

Bosna i Hercegovina

Босна и Херцеговина



Sud Bosne i Hercegovine
Суд Босне и Херцеговине

Case Number: S1 2 K 020784 20 K

Judgment pronounced on: 28 January 2021

Written judgment sent out on: 24 February 2021

Before the Panel composed of:

Judge Mirsad Strika, Presiding Judge

Judge Goran Radević, Panel member

Judge Hasija Mašović, Panel member

CASE OF PROSECUTOR'S OFFICE OF BOSNIA AND HERZEGOVINA

v.

SENAD KASUPOVIĆ

FIRST INSTANCE JUDGMENT

Attorney Husein Mušić, Defense Counsel for the Accused

Ćazim Hasanspahić, Prosecutor for the Prosecutor's Office of Bosnia and Herzegovina

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Number: S1 2 K 020784 20 K

Sarajevo, 28 January 2021

IN THE NAME OF BOSNIA AND HERZEGOVINA!

The Court of Bosnia and Herzegovina, sitting on the Panel composed of Judge Mirsad Strika, as the Presiding Judge, and Judge Goran Radević and Judge Hasija Mašović, as members of the Panel, with the participation of Legal Officer Biljana Janković as the record-taker, in the criminal case conducted against Senad Kasupović, accused of the criminal offense of Organizing a Terrorist Group in violation of Article 202d(2), as read with Paragraph (1) of the Criminal Code of Bosnia and Herzegovina (CC B-H), as read with the criminal offense of Terrorism in violation of Article 201 of the CC B-H, charged under the Indictment issued by the Prosecutor's Office of B-H No. T20 0 KTT 0010333 15 on 13 March 2020, confirmed on 16 March 2020, after a public main trial held in the presence of the Prosecutor for the Prosecutor's Office of B-H, the Accused Senad Kasupović and his Defense Counsel, Attorney Husein Mušić from Velika Kladuša, on 28 January 2021 rendered and publicly announced the following:

J U D G M E N T

THE ACCUSED SENAD KASUPOVIĆ, son of Mehmed and Hamida nee Foštagić, born on 23 January 1980 in the place of Grabovac, Municipality of Velika Kladuša, with residence in the Street ..., Municipality of ..., citizen of ..., an ethnic ..., literate with completed secondary school, engine fitter by profession, married with two children under age, indigent, with no prior conviction, Citizen's Personal Identification Number ...,

HAS BEEN FOUND GUILTY

Of the following:

On 12 July 2013, at 10.48 hrs, the Accused flew off from the Sarajevo International Airport to Istanbul and thus left the territory of Bosnia and Herzegovina. He travelled to the Republic of Turkey wherefrom he illegally crossed