from the direct presentation of evidence**

60. At the hearing held on 11 June 2019, the Court granted the Prosecution's motion to read out the statement given by witness Ratko Đogić at the State Investigation and Protection Agency, No. 16-06/1-04-2-214/16 on 1 March 2016<sup>1</sup>. At the hearing held on 1 October 2019, the Court granted the Prosecution's motion to read out the statement given by witness Milivoje Sladoje at the State Investigation and Protection Agency, No. 16-06/1-04-2/1080/16 on 27 September 2016<sup>2</sup>. The Court found that in those cases the requirements set forth in Article 273(2) of the CPC BiH were satisfied.

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<sup>1</sup> Prosecution's Exhibit T-1.

<sup>2</sup> Prosecution's Exhibit T-2a.

61. The referenced legal provision provides that: "Records of statements given during the investigative phase and if judge or the Panel of judges so decides, may be read out or used as evidence at the 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".

62. At the referenced hearings, the Prosecution submitted the Death Certificates concerning Ratko Đogić<sup>3</sup> and Milivoje Sladoje<sup>4</sup>, to which evidence the Defense for the accused made no objections, whereupon the statements given by the referenced witnesses during the investigation were read out.

63. Given the foregoing exemptions from the direct presentation of evidence, which the Court makes when it is not possible to directly examine the witnesses at the main trial for the legally prescribed reasons, after reading out witness Ratko Đogić's and witness Milivoje Sladoje's statements, the Panel gave the adverse party a possibility to indicate the questions it would have posed to those witnesses had they been examined directly.

#### **4. WITHDRAWAL OF THE EVIDENTIARY PROPOSALS**

64. At the hearing held on 3 September 2020, the Prosecutor abandoned the examination of the following witnesses: Todor Avram, Saša Kovačević, Slobodan Avram, Miloš Pržulj, Kosta Ognjetović, Pero Stanić, Slavko Višnjevac, Dragan Elez, Željko Elez, Vladimir Nišić, Petar Gočević, Momčilo Veletić, Ramiz Bašić, Esmir Kruščica, Alen Halak, Ramiz Tvrtković, Suad Crnčalo, Damir Husković, Hajrudin Pašić, Omer Hasić, Midhat Spahić, Hajdar Tinjak, Mladen Pupić and Amir Hadžić.<sup>5</sup>

65. At the hearing held on 15 February 2021, the Prosecution abandoned adducing the following documentary evidence: Daily Combat Report, the 4<sup>th</sup> Corps of the ARBiH, 4<sup>th</sup> MAP, No. 02-22/4-05/95 of 22 May 1995, 02-03/4-05/95 of 23 May 1995, Daily Combat Report, the 4<sup>th</sup> Corps of the ARBiH, 4<sup>th</sup> MAP, No. 02-23/1-05/95 of 23 May 1995, Daily Combat Report, the 4<sup>th</sup> Corps of the ARBiH, 4<sup>th</sup> MAP, No. 02-24/4-05/95 of 24 May 1995, Daily Combat Report, the 4<sup>th</sup> Corps of the ARBiH, 4<sup>th</sup> MAP, No. 02-

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<sup>3</sup> Death Certificate concerning Ratko Đogić, Prosecution's Exhibit T-1a.

<sup>4</sup> Death Certificate concerning Milivoje Sladoje, Prosecution's Exhibit T-2.

<sup>5</sup> Examination of the referenced witnesses was proposed under the Submission of 11 March 2019.

24/2-05/95 of 24 May 1995, Daily Combat Report, the 4<sup>th</sup> Corps of the ARBiH, 4<sup>th</sup> MAP, No. 02-26/2-05/95 of 26 May 1995, Daily Combat Report, the 4<sup>th</sup> Corps of the ARBiH, 4<sup>th</sup> MAP, No. 02-26/1-05/95 of 26 May 1995, Daily Combat Report, the 4<sup>th</sup> Corps of the ARBiH, 4<sup>th</sup> MAP, No. 02-27-05/95 of 27 May 1995, Daily Combat Report, the 4<sup>th</sup> Corps of the ARBiH, 4<sup>th</sup> MAP, No. 02-27/1-05/95 of 27 May 1995, Daily Combat Report, the 4<sup>th</sup> Corps of the ARBiH, 4<sup>th</sup> MAP, No. 02-02/1-06/95 of 2 June 1995, Daily Combat Report, the 4<sup>th</sup> Corps of the ARBiH, 4<sup>th</sup> MAP, No. 02-03/3-06/95 of 3 June 1995, Daily Combat Report, the 4<sup>th</sup> Corps of the ARBiH, 4<sup>th</sup> MAP, No. 02-04/1-06/95 of 4 June 1995, Combat Report, 4<sup>th</sup> Corps ARBiH, Command of the 4<sup>th</sup> MAP, No. 02-05/06/95-01 of 5 June 1995, Daily Combat Report, the 4<sup>th</sup> Corps of the ARBiH, 4<sup>th</sup> MAP, No. 02-07/1-06/95 of 7 June 1995, Daily Combat Report, the 4<sup>th</sup> Corps of the ARBiH, Command of the 4<sup>th</sup> MAP, No. 02-07/2-06/95 of 7 June 1995, Daily Combat Report, the 4<sup>th</sup> Corps of the ARBiH, 4<sup>th</sup> MAP, No. 02-07/3-06/95 of 7 June 1995, Extraordinary Combat Report, the 4<sup>th</sup> Corps of the ARBiH, Command of the 4<sup>th</sup> MAP, SP No. 02/-8/3-06/95 of 8 June 1995, Combat Report, the 4<sup>th</sup> Corps of the ARBiH, Command of the 4<sup>th</sup> MAP, No. 02-08/1-06/95 of 8 June 1995, Daily Combat Report, the 4<sup>th</sup> Corps of the ARBiH, 4<sup>th</sup> MAP, No. 02-08/2-06/95 of 8 June 1995, Daily Combat Report, the 4<sup>th</sup> Corps of the ARBiH, 4<sup>th</sup> MAP, No. 02-08/4-06/95 of 8 June 1995, Combat Report, 4<sup>th</sup> Corps ARBiH, 4<sup>th</sup> MAP, No. 02-12/1-06/95 of 12 June 1995, Kalinovik Municipality, Death Certificate concerning Vera Aleksandrov, No. 04-202-1-63/16 of 16 March 2016, Citizenship Certificate from Serbia concerning Ramiz Dreković, MK Ribarići – Municipal Administration Tutin of 27 October 2016, Serbia, Birth Certificate concerning Ramiz Dreković of 27 October 2016, Certificate confirming that Ramiz Dreković holds the BiH citizenship, No. ... of 15 September 2016, Municipality Center, Birth Certificate concerning Ramiz Dreković, No. ... of 15 September 2016, MAC, Map of Bjelimići with and without the status of mines, MAC, Map of Treskavica with and without the status of mines, Map of Bjelašnica East (525-4-1), Ilovice 525-4-2, Zelomici (525-4-3) and Kalinovik (525-4-4), Orto-photo plan for the Kalinovik area, sheets Nos. 6N13-36, 6N13-37, 6N13-46 and 6N13-47.

66. At the hearing held on 7 June 2021, the Defense for the accused Ramiz Dreković abandoned the examination of witness Enes Kovačević<sup>6</sup>, while at the hearing

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<sup>6</sup> Proposed under the Defense's submission of 11 May 2021.

held on 10 November 2021, the Defense abandoned the examination of witnesses Ramiz Ćatić, Šefko Hodžić, Zakir Oković and Muharem Bajramović.<sup>7</sup>

67. The Court accepted the withdrawals of the referenced evidence proposed for presentation by the parties to the proceedings, taking into account that the parties are entitled to decide which evidence to propose or withdraw.

68. Pursuant to Article 261(2)c) of the CPC BiH, the Prosecutor proposed presentation of rebuttal evidence at the hearing held on 6 July 2022. Specifically, the Prosecutor proposed that a precise cadaster sketch or plan of the Kalinovik urban area with the barracks, namely the Gornji and Donji camp, be presented, that witness Dragan Cerovina be examined, and that the crime-scene in Kalinovik be visited in the presence of both the injured party D.A. (D.N.) and witness Rajko Višnjevac, who had conducted the on-site investigation at the critical time.

69. At the referenced hearing, the Court granted the Prosecution's motion to adduce as a rebuttal evidence the cadaster sketch of the Kalinovik urban area and to examine witness Dragan Cerovina. As to a visit to the crime-scene in Kalinovik, the Court instructed the Prosecution to specify the motion in this part by indicating the precise locations in Kalinovik which were to be visited.

70. Having acted in compliance with the Court's instructions, on 21 July 2022, the Prosecution submitted a consolidated motion to visit the site at issue, having precisely indicated the locations in Kalinovik, whose visit was relevant to the present criminal proceedings, specifically: the Upper and the Lower Camp (Gornji and Donji kamp) - the VRS Barracks in Kalinovik; the so called Gradina site, where the projectile landed on 22 May 1995, 100 m away from the *Ljutica Bogdan* Elementary School in Kalinovik, as well as the projectile's landing site in the place of Bogdanovo, near the house where the injured party Ratko Đogić had resided at the critical period; the projectile's landing site on 3 June 1995 in the vicinity of the Kalinovik Health Center, at the address Omladinska Str., the site in front of a store in the Karađorđeva Str., as well as on the location between the housing facilities in the 9<sup>th</sup> January Str; a bridge over the Tatinac creek, at the Kalinovik-Nevesinje regional road R433.

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<sup>7</sup> Proposed under the Defense's submission of 11 May 2021.

71. In commenting on the referenced Prosecution's specified proposal, the accused's Defense indicated in their submission of 26 July 2022 that the Prosecution did not explain in their proposal the circumstances due to which they requested a visit to the crime scene, namely why such a visit is relevant to the present criminal proceedings. According to the Defense, the space and the location of the VRS barracks in Kalinovik are to be proved by way of cadaster records, in addition to explanations provided by qualified persons, rather than by visiting the site at issue. With regard to visiting the locations of the alleged projectiles' landing sites, the Defense indicated that, in the hitherto course of the proceedings, many witnesses and forensic experts were examined about those circumstances, in addition to the large volume of the tendered physical evidence, which is why visiting those locations is completely irrelevant and insignificant. The Defense further objected to the proposal that the three proposed persons be present during a site-visit, considering that such a site was neither an act of crime-scene investigation nor a reconstruction of the event pursuant to Articles 92 and 93 of the CPC BiH.

72. At the hearing held on 14 September 2022, the Court dismissed the Prosecution's proposal to visit the sites in Kalinovik, having indicated that it was not necessary for a further clarification of the state of facts. This is so because numerous witnesses and the forensic experts were examined during the proceedings and a large body of physical evidence presented in relation to the circumstances due to which the referenced visit to the sites at issue was proposed by the Prosecution, namely with regard to the precise determination of the locations relevant to the present criminal proceedings (the location of the VRS barracks in Kalinovik, the sites in Kalinovik where the projectiles fell on 22 May, 26 May and 3 June 1995), which is why the acceptance of the Prosecution's proposal to visit the site would cause unnecessary delay of the trial in the present criminal case.

**5. THE COURT'S DECISION PURSUANT TO THE PROPOSAL OF THE ACCUSED'S DEFENSE**  
**TO ORDER CONDUCT OF EXPERTISE**

73. By its submission of 10 May 2021, the accused's Defense moved the Court to issue an order that forensic analyses be conducted by Berko Zečević and Jasmin

Terzić, ballistic forensic experts, Amir Šahinović, forensic expert in geodesy, and Mustafa Polutak and Mirsad Ćatić, military forensic experts, having clearly specified the subjects of those forensic analyses.

74. At the hearing held on 5 July 2021, the Court instructed the accused's defense counsel to engage the proposed forensic experts at the Defense's expense pursuant to Article 269 of the CPC BiH.

75. Having acted in compliance with the referenced legal provision, the accused Dreković's Defense hired the following forensic experts: Zijad Džananović and Ahmed Hadžić, forensic experts in geodesy; Vedo Tuco, forensic expert in medicine; Mustafa Polutak, military forensic expert; and Berko Zečević and Jasmin Terzić, forensic experts in ballistics. The referenced forensic experts conducted their respective expertise analyses, produced the related findings and opinions, and ultimately presented them orally at the main trial<sup>8</sup>, whereupon those findings and opinions were tendered in the case record as the evidence for the Defense.<sup>9</sup>

76. In his closing argument, the Prosecutor objected to the lawfulness of the referenced findings and opinion produced by the forensic experts hired by the Defense. The Prosecutor argued that they were produced without any Court's order for the conduct of those expert analyses pursuant to Article 96(1) of the CPC BiH, which renders the referenced evidence unlawful. The Court found that the referenced objections to the lawfulness of evidence are ill-founded considering that Article 269(1) of the CPC BiH clearly provides that the parties, defense counsel and the Court can hire forensic experts.

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<sup>8</sup> Forensic expert Zijad Džananović was examined at the hearing held on 22 December 2021, forensic expert Vedo Tuco at the hearing held on 19 January 2022, forensic expert Mustafa Polutak at the hearings held on 16 March, 30 March and 13 April 2022, and forensic experts Berko Zečević and Jasmin Terzić at the hearings held on 27 April and 18 May 2022.

<sup>9</sup> O-514: Findings and Opinion produced by forensic expert in geodesy, Zijad Džananović, of 6 October 2021; O-515: Findings and Opinion produced by forensic expert in medicine, Prof. Dr. Vedo Tuco, of 3 January 2022; O-516: Findings and Opinion produced by military forensic expert, Mustafa Polutak, January 2022; O-517: Findings and Opinion produced by ballistic forensic experts, Prof. Dr. Berko Zečević and Dr. Jasmin Terzić of 27 December 2021.

**6. ANNOUNCEMENT OF THE JUDGMENT – ARTICLE 286(1) (THE TIME AND THE PLACE OF THE JUDGMENT’S ANNOUNCEMENT)**

77. Article 286(1) of the CPC BiH provides that: *“After the delivery of the judgment, the Court shall announce the judgment immediately. If the Court is unable to announce the judgment the same day the trial was completed, the judge may postpone the announcement of the judgment for a maximum of three (3) days and shall set the date and place when the judgment shall be announced”*.

78. At the hearing held on 15 March 2023, the accused’s Defense completed the presentation of their closing argument. However, considering that the Court was not able to announce the judgment at the same hearing, the judgment’s announcement was postponed. Along this line, with the consent of the parties and defense counsel, the judgment was announced at the hearing held on 17 May 2023, because the Panel was not able to deliver and announce the judgment within the legally prescribed deadline due to the extensive and complex nature of the case, as well as due to the obligations of the Panel’s members in other cases. The Panel notes that the parties to the proceedings and the accused’s defense counsel made no objections to the referenced Panel’s decision.

79. The foregoing Panel’s decision was in compliance with the Court’s case law in war crimes cases.<sup>10</sup>

**IV. STANDARDS OF PROOF**

80. In examining and weighing the evidence presented at the trial, the Panel was guided by some of the fundamental principles laid down in the CPC BiH, the European Convention on Human Rights (ECHR) and the case law established by the ICTY, the International Criminal Tribunal for Rwanda (ICTR) and the European Court of Human Rights (ECtHR), to be indicated further below.

81. The Panel primarily took into account that the purpose of any trial proceedings is to ensure that no innocent person be convicted, and that the perpetrator of the

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<sup>10</sup>See, e.g., the final judgments in the cases of Albina Terzić (S1 1 K 005665 11 krl), Jasko Gazdić (S 1 1 K 005718 11 krl), Srećko Aćimović (S1 1 K 020200 16 Kri) and others.

criminal offense receive a criminal sanction pursuant to the requirements set forth in the CC BiH in the legally prescribed proceedings (Article 2(1) of the CPC BiH).

82. Along this line, Article 3(1) of the CPC BiH provides that a person shall be considered innocent of a crime until guilt has been established by a final judgment. Procedural presumption of innocence is the so-called rebuttable presumption (*praesumptio iuris tantum*) taken to be true unless proven otherwise. As a result of this presumption, an accused is relieved of the burden of proving his/her innocence. The burden of proving the opposite of the presumption of innocence falls on the prosecution. Presumption of innocence pertains not only to the guilt of an accused but also to other elements of a crime that are interrelated (act of perpetration, unlawfulness or punishability).

83. It is taken, as confirmed by judgments of the ECtHR, that the presumption of innocence has, *inter alia*, the following consequences:

- (i) an accused is not required to prove his/her innocence and the burden of proof is on the opposing party, namely prosecutor, and
- (ii) a court is bound to render an acquittal not only when it is satisfied that the accused is innocent but also in a situation involving a reasonable doubt.

84. One of the immediate consequences of the presumption of innocence is an express statutory provision contained in Article 3(2) of the CPC BiH providing “a doubt with respect to the existence of facts constituting elements of a criminal offence or on which application of particular provisions of criminal legislation depends shall be decided by the Court with a judgment and in a manner that is the most favorable for accused.”

85. The subject under discussion is the principle of *in dubio pro reo* or deciding in favor of an accused. A court may on the basis of evidence assessment find that a fact has been established if it is satisfied that that fact exists, the fact must ensue from the evidence presented at trial and the trial panel must not have any doubts in that regard. In this connection, all the facts that go to the detriment (*in peius*) of an accused must be established with absolute certainty, meaning they must be proved. Otherwise, they do not exist. All the facts that are in favor (*in favorem*) of an accused exist when their existence is likely (meaning they have not been established with certainty). If upon a

conscientious assessment of pieces of evidence *“individually and in combination with other evidence”* doubts cannot be removed, the standard from the cited article requires that a court issues a decision that is the most favorable to the accused.

86. The result of application of the principle of *in dubio pro reo* is always a judgment *“in favor of an accused”*, which, in case of doubt about legally relevant facts envisaged in substantive criminal law, includes not only a more lenient punishment when the guilt has been established but also in acquittal in cases in which a doubt as to whether or not the accused committed the crime charged was not clarified during the trial.

87. Article 284(c) of the CPC BiH - *„if it has not been proved that the accused committed the criminal offense charged“* – is relevant in this respect, referring not only to the cases in which the prosecution did not present any evidence in support of the charge but also the cases in which evidence was presented but was deemed insufficient by the court upon assessment thereof to be relied on in making findings beyond doubt that the facts stated in the charge exist.

88. In line with the foregoing, when evaluating the evidence, the Panel also took account of the standard of proof *“beyond a reasonable doubt”*, established in the case law as a requirement for imposition of a sentence of conviction. Pursuant to the generally recognized position, evidence beyond a reasonable doubt is evidence base on which it can be reliably found that there is the largest extent of likelihood that the accused indeed committed the criminal offense.

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

90. The Panel has considered and evaluated all the evidence presented at the main trial, individually and in combination, pursuant to Article 281 of the CPC BiH, but it will indicate further below only the evidence relevant to adjudication, and explain and present only the findings related to the facts of essential relevance to the Court’s decision.

91. The Panel further recalls Article 15 CPC BiH by which it was guided and which includes one of the fundamental principles of the criminal legislation – the principle of

free evaluation of evidence, which is restricted only by the principle of lawfulness of evidence. This means that evaluation of evidence is free from any formal legal rules defining the value of individual evidence. By establishing this principle, the legislator gave the necessary freedom to the judicial authorities and showed trust in the judge's ability to adjudicate.

92. The Panel also took account of the jurisprudence of the ECtHR, pursuant to which the Court, despite its duty to provide reasons for its decision, need not address in detail each argument presented by parties to the proceedings.

93. In addition, the Panel took into account the position of the ICTY's Appeals Chamber in *Kvočka et al.*, namely that it is in the discretion of the Trial Chamber as to which legal arguments to address. With regard to the factual findings, the Trial Chamber is required only to make findings of those facts, which are essential to the determination of guilt on a particular count. It is not necessary to refer to the testimony of every witness or every piece of evidence on the trial record.

94. Article 6(1) of the Convention imposes on all courts an obligation to "*indicate in a sufficiently clear manner the grounds on which their decision is based*". Despite its recognition of the primacy of national judicial authorities in evaluating what is relevant and acceptable, this provision imposes on national courts the obligation to examine adequately submissions, arguments and evidence submitted by the parties. In view of the foregoing, courts must consider and remove all significant inconsistencies in the evidence of the parties to the proceedings, indicate if any of the challenged evidence is inadmissible, and, if so, indicate on what ground.

95. In evaluating the examined witnesses' evidence, the Panel made efforts to consider it in whole, taking account of both the substance of the very evidence and the witnesses' stance and conduct while giving evidence. Along this line, the Panel also took account of the ICTY's jurisprudence and the position taken by its Appeals Chamber in *Nahimana et al.*, wherein the Appeals Chamber recalls that: "*The Trial Chamber has full discretion in weighing which weight and reliability to attribute to a witness's evidence. The Trial Chamber must also take account of the relevant factors depending on the concrete case, including the witness's conduct in the courtroom, his role in the events at issue, plausibility and clarity of his evidence, the issue as to are*

*there any contradictions and inconsistencies in his successive statements or between his evidence and the other evidence, examples of false testimony, motives to give false evidence, and the witness's responses during the cross-examination."*

96. The Panel was also mindful of the fact that the reliability of a witness's evidence depends on his knowledge about the facts, but also that his reliability could be affected to a large extent by the elapsed time, vagaries of the human perception, and the traumatic nature of the very event he/she testifies. Inconsistencies in the witness's evidence do not mean, in and out of themselves, that the Trial Panel acting reasonably must dismiss that evidence as unreliable. Similarly, the factors such as the period between the event and the testimony, possible influences by third parties, other inconsistencies, or stressful circumstances at the time of the critical event do not automatically exclude a possibility that the Panel will rely on such evidence. Concretely, the Panel has compared the facts about certain witness testifies with the facts established by the other witnesses and the documentary evidence in order to establish whether his claims were corroborated or contested by the other evidence in the present case.

97. In evaluating the probative strength of the examined witnesses' evidence, the Panel addressed the inconsistencies in the witnesses' evidence given at the main trial and their statements given at the earlier stages of the proceedings, as well as the differences in their statements on certain facts, in different time and before different authorities, as well as the explanations of the reasons provided at the main trial for those differences. The Panel also analyzed and evaluated the probative value of each evidence individually, and in combination with the other evidence, and thereupon decided on its reliability, which will be in more detail explained further in the judgment's reasoning.

98. The Panel also reviewed each piece of the tendered documentary evidence in order to adjudicate on its reliability and probative value. However, the Panel will not refer equally to each evidence, but it will only explain the findings of facts relevant to the establishment of the accused's responsibility.

## V. FINDINGS OF THE PANEL

### A. GENERAL ELEMENTS OF THE CRIMINAL OFFENSE OF WAR CRIMES AGAINST CIVILIAN POPULATION UNDER ARTICLE 142(1) OF THE CC SFRY

99. In the manner specified in the operative part of the present Judgment, the accused Ramiz Dreković has been acquitted of the charges that he had committed the criminal offense War Crimes against Civilian Population under Article 142(1) of the CC SFRY.

100. The referenced provision of substantive law reads as follows:

*„Whoever in violation of rules of international law effective at the time of war, armed conflict or occupation, orders that civilian population be subject to killing, torture, inhuman treatment, biological experiments, immense suffering or violation of bodily integrity or health; dislocation or displacement or forcible conversion to another nationality or religion; forcible prostitution or rape; application of measures of intimidation and terror, taking hostages, imposing collective punishment, unlawful bringing in concentration camps and other illegal arrests and detention, deprivation of rights to fair and impartial trial; forcible service in the armed forces of enemy's army or in its intelligence service or administration; forcible labor, starvation of the population, property confiscation, pillaging, illegal and self-willed destruction and stealing on large scale of a property that is not justified by military needs, taking an illegal and disproportionate contribution or requisition, devaluation of domestic currency or the unlawful issuance of currency, or who commits one of the foregoing acts, shall be punished by imprisonment for not less than five years or by the death penalty.“*

101. Accordingly, the underlying elements of the criminal offense of War Crimes against Civilian Population under Article 142 of the adopted CC SFRY, namely its so called *chapeau* elements, which must be proved in each concrete case, are as follows:

1. the perpetrator's act must be committed in contravention of the rules of international law;
2. violations must be made in the time of war, armed conflict or occupation;

3. there must be a nexus between the perpetrator's act and the war, armed conflict or corruption;
4. the perpetrator must order or commit the offense.

102. However, considering that it was not found *beyond a reasonable doubt* following the analysis and evaluation of the presented evidentiary documents, that the accused Ramiz Dreković had indeed committed the criminal offense charged against him under the Indictment, the Panel will not address in more detail the existence of the underlying elements of the criminal offense at issue. The Panel will rather refer further below to the individual charges and present its own findings and evaluations along this line.

**B. EVALUATION OF THE PRESENTED EVIDENCE – REASONS TO DELIVER THE ACQUITTING JUDGMENT**

103. The Prosecutor's Office charged the accused Ramiz Dreković that, during the state of war and an armed conflict in Bosnia and Herzegovina between the Army of the RBiH and the Army of Republika Srpska, as the Commander of the 4<sup>th</sup> Corps of the ARBiH, he acted in contravention of international humanitarian law<sup>11</sup> in as much as, during the period between 21 May 1995 and 7 June 1995, he had ordered an attack against the Serb majority population of Kalinovik, having ordered the artillery units of the 4<sup>th</sup> Corps of the ARBiH subordinated to him and deployed in the wider area of Bjelimići, Konjic municipality, to attack the civilian population from guns caliber 130 mm and howitzers caliber 105 mm, 122 mm and 155 mm, without selecting targets, by shelling the area of the inhabited place of Kalinovik, with the aim to cause fear and horror among the civilian population of Kalinovik (terror), in compliance with which orders members of the artillery units of the 4<sup>th</sup> Corps of the ARBiH subordinated to him acted, having fired artillery projectiles of enormous destructive power on the territory of the inhabited place of Kalinovik, as a result of which the injured party Stanislava

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<sup>11</sup> As well as in violation of Article 3 of the IV Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949, Articles 51, 57 and 85 of Protocol I additional to the Geneva Conventions of 12 August 1949 relative to the Protection of Victims of International Armed Conflicts and Article 13 of Protocol II additional to the Geneva Conventions of 12 August 1949 relative to the Protection of Victims of Non-International Conflicts.

Koprivica was killed, and the injured parties M.T., J.B., D.N., I.K., D.M., M.T. and Ratko Đogo wounded.

104. The Panel will primarily refer to the general findings of facts indisputably ensuing from the presented evidence, which are related to the accused's status, the organizational structure of the 4<sup>th</sup> Corps of the ARBiH, and the combat operations in which the military units of this Corps had participated.

### **ORGANIZATIONAL AND FORMATIONAL STRUCTURE** **OF THE 4<sup>th</sup> CORPS OF THE ARBIH**

105. The 4<sup>th</sup> Corps of the ARBiH was one of the seven Corps active during the war in Bosnia and Herzegovina within the Army RBiH. It was established on 17 November 1992 pursuant to an order issued by Sefer Halilović, Chief of the Supreme Command Staff. Its seat was located in Mostar, and Arif Pašalić was appointed to the duties of the Corps Commander. The Corps joined the units of the BiH Territorial Defense and some voluntary units which had operated until its establishment in the wider territory of the Neretva river valley. The zone of responsibility of the 4<sup>th</sup> Corps included the following municipalities: Mostar, Konjic, Jablanica, Nevesinje, Stolac and Čapljina.<sup>12</sup>

106. In May and June 1995, the 4<sup>th</sup> Corps of the ARBiH was led by the accused Ramiz Dreković<sup>13</sup>, while the basic command post was located in Jablanica, with the forward command posts (IKMs) formed in the areas of Bjelimići, Zlatar near Konjic,

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<sup>12</sup> Findings and Opinion produced by military forensic expert, Mladen Marinković, December 2018, adduced as the Prosecution's Exhibit T-19.

<sup>13</sup> Prosecution's Exhibit T-184: Federation Ministry for the Issues of Veterans and Disabled Veterans of the Defense-Liberation War - Personnel file of Ramiz Dreković, copy II and III (VOB2 and VOB3) and Personnel file of officer Ramiz Dreković; Exhibit T-185: Letter of the BiH Defense Ministry, No. P-T-13-04-1-48-1/18 of 14 November 2018 with the attachments: two VOB 8 excerpts for Ramiz Dreković (Staff of the 5.K. VF: No.1, indicating Ramiz Dreković and VJ5024 and the Command of the 4th Corps with the Staff units – Ramiz Dreković indicated under No. 373) and the List of military persons with the General Army Main Staff with Ramiz Dreković indicated under No. 90.

and Ledenice, in the wider area of Mostar<sup>14</sup>. During the critical period, the forward command post in Bjelimići was marked as IKM-1.<sup>15</sup>

107. The following units formed a part of the 4<sup>th</sup> Corps of the ARBiH: the 441<sup>st</sup> Famous Mountain Brigade, the 442<sup>nd</sup> Light Infantry Brigade, the 443<sup>rd</sup> Mountain Brigade, the 444<sup>th</sup> Mountain Brigade, the 445<sup>th</sup> Mountain Brigade, the 446<sup>th</sup> Light Brigade, the 447<sup>th</sup> Liberation Brigade, the 448<sup>th</sup> Liberation Brigade, the 449<sup>th</sup> East-Herzegovina Mountain Brigade, the 450<sup>th</sup> Light Brigade, the 4<sup>th</sup> Muslim Light Brigade, the 4<sup>th</sup> Mixed Artillery Regiment (4<sup>th</sup> MAP), the 4<sup>th</sup> Light Artillery-Rocket Division PVO (4<sup>th</sup> Light PVO), the 4<sup>th</sup> Sabotage-Reconnaissance Battalion (4<sup>th</sup> SRB), the 4<sup>th</sup> Engineering Battalion (4<sup>th</sup> Eng.B), and the 4<sup>th</sup> Logistics Battalion (4<sup>th</sup> Log.B.).<sup>16</sup>

108. The 4<sup>th</sup> Mixed Artillery Regiment comprised the 105 mm howitzer battery (4 weapons), the 128 mm LRV platoon (2 weapons), the 107 mm LRV platoon (2 weapons), the 76 mm gun battery „ZIS“ (6 weapons), the 122 mm platoon howitzer (3 weapons) and a mixed platoon comprised of a 130 mm gun and a 152 mm howitzer gun. At the critical time, Zlatko Bećović<sup>17</sup> was the Commander of the Mixed Artillery Regiment.

109. Witness Nedim Hodo, who had at the critical period performed the duty of the Chief of Artillery of the 4<sup>th</sup> Corps, stated that the 4<sup>th</sup> MAP was a tactical artillery unit, which would change its positions in defensive and offensive operations when required, depending on the situation on the ground.

110. Pursuant to a Decision of the 4<sup>th</sup> Corps Commander, the Corps Artillery Group (the 4<sup>th</sup> KAG) was formed from within the composition of the 4<sup>th</sup> MAP. The military forensic expert for the Prosecution, Mladen Marinković, explained that an artillery group of the Corps is usually being formed of the formation and the joined artillery units armed with weapons of a larger range and caliber; that, in principle, it comprises 2-4 divisions, and that it is intended for combat against hostile artillery and the enemy

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<sup>14</sup> Findings and Opinion produced by military forensic expert, Mustafa Polutak, adduced as the Defense's Exhibit O-516.

<sup>15</sup> Defense's Exhibit O-258: supplemented order of communications, Command of the 4th Corps, Communications Sector, str. conf. No. 02/2-5-1821, received by the Command of the 4th Mixed Artillery Regiment, No. 02-2213/95 of 11 May 1995.

<sup>16</sup> Prosecution's Exhibit T-19 and Defense's Exhibit O-516.

<sup>17</sup> Prosecution's Exhibit. T-19.

forces deployed deeper on the ground (reserves) and for fire support at the sites of combat operations.<sup>18</sup>

111. The Defense's witness Zlatko Bećović, Commander of the 4<sup>th</sup> MAP at the critical period, testified at the main trial, indicating that the 4<sup>th</sup> KAG had been deployed in three artillery groups at the critical period, one of which was located in the Bjelimići area with its commander Esad Moro.

112. That the artillery weapons of the 4<sup>th</sup> Corps had been stationed in the Bjelimići area was also confirmed by witnesses Esad Ramić, Hamid Selimović, Nedim Hodo, Esad Moro, Edin Čajić, Mujo Šubara, who, as members of the 4<sup>th</sup> Corps at the critical time, had been deployed at the IKM-1 in Bjelimići.

### **COMBAT OPERATIONS OF THE 4<sup>TH</sup> CORPS OF THE ARBiH IN MAY AND JUNE 1995, THE "TRESKAVICA 95" AND "BORAŠNICA 95" MILITARY OPERATIONS**

113. The Panel holds that the presented evidence shows beyond a reasonable doubt that, in May and June 1995, the units within the 4<sup>th</sup> Corps of the ARBiH were engaged for the purpose of preparation, organization and execution of the "Treskavica 95" and "Borašnica 95" military combat operations. The commands and the units which participated in the operations, the areas of their deployment, the tasks in the planning and execution of the operations were precisely indicated in the "Treskavica 95" Attack Order, op. No. 02-1753/2, No. DBD No. 33/43-1 of 8 May 1995<sup>19</sup>, and the "Borašnica 95" Attack Order, op. No. 02-1754-2, DBD No. 33/62-1 of 8 May 1995.<sup>20</sup>

114. It is also indisputable for the Panel, as it ensues from numerous consistent pieces of physical evidence and the testimonials that, during the execution of the referenced military operations at the relevant period, heavy fights with the VRS units were ongoing within the zone of responsibility of the 4<sup>th</sup> Corps, which is when artillery weapons were used by the 4<sup>th</sup> Corps units, whose firing positions at the time also included the Bjelimići territory.

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<sup>18</sup> Prosecution's Exhibit T-19.

<sup>19</sup> Prosecution's Exhibit T-40.

<sup>20</sup> Prosecution's Exhibit T-41.

115. It indisputably ensues from the presented documentary evidence<sup>21</sup> that the following artillery weapons of the 4<sup>th</sup> KAG were deployed at the firing position No. 1 in the Bjelimići area: howitzer - 105 mm – 2 weapons, light rocket launcher 128 mm – 2 weapons, howitzer - 122 mm – 1 weapon, and a 76 mm gun („ZIS“) – 2 pcs. The foregoing was also confirmed by Prosecution’s witness Esad Moro, Commander of the 4<sup>th</sup> KAG deployed in Bjelimići at the critical time.

116. With regard to the gun caliber 130 mm, the presented evidence shows that, during the execution of the “Treskavica 95“ and “Borašnica 95” operations in May and June 1995, the artillery units of the 4<sup>th</sup> Corps possessed a 130 mm gun engaged at the firing position No. 3 in the Delić Polje area.<sup>22</sup>

117. It was noted in the artillery order for the “Treskavica 95” operation of the 4<sup>th</sup> Corps Command e, Op. br. 02-1753/10, received at the Command of the 4<sup>th</sup> Logistics Base, No. DBD No. 33/50-1 of 8 May 1995<sup>23</sup>, that a 130 mm gun, from within the 4<sup>th</sup> KAG, was placed at the firing position No. 3 in the Delić polje area. On 26 May 1995, the 130 mm gun was transferred from the referenced location to the firing position in the village of Čuhovići.<sup>24</sup>

118. The presented evidence further shows that the 4<sup>th</sup> Corps artillery units also disposed with weapons caliber 155 mm. However, the Panel was not able to establish, beyond a reasonable doubt, where precisely the referenced weapon was positioned, namely whether it was placed on the open fire positions in the Bjelimići wider area, as alleged in the preamble of the Indictment at issue, nor was the Panel able to find beyond a reasonable doubt whether the 4<sup>th</sup> Corps units had indeed fired from that weapon on the Kalinovik territory at the critical time.

119. Exhibit T-70<sup>25</sup> shows that, on 20 June 1995, the accused, *inter alia*, ordered that a 155 mm howitzer be moved from the then military position to the military position in the area tt 717 - the wider area of the village of Dragovići. However, the said

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<sup>21</sup> Prosecution’s Exhibit T-40.

<sup>22</sup> Prosecution’s Exhibit T-41.

<sup>23</sup> Defense’s Exhibit O-237.

<sup>24</sup> Prosecution’s Exhibits T-104 and T-108.

<sup>25</sup> Order by the CM OG „Neretva“ ARBiH, Str. Conf. No. 02/2-1-100/95 of 20 June 1995.

evidence shows neither the original position of the referenced howitzer at the critical period, nor whether the said 155 mm howitzer was indeed fired from at all.

120. In addition, the Combat Reports of the 4<sup>th</sup> MAP of 30 May and 2 June 1995, tendered as the Prosecution's Exhibits T-111<sup>26</sup> and T-114<sup>27</sup>, show that a 155 mm howitzer existed within the 4<sup>th</sup> MAP's composition. The referenced Reports indicated the quantity of ammunition at the disposal of the 4<sup>th</sup> MAP, including the ammunition for a 155 mm howitzer. However, those reports do not indicate the howitzer's combat position, or whether it was used in the critical period, nor does it ensue beyond a reasonable doubt from the other presented evidence.

121. In his evidence given at the main trial, the Prosecution's witness Nedim Hodo mentioned a 155 mm howitzer only in his explanation of the ammunition deficit for certain types of weapons in the 4<sup>th</sup> Corps, without specifying whether the artillery units deployed in the territory of the IKM-1 Bjelimići had also fired from the 155 mm howitzer.

122. Witness for the Defense, Zlatko Bečović, confirmed that a total of 2 howitzers caliber 155 mm had existed within the 4<sup>th</sup> MAP's composition, that they were not located in the Bjelimići territory, but rather in the Zvekuša territory. The witness emphasized that those howitzers were not used in the "Treskavica 95" and the "Borašnica 95" operations: "They were located in the Zvekuša area, but none of them was engaged in the operation at issue, because one was broken, and we had no proper gun capsules for the other, so we were not able to complete the ammunition, and they were not operational at that period."<sup>28</sup>

123. It is also indisputable for the Panel that the 4<sup>th</sup> Corps artillery units deployed in the Bjelimići area, *inter alia*, also operated in the Kalinovik area, as well as that military targets in the Kalinovik territory were indeed marked in the 4<sup>th</sup> Corps planned documents at the critical time for the artillery units of the 4<sup>th</sup> Corps.

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<sup>26</sup> Report by the 4th Corps of the ARBiH, the 4th MAP, No. 02-01/30 of 30 May 1995.

<sup>27</sup> Report by the 4th Corps of the ARBiH, Command of the 4th MAP, No. 02-02/6 of 2 June 1995.

<sup>28</sup> Transcript No. S1 1 K 012247 19 Kri of 10 November 2021, p. 26.

124. Specifically, Exhibits O-281<sup>29</sup> and O-263<sup>30</sup> show that the reserve target - Kalinovik was indicated therein under No. 26. Within the tabular review of the planned firing operations in Exhibit O-238<sup>31</sup>, the Kalinovik area was indicated under No. 15 with an indication of the type of targets: command post, reserve. In Exhibit O-240<sup>32</sup>, the Kalinovik barracks were marked as the target No. 105.

125. In order to be able to prove the accused Dreković's criminal responsibility for the offenses charged against him in the present case, it was necessary to prove, beyond a reasonable doubt, that the accused had indeed issued orders to the artillery units subordinated to him to attack the majority Serb population in Kalinovik. It was also necessary to prove that they had indeed acted in compliance with the accused's orders, as a result of which the injured parties-civilians were killed and injured. Specifically, it was necessary to establish the existence of a cause-and-effect *nexus* between the accused's acts/issued orders and the resulting consequences, as described in the individual Counts of the Indictment.

**A. SECTION 1 OF THE OPERATIVE PART OF THE JUDGMENT - THE SHELLING OF KALINOVIK ON 26 MAY 1995 AND THE RESULTING WOUNDING OF THE INJURED PARTY M.T.**

126. Count 1 of the Indictment at issue charged the accused Ramiz Dreković that, on 26 May 1995, he had issued an Order, No. Str.conf. No. 3791-01, to the ARBiH's units at the IKM Bjelimići to launch five projectiles at the Kalinovik downtown from a 122 mm howitzer-gun, and that, in compliance with the said order, at around 22:00 hrs on the same day, the referenced units had fired those projectiles, having hit the town territory, as a result of whose explosions child M.T., born on ... in Kalinovik, was wounded and sustained serious bodily injuries.

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<sup>29</sup> Attack Order, Command of the KAG-4, Op. No. 02-2199/95 of 9 May 1995, Textual-tabular segment of the planned firings.

<sup>30</sup> Textual-tabular segment of the plan the "Borašnica 95" operation, No. 02-1754/11-2, entered in the List of the documents received by the 4th MAP, under No. 11.2.

<sup>31</sup> Operative plan of the artillery of the 4th Corps, schematic overview, graphical overview on a map 1:100.000 (Konjic, Sarajevo, Mostar, Nevesinje), „Treskavica 95".

<sup>32</sup> Supplemented tabular survey of artillery fire, Command of the 4th MAPa of 27 July 1995.

127. Thus, the accused was charged with ordering the units subordinated to him and deployed at the IKM Bjelimići on the critical day to fire from the artillery weapons at the Kalinovik downtown, as a result of which the injured party M.T. was wounded.

128. In the present case, it is indisputable that, on the critical day, the accused Dreković had indeed issued an order to the IKM-1 in Bjelimići to launch five (5) projectiles from a 122 mm gun-howitzer at the Kalinovik center, as also ensues from Exhibit T-57<sup>33</sup>. This order was drafted at the basic command post of the 4<sup>th</sup> Corps of the ARBiH in Jablanica, signed by the accused Ramiz Dreković as the Commander of the 4<sup>th</sup> Corps, and addressed at the Commander of the IKM-1 Bjelimići, attention IKM Commander.

129. It was also found beyond a doubt during the proceedings that, on the same day, the injured party M.T was wounded as a result of the explosion of a projectile that had landed at the Potoci site, which ensues from the evidence given by the examined witnesses, the injured party personally and the documentary evidence tendered by the Prosecution.

130. In his evidence given at the main trial, the injured party M.T. described the events of the critical day. The witness indicated that it was his birthday on the referenced day, namely on 26 May 1995; that he had visited his grandmother and grandfather in the village of Vlahovlje; and that on his way back home in the evening hours he was wounded as a result of a shell explosion at the Potoci site.

131. The injured party explained that the Potoci site is around 700/800 m - 1km away from the Kalinovik downtown, around 300-400 m away from the local cemetery (in Oglavak), and that the Potoci site where he was wounded is around 300-400 m away from the first houses and the garages of the *Zelengora Forest Farm*. During their site-visit, the injured party showed to the official persons of the State Investigation and Protection Agency the exact place where he was wounded. Along this line, they produced a photo-documentation, which was tendered in the case record as Exhibit T-151.<sup>34</sup> It is evident from the referenced photo-documentation that the Potoci site,

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<sup>33</sup> Order by the Command of the 4th Corps ARBiH, Str. conf. No. 3791-01 of 26 May 1995.

<sup>34</sup> The Prosecution's Exhibit T-151: State Investigation and Protection Agency, Photo-documentation concerning the site showed by witness M.T. No. 16-10/6-73-FD/17 of 25 April 2017 –produced on 15 May 2017.

where the injured party M.T. had been wounded was a couple of hundred meters away from the first houses in Kalinovik.

132. The witness described the moment of a projectile's explosion as a result of which he was wounded. The witness indicated that, on the critical occasion, he was around 2-3 m away from the site of the projectile's impact. The witness also added the following: "I heard an explosion, and then I was thrown away and I fell down. When I got up, I saw that I was all covered in blood, and that my T-shirt was torn off ... I was all muddy and covered in blood ... I felt pain all over my body ...and I started losing my consciousness"<sup>35</sup>.

133. The witness explained that he was wounded in his hip on the critical occasion, and that the workers from the *Zelengora Forest Farm*, located around 200-300 m away from the site where he was injured, drove him to the Health Center in Kalinovik. He received first aid there, whereupon he was transferred to a hospital in Foča, where he stayed for around two months.

134. The witness added that he still feels pain during weather changes as a consequence of his wounding on the critical day, and that he has been diagnosed with permanent 20% disability.

135. The evidence given by the injured party M.T. is fully consistent with the documentary evidence tendered by the Prosecution in relation to his wounding, specifically Exhibits T-8<sup>36</sup>, T-9<sup>37</sup>, T-18<sup>38</sup>, T-157<sup>39</sup>, T-175<sup>40</sup>, T-176<sup>41</sup>, T-177<sup>42</sup> and T-178<sup>43</sup>.

136. That the injured party M.T. was indeed wounded on the critical day as a result of the projectile's explosion at the Potoci site was also consistently confirmed by

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<sup>35</sup> Transcript No. S1 1 K 012247 19 Kri of 5 November 2019, pages 9 and 12.

<sup>36</sup> On-site investigation Record, Ministry of Interior of Republika Srpska, Public Security Center Kalinovik, No. 16-3/02-230-267/95 of 24 June 1995.

<sup>37</sup> Official Note, Ministry of Interior of Republika Srpska, Public Security Center Srbinje Station, Kalinovik, No. 16-3/02-230-267/95 of 30 May 1995.

<sup>38</sup> Findings and Opinion produced by forensic expert in medicine, Željko Karan, 30 November 2017.

<sup>39</sup> JZU University Hospital in Foča, the 1995 Patient Flow Protocol – M.T. recorded under No. 91.

<sup>40</sup> Clinical Center, Medical Faculty Sarajevo, General Hospital, No. 424-01/61 of 18 June 1995.

<sup>41</sup> Medical Commission for examination of persons included on the Law on the Rights of War Disabled Veterans and families of Fallen Veterans, Findings and Opinion produced in relation to M.T., No. 383/95 of 6 December 1995.

<sup>42</sup> University Hospital in Foča, Excerpt from medical documents related to M.T., No. 01-13/4 of 4 February 2014.

<sup>43</sup> Certificate of the SJB Kalinovik, No. 16-3/02-230-267/95 of 14 August 1995.

indirect witnesses J.B., D.A. (D.N.), M.J. (M.T.), Ratko Đogić, Mitar Sladoje, Lazar Gojanović, Nenad Višnjevac, Rajko Višnjevac and Stanimir Elez. The Court has credited those witnesses' evidence in that regard. It was also indisputable during the proceedings that the injured party M.T. was a civilian at the time of his wounding.

137. On the other hand, the Panel holds that, in the present case, the Prosecution did not prove beyond a reasonable doubt that the wounding of the injured party M.T. was a result of the actions taken in compliance with the orders issued by the accused on 26 May 1995. Specifically, the Panel finds that the existence of a cause-end-effect *nexus* between the accused's act - Order of 26 May 1995 and the resulting consequence was not proved beyond a reasonable doubt.

138. The Panel primarily holds that there is neither any clear evidence in the present case proving that the referenced order was indeed received at the IKM-1 Bjelimići nor that any action was taken in compliance with it.

139. None of the examined witnesses deployed at the IKM-1 Bjelimići at the critical time, namely the witnesses from the 4<sup>th</sup> MAP, the 4<sup>th</sup> KAG and members of the 4<sup>th</sup> Corps Command<sup>44</sup> confirmed that the IKM-1 Bjelimići had indeed received the accused Dreković's Order of 26 May 1995 to open fire at the Kalinovik downtown, or that any action had indeed been taken in compliance with it.

140. In addition, during his examination at the main trial, Prosecution's witness Esad Ramić, Commander of the IKM-1 Bjelimići<sup>45</sup> at the critical time to whom the referenced order was addressed, did not confirm that he had ever seen that order. Thereby, the witness was also not able to confirm whether any action was indeed taken pursuant to the order at issue. The witness stated that, as the 4<sup>th</sup> Corps Commander, the accused Dreković had never ordered him to fire from artillery weapons at any civilian target. The witness emphasized that the artillery units of the 4<sup>th</sup> Corps had never fired at any civilian targets during his presence at the IKM Bjelimići.

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<sup>44</sup> Witnesses: Esad Ramić, Esad Tokić, Esad Moro, Nedim Hodo, Mujo Šubara, Sead Đulić, Zlatko Bećović and others.

<sup>45</sup> The referenced fact indisputably ensues from the Prosecution's documentary Exhibits T-14, T-64 and T-65, the Defense's Exhibit O-295, the evidence given by witnesses Esad Moro and Hamid Selimović, who assumed the duty of the IKM-1 Commander after Esad Ramić. Witness Selimović stated that he had arrived at the IKM-1 on 31 May 1995, and since that date performed the duty of Esad Ramić's deputy, and that by the Decision of 13 June 1995 he was appointed Commander of the IKM-1 Bjelimići.

141. The Panel further notes that the accused Dreković's Order of 26 May 1995 is marked as "URGENT", with a note "promptly" added in writing as a deadline for taking action pursuant to the order, and an indication that the Commander of the 4<sup>th</sup> Corps of the ARBiH should be accordingly notified immediately after the action has been taken. However, no regular or extraordinary combat report by the units of the 4<sup>th</sup> Corps of the ARBiH about the execution of the referenced order was tendered in the case record. Specifically, there is no evidence proving that, as the Commander of the 4<sup>th</sup> Corps of the ARBiH, the accused Ramiz Drekovic was ever notified that his Order of 26 May 1995 was complied with, namely that the units deployed at the IKM-1 Bjelimići had indeed launched 5 projectiles from a howitzer caliber 122 mm at the Kalinovik downtown.

142. On the other hand, combat reports made by the VRS units stationed in Kalinovik, tendered as evidence,<sup>46</sup> also do not confirm that, on the critical day, the units of the ARBiH had fired five projectiles from a 122 mm howitzer at either the Kalinovik downtown or its wider area.

143. The only proof indicating that, on the critical day, the units of the 4<sup>th</sup> Corps had fired from a 122 mm howitzer is the Report made on 27 May 1995 at the IKM-1 by the Esad Moro, Commander of the 4<sup>th</sup> KAG, and forwarded to the Command of the 4<sup>th</sup> MAP.<sup>47</sup> The referenced report, *inter alia*, noted that, on 26 May 1995, at around 20:00 hrs, the units of the 4<sup>th</sup> KAG had launched 4 projectiles from a 122 mm howitzer at the target No. 110.

144. Thus, pursuant to the foregoing Report, on the critical day, the units of the 4<sup>th</sup> Corps had fired from the 122 mm howitzer at around the same time when the injured party M.T. was wounded. However, the Panel was not able to determine whether the time of firing by the artillery units noted in Exhibit T-14 matches the order at issue, considering that, pursuant to the Order of 26 May 1995, the action had to be taken promptly with no delay, but there was no indication of the time of its drafting.

145. The Panel further notes that the foregoing Report is not compliant with the referenced Order of 26 May 1995 with regard to the target of the artillery attack or the

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<sup>46</sup> Defense Exhibits No. O-434, O-435 and O-437

<sup>47</sup> Prosecution Exhibit No. T-14: Daily combat report, Str.conf. No. 01-1-14/95 of 27 May 1995, 4th KAG Commander Esad Moro.

number of the projectiles launched. In addition to the fact that the report was not addressed to the 4<sup>th</sup> Corps Command or the accused Ramiz Dreković as its Commander, the Panel finds that the foregoing points to the conclusion that the firing from the 122 mm howitzer mentioned in the referenced Report does not prove beyond a reasonable doubt that the accused's Order of 26 May 1995 was indeed executed.

146. Specifically, under the referenced Order, the accused Dreković orders fire opening at the Kalinovik downtown (with no target number indication), and that a total of 5 projectiles be launched from a 122 mm howitzer. On the other hand, the combat report made by the IKM-1 indicates that 4 projectiles were launched from the referenced weapon at a numerically marked target, namely the target No. 110. In addition, based on all the presented evidence, the Panel was not able to find, beyond a reasonable doubt, that the marked target indeed indicated the Kalinovik downtown, or the Kalinovik proper, or wider area, namely the Potoci site where the injured party M.T. had been wounded on the critical day.

147. The tabular reviews of the artillery targets of the 4<sup>th</sup> Corps units, planned within the execution of the "Treskavica 95" and the "Borašnica 95"<sup>48</sup> military operations, show that Kalinovik was indeed marked as a target, but not under No. 110. Thus, in the tabular review of the planned firing, tendered as the Defense's Exhibit O-238<sup>49</sup>, the Kalinovik area was marked under No. 15, with the noted type of the target as the command post-reserve. On the other hand, it ensues from Exhibits O-281<sup>50</sup> and O-263<sup>51</sup> that the reserve target-Kalinovik was marked under No. 26.

148. In addition, pursuant to the supplemented tabular review of the artillery firings<sup>52</sup>, the Kalinovik barracks were marked as the target No. 105, while the howitzer firing post in Dubrave was indicated as the target No. 110. Therefore, the target No. 110 indicated in the Report by the KAG of 27 May 1995 relates to the Dubrave target, rather than to Kalinovik. In addition to the target No. 110, the referenced supplemented

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<sup>48</sup> Defense's Exhibits O-238, O-262, O-263 and O-281.

<sup>49</sup> Action plan of the artillery of the 4th Corps, schematic review on a 1:100.000 map (Konjic, Sarajevo, Mostar, Nevesinje), "Treskavica 95".

<sup>50</sup> Attack Order, Command of the KAG-4, Op. No. 02-2199/95 of 9 May 1995, and the Textual – tabular segment of the planned firing.

<sup>51</sup> Textual – tabular segment of the planned actions within the "Borašnica 95" operation, No. 02-1754/11-2, entered on the List of documents received by the 4th MAP under No.11.2.

<sup>52</sup> Defense's Exhibit O-240: Supplemented Artillery Fire Tabular Review, Command of the 4th MAP of 27 July 1995.

tabular review of the artillery firings shows that the target No. 119 also relates to Dubrave, more precisely, to the firing position of a 105 mm howitzer, and that the 4<sup>th</sup> KAG deployed in Bjelimići during the critical period was tasked with firing at the two targets in Dubrave.

149. The Panel took into account that the date of the referenced supplemented tabular review of the artillery firing was 27 July 1995, that is, much later than the critical event. However, this fact, in and out of itself, does not exclude a possibility that the target No. 110 was an indication of the firing positions of the VRS forces in Dubrave even before the supplemented table was made, namely that the referenced target had also existed on the critical day.

150. Along this line, the Panel primarily points to the evidence given by witness Zlatko Bećović, Commander of the 4<sup>th</sup> MAP at the critical period. During the examination at the main trial, this witness explained how the supplements to the textual-tabular plan of the artillery targets of the 4<sup>th</sup> Corps had been made.

151. According to witness Bećović, the supplements to the textual-tabular plan did not relate to new targets only, but also to the previously planned targets at which no fire had been open, or at which fire was open but without achieving the desired effect. Witness Bećović underlined that: "... If there was a fire artillery post or some command post which we had fired at but without realizing the desired effect, it keeps existing and functioning, we will subsequently deliver that target through a supplement; there are several targets like that... each target had existed from before, and it was planned for a certain stage of combat operations."<sup>53</sup>

152. The Panel holds that the Daily Informative Report made by the IKM-1 Bjelimići of 18 May 1995<sup>54</sup> shows that Dubrave had been observed as a military target of the units of the 4<sup>th</sup> Corps even before the artillery fire tabular review was supplemented, that is, before 27 July 1995, namely that it was not a new discovered target. Specifically, the referenced evidence noted under No. 1.1.3. that, over the past period,

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<sup>53</sup> Transcript No. S1 1 K 012247 19 Kri of 10 November 2021, p. 40 and 42.

<sup>54</sup> Daily Informative Report, 4th Corps Command, IKM-1 Bjelimići, str. conf. no. 03-064 of 18 May 1995, tendered in the case record as Defense's Exhibit O-292.

the VRS units had launched from Dubrave seven projectiles at the communication Odžaci - Vilišta camp premises.

153. Therefore, it ensues from the foregoing evidence that much before 26 May 1995, the 4<sup>th</sup> Corps units, more precisely, the units deployed at the IKM-1 Bjelimići had been aware of the Dubrave firing position from which the VRS units had fired at the critical period. According to the Panel, the foregoing points to the conclusion that the referenced firing position could also be the target at which the forces of the 4<sup>th</sup> KAG had opened fire on the critical day, which firing was also noted in the Report of 27 May 1995.<sup>55</sup> On the other hand, no piece of evidence was tendered in the case record from which it ensues that, on the critical day, the target No. 110, in fact, meant the Kalinovik downtown or its wider area, namely the Potoci site where the injured party M.T. had been injured.

154. During the examination at the main trial, witness Esad Moro, Commander of the 4<sup>th</sup> KAG Bjelimići at the critical period, who had produced the Daily Combat Report of 27 May 1995<sup>56</sup>, after being presented with the referenced Report, stated that he does not know what the target No. 110 stands for, and that after his arrival at the IKM-1, he had fired at the targets already defined before his arrival: "... The target was most probably defined by the chief of artillery"<sup>57</sup>.

155. The witness further confirmed that the order to open fire at the target No. 110 came after the Serb forces' activities. When asked by the Prosecutor who had ordered him to open fire at the target No. 110 on the critical occasion, the witness responded vaguely, indicating that the order came from superior officers of the IKM Command and the Corps Command.<sup>58</sup> However, during the cross-examination, witness Moro resolutely responded that, as the Commander of the 4<sup>th</sup> Corps, the accused Ramiz Dreković had never ordered him to use the artillery weapons.<sup>59</sup> In the Panel's view, the foregoing further points to the conclusion that it cannot be established beyond a doubt

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<sup>55</sup> Prosecution's Exhibit T-14.

<sup>56</sup> Prosecution's Exhibit T-14.

<sup>57</sup> Transcript No. S1 1 K 012247 19 Kri of 28 January 2020, p. 24.

<sup>58</sup> Transcript No. S1 1 K 012247 19 Kri of 28 January 2020, p. 24.

<sup>59</sup> Transcript No. S1 1 K 012247 19 Kri of 28 January 2020, p. 73.

that the Report of the 4<sup>th</sup> KAG of 27 May 1995 at the IKM-1 Bjelimići by witness Esad Moro is related to the execution of the accused's Order of 26 May 1995.

156. After evaluating all the evidence presented in relation to Count 1 of the Indictment, individually and in combination, the Panel was not able to find, beyond a reasonable doubt, that the referenced Daily Combat Report was indeed related to the accused's Order of 26 May 1995, or that the injured party M.T. had indeed been wounded as a result of the artillery fire mentioned in the referenced Report.

157. The Panel has therefore examined whether the other presented evidence points to a conclusion that the shelling of the Potoci site when the injured party M.T. was wounded is directly connected with the Order at issue.

158. As noted in the Judgment's reasoning above, the Combat Reports of the VRS units stationed in Kalinovik, which were tendered as evidence<sup>60</sup>, do not confirm that the units of the Army RBiH had indeed launched five projectiles from a howitzer caliber 122 mm at either the Kalinovik downtown or its wider area on the critical day.

159. Thus, the Daily Operative Report by the Command of the VRS Herzegovina Corps of 26 May 1995<sup>61</sup> noted that there were no active combats or activities in the zone of responsibility of the 1<sup>st</sup> Guard Motorized Brigade (1<sup>st</sup> GMTBR), and that the situation in the Municipality territory was normal. The Regular Combat Report made by the Command of the VRS Herzegovina Corps on 26 May 1995 and forwarded to the VRS Main Staff<sup>62</sup> noted that: "Along the Konjic direction, units of the so called ABiH had fired from an MB 82 and 120 mm at our posts in the areas of Ćetkov Kuk, Orlov Kuk and Razići... There were no extraordinary events or losses... We think based on the available information that the enemy will intensify activities against our forces, particularly along the Konjic-Kalinovik direction, in addition to the use of DTG and launching attacks on more important objects in our schedule." The Operative Daily Report by the Command of the 1<sup>st</sup> GMTBR of 27 May 1995,<sup>63</sup> stationed in Kalinovik, also did not indicate that the Kalinovik territory had been shelled on 26 May 1995. This Report only indicated that: "In the zone of responsibility of the 1st GMTBR, the enemy

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<sup>60</sup> Defense's Exhibits O-434, O-435 and O-437.

<sup>61</sup> Defense's Exhibit O-434.

<sup>62</sup> Defense's Exhibit O-435.

<sup>63</sup> Defense's Exhibit O-437.

had provocatively fired from the Ilijaš area at the Đoko's tower in late evening hours of 26 May 1995...the situation in the territory is normal...we have no new information regarding the enemy's activities in our defense's wider area."

160. In the present case, there is also no evidence proving that the relevant police or military bodies in Kalinovik indeed conducted any on-site investigation on the critical day, or that any photo-documents of the craters and the damages caused by the projectile's explosions were produced, or that traces of projectiles had been secured.

161. The only evidence presented by the Prosecution along this line is the following: the Certificate of the SJB Kalinovik of 14 August 1995<sup>64</sup>, and the Official Note of the SJB Kalinovik of 30 May 1995,<sup>65</sup> indicating that the Kalinovik territory had been shelled on the critical day, and that the injured party M.T. was wounded as a result of the explosion of one of the projectiles fired at the Potoci site.

162. It is evident from the SJB Certificate of 14 August 1995<sup>66</sup> that the injured party M.T. was wounded at the Potoci site by a howitzer projectile on the critical day, at the entrance in the populated town of Kalinovik, and that no military facilities or formations existed in the vicinity.

163. The Official Note made by the SJB Kalinovik on 30 May 1995<sup>67</sup> provided more details about the critical event. The Official Note indicated that, on 26 May 1995, at 20:20 hrs, four howitzer projectiles were fired from the enemy territory during a three-minute period; that the projectiles landed on the north-west side of the populated town of Kalinovik; that one of those projectiles landed at the Potoci site, 150 m away from the first houses; that the injured party M.T. was wounded as a result of the projectile's explosion; and that the projectile made a crater of 2.50m in diameter and 1.00m in depth. Pursuant to the referenced Official Note, the three remaining projectiles landed in the place of Jabuka, 300m away from the first houses, while no military objects or activities existed near the impact site of those 4 (four) projectiles.

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<sup>64</sup> Prosecution's Exhibit T-178: SJB Kalinovik Certificate, No. 16-3/02-230-267/95 of 14 August 1995.

<sup>65</sup> Prosecution's Exhibit T-9: Official Note, Interior Ministry of Republika Srpska, PSC Srbinje, Kalinovik Station, No. 16-3/02-230-267/95 of 30 May 1995.

<sup>66</sup> Prosecution's Exhibit T-178.

<sup>67</sup> Prosecution's Exhibit T-9.

164. Witness for the Prosecution, Rajko Višnjevac, employee of the SJB Kalinovik at the critical period and drafter of the foregoing Official Note, stated during the trial that he had visited the Potoci site on the critical day, but he could not remember what he had found there on that occasion. The witness gave no details about the crater, or any possibly found shrapnel, or the type and caliber of the projectile at issue. When asked by the Prosecutor if he knew the direction from which the shell had come, the witness responded: “(I know ) only what I learned from the persons who had heard it. I do not recall it precisely, as God is my witness...”<sup>68</sup>

165. Thus, as the only person who had visited the site on the critical occasion, in his evidence given at the main trial, witness Rajko Višnjevac did not provide any details related to the critical event. On the other hand, the other persons present at the time in his close vicinity, namely the persons who had according to the injured party M.T. helped him after his wounding, and transported him to the health center, did not testify in the present case.<sup>69</sup>

166. In addition to the information provided in the Official Note in relation to the diameter and the depth of the crater made by the projectile’s explosion at the Potoci site, and the indication that the projectiles were fired from the enemy territory and landed on the Kalinovik north-west side, no other evidence was presented along this line.

167. Specifically, no on-site investigation record was made on the critical occasion, no shrapnel was found, no photo-documentation was produced on the site, and there is no evidence related to the three remaining projectiles that landed on the critical day in the place of Jabuka. The Panel holds that all the foregoing should have been established, namely not only the direction from which the projectile was launched, as a result of whose explosion M.T. was wounded, that is, the artillery position from which the projectile had been fired, but also the type and possibly the caliber of the weapon.

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<sup>68</sup> Transcript No. S1 1 K 012247 19 Kri of 15 October 2019, p. 17.

<sup>69</sup> Witness/injured party M.T. stated in his main trial testimony that after he was wounded on the critical day, Vide Elez, Stanko Bozalo and Dragan Cerovina transferred him to the Health Center (Transcript No. S1 1 K 012247 19 Kri of 5 November 2019, p. 12). However, Vide Elez and Stanko Bozalo were not examined during the present criminal proceedings. On the other hand, Dragan Cerovina was examined as a rebuttal witness, but he did not testify about the wounding of the injured party M.T. nor did he mention him at all in his evidence. This witness also emphasized that, in addition to him, there are three more men bearing the name Dragan Cerovina (Transcript No. S1 1 K 012247 19 Kri of 20 July 2022, p. 16.)

In the absence of the foregoing facts, and considering that the crime-scene has meanwhile changed completely, the ballistic forensic experts for both the Prosecution and the Defense were not able to conduct any related forensic analysis, and were thereby not able to provide relevant information related to the critical event.

168. In view of the foregoing, the Panel was not able to find, beyond a reasonable doubt, from which type and caliber of the weapon specifically the fire was launched at the Potoci site on the critical day, or from which artillery positions the Kalinovik territory was shelled on that day. Specifically, the Panel was not able to find, beyond a reasonable doubt, that the wounding of M.T. was indeed caused by the explosion of one of the projectiles launched from a 122 mm howitzer from the Bjelimići on the accused's order on the referenced day.

169. The Panel further notes that the injured party M.T. was not wounded at the location indicated in the referenced order. Specifically, the order at issue indicated the Kalinovik downtown as the shelling target, whereas the injured party was wounded by the explosion of a projectile that landed on a non-inhabited Potoci site, which was located a couple of hundred of meters away from the first houses in Kalinovik, rather than in the Kalinovik downtown. The foregoing ensues from the injured party's evidence, the photographs made during the on-site visit,<sup>70</sup> and Exhibits T-9 and T-178.

170. In addition, the number of projectiles that had landed on the Kalinovik territory on the critical day does not match the number of projectiles indicated in the Order of 26 May 1995. Specifically, the Order pointed to the use of five projectiles of a 122 mm howitzer, whereas Exhibit T-9<sup>71</sup> shows that four projectiles were fired at the Kalinovik territory on the referenced day, one at the Potoci site, and three in the place of Jabuka. There is no other piece of evidence whatsoever proving that five projectiles were indeed fired at the Kalinovik territory on the critical day.

171. Therefore, the location where the injured party was wounded does not match the target indicated in the referenced Order. The number of projectiles which hit the Kalinovik wider area does not match the number of projectiles indicated in the Order.

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<sup>70</sup> Prosecution's Exhibit T-151: SIPA, Photo-documentation of the site visit with witness M.T., No. 16-10/6-73-FD/17 of 25 April 2017, produced of 15 May 2017.

<sup>71</sup> Official Note, Interior Ministry of Republika Srpska, SCB Srbinje, Kalinovik Station, No. 16-3/02-230-267/95 of 30 May 1995.

There is no evidence proving that the injured party was indeed wounded by the type and the caliber of the projectile specified in the Order. There is no evidence proving beyond a reasonable doubt that the order issued by the accused Dreković was indeed executed.

172. In the absence of all the foregoing evidence, the Panel was not able to find beyond a reasonable doubt that the artillery firing at the Kalinovik territory and the wounding of the injured party M.T. was directly connected with the Order issued by the accused Dreković, as alleged in the factual description of Count 1 of the Indictment. Therefore, by applying the principle of *in dubio pro reo*, the Panel decided to acquit the accused Ramiz Dreković of the charges that he had committed the criminal offense alleged under this Count of the Indictment.

#### **B. COUNTS 2 AND 3 OF THE INDICTMENT**

173. Count 2 of the Indictment charged the accused Ramiz Dreković that, on 3 June 1995, between 07:25 and 08:50 hrs, members of the units subordinated to him had launched several artillery projectiles at the Kalinovik downtown, and that as a result of the explosion of one of the shells that fell near the “Miladin Radojević” Elementary School, Stanislava Koprivica, pupil of the 8<sup>th</sup> grade was killed and pupils of the 8<sup>th</sup> grade J.B., D.N., I.K., D.M. and M.T. wounded near the said elementary school right across from the “Lelija” Hotel. Count 3 of the Indictment charged the accused that, on 22 May 1995, at around 08:30 hrs, members of the units subordinated to him launched several artillery projectiles hitting the territory of Kalinovik and Bogdanovo, Kalinovik municipality, as a result of whose explosions civilian Ratko Đogić was wounded.

174. The foregoing Counts of the Indictment charged the accused Dreković that, on 22 May 1995 and on 3 June 1995, members of the units subordinated to him had fired several artillery projectiles, which hit the territory of Kalinovik and Bogdanovo, as a result of whose explosions the injured civilians were killed and wounded. The two Counts of the Indictment resulted from the concretization of the introductory part of the Indictment. It was alleged therein that, during the critical period, the accused ordered launching of an attack against the Serb majority population of Kalinovik, namely that the artillery units of the 4<sup>th</sup> Corps of the ARBiH subordinated to him, deployed at the

Bjelimići wider area, attack the civilian population in Kalinovik by opening fire from guns caliber 130 mm and howitzers caliber 105 mm, 122 mm and 155 mm.

175. The Panel primarily notes that, after a detailed and comprehensive evaluation of all the presented evidence, it found beyond a reasonable doubt that, at the relevant period, the injured party Stanislava Koprivica was killed and the injured parties J.B., D.N., I.K., D.M., M.T. and Ratko Đogo injured by the explosions of artillery projectiles. The foregoing primarily ensues from the evidence given by the witnesses-injured parties and the other witnesses who have presented the information in their possession about the referenced circumstances, as well as from the tendered documentary evidence.

(a) The death of the injured party Stanislava Koprivica and the wounding of the injured parties J.B., D.N., I.K., D.M. and M.T. on 3 June 1995 - COUNT 2 OF THE INDICTMENT

176. Witness Mitar Sladoje, school master and teacher at the “Ljutica Bogdan” Elementary School during the critical period, has stated that pupils of two 8<sup>th</sup> grade classes had attended classes on 3 June 1995, and that a total of 45 pupils were present in the school, including the injured parties Stanislava Koprivica, J.B., D.N., I.K., D.M. and M.T..

177. According to witness Sladoje, the shelling of Kalinovik started in the morning hours, after the beginning of classes and that three shells in total had landed on that day.

178. Witness Sladoje further stated that the first shell fell on a housing facility, around 200 m away from the school, which is why all pupils moved into the school’s corridor for security reasons, where they stayed for a certain period of time, whereupon teachers sent them home, in groups of two-three pupils.

179. Witness Sladoje further stated that a group of pupils, with his son among them, did not go straight home, but rather stayed in front of a store in Kalinovik, where the second shell landed, as a result of which Stanislava Koprivica got killed, and five children wounded: J.B., D.N., M.T., D.M. and I.K., all pupils of the 8<sup>th</sup> grade.

180. Witness-injured party J.B. stated that, on the critical day, on her way home from the school along with a group of 6-7 pupils, she was standing at a cross-roads in the Kalinovik downtown when the second projectile exploded. In describing the moment of the projectile's explosion, the witness explained that she was accompanied by the injured party I.K., and that they heard the sound of a fired shell. The witness also added: "I do not remember the explosion itself after that sound. I do not know if I had lost my consciousness for a certain period of time. I don't know ... when I recovered...I saw no one around me. It was not clear to me what was going on. I looked down my body and saw that my trousers were slightly bloody and torn up. It passed through my mind that I was wounded."<sup>72</sup>

181. The witness explained that the shell explosion threw her away to the other side of the street: "...at the other side of the street. There was a pavement on the one side, where I had stood in relation to that shell, as far as I can remember, and the place where I fell down, which was on the other side, and I assume that I was thrown away by the shell detonation."<sup>73</sup> During the cross-examination, the witness explained that, on the critical occasion, she had stood around 3 m away from the projectile's landing site.

182. In describing the injuries she had sustained on the critical occasion, the witness stated: "The right leg, the right side, several places on the right leg and the face, the right side of the face, which was swollen. I know that they were not able, they were not certain what was with my eye, since the face was swollen, and the eye was closed."<sup>74</sup>

183. The witness further indicated that she went towards the Health Center. Along that way, the witness's father and some other men met her and drove her to the Health Center, where she received first aid. Thereupon, the witness was, along with the injured party I.K., transported to the hospital in Foča, where she stayed for around one month.

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<sup>72</sup> Transcript No. S1 1 K 012247 19 Kri of 16 July 2019, p. 15.

<sup>73</sup> Transcript No. S1 1 K 012247 19 Kri of 16 July 2019, p. 15.

<sup>74</sup> Transcript No. S1 1 K 012247 19 Kri of 16 July 2019, p. 18.

184. According to witness J.B., her class friends D.N., M.T. and D.M., who had been wounded on the critical day, were also admitted to the Foča Hospital, while the injured party Stanislava Koprivica was killed during the critical incident.

185. Witness-injured party M.J. (née T.) described the explosion of the second projectile, as a result of which she sustained injuries. The witness indicated that, on the referenced occasion, she was accompanied by J.B., D.N., Stanislava Koprivica and D.M. "We reached the crossroads in the Kalinovik downtown, where we heard the sound of the second fired shell. We started running. Some entered a housing facility while some of us went straight towards the eventual landing site... I heard a very strong explosion. I do not know what happened and in what moment... I was in shock when I saw my injuries for the first time. I was lying in a fetus position...and I felt pain in my leg."<sup>75</sup>

186. After regaining her consciousness, the witness noticed that she was lying on the ground in a fetus position. She felt pain in her leg, indicating that she was in shock after seeing her injuries: "My hair was almost all burnt down. I had injuries in my arms, back, chest, the left and the right sides, the left upper and the lower leg."<sup>76</sup> The witness emphasized that she still feels the consequences of the referenced injuries.

187. Witness M.J. (M.T.) further stated that, on the referenced occasion, D.N., D.M., J.B. and I.K. had also been wounded on the occasion, while her best girl-friend Stanislava Koprivica had died on the site. In describing the injuries she saw on her friends, the witness stated: "Dušanka was the one bleeding most heavily at the time. Her T-shirt was all torn off, and there was a lot of blood around her. I remember that Davor's head was bandaged, and I.K. held his hands on his abdomen. Jelena's face was all covered in sand and dust, while her hair looked like it was burnt down."<sup>77</sup> The witness had received first aid at the Kalinovik Health Center, whereupon she was, along with the other injured parties, transferred to a hospital in Foča, where she stayed for around 10 days.

188. During the examination at the main trial, the injured party D.M. confirmed that, on his way back home from the school on the critical day, along with I.K., Stanislava

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<sup>75</sup> Transcript No. S1 1 K 012247 19 Kri of 14 May 2019, p. 16 and 17.

<sup>76</sup> Transcript No. S1 1 K 012247 19 Kri of 14 May 2019, p. 21.

<sup>77</sup> Transcript No. S1 1 K 012247 19 Kri of 14 May 2019, p. 22.

Koprivica, J.B., D.A. (D.N.) and M.T., he was wounded as a result of the explosion of a projectile which had hit the Kalinovik downtown. The witness explained that they had heard the sound of a shell firing; that he tried to flee to a passage between a housing facility and a store located in the Kalinovik downtown; that thereupon there was an explosion. The witness added: "I felt my blood dripping down. I felt warmth on my neck and my head. I saw that it was my blood. I got frightened, and I started running towards the Health Center."<sup>78</sup> According to witness D.M., he had sustained severe injuries in his head and back, which is why he was transferred to the hospital in Foča, where he stayed for around 15 days. The witness also saw I.K. and M.T. at the Foča hospital, and he heard that Stanislava Koprivica had been killed by the projectile explosion. During the cross-examination, the witness confirmed that, on the critical occasion, he had stood around 2-3m away from the projectile's landing site, but he does not remember whether he was wounded in his standing position.<sup>79</sup>

189. Witness-injured party D.A. (née N.) stated that, on 3 June 1995, on their way back from the school, she and Stanislava Koprivica had stayed a little bit longer in the Kalinovik downtown. At one moment, they heard the sound of a fired shell, wherefore they tried to hide behind a kiosk located in their close vicinity, but did not succeed. "I remember that, all of a sudden, there was a smoke and fog, and I am flying through the air. I only remember myself and late Stanislava, namely that we were there, that I fell down over her, and that she was instantly killed on the site..., while I did not know where the others were. That is how horrible the fog and the smoke were. I was not able to see anything..."<sup>80</sup>

190. Witness D.A. (D.N.) showed to the official persons of the BiH State Investigation and Protection Agency the exact landing site of the projectile which had caused her injuries and Stanislava Koprivica's death. The photo-documentation produced on the referenced occasion was tendered as the Prosecution's Exhibit T- 152.<sup>81</sup> At the

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<sup>78</sup> Transcript No. S1 1 K 012247 19 Kri of 27 August 2019, p. 14.

<sup>79</sup> Transcript No. S1 1 K 012247 19 Kri of 27 August 2019, p. 33.

<sup>80</sup> Transcript No. S1 1 K 012247 19 Kri of 23 April 2019, p. 17.

<sup>81</sup> State Investigation and Protection Agency, Photo-documentation produced in relation to the visit of the site where Stanislava Koprivica had been killed showed by witness D.A. (D.N.) No. 16-10/6-74-FD/17 of 25 April 2017 –produced on 15 May 2017.

referenced photographs, witness D.A. (D.N.) also showed the site where she had stood at the moment of the projectile's explosion.

191. According to witness D.A. (D.N.), Milivoje Sladoje had driven her to the Health Center, whereupon she was transferred to the hospital in Foča. In describing the injuries she sustained on the critical occasion, the witness stated: "My lungs were open. It was a massive bleeding ... I still have one shrapnel in my lungs, and the other next to my spine. My abdomen was damaged, the intestines perforated all over, the large intestine and the spleen were outside the body; my hand and four ribs were fractured, I lost almost all blood."<sup>82</sup> The witness added that she had undergone several surgeries due to the described injuries, and that she had spent a total of 42 days in intensive care. The witness emphasized that she still feels the consequences of the sustained injuries<sup>83</sup> and that she has been diagnosed with ... .

192. According to the witness's evidence, M.T., D.M., J.B. and I.K. were also wounded on the critical occasion, while Stanislava Koprivica was instantly killed on the spot. Witness D.A. (D.N.) stated that, along with her, the injured parties J.B. and I.K. had been hospitalized in Foča, and that they had been injured in their abdomen and that they had been in ... .

193. That the injured party Stanislava Koprivica had been killed on the critical occasion was also confirmed by her mother, witness Milka Koprivica: "She was killed in the downtown by a shell. Five of them were injured, while she got killed."<sup>84</sup> The witness stated that she had seen her daughter's body at the Health Center, and that on the referenced occasion she noticed that she (her daughter) had been wounded in the back of her head.

194. Witness Rajko Višnjevac, employee of the SJB Kalinovik at the critical time, stated that he had been among the first persons who arrived at the crime-scene, having found Stanislava Koprivica lying dead in the lap of D.N. The witness explained that the shell had landed in the Karađorđeva Street next to a store building, some 20 m away from the "Lelija Hotel". The witness further stated that he called Milivoje Sladoje and another colleague from the SJB Kalinovik, having told them to drive away

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<sup>82</sup> Transcript No. S1 1 K 012247 19 Kri of 23 April 2019, pages 19, 20 and 21.

<sup>83</sup> Transcript No. S1 1 K 012247 19 Kri of 23 April 2019, p. 31.

<sup>84</sup> Transcript No. S1 1 K 012247 19 Kri of 16 September 2020, p. 7.

D.N., while the body of late Stanislava was left at the crime-scene for a while, whereupon she was also transferred to the Health Center.

195. Witness Stanimir Elez, employed at the Health Center in Kalinovik as a general practice physician, stated during the trial that he had been present at the Health Center when the wounded children as well as the body of late Stanislava Koprivica were brought there. The witness explained that all the injured parties had sustained injuries in different parts of their bodies, with the noted explosive-caused injuries, that they immediately provided first aid to them, and thereupon transported them to the hospital in Foča. In relation to late Stanislava Koprivica, the witness stated that he had examined her body at the Health Center, having found that she had indeed sustained the injuries caused by an explosive device. The witness emphasized that he had also produced a written document concerning the referenced examination: "I described those injuries, and typed the report on an old typing machine, because I thought it would matter once."<sup>85</sup> The referenced document was tendered in the case record as the Prosecution's Exhibit T-11.<sup>86</sup>

196. That the injured party Stanislava Koprivica was indeed killed on the critical occasion, namely in the morning hours of 3 June 1995, and that the injured parties J.B., D.N., I.K., D.M. and M.T. were indeed wounded, is also corroborated with the following Prosecution's Exhibits: T-3<sup>87</sup>, T-10<sup>88</sup>, T-11<sup>89</sup>, T-32<sup>90</sup>, T-144<sup>91</sup>, T-152<sup>92</sup>, T-

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<sup>85</sup> Transcript No. S1 1 K 012247 19 19 Kri of 19 November 2019, p. 23.-24.

<sup>86</sup> Prosecution's Exhibit T-11: Description of Stanislava Koprivica's injuries, "Sveti Luka" Health Center Kalinovik, No. 75/95 of 3 June 1995. The referenced evidence was presented to witness Elez during his examination at the main trial, and the witness confirmed that this is the document he produced after the examination, wherein he had recorded the injuries on the body of the injured party Koprivica.

<sup>87</sup> Record on crime-scene investigation, Interior Ministry of Republika Srpska, CSB Srbinje, No. 16-02/2-230-78/95 of 3 June 1995.

<sup>88</sup> The substance of paper verified by the Kalinovik Municipality, Republika Srpska, No. 655 of 28 April 2017 and the Substance verified by Kalinovik Municipality, Republika Srpska, No. 656 of 28 April 2017.

<sup>89</sup> Description of the injuries sustained by Stanislava Koprivica, Health Center "Sveti Luka" Kalinovik, No. 75/95 of 3 June 1995.

<sup>90</sup> CJB, Police Forces Command Staff, Srbinje, No.16-85/95 of 3 June 1995.

<sup>91</sup> Photo-documentation, PU Foča, No.: 16-02/2-233-56/95 of 12 July 2018.

<sup>92</sup> SIPA, Photo-documentation produced during the visit where Stanislava Koprivica had been killed, showed by witness D.A. (D.N.), No. 16-10/6-74-FD/17 of 25 April 2017 –produced on 15 May 2017.

158<sup>93</sup>, T-159<sup>94</sup>, T-160<sup>95</sup>, T-161<sup>96</sup>, T-162<sup>97</sup>, T-163<sup>98</sup>, T-164<sup>99</sup>, T-165<sup>100</sup>, T-166<sup>101</sup>, T-167<sup>102</sup>, T-168<sup>103</sup>, T-169<sup>104</sup>, T-170<sup>105</sup>, T-171<sup>106</sup>, T-172<sup>107</sup>, T-173<sup>108</sup>, T-179,<sup>109</sup> and T-183.<sup>110</sup> The Findings and Opinion produced by forensic medicine expert, Željko Karan, showed that the injuries sustained by the foregoing injured parties were caused by fragments of an explosive device.<sup>111</sup> The Court fully credited the Findings and Opinion produced by forensic expert Karan, having rendered them professional, objective, and produced in accordance with the rules of profession and consistent with the evidence given by both the witnesses and the injured parties in possession of the information about the charged event. During the proceedings, it was indisputable that all the injured parties, including late Stanislava Koprivica, had the civilian status at the critical

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<sup>93</sup> JZU University Hospital in Foča, Patient Protocols for 1994, 1995 through 1997, I.K. entered under No. 476; J.B. entered under No. 478; M.T. entered under No. 411; M.T. entered under No. 453; and D.M. entered under No. 454.

<sup>94</sup> Regional Medical Center „Proleterskih brigada“ OUUR General Memorial Hospital Foča, Discharge Letter for J.B. – Register No. 1545.

<sup>95</sup> Physical Medicine and Rehabilitation Institute „Dr. Simo Milošević“, Psychological Findings and Opinion in relation to J.B. of 12 February 1996.

<sup>96</sup> Physical Medicine and Rehabilitation Institute „Dr. Simo Milošević“, Discharge Letter for J.B., No. 97. of 12 February 1996.

<sup>97</sup> SJB Kalinovik, Certificate, No. 16-3/02-230-353/95 of 5 August 1995.

<sup>98</sup> Municipality Kalinovik, Municipal Administrative Service, Decision No. Up/1-04-534-11/07 of 31 December 2007.

<sup>99</sup> Regional Medical Center „Proleterskih brigada“, OUUR General Memorial Hospital Foča, Discharge Letter for D.N. – Register No. 1543.

<sup>100</sup> Clinical Center of Medical Faculty Sarajevo, General Hospital, Discharge Letter for D.N., No. 1380

<sup>101</sup> Institute for Physical Medicine and Rehabilitation „Dr. Simo Milošević“, Discharge Letter for D.N., No. 96 of 12 February 1996.

<sup>102</sup> Institute for Physical Medicine and Rehabilitation „Dr. Simo Milošević“, Discharge Letter for D.N., 1094 of 2 October 1995.

<sup>103</sup> Navy Military Hospital, Medical Rehabilitation Institute Meljine, Discharge Letter for D.N. with epycrisis, No. 1894/732 of 9 September 1995.

<sup>104</sup> Municipality Kalinovik, Municipal Administrative Service, Decision No. Up/I-04-534-4/95 of 16 September 1998.

<sup>105</sup> Medical Commission for examination of persons included in the Law on the Rights of War Disabled Veterans and Families of Fallen Veterans, Findings and Opinion concerning D.N. No. 192/97 of 6 November 1997.

<sup>106</sup> Medical Commission for examination of persons included in the Law on the Rights of War Disabled Veterans and Families of Fallen Veterans, Findings and Opinion concerning D.N. No. 295/95 of 5 September 1995.

<sup>107</sup> Institute for Physical Medicine and Rehabilitation „Dr. Simo Milošević“, Psychological Findings and Opinion in relation to D.N. of 12 February 1996.

<sup>108</sup> University Hospital in Foča, Excerpt from medical documents concerning M.T., No. 01-13/56 of 28 September 2016.

<sup>109</sup> Certificate SJB Kalinovik, No. 16-3/02-230-456/95 of 4 October 1995.

<sup>110</sup> Municipality Kalinovik, Death Certificate concerning Stanislava Koprivica, No. 04-202-1-64/16 of 16 March 2016.

<sup>111</sup> Prosecution's Exhibit, No. T-18: Findings and Opinion produced by forensic expert Željko Karan, 30 November 2017.

period, and that they enjoyed protection under the IV Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949.

197. The Defense contested that the injured parties were wounded by the explosion of the shell that had landed at the Kalinovik downtown, near the store in the ground floor of the building across from the Karađorđeva Street. Along this line, the Defense presented evidence through the forensic expertise conducted by forensic medical expert, Dr. Vedo Tuco, and the forensic expertise conducted by ballistic forensic expert, Berko Zečević.

198. In his Findings and Opinion of 3 January 2022<sup>112</sup> and during their explanation provided at the main trial, forensic expert Vedo Tuco indicated that due to the blast effects caused by the explosion of a projectile, namely due to the vicinity of the shell's landing site in relation to the place where the injured parties had stood on the critical occasion (as showed by D.A. (D.N.))<sup>113</sup>, the injured parties would have had the injuries of much larger intensity than those noted in their medical records.

199. The same conclusion was reached by the ballistic forensic expert Berko Zečević. Within his forensic expertise, the forensic expert made experimental tests in order to establish blast effects on the bodies of the persons standing at a certain distance from the center of explosion of howitzer projectiles calibers 105 mm, 122 mm and 130 mm. For the needs of the experiment, the forensic expert used pig bodies (whose structure is equivalent to the human tissue), weighing around 40-50 kg, posted vertically and tightly tied to a 2-part metal pole at the distances of 1m, 2m and 4m away from the projectile's explosion center.

200. The referenced tests showed the foregoing: at the distance of 1 m away from the explosion center, the pig's body was fully disintegrated into several larger and smaller pieces as a result of the blast effect caused by the explosion of a 122 mm projectile. The parts of the pig's body were thrown several meters away from the initial position and covered with soot. The blast effects of a 130 mm projectile were identical, but larger parts of the body were thrown up to 15 m away from the explosion center and covered with soot. A significant disintegration of the pig's body appears at the

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<sup>112</sup> Defense's Exhibit O-515.

<sup>113</sup> Prosecution's Exhibit T-152.

distance of 2m and more from the explosion center of all three referenced calibers, including tearing of the extremities and the head due to the blast effects.

201. In presenting his Findings and Opinion, the forensic expert explained that he has concluded based on the results of the experiments conducted that, on the critical occasion, the injured parties could not have been present near the projectile's landing site since, otherwise, the consequences for all of them would have been either lethal or much more serious than the existing ones. Defense counsel asked the forensic expert what would have happened had the injured parties stood 2 m away from the center of the projectile's explosion. The forensic expert responded: "Either a male or female body, or a body of an adult or a child would have been fully disintegrated; their hands, head, and legs would have been teared away and the abdomen ripped, while the whole surrounding area would be covered with blood."<sup>114</sup>

202. The Court did not accept such conclusions of forensic experts Vedo Tuco and Berko Zečević, because they fully contradict the statements of the foregoing witnesses, who testified about the site where they had stood at the moment of explosion, the cause of their injuries, and the presented documentary evidence, from which it clearly ensues that all the injured parties had stood within the landing range of the fired projectile, and that their injuries were caused by the explosion of the referenced projectile.<sup>115</sup>

203. In addition, the Panel notes that the experiment made by forensic expert Zečević was not based on any realistic parameters which could affect the final result. Specifically, the arrangement of the pigs' bodies during the referenced experiment documented in the Findings and Opinion<sup>116</sup> produced by forensic expert Zečević, was not corroborated with the evidence presented with regard to the injured parties' position at the moment of the projectile's explosion. Along this line, the Panel notes that the injured parties' position at the moment of the projectile's explosion on the critical occasion could be determined only based on the evidence given by the injured parties personally about this circumstance (witnesses D.A. (D.N.), D.M. and J.B.). This is so considering that, at the moment of an investigation team's arrival, they had

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<sup>114</sup> Transcript No. S1 1 K 012247 19 Kri of 27 April 2022, p. 37.

<sup>115</sup> The Prosecution's Exhibits T-3, T-10, T-11, T-18, T-32, T-144, T-152, T-158, T-159, T-160, T-161, T-162, T-163, T-164, T-165, T-166, T-167, T-168, T-169, T-170, T-171, T-172, T-173, T-179 and T-183.

<sup>116</sup> Defense's Exhibit O-517, p. 106-116.

already been transferred to the Health Center. The Panel also has no doubts that, due to the experienced state of shock and the traumas of wounding, the injured parties were absolutely unable to define correctly their position at the time of the projectile's fire. It is evident from the injured parties' evidence that, at the moment when they heard the sound of a fired projectile, some of them had stood at the crossroads, that almost all of them had run away to hide at that moment, some of them in a passage between the kiosk and the building, others behind a kiosk, namely they were running away in fear. It is therefore understandable that they were not able to precisely know the exact position at which they were standing at the moment of the explosion, and specifically how many meters away from them the shell exploded.

204. Of all the injured parties, only witness D.A. (D.N.) showed the site where she had stood on the critical occasion. This witness also indicated that she had tried to hide behind a kiosk and that she had sustained many injuries all over her body. The witness remembers seeing only smoke and fog: "I am flying through the air. I only remember myself and late Stanislava, and that I fell over her. I do not remember her dead at that site... I don't know where the others were, because nothing could be seen due to such a terrible fog and smoke ..."117 The documentary evidence, as well as witness Višnjevac's evidence, confirmed that after the shell explosion, witness D.A. (D.N.) was found together with late Stanislava right by the kiosk. However, no other witnesses confirmed that the site the witness showed to the SIPA's official persons was indeed the site where she had stood before the explosion.

205. The Panel also finds that there is no evidence proving that the body height of the pigs used in the experiment was adequate to the injured parties' height at the time. During the experiment, the pigs were lined up vertically, next to each other, but there is no evidence proving that all the injured parties had been in a standing position, or that they had stood side by side at the moment of the projectile's explosion. In addition, the simulation of the projectile's firing does not fully reflect the realistic parameters such as: the condition of the weapon from which it was fired, the quality of the projectile, the angle of the projectile's explosion, the distance of the firing position, and the weather circumstances on the day at issue. In addition, during the conduct of the

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<sup>117</sup> Transcript No. S1 1 K 012247 19 Kri of 23 April 2019, p. 17.

experiment, the forensic expert did not take into account the underpinning (wall) on the site, which could also affect the blast impact.

206. The Panel also took account of the claims of Milan Vrdoljak, forensic expert for the Prosecution. During the trial, the forensic expert indicated that the underpinning wall located near the projectile's landing site had affected the death zone. Along this line, forensic expert Vrdoljak stated that: "... It is specific for this crater that the projectile fell just near this stair (underpinning), which has most probably changed the death area, namely it affected or prevented movement of those particles, as evident from the fact that the major segment of this stair is damaged here."<sup>118</sup> The forensic expert further explained that, specifically due to the referenced underpinning, none of the persons being closer to the kiosk, or no lower person, sustained any lethal consequences.<sup>119</sup>

207. In view of all the foregoing, the Court finds that the conclusions drawn by Defense's forensic experts Vedo Tuco and Berko Zečević, and presented along this line, did not contest the numerous testimonials and the physical evidence from which it ensues, beyond a reasonable doubt, that the civilian injured parties were killed and wounded on the critical occasion due to the explosion of the projectile which had landed near the store in the Karađorđeva Street in Kalinovik.

(b) Was the death of Stanislava Koprivica and the wounding of the injured parties J.B., D.N., I.K., D.M. and M.T. caused by the artillery fire of the units of the 4<sup>th</sup> Corps?

208. The Panel primarily holds that it undoubtedly ensues from the evidence given by witnesses J.B., D.A. (D.N), M.J. (M.T.), D.M., Milka Koprivica, Lazar Gojanović, Nenad Višnjevac, Rajko Višnjevac, Stanimir Elez, Mitar Sladoje and the other witnesses that the Kalinovik territory was indeed shelled on 3 June 1995.

209. The foregoing is also corroborated with many combat reports made by the Herzegovina Corps Command and the 1<sup>st</sup> Guard Motorized Brigade, which were

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<sup>118</sup> Transcript No. S1 1 K 012247 19 Kri of 28 October 2020, p. 29.

<sup>119</sup> Transcript No. S1 1 k 012247 19 Kri of 23 November 2020, p. 56.

tendered in the case record as Defense's Exhibits O-450<sup>120</sup>, O-451<sup>121</sup>, O-453<sup>122</sup> and O-476.<sup>123</sup> It undoubtedly ensues from those reports that the Kalinovik territory was indeed shelled by units of the Army ARBiH on 3 June 1995.

210. The Panel holds that a crime-scene investigation was conducted after the shelling of Kalinovik on the critical day, and thereupon a record was made noting the findings of the authorized persons at the crime scene. The referenced record was tendered as the Prosecution's Exhibit T-3.<sup>124</sup>

211. It ensues from the above referenced Exhibit that, on 3 June 1995, at 11:00 hrs, the CJB duty service was notified via a dispatch note sent by the SJB Kalinovik of the explosions of three artillery projectiles in the inhabited place of Kalinovik on the referenced day. Thereupon, a crime scene-investigation team was established, which arrived at the crime-scene at 12:45 hrs. The Crime-Scene Investigation Record noted that an authorized employee of the SJB Kalinovik secured the crime-scene, and that the investigation was carried out by Rade Gagović, Rajko Višnjevac, Jovo Ostojić and Sreten Forcan.

212. According to the Crime-Scene Investigation Record, one oval-shape crater of 160x120 cm was found near the Pešut Klarić Street, and damage on the surrounding housing buildings observed. The Record further indicated that a second crater of 1-5 m in diameter and 0.30 cm in depth was found at the site of the injured parties killing and wounding, across from the Karađorđe's Street in the Kalinovik downtown, in addition to the noted damage on the nearby housing buildings caused by the referenced projectile's explosion. A third crater, dimensions 180x230 cm, 40 cm in depth, was found 70 m to the north from the Health Center in Kalinovik, with a note that the third projectile caused no material damage.

213. The referenced Record also noted that traces of red color resembling blood, books, and school items with the names of the injured parties Stanislava Koprivica and D.N were found at the crime-scene, near the second crater. All the foregoing was

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<sup>120</sup> Daily Operative Report, Command of the 1st GMTBR, conf. No. 6-160 of 3 June 1995.

<sup>121</sup> Report by the Command of the 1st GMTBR, conf. No. 4-400 of 3 June 1995.

<sup>122</sup> Regular Combat Report, Herzegovina Corps Command, strictly conf. No. 19-635 of 3 June 1995.

<sup>123</sup> Extraordinary Combat Report, Command of the 1<sup>st</sup> GMTBR, strictly conf. No. 6-159 of 3 June 1995.

<sup>124</sup> Prosecution's Exhibit T-3: Crime-Scene Investigation Record, Interior Ministry of Republika Srpska, PSC Srbinje, No. 16-02/2-230-78/95 of 3 June 1995.

also noted on the drawing of the crime-scene<sup>125</sup> and the photo-documentation<sup>126</sup> produced during the crime-scene investigation at issue.

214. During the examination at the trial, witness Rajko Višnjevac confirmed that, on the critical day, authorized official persons of the CJB Srbinje had conducted the on-sight investigation, having noted that he had also attended the investigation and signed the Record.

215. Witness Milivoje Faladžić, employed at the critical period as a police officer of the SJB Kalinovik, also confirmed his presence during the crime-scene investigation on the critical day, or, more precisely, that he had secured the crime scene, while the authorized official persons of the CJB Foča (Srbinje) had conducted the investigation. After arriving at the crime-scene, the witness also saw Rajko Višnjevac from the SJB Kalinovik. The witness indicated that, on the referenced occasion, he saw a crater, shrapnel/particles of the shell, blood traces as well as the belongings of the injured children. The witness emphasized that the wounded children and the body of Stanislava Koprivica had previously been transported to the Health Center in Kalinovik.

216. The Crime-Scene Investigation Record indicates that, according to citizens' statements, the first shell fell at 07:25 hrs, the second at 08:45 hrs and the third at 08:50 hrs. It also indicates that they had been "most likely" fired from the artillery weapon caliber 122 mm from the Bjelimići area, and the Argud or Mokro settlements, located around 13-14 km away from Kalinovik.

217. The Panel did not accept the Defense's theory regarding the direction from which the referenced projectile had come, namely that it was fired from the position held by units of the 1<sup>st</sup> Corps of the Army RBiH. The said theory was based on the Findings and Opinion produced by ballistic forensic experts, Berko Zečević and Jasmin Terzić.

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<sup>125</sup> The Prosecution's Exhibit T-147: PSC Srbinje, Crime-scene sketch, Stanislava Koprivica at al., Kalinovik, 3 June 1995 – ERN No. RR13-3359-RR13-3361.

<sup>126</sup> The Prosecution's Exhibit T-144: Photo-documentation of the PU Foča, No. 16-02/2-233-56/95, 12 July 2018.

218. In his Findings and Opinion,<sup>127</sup> forensic expert Zečević concluded, based on the terminal ballistic analysis of the probable directions from which howitzer projectiles had been fired, that the projectiles which exploded in the Kalinovik downtown on 3 June 1995 were projectiles caliber 130 mm M79 or OF-482, fired from the north-northwest direction, azimuth 337 degrees, which matched the firing position of a gun caliber 130 mm, from within the composition of the 1<sup>st</sup> Corps in the Dejčići village area.

219. The Court did not accept this part of the Findings and Opinion produced by forensic expert Zečević because it contradicts the evidence of the examined witnesses who have testified about the referenced circumstances, the tendered documentary evidence as well as the Findings and Opinion produced by forensic experts Vrdoljak and Janković.

220. The Panel primarily took account of the evidence given by certain injured parties and the other witnesses, who have testified about the direction from which the shell had come, and who have consistently confirmed that the projectiles that hit the Kalinovik area on the critical day had been fired from the Bjelimići area, where the firing positions of units of the 4<sup>th</sup> Corps were located at the critical period.

221. When asked by the Panel Presiding during the examination at the trial, if she knew from which direction the shell had been fired due to whose explosion she was wounded, the injured party J.B. responded: "That sound came from the Gradina direction. It is a hill in Kalinovik located to the west from the School."<sup>128</sup>

222. The injured party M.J. (nee T.) stated that she had heard the firing of the first shell which hit Kalinovik on the critical day. The witness indicated that it had come from the west direction, looking from the Kalinovik downtown or, more precisely, from the places of Bjelimići and Ljuta.<sup>129</sup>

223. The injured party D.A. (D.N.) also confirmed that the shell had been fired from the Bjelimići direction: "From the west direction, at least we learned from our parents

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<sup>127</sup> Defense's Exhibit No. O-517.

<sup>128</sup> Transcript No. S1 1 K 012247 19 Kri of 16 July 2019, p. 46.

<sup>129</sup> Transcript No. S1 1 K 012247 19 Kri of 14 May 2019, p. 12.-13.

that the villages of Bjelimići and Ljuta were in that direction, from which they heard the firing, and we heard its whistling sound above us.”<sup>130</sup>

224. Witness Mitar Sladoje explained that the shells had come from the west direction, from the wider area of Bjelimići. When asked by the Prosecutor how he knows that, the witness responded: “The pupils told me. I also know that. They told me as well that each firing of those shells was heard in Kalinovik...we heard their firing. We felt their flying over our heads. They were coming from the west and flying towards Kalinovik.”<sup>131</sup>

225. Consistently with witnesses Mitar Sladoje, M.J. (M.T.) and D.A. (D.N.), witness Stanimir Elez also stated that, on the critical occasion, the shells were fired from the Bjelimići direction to the west from Kalinovik.<sup>132</sup>

226. The foregoing was also confirmed by the following witnesses: Rajko Višnjevac, (who concluded based on the shell’s whistling sound that it had been fired from the Bjelimići and Konjic areas, where the units of the ARBiH<sup>133</sup> were stationed), Lazar Gojanović, Milivoje Faladžić, as well as witness Radivoje Mandić, who stated: “I am telling you, the shells were fired from the Bjelimići territory. I listened the sounds while standing on the road. I heard exactly the sound of a fired shell...”.<sup>134</sup>

227. The Court fully credited the foregoing witnesses’ evidence, having rendered it objective, convincing and consistent, both mutually and with the other presented physical evidence, as well as with the evidence given by the forensic experts from the Faculty of Mechanical Engineering and Naval Architecture, University in Zagreb.<sup>135</sup>

228. That the shells were indeed fired on the critical day from the Bjelimići territory on the Kalinovik territory is also confirmed by the Regular Combat Report of the 4<sup>th</sup> KAG, produced at the IKM Bjelimići.<sup>136</sup> The Report noted that, on 3 June 1995, the referenced unit had fired at Kalinovik three projectiles from a 122 mm howitzer. This is consistent with the evidence given by the witnesses who stated that three shells

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<sup>130</sup> Transcript No. S1 1 K 012247 19 Kri of 23 April 2019, p. 14.

<sup>131</sup> Transcript No. S1 1 K 012247 19 Kri of 2 April 2019, p. 11.

<sup>132</sup> Transcript No. S1 1 K 012247 19 Kri of 19 November 2019, p. 26.-27.

<sup>133</sup> Transcript No. S1 1 K 012247 19 Kri of 15 October 2019, p. 23.

<sup>134</sup> Transcript No. S1 1 K 012247 19 Kri of 1 October 2019, p. 8.

<sup>135</sup> Forensic experts Milan Vrdoljak and Slobodan Janković, Prosecution's Exhibits T-141 and T-141a.

<sup>136</sup> Daily Combat Report, Str. conf. No. 01-1-23/95 of 3 June 1995, KAG Commander Esad Moro.

were fired on the Kalinovik territory on the critical day. In addition, the Panel holds that the same number of projectiles was also indicated in the Crime-Scene Investigation Record,<sup>137</sup> as well as that it also ensues from Exhibit T-32.<sup>138</sup>

229. The Prosecution's witness, Mujo Šubara, as a member of the 4<sup>th</sup> MAP, was during the critical period deployed at the Bjelimići area in the capacity of a 122 mm howitzer commander stationed in the village of Vojile. The witness confirmed in his statement given during the investigation<sup>139</sup> that he had fired at Kalinovik from the said weapon during an action on the Treskavica mountain, but that he does not remember which targets he had hit on the said occasion.

230. In addition to the foregoing, the Panel holds indisputable the existence of coordination between the units of the 4<sup>th</sup> Corps and the 1<sup>st</sup> Corps during the ongoing combat operations at the Treskavica<sup>140</sup> plateau at the critical period. However, there is no evidence proving that the Kalinovik proper was indeed targeted by the artillery of the 1<sup>st</sup> Corps.

231. Specifically, the tendered combat reports of the 1<sup>st</sup> Corps units do not confirm the Defense's theory that the units of the 1<sup>st</sup> Corps had fired from their combat positions by their artillery at the Kalinovik town on 3 June 1995, or that such artillery firing existed throughout the entire critical period.

232. The conclusion drawn by forensic expert Berko Zečević also had no confirmation in the evidence given by the examined witnesses, who were members of the 1<sup>st</sup> Corps at the critical period.

233. The Prosecution's witness Abdulah Čobo, Commander of the 1<sup>st</sup> MAD of the 1<sup>st</sup> Corps at the critical time, stated that his unit had fired towards the Gvozno polje area, in the zone of responsibility of the 1<sup>st</sup> Corps, but that he had never fired at any inhabited part of Kalinovik. The witness stated that Kalinovik was not within the firing zone of the 1<sup>st</sup> Corps artillery, namely that Kalinovik was outside their firing range: "I was not able

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<sup>137</sup> The Prosecution's Exhibit T-3.

<sup>138</sup> CJB, Police Forces Staff Command Srbijne, No. 16-85/95 of 3 June 1995.

<sup>139</sup> The Prosecution's Exhibit T-12: Witness Examination Record concerning Mujo Šubara, SIPA. No. 16-06/1-04-2-1272/16 of 9 November 2016.

<sup>140</sup> The foregoing ensues from the Prosecution's Exhibit T-15, the Defense's Exhibits O-323, O-368 and others.

to fire, it was out of range, totally beyond the firing zone, and the weapons also were not turned in that direction. Those weapons were directed towards Gvozino polje.”<sup>141</sup>

234. During the examination at the main trial, Prosecution’s witness Muhidin Ćuprija, member of the 1<sup>st</sup> MAD during the critical period, confirmed that the 1<sup>st</sup> Corps did not have any artillery targets in Kalinovik at the critical period, and that Kalinovik was not in the direction of their firing activities. The witness emphasized that: “We did not have a good-quality ammunition in order to be able at all to fire at such distance, and we also did not have a sufficient number of shells to fire them just like that in an unknown direction...”<sup>142</sup>

235. The Court fully credited the foregoing witnesses, having held that they are objective, reliable and consistent, both mutually and with the other presented evidence.

236. The only witness who has spoken about the 1<sup>st</sup> Corps artillery firing at the Kalinovik territory is witness for the Defense, Damir Husković, also a former member of the 1<sup>st</sup> MAD at the critical period. However, it is not clear from his evidence which specific duty he had performed within the referenced unit. In his evidence given during the trial, the witness stated that, during 1995, the units of the 1<sup>st</sup> Corps were active in the wider area of Kalinovik and Treskavica, and that, during May, June and July 1995, they held artillery positions directed at Kalinovik.

237. However, in his statement given during the investigation, witness Husković resolutely stated: “As far as my unit is concerned, we did not have any artillery weapons whose range could reach the inhabited place of Kalinovik, nor did we intend to open any fire at the inhabited place of Kalinovik.”<sup>143</sup> When faced with the referenced inconsistency in his statements, witness Husković stated that the referenced part of the statement given during the investigation relates to 1994, and that during 1995 the units of the 1<sup>st</sup> Corps possessed weapons whose range could reach Kalinovik.

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<sup>141</sup> Transcript No. S1 1 K 012247 19 Kri of 3 September 2020, p. 18.

<sup>142</sup> Transcript No. S1 1 K 012247 19 Kri of 6 July 2020, p. 14.

<sup>143</sup> The Prosecution’s Exhibit T-187: Witness Examination Record concerning Damir Husković, No. 16-06/1-04-1-512/18 of 22 May 2018, Ministry of Security, SIPA.

238. The Panel did not credit the foregoing witness Husković's claims considering that his explanation of the inconsistencies in his statements was not convincing. In addition, his main trial evidence completely contradicts the evidence given by the witnesses who had at the time held the office of the Commander of the 1<sup>st</sup> MAD (Abdulah Čobo) and the witness who had executed firing with the 1<sup>st</sup> MAD (Muhidin Ćuprija), whose evidence the Panel renders objective and reliable.

239. Ballistic forensic experts for the Prosecution, Milan Vrdoljak and Slobodan Janković,<sup>144</sup> conducted an expert evaluation of the direction and the caliber of the projectile which had hit the Kalinovik downtown on 3 June 1995, whose explosion inflicted injuries on the injured parties.

240. Forensic experts Vrdoljak and Janković concluded, based on an analysis of the crater traces noted in the Record of the on-site investigation of 3 June 1995, as well as based on the examination of visible traces of the crater and the fragments of shells on the surrounding housing facilities observed during the on-site visit of 1 October 2018, that the referenced craters could have been caused by howitzer projectiles caliber 122mm, 130mm or 155mm. Thus, based on the data concerning the referenced weapons' maximum ranges, they established with a high probability that the projectiles at issue had the azimuth direction between 273° and 294°.

241. The photo No. 12<sup>145</sup> in the Findings and Opinion shows the area of possible firing positions at the Kalinovik downtown, considering the established azimuth of 273° to 294° from which the projectile had come. It is evident from the referenced photo that the area at issue also includes the place of Odžaci, where the forward command post of Bjelimići (IKM-1) was located at the critical period, namely where the artillery units of the 4<sup>th</sup> Corps were deployed, as confirmed by forensic expert Vrdoljak in explaining his Findings and Opinion at the trial. Therefore, according to the Findings and Opinion produced by the ballistic forensic experts Milan Vrdoljak and Slobodan Janković, one of the directions from which the projectile which had on the critical occasion hit the Kalinovik downtown, is exactly the Bjelimići area.

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<sup>144</sup> The Prosecution's Exhibits T-141 and T-141a.

<sup>145</sup> Exhibit T-141a, p. 11.

242. The referenced forensic experts noted in their Findings that many traces of shelling have disappeared over the elapsed period of time and became unusable for drawing any conclusions as to what had precisely happened on the critical day. The forensic experts specifically indicated in their Findings, and also confirmed in their explanation at the trial, that during their on-site visit they did not find any traces of the second crater created on the site where the injured parties had been wounded, or any traces of damages on the surrounding housing facilities near the store. This is so because the crime-scene has meanwhile changed: “First the asphalt was placed on it, and thereupon covered with concrete on the top of it. The damages were repaired, so the crater could not be seen at all.”<sup>146</sup>

243. In explaining his Findings and Opinion at the trial,<sup>147</sup> forensic expert Vrdoljak clarified that, due to the foregoing reasons, they have analyzed the remains of the “first crater”<sup>148</sup> visible during their on-site visit on 1 October 2018, including the visible traces of damage on one building, while traces of damage on the other building were covered with paint. The forensic expert indicated that, therefore, the conclusions in their Findings and Opinion were drawn based on the first crater: “We focused on analyzing the first crater and the damage it had caused.”<sup>149</sup> This forensic expert added that the projectiles, which had made the first and the second crater, were also marked as Photo 1 and Photo 2, and that, most likely, their firing elements were identical because they had landed within the circle or the ellipse of the expected impact of a projectile. It is a 97% possibility that the projectile will land within that circle.

244. The Panel has emphasized that, in producing their Findings and Opinion, the forensic experts did not have at their disposal the projectiles’ fragments/shrapnel found during the crime-scene investigation conducted on 3 June 1995, which were subsequently lost. Therefore, they were not able to make any ballistic analysis of the shrapnel and on that basis determine the precise type/caliber of the weapons by which Kalinovic had been shelled on the critical day, and which caliber could cause “the first crater” and “the second crater”. The forensic experts rather indicated that the weapon at issue could be caliber 122 mm, 130mm, 105 mm and 155 mm.

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<sup>146</sup> Transcript No. S1 1 K 012247 19 Kri of 28 October 2020, p. 28.

<sup>147</sup> Hearing held on 28 October 2020 and on 23 November 2020.

<sup>148</sup> Crater found in the Pešut Klarić Street, according to the Crime-Scene Investigation Record.

<sup>149</sup> Transcript No. S1 1 K 012247 19 Kri of 3 November 2020, p. 9.

245. During the cross-examination, forensic expert Vrdoljak confirmed that their findings regarding the weapon caliber were based: “on the referenced Records which we have presented and on the Corps orders... We took into account different projectiles because we were not able to identify their type, since we had no descriptions of those craters, or shell fragments to be able to concretely determine them.”<sup>150</sup>

246. Therefore, in the absence of all the necessary technical parameters, forensic experts Vrdoljak and Janković were not able to establish which specific weapon was used on the critical occasion, or to determine the position from which the weapon fired. However, the forensic experts calculated the azimuth of the firing direction (273°-294°), pursuant to which the projectile that had on the critical occasion hit the Kalinovik downtown could also be fired from the direction of Bjelimići, which is where the artillery units of the 4<sup>th</sup> Corps (4<sup>th</sup> KAG) were stationed, specifically most likely from weapons caliber 122mm, 130mm or 155mm. The Panel accepted the referenced Findings and Opinion, having rendered them objective and produced in compliance with the rules of profession.

247. When it comes to possible calibers of the projectiles which hit the Kalinovik downtown (122 mm, 130mm or 155 mm) on the critical occasion according to the Findings and Opinion produced by forensic experts Vrdoljak and Janković, the Panel finds that the presented documentary evidence,<sup>151</sup> and the evidence given by the examined witnesses<sup>152</sup> shows that, at the critical period, the artillery units of the 4<sup>th</sup> Corps had at their disposal a 122 mm howitzer (firing position Gradeljina) and a gun caliber 130 mm (Delić Polje/Čuhovići), by which they had, *inter alia*, also fired at the Kalinovik area. On the other hand, in relation to a 155 mm projectile, there is no evidence proving beyond a reasonable doubt either where it was located or whether it was fired from in that direction.<sup>153</sup>

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<sup>150</sup> Transcript No. S1 1 K 012247 19 Kri of 23 November 2020, p. 16.-17.

<sup>151</sup> Exhibits T-40, T-41, T-104, T-108, O-237 and others.

<sup>152</sup> Witnesses Esad Moro, Esad Ramić, Zlatko Bečović and others.

<sup>153</sup> SEE the Reasoning of the Judgment on page 34.

(c) The wounding of the injured party Ratko Đogić on 22 May 1995 – COUNT 3 OF THE INDICTMENT

248. The injured party Ratko Đogić was examined during the investigation about the circumstances pertaining to the event at issue, and his statement was read out at the main trial<sup>154</sup> pursuant to Article 273. The witness stated that he was wounded by a shell that landed near his house in the village of Mjehovine,<sup>155</sup> Kalinovik, on 22 May 1995.

249. The witness described how he was wounded on the referenced day, indicating: “I remember that, on that day, I went out of the house to take some grass to feed the cattle. When I came near the stable, around 30 m away from the house, I heard the ‘whistling’ sound of a shell. One shell exploded in Kalinovik, while I personally saw the second one hitting the old fortress at the Gradina hill. I immediately abandoned all my activities and went to hide myself below the house. However, on my way back from the stable to the house, a shell fell near me and I felt a strong pain....I subsequently learned that it landed 8 m away from me...and threw me around 5 or 6 m away.”<sup>156</sup>

250. Witness Đogić indicates that, on the critical occasion, Milorad Šojić, Dragan Lalović, Mitar Lalović and other neighbors immediately came to help him, whereupon the ambulance vehicle came and transported him to the Kalinovik Health Center, wherefrom he was transferred to the hospital in Foča.

251. The injured party Ratko Đogić showed to the SIPA official persons the exact location where the projectile had landed as a result of whose explosion he was wounded. The Photo-documentation produced on the referenced occasion was tendered in the case record as the Prosecution’s Exhibit T- 150.<sup>157</sup>

252. Based on the evidence given by the injured parts and indirect witnesses Višnjevac and Faladžić, the Court found that the injured party Đokić had the status of a civilian person at the time of his wounding; that he had stood near his house, performing the farming activities; and that, as a civilian, he had enjoyed protection

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<sup>154</sup> The Prosecution’s Exhibit T-1: Witness Examination Record, No. 16-06/1-04-2-214/16 of 1 March 2016, Kalinovik, SIPA.

<sup>155</sup> During the examination at the man trial, witness Rajko Višnjevac explained that, during the war, the name of the village of Mjehovine was Bogdanovo.

<sup>156</sup> The Prosecution’s Exhibit T-1.

<sup>157</sup> SIPA, Photo- documentation concerning the visit to the site showed by witness Ratko Đogić, No. 16-10/6-72-FD/17 of 25 April 2017 – with the production date of 15 May 2017.

under the 1949 Geneva Convention IV. The Court completely credited the evidence given by the injured party Ratko Đogić, having rendered it reliable, objective and consistent with the other evidence presented.

253. It ensues from the Prosecution's Exhibit T-36<sup>158</sup> that the Kalinovik area was shelled on 22 May 1995. The Prosecution's documentary Exhibits T-4,<sup>159</sup> T-7,<sup>160</sup> T-180,<sup>161</sup> T-181,<sup>162</sup> and T-182<sup>163</sup> confirms that the injured party Ratko Đogić was indeed wounded on the referenced occasion. The foregoing also ensues from the evidence given by indirect witnesses Rajko Višnjevac and Milivoje Faladžić, while there were no other witnesses testifying in relation to the critical event.

254. Forensic medicine expert for the Prosecutor's Office, Željko Karan,<sup>164</sup> conducted a forensic expertise concerning the type and the degree of the wounds sustained by the injured party Ratko Đogić. Based on an analysis of the submitted medical documents related to the injured party's wounds, forensic expert Željko Karan concluded that, on the critical occasion, the injured party was wounded by fragments of an explosive device. The Court completely credited the referenced finding, having rendered it professional, objective and produced in compliance with the rules of profession.

(d) Was the wounding of the injured party Ratko Đogić caused by the artillery fire of the 4<sup>th</sup> Corps units?

255. The Record of the on-site investigation conducted on the critical day by authorized official persons of the SJB Kalinovik, tendered in the case record as the

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<sup>158</sup> The Prosecution's Exhibit T-4: On-Sight Investigation Record, Interior Ministry of Republika Srpska, CSB Srbinje, Kalinovik Station, No. 16-3/02-230-261/95 of 23 May 1995, T-7: Record, Interior Ministry of Republika Srpska, CSB Srbinje, Kalinovik Station, No. 16-3/02-230-261/95 of 30 June 1995; T-36: Report by the Herzegovina Corps Command, Regular Combat Report, Str. conf. No. 19-579 of 22 May 1995.

<sup>159</sup> Record, Interior Ministry of Republika Srpska, CSB Srbinje, Kalinovik Station, No. 16-3/02-230-261/95 of 23 May 1995.

<sup>160</sup> Record, Interior Ministry of Republika Srpska, CSB Srbinje, Kalinovik Station, No. 16-3/02-230-261/95 of 30 June 1995.

<sup>161</sup> Health Center "Sveti Luka" Kalinovik, Hospital Discharge Letter concerning Ratko Đogić.

<sup>162</sup> General Hospital, Discharge Letter concerning Ratko Đogić - M.B. 1390.

<sup>163</sup> General Hospital, Report on the character of injuries sustained by Ratko Đogić, No. 424-01/61 of 28 June 1995.

<sup>164</sup> Findings and Opinion produced by forensic medicine expert, Dr. Željko Karan, 30 November 2017.

Prosecution's Exhibit T-4, noted that, on the referenced day, at around 08.30 hrs, three shells landed at the Kalinovik suburbs' west side. The Record indicated that one shell landed on the Gradina site around 50 m away from the first houses, and that two shells landed on the village of Bogdanovo, which is when Ratko Đogić sustained injuries. The Record described the character of the projectile which had landed on the Gradina site, as well as the damages on the nearby housing facilities caused by the projectiles' explosion.

256. With regard to the projectile that fell on the village of Bogdanovo, as a result of whose explosion the injured party Ratko Đogić was wounded, the referenced Record noted that the projectile had landed just below the injured party's house, having made a crater of 2.20 m in diameter and 50 cm in depth. Also described was the damage on the housing facilities caused by the projectile's blast. The Record indicated that the injured party he had stood 7 m away from the explosion site, and that he sustained serious bodily injuries (caused by fragments (shrapnel) all over his body), which is why he was transferred to the Health Center in Kalinovik.

257. In the concrete case, no shrapnel was collected during the on-site investigation, nor was any sketch of the site, or the related photo-documentation or the investigation video-recording made.

258. Therefore, the referenced site-visit did not offer any sufficient or reliable information based on which either the caliber of the projectile whose explosion inflicted the injuries on the injured party Đogić, or the precise position from which the projectile had been fired on the critical occasion could be determined.

259. During their testimonies at the main trial, witnesses Rajko Višnjevac and Milivoje Faladžić, who had conducted the referenced on-site investigation on the referenced day, as it ensues from Exhibit T-4, did not present any detailed information about the critical event. Witness Rajko Višnjevac confirmed that he had produced the referenced Record of the on-site investigation. However, during the trial, the witness provided no details about it. On the other hand, witness Milivoje Faladžić only stated that he has learned from his colleague (with no indication of the colleague's name) that the injured party at issue was wounded in the village of Mjehovine. The witness however did not confirm either that he had visited the site, or that he had attended the

investigation. In addition, the Panel finds that, in the concrete case, there were no other witnesses to testify about the critical event.

260. Considering the above mentioned absence of the relevant technical information, as well as the fact that the crime-scene has meanwhile changed to such an extent that the traces of shelling are no longer visible, the Prosecution's ballistic forensic experts were not able to offer any expert analysis or expert findings concerning the critical event.

261. Despite the absence of evidence in the present case concerning the precise position from which the projectile was fired as a result of whose explosion the injured party Đogić was wounded, and considering the absence of evidence related to the type and the caliber of the weapon used, the Panel finds that the presented evidence points to the conclusion, beyond a reasonable doubt, that the injured party was indeed wounded as a result of activity of the artillery units of the 4<sup>th</sup> Corps of the ARBiH.

262. In this regard, the Panel primarily holds that Exhibit T-56<sup>165</sup> shows that, in relation to combat operations of 22 May 1995, the Commander of the IKM-1, of the 4<sup>th</sup> Corps ARBiH, had *inter alia* approved the ammunition for a 130 mm gun, in a total amount of 6 projectiles, to be fired at Kalinovik pursuant to his order.

263. That on the critical day the artillery units of the 4<sup>th</sup> Corps had indeed fired from a 130 mm gun at the Kalinovik territory is confirmed by the Report of the 4<sup>th</sup> MAP Command made at the Dubravice site on 22 May 1995.<sup>166</sup> The Report noted that, on the referenced day, this unit had also fired three projectiles from a 130 mm gun at Kalinovik, which number is identical with the number of projectiles mentioned in the Record of the on-site investigation.<sup>167</sup>

264. It further ensues from the Report of the 4<sup>th</sup> KAG of 23 May 1995<sup>168</sup>, produced at the IKM-1 Bjelimići that, on 22 May 1995, the referenced unit fired 5 projectiles from a 122 mm howitzer at Kalinovik. That the artillery fire was opened on the referenced

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<sup>165</sup> Order by the Command of the 4<sup>th</sup> Corps ARBiH, IKM-2, to take reconnaissance and sabotage actions, Str. conf. No. 02-1754-15/1 of 21 May 1995 at 17:00 hrs.

<sup>166</sup> Prosecution's Exhibit T-95: Regular Daily Report by the 4<sup>th</sup> MAP Command, made at the Dubravice site on 22 May 1995.

<sup>167</sup> Prosecution's Exhibit T-4.

<sup>168</sup> Prosecution's Exhibit T-99: Daily combat Report, 4<sup>th</sup> Corps Command ARBiH, IKM-1 Bjelimići, KAG, 4<sup>th</sup> MAP, Str. conf. No. 01-12/95 of 23 May 1995.

day is also confirmed by the injured party Ratko Đogić: “I heard the sound of a shell firing from Bjelimići. In my opinion, it was a shell fired from a howitzer, because they could not reach Kalinovik by firing from any other weapon...I also heard shells’ whistling sound from the Bjelimići direction.”<sup>169</sup>

265. The Panel holds that there is no evidence in the present case proving that the territory of the Kalinovik municipality was at the critical time an artillery target of the 1<sup>st</sup> Corps ARBiH or any other military unit. Specifically, there is no evidence proving that some units other than the 4<sup>th</sup> Corps units had indeed opened any artillery fire from their positions at the Kalinovik territory during the critical period, namely on 22 May 1995, as reasoned in the Judgment above.<sup>170</sup>

(e) Conclusion regarding the criminal responsibility of the accused Ramiz Dreković for the critical events described in Counts 2 and 3 of the Indictment

266. In view of the above reasoned evidence, the Panel finds proved beyond a reasonable doubt that, on the critical occasion, the injured parties referred to in Counts 2 and 3 of the Indictment were wounded by the artillery projectiles fired at the Kalinovik territory on 22 May 1995 and on 3 June 1995.

267. The Panel finds that the presented evidence points to the conclusion beyond a reasonable doubt that the artillery units of the 4<sup>th</sup> Corps indeed fired at the Kalinovik territory at the critical period. This primarily ensues from both the evidence showing that Kalinovik was indeed marked as an artillery target of the referenced Corps and the Combat Reports noting that units of the 4<sup>th</sup> Corps indeed fired at Kalinovik throughout the critical period, including on 22 May and 3 June 1995.<sup>171</sup> However, there is no clear evidence showing that any other unit shelled Kalinovik during the referenced period.

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<sup>169</sup> Prosecution’s Exhibit T-1.

<sup>170</sup> SEE the Judgment pages. 62-64, paras. 230-238.

<sup>171</sup> Daily Combat Report, Str. conf. No. 01-1-23/95 of 3 June 1995, KAG Commander, Esad Moro (a copy verified by Captain Ragib Podrug, Head of the Archive Depot), Regular Combat Report, 4<sup>th</sup> Corps ARBiH, 4<sup>th</sup> MAP, Sp No. 02-22/2-05/95 of 22 May 1995, Daily Combat Report, Command of the 4<sup>th</sup> Corps of the ARBiH, IKM-1 Bjelimići, 4<sup>th</sup> KAG, 4<sup>th</sup> MAP, Str. conf. No. 01-12/95 of 23 May 1995.

268. In order to establish the criminal responsibility of the accused Ramiz Dreković, who was undoubtedly the Commander of the 4<sup>th</sup> Corps of the ARBiH, on both 3 June and 22 May 1995, it was necessary to establish whether he had indeed ordered the units subordinated to him on that occasion to attack the civilian population and launch an attack with no selected targets by shelling the Kalinovik inhabited territory with guns caliber 130 mm, howitzers caliber 105 mm, 122 mm and 155 mm, as described in the preamble of the Indictment, namely to establish whether he was the only person holding the exclusive right to order the artillery units of the 4<sup>th</sup> Corps to open fire.

269. The Panel primarily notes that, in the present case, there is no evidence whatsoever proving that the accused had concretely issued any written or oral order to artillery units to launch an attack on the civilian population and an attack on Kalinovik without any target selected. In addition, no written orders by the accused Dreković related to the artillery activities on 22 May and 3 June 1995 were tendered in the case as evidence.

270. The Court was not able to correlate the accused Dreković's Order of 26 May 1995<sup>172</sup> with the artillery firing of the 4<sup>th</sup> Corps on 22 May and 3 June 1995. This is so considering that the Order of 26 May 1995 was strictly related to the artillery firing from a 122 mm howitzer on that day, namely the Order indicated that the action had to be "prompt". The Court holds that although the fact that the accused ordered on 26 May 1995 opening of the artillery fire at the Kalinovik downtown proves that the accused indeed had the authority to order the use of the Corps artillery, this fact, in and out itself, does not prove beyond a reasonable doubt that, during the critical period (22 May 1995 and 3 June 1995), the opening of artillery fire was indeed ordered by no other person than the accused Dreković as the Commander of the 4<sup>th</sup> Corps.

271. The Panel further holds that none of the examined witnesses present during the critical period on the IKM-1 Bjelimići (the witnesses from the 4<sup>th</sup> MAP and the 4<sup>th</sup> KAG, or members of the Command of the 4<sup>th</sup> Corps<sup>173</sup>) confirmed that at the time the accused Dreković had indeed issued any written order that artillery fire be open at the Kalinovik area, or that such an order was issued orally, via the means of

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<sup>172</sup> The Prosecution's Exhibit T-57.

<sup>173</sup> Witnesses Esad Ramić, Esad Tokić, Esad Moro, Nedim Hodo, Mujo Šubara, Sead Đulić, Zlatko Bećović et al.

communications used at the time by the 4<sup>th</sup> Corps, or in any other manner whatsoever. The foregoing also does not ensue beyond a reasonable doubt from any piece of the presented documentary evidence.

272. The Panel also holds that the reports related to the artillery firing of the 4<sup>th</sup> Corps units at the Kalinovik territory on the critical days did not indicate that those activities were executed strictly pursuant to the order of the accused Dreković as the 4<sup>th</sup> Corps Commander. It also does not ensue from the presented evidence that those reports were indeed forwarded to the accused Dreković.

273. Specifically, the Reports of the 4<sup>th</sup> KAG of 3 June 1995 and 23 May 1995 related to the artillery firing were forwarded to the Command of the 4<sup>th</sup> MAP, while the Report of 22 May 1995 was forwarded to the IKM-2. The Panel holds that this fact further indicates that the artillery fire mentioned in the referenced Reports does not constitute the execution of the order issued by the accused Dreković.

274. In the absence of the accused Dreković's clear order to the units subordinated to him to fire from guns caliber 130 mm and howitzers caliber 105 mm, 122 mm and 155 mm at the Kalinovik territory, with which the accused was charged under the present Indictment, the duty of the Prosecutor's Office was to prove that only the accused Dreković, as the Commander of the 4<sup>th</sup> Corps of the ARBiH, could order that such an artillery fire be opened on the critical occasion.

275. Military forensic expert for the Prosecutor's Office, Mladen Marinković, conducted an expert evaluation in relation to the foregoing circumstance and, in December 2018, produced the Findings and Opinion on the subject of his expertise. These Findings and Opinion were presented orally at the hearings held on 21 December 2020, 18 January and 1 February 2021, and thereupon tendered in the Court's case record as the Prosecution's Exhibit T-19.<sup>174</sup>

276. In his Findings and Opinion, forensic expert Marinković concluded that the Commander of the 4<sup>th</sup> Corps had the exclusive right to use the artillery of the 4<sup>th</sup> Corps in combat operations; that he issued decisions and gave tasks to his subordinates, organized coordination and co-operation, and controlled the execution of decisions;

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<sup>174</sup> The Prosecution's Exhibit T-19: Findings and Opinion produced by military forensic expert, Mladen Marinković, December 2018. p. 20.

that pursuant to the plan and decision to conduct upcoming combat operations, he grouped the artillery, assigned combat roles, tasks, and combat deployment areas to the artillery units, including the manner of the tasks' execution, and the consumption of ammunition; and that, when required, he also regulated other issues.

277. In explaining his Findings and Opinion at the trial, the forensic expert explained that his conclusion on the use of artillery of the 4<sup>th</sup> Corps is based on the artillery combat rule.<sup>175</sup> Pursuant to this rule, command over the artillery is an activity of the commander and the commands of joint strategic and operative units,<sup>176</sup> wherein the joint tactical unit constitutes a brigade, while an operative unit constitutes a corps. Thus, pursuant to the artillery rule, brigade commanders command over the brigade artillery, while the corps artillery will be under the command of the Corps Commander only.<sup>177</sup>

278. The forensic expert further corroborated his Findings with the Order issued by the Command of the 4<sup>th</sup> Corps of the ARBiH, IKM-2 for reconnaissance-sabotage operations, Str. conf. No. 02-1754-15/1 of 21 May 1995<sup>178</sup>. Item 10 of this Order indicated the following: "The IDG operations will be under the command of brigade commanders, the artillery activities of the 4<sup>th</sup> MAP will be under the command of the Corps Commander, while BRAGs will be under the command of the IKM-2 and IKM-3 commanders."

279. However, the Panel did not credit forensic expert Mladen Marinković's conclusion that, as the Commander of the 4<sup>th</sup> Corps, the accused Ramiz Dreković had had the exclusive right to use the Corps artillery. This is so considering that such a conclusion contradicts the evidence presented by both the Prosecution and the Defense, as well as the Findings and Opinion produced by military forensic expert Mustafa Polutak.<sup>179</sup> It clearly ensues from the foregoing evidence that, in addition to the accused, the lower-ranking superior officers of the 4<sup>th</sup> Corps also issued or had

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<sup>175</sup> The Prosecution's Exhibit T-145.

<sup>176</sup> Transcript No. S1 1 K 012247 19 Kri of 21 December 2020, p. 10.

<sup>177</sup> Transcript No. S1 1 K 012247 19 Kri of 18 January 2021, p. 68.

<sup>178</sup> The Prosecution's Exhibit T-56.

<sup>179</sup> The Defense's Exhibit O-516.

the authority to issue orders that the artillery weapons of the 4<sup>th</sup> Corps of different calibers be used in combat operations.

280. Thus, it ensues from the Daily Combat Report made by Esad Moro, Commander of the 4<sup>th</sup> KAG, of 1 June 1995<sup>180</sup> that the unit had fired from the artillery weapon - howitzer caliber 105 mm and 122 mm “pursuant to an order issued by the Chief of Artillery of the 4<sup>th</sup> Corps of the ARBiH.”

281. That the Chief of Artillery of the 4<sup>th</sup> Corps also had the authority to order artillery firing also ensues from the Defense’s Exhibits O-261<sup>181</sup>, O-281<sup>182</sup> and O-341.<sup>183</sup>

282. Specifically, it was indicated in the order issued by the Chief of Artillery of the 4<sup>th</sup> Corps<sup>184</sup> that, in case of the aggressor’s retaliation, among other things, fire can also be opened from a 122 mm howitzer “pursuant to his order”. The foregoing was also indicated in the Attack Order issued by the Command of the 4<sup>th</sup> KAG of 9 May 1995,<sup>185</sup> The Order issued by the Commander of the IKM-1 on 15 June 1995<sup>186</sup> indicated that the Chief of the Artillery will visit the MAP military positions and the units subordinated to it and determine the firing directions, pursuant to the aggressor’s newly observed military positions and set up defense lines.

283. That the commander of the IKM had the authority to issue orders for artillery fire ensues from the Order of 21 May 1995<sup>187</sup> issued by Kemal Hindić, Commander of the IKM-2. The Order indicates in its Item 7 that the systemic firing at the targets on 22 May 1995 can only be undertaken “strictly pursuant to an order issued by the Commander of IKM-1”. The foregoing is also corroborated with Exhibit O-489-Daily Combat Report by the 4<sup>th</sup> MAP of 30 May 1995<sup>188</sup>, which shows that the artillery unit

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<sup>180</sup> The Defense’s Exhibit O-490: Daily Combat Report, 4<sup>th</sup> Corps Command, IKM-1 Bjelimići, str. conf. No. 01-06-195 of 1 June 1995.

<sup>181</sup> Order by the Chief of Artillery, 4<sup>th</sup> Corps "Borašnica 95", 4<sup>th</sup> Corps Command given to the Command of the 4<sup>th</sup> MAP, Op. no. 02-1754/11, entered on a List of received documents by the 4<sup>th</sup> MAP under No. 11.

<sup>182</sup> Attack Order, Command of the KAG-4, Op. no. 02-2199/95 of 9 May 1995 and the textual-tabular segment of the planned firing activities.

<sup>183</sup> Order, 4<sup>th</sup> Corps Command, Army R BiH, SP No. 02-1557 of 15 June 1995.

<sup>184</sup> The Defense’s Exhibit O-261.

<sup>185</sup> The Defense’s Exhibit O-281.

<sup>186</sup> The Defense’s Exhibit O-341.

<sup>187</sup> The Prosecution’s Exhibit T-56.

<sup>188</sup> The Defense’s Exhibit O489: Daily Combat Report, 4<sup>th</sup> Corps Command, 4<sup>th</sup> MAP, No. 02-30/2-05/95 of 30 May 1995.

was active “pursuant to an order issued at the IKM”, as well as Exhibit T-113<sup>189</sup>, which indicated that the 4<sup>th</sup> MAP acted pursuant to an order given by the commander of the IKM-3.

284. Forensic expert for the Prosecution, Mladen Marinković, referred in his Findings and Opinion to the foregoing Order issued by Kemal Hindić, Commander of the IKM-2, on 21 May 1995. Specifically, the forensic expert referred only to the Order’s Item 10, which indicated that the artillery firing of the 4<sup>th</sup> MAP was directed by the Corps Commander, while he completely disregarded Item 7 of the same Order. However, the Panel holds that, as noted in Item 10, the control over the firing activities of the 4<sup>th</sup> MAP does not imply that the 4<sup>th</sup> Corps Commander had the exclusive right to issue orders for the artillery activities, as concluded by forensic expert Marinković.

285. Specifically, the artillery activities’ control includes a wider spectrum of the activities and responsibilities, as also noted by forensic expert Marinković in his Findings<sup>190</sup>, while issuing orders is only one aspect of control. In support of the foregoing stands the fact that despite the claims in Item 10, the same Order indicated, in its Item 7, that the systemic artillery firing at targets can be undertaken only pursuant to an order issued by the commander of the IKM-1 and that, inter alia, fire at Kalinovik<sup>191</sup> will be opened “pursuant to an order issued by the Commander of the IKM-1 Bjelimići”.

286. The Panel also took account of Exhibit T-64<sup>192</sup> (Order issued by the Commander of the 4<sup>th</sup> Corps of the ARBiH), which shows that Major Ramić, Commander of the IKM-1, along with the superior officers of the IKM, is responsible for the destiny of that area, and that he has all the control and command (RIK) powers.

287. The foregoing is also consistent with the evidence given by witness Esad Moro. During the examination at the trial, this witness stated that, as the Commander of the

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<sup>189</sup> Combat Report, Command of the 4<sup>th</sup> MAP, Str. conf. No. 02/1-836/95 of 2 June 1995.

<sup>190</sup> Prosecution’s Exhibit T-19, pr. 20: Pursuant to the plan and decision to conduct the forthcoming combat operations, the Corps Commander will group the artillery, define the combat roles, tasks and combat deployment areas of the artillery units, the manners of the task realization, the use of ammunition and regulate other issues as required.

<sup>191</sup> The IKM-1 Commander approved the use of ammunition for the task retaliation, specifically 6 projectiles for a gun 130 mm for Kalinovik.

<sup>192</sup> Order by the Command of the 4<sup>th</sup> Corps ARBiH, SP No. 02-2204 of 8 June 1995.

4<sup>th</sup> KAG during the critical period, he had received orders from the IKM superior officers, among others, also from Esad Ramić, Commander of the IKM.

288. The Panel also took account of Exhibit O-323-Daily Intelligence Report from the IKM-1 Bjelimići of 3 June 1995 signed by Munib Milišević, Assistant Intelligence Commander. The referenced Report mentioned the use of the artillery of the 4<sup>th</sup> Corps. During the examination at the trial, Defense's witness, Munib Milišić, explained that the artillery fire had been ordered by no other person than the IKM Commander: "The IKM Commander is authorized for such actions. In case of his absence, the chief of the artillery or the commander of the artillery can help out at that command post."<sup>193</sup>

289. That the IKM Commander is responsible for the situation in the zone of responsibility of a forward command post (IKM), namely that he is along this line authorized to take appropriate action, also ensues from the Order for further combat actions issued by the accused Ramiz Dreković, Commander of the 4<sup>th</sup> Corps on 22 May 1995.<sup>194</sup> Specifically, Item 17 of the referenced Order indicates that: "The Commander of the IKM is responsible for the situation within the zone of responsibility of the IKM-1, to which effect he will take actions and timely notify me in person of all problems."

290. That in addition to the Chief of the artillery and the IKM Commander, the Commander of the 4<sup>th</sup> MAP was also authorized to use the Corps artillery during the critical period ensues from Exhibit O-81.<sup>195</sup> This evidence indicates that, after the Assistant Commander's report to the Commander of the 4<sup>th</sup> MAP, the Commander will give tasks to the assistant commanders and the subordinated units in accordance with the new situation.

291. Witness Zlatko Bećović, Commander of the 4<sup>th</sup> MAP during the critical period, has also confirmed the foregoing. During his examination at the trial, the witness stated that, in combat situations, he was able to act independently and to determine the consumption of ammunition. The witness explained: "I have an approval through the order, the action plan, the textual-tabular segment of the action plan, and the

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<sup>193</sup> Transcript No. S1 1 K 012247 19 Kri of 8 December 2021, p. 27.

<sup>194</sup> The Defense's Exhibit O-295: Tasks for further combat operations, Order, Command of the 4<sup>th</sup> Corps, IKM-1 Bjelimići, SP No. 02-638 of 22 May 1995.

<sup>195</sup> Daily Combat Report, 4<sup>th</sup> Corps, 4<sup>th</sup> MAP, No. 02-03/4-05/95 of 23 May 1995.

consumption of ammunition. I have the task and it is my duty and obligation to act pursuant to it ... I need not ask anyone whether I have to shoot at something I estimate it is necessary to shoot at it.”<sup>196</sup>

292. In ruling on this matter, the Panel also took account of the examined witnesses Esad Ramić and Nedim Hodo, who stated that the 4<sup>th</sup> Corps artillery could be used only based on an order, that is, an approval given by the Corps Commander, and that not even a shell could be fired without him. However, the Panel did not credit the foregoing witnesses’ claims. The Panel found that they are not objective and reliable considering the function and the activities the referenced witnesses had performed and undertaken during the critical period, as well as considering their possible motives to diminish their own responsibility for the events at the period at issue. In addition, their claims contradict the above mentioned documentary evidence and the testimonials credited by the Court.

293. The Panel holds that, in his evidence given during the trial, witness Esad Ramić tried to distance himself from all the incriminating events by indicating that, during the period relevant to the Indictment at issue, he had not performed the duties of the Commander of the IKM Bjelimići. The witness specifically indicated: “I was withdrawn from that site in mid-May. As I have told you, I was relieved of all duties on June 1”.<sup>197</sup> Thereupon, Hamid Selimović assumed the duties of the commander: “As far as I can remember, it was around mid-May, or around that time...the duty hand-over was to follow-up, whereupon I would be withdrawn and relieved of all duties on 1 June.”<sup>198</sup>

294. The foregoing Esad Ramić’s claims contradict the other witnesses’ testimonials<sup>199</sup> and the tendered documentary evidence<sup>200</sup>, from which it ensues beyond a reasonable doubt that Esad Ramić had indeed performed the duties of the

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<sup>196</sup> Transcript No. S1 1 K 012247 19 Kri of 10 November 2021, p. 50.

<sup>197</sup> Transcript No. S1 1 K 012247 19 Kri of 25 February 2019, p. 14.

<sup>198</sup> Transcript No. S1 1 K 012247 19 Kri of 25 February 2019, p. 33.

<sup>199</sup> Defense’s witnesses Hamza Ajanović and Nusret Šehić.

<sup>200</sup> Prosecution’s Exhibit T-58: Order by the Command of the 4<sup>th</sup> Corps ARBiH, Str. conf. No. 3842-01 of 28 May 1995, T-64: Order by the Command of the 4<sup>th</sup> Corps ARBiH, SP No. 02-2204 of 8 June 1995; T-65: Order by the Command of the 4<sup>th</sup> Corps ARBiH, Str. conf. No. 02/1-1-2225 of 11 June 1995; Defense’s Exhibit O-225: Engagement of Superior Officers at IKM-3 Bjelimići, Order by the Command of the 4<sup>th</sup> Corps, str. conf. No. 02/1-2-1553 of 22 April 1995

IKM Bjelimići Commander during the critical period, more precisely during May and early June 1995.

295. Along this line, the Panel particularly points to Exhibit T-64,<sup>201</sup> from which it ensues that not only that Esad Ramić held the office of the IKM Bjelimići Commander in June 1995, but that along with the IKM superior officers he was also responsible for the destiny of that area and that he had all the control and command powers (RIK). The same evidence indicates that Esad Ramić's replacement with Hamid Selimović was to be regulated subsequently. In addition, Exhibit T-65<sup>202</sup> shows that the handover of the duty between them was planned for 13 June 1995, as also confirmed by witness Hamid Selimović. Witness Hamid Selimović emphasized that during the period between his arrival at the IKM-1 on 31 May 1995 and 13 June 1995, he had been in fact present "at the forward command post without any order on his appointment", during which time the person in charge of the IKM-1 was Esad Ramić, "all through 13 June".<sup>203</sup>

296. During the examination at the trial, witness Hamidović stated that, as the Commander of the IKM-1, he had the power to order the use of the artillery. The witness added that he would usually only order the use of the weapons whose range was up to 3 km (mortar shells, ZIP and ZIS guns),<sup>204</sup> but that all other artillery weapons could be used primarily under the Corps orders: "The Chief of the Corps Command ... based on a written order"<sup>205</sup> but he had not received any such orders from the Corps Command.

297. The Panel did not credit the foregoing witness's claims considering that the office held by witness Hamidović during the critical period within the IKM-1 implied certain responsibilities, as it also ensues from the accused Dreković's order of 31 May 1995.<sup>206</sup> Specifically, Item 4 of the referenced Order indicates that, after taking over his duties of the IKM-1 Commander (which followed up on 13 June 1995), Major Selimović will be completely responsible for the defense of each footprint of the zone

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<sup>201</sup> Order by the Command of the 4<sup>th</sup> Corps ARBiH, SP No. 02-2204 of 8 June 1995.

<sup>202</sup> Order by the Command of the 4<sup>th</sup> Corps ARBiH, Str. conf. No. 02/1-1-2225 of 11 June 1995.

<sup>203</sup> Transcript No. S1 1 K 012247 19 Kri of 14 January 2020, p. 81.

<sup>204</sup> Transcript No. S1 1 K 012247 19 Kri of 14 January 2020, p. 18.

<sup>205</sup> Transcript No. S1 1 K 012247 19 Kri of 14 January 2020, p. 18.

<sup>206</sup> The Prosecution's Exhibit T-60: Order by the Command of the 4<sup>th</sup> Corps ARBiH, IKM-1 Bjelimići, SP No. 02-1019 of 31 May 1995.

of responsibility of the IKM-1 (the 450<sup>th</sup> and the 445<sup>th</sup> LIBr.), the proper combat use of the units, and the regular, timely and truthful reporting on all events relevant to the Corps Command.

298. In addition, the Panel was not able to credit the claims of the Prosecution's witness Nedim Hodo that, due to the lack of artillery ammunition, not even a single shell<sup>207</sup> could be fired without the Corps Commander. This is because of the fact that, during the critical period, this witness was the Chief of Artillery of the 4<sup>th</sup> Corps, and because the tendered documentary evidence shows that the Corps artillery had also been used pursuant to his order.<sup>208</sup>

299. Witness Esad Tokić, Chief of the 4<sup>th</sup> Corps Operational Sector at the time, indicated that the Corps Commander had insisted that the planned documents be respected, and that in case that new firing was possibly needed, an approval was requested from the Command for that type of ammunition.

300. During the examination at the trial, witness Edin Čajić, professional artillery operator within the 4<sup>th</sup> Corps at the critical time, stated that the Corps Commander used to issue orders for the use of artillery through the IKM Commander. However, the basis for the witness's claim was the period during which he was the Commander of the 4<sup>th</sup> MAP, namely through mid-April 1995, which means before the occurrence of the critical event and before the "Treskavica 95" action. The Panel also holds that this witness's evidence contradicts the evidence given by witness Zlatko Bećović, Commander of the 4<sup>th</sup> MAP at the time of the critical events, whose evidence was in relation to these circumstances mentioned in the Judgment's reasoning above. The Panel holds that witness Čajić's evidence also contradicts the evidence given by witness Alija Ismet, Commander of the IKM in Odžaci and Bjelimići during the period before the period at issue.

301. The rule mentioned in his Findings and Opinion by Mladen Marinković, military forensic expert for the Prosecution, that only the Corps Commander had the power to approve and order the use of artillery, has no confirmation in the evidence given by witness Abdulah Čobo, Commander of the 1<sup>st</sup> Mixed Artillery Division (MAD) of the 1<sup>st</sup>

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<sup>207</sup> Transcript No. S1 1 K 012247 19 Kri of 10 March 2020, p. 23-24.

<sup>208</sup> The Defense's Exhibits O-261, O-281, O-341 and O-490.

Corps at the critical period. The witness stated that, as the Commander of the 1<sup>st</sup> MAD, he was able to act independently in the following manner: “I had the defense code in case of an attack. I had a possibility to use, of my free will, up to five rounds per each weapon... when the attack started, I had an approval by the Corps Commander to independently fire 5 rounds per each weapon.”<sup>209</sup>

302. However, in connection with the firing from the Corps artillery based on an approval granted by the Corps Commander, the Panel notes that the Indictment at issue alleges the charges for the artillery firing strictly based on the accused Dreković’s order. Specifically, the Indictment charges the accused with the issuance of orders, but it does not mention the term “approval”, that is, the firing pursuant to the accused’s approval, or that the accused is responsible for any artillery activity of the 4<sup>th</sup> KAG units.

303. The Panel also holds that no piece of evidence was tendered in the present criminal proceedings proving beyond a reasonable doubt that the accused Dreković was requested to give either a written or oral approval for the use of artillery weapons in the critical period, namely on 22 May and 3 June 1995. The Panel also holds that no combat report noting the artillery activity on the referenced days indicates that the artillery had been used exactly under the approval of the accused as the 4<sup>th</sup> Corps Commander.

304. The Panel particularly took into account the evidence given by Defense’s witness Emir Sinanović, Chief of the 4<sup>th</sup> Corps artillery at the IKM-2 Zlatar during the critical period, who had participated in the “Treskavica 95” and the “Borašnica 95” actions. Defense counsel asked the witness whether the Corps Commander used to receive for his approval any requests from the ground for each artillery shell planned to be fired by the IKM commander. The witness responded: “No, not at all ... the IKM commanders were those who had used them. What would be the purpose of asking that? It would mean that any soldier has to ask the Corps Commander should he fire a round!”<sup>210</sup> The witness emphasized that the IKM commander is the person who approves the use of artillery in accordance with the situation on the ground in real time.

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<sup>209</sup> Transcript No. S1 1 K 012247 19 Kri of 3 September 2020, p. 38.

<sup>210</sup> Transcript No. S1 1 K 012247 19 Kri of 8 September 2021, p. 8.

305. In his trial evidence, Defense's witness Alija Ismet stated that, during the critical period, he had been the Chief of the Operative Center of the ARBiH General Main Staff. The witness emphasized that, during 1994, he had performed the duties of the Commander of the IKM in Odžaci, wherefore he knew how the artillery had to be used at a forward command post. When asked by defense counsel along this line, whether the IKM commander needed any order by the Corps Commander to use the artillery fire, witness Ismet responded: "No. It is out of discussion. No. It is not necessary. It is up to the IKM commander to decide on a new situation... What would happen if he waited for the Commander?"<sup>211</sup>

306. The Court credited the foregoing witnesses' evidence, having rendered it objective, reliable and consistent with the documentary evidence, from which it ensues that the lower-ranking officers of the 4<sup>th</sup> Corps with the IKMS indeed used to issue orders for the use of artillery weapons.

307. In view of all the foregoing, the Panel did not find proved the Prosecution's theory that, during the critical period, the 4<sup>th</sup> Corps units had fired from the artillery weapons strictly pursuant to orders of the accused Ramiz Drekočić, as the Commander of the 4<sup>th</sup> Corps.

108. Considering the above established state of facts, namely that the Prosecutor's Office did not prove that the killing and the wounding of the injured parties, referred to in Counts 2 and 3 of the Indictment, was caused by the firing of the 4<sup>th</sup> Corps units at the Kalinovik territory, during the critical period, based on the accused's orders to launch an attack against the civilian population, and an indiscriminate attack by shelling the territory of the inhabited place of Kalinovik, the Panel acquitted the accused Drekočić also of the charges under Counts 2 and 3 of the Indictment.

## **VI. CONCLUSION**

109. The Panel recalls that the burden of proving the essential elements of the criminal offense and the elements of the accused's criminal responsibility rests with the Prosecution. However, the Panel holds that the evidence presented during the trial by the Prosecution to prove the accused's guilt did not satisfy the Panel, beyond a

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<sup>211</sup> Transcript No. S1 1 K 012247 19 Kri of 5 July 2021, pp. 48-49.

reasonable doubt, so as to find that the accused Ramiz Dreković had indeed committed the criminal offense of War Crimes against Civilian Population under Article 142(1) of the CC SFRY, as charged against him under the Indictment at issue.

110. Along this line, the Panel notes that the Court's duty is to render a judgment of acquittal not only in the case when the accused's innocence was proved, but also when the accused's guilt was not proved. Any doubt into the existence of any legally relevant fact must be decided in favor of the accused.

111. The facts *in peius* of the accused must be proved with complete certainty (beyond a reasonable doubt). If there is a doubt in those facts, they cannot be accepted as proved, but rather they must be considered as unproved. The second rule refers to the facts in favor or *in favorem* of the accused. These facts are taken as proved even if there is just a likelihood that they exist, and even when the facts to the prejudice of the accused are more likely to exist.<sup>212</sup>

112. In view of the foregoing, and pursuant to Article 281(2) of the CPC BiH, the Court's duty is to conscientiously evaluate each piece of evidence individually and in combination with the other evidence, and to conclude based on such an evaluation of a fact whether it is proved or not.<sup>213</sup>

113. In compliance with the foregoing principles, and considering that, in the present case, the Prosecution did not prove, beyond a reasonable doubt, the accused Ramiz Dreković's guilt, the Panel applied Article 284(1)c), as read with Article 3 of the CPC BiH, and delivered the judgment acquitting the accused of the charges.

#### **IV COSTS OF CRIMINAL PROCEEDINGS AND REDRESS CLAIMS**

114. Considering that the accused has been acquitted of the charges, the costs of the criminal proceedings under Article 185(2) e) through f) of the CPC BiH, the necessary expenditures of the accused as well as the necessary expenditures and remuneration of defense counsel will be paid from within the budget appropriations,

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<sup>212</sup> Commentaries on the Criminal Procedure Codes in BiH, Joint Project of the Council of Europe and the European Commission, p. 50.

<sup>213</sup> Article 281(2) of the CPC BiH: "*The Court is obligated to conscientiously assess every piece of evidence individually and in combination and, based on such assessment, to conclude whether the facts have been proved.*"

pursuant to Article 189(1) of the Criminal Procedure Code of Bosnia and Herzegovina.

115. Pursuant to Article 198(3) of the Criminal Procedure Code of Bosnia and Herzegovina, the injured parties are instructed to pursue their claims under property law in a civil action.

**Record-taker:**  
**Legal advisor-assistant**  
**Samira Kustura Čolić**

**PANEL PRESIDING**  
**JUDGE**  
**Staniša Gluhajić**

**LEGAL REMEDY NOTE:** An appeal from this Judgment may be filed with the Appellate Division of the Court within a period of 15 (fifteen) days after the receipt of a written Judgment.

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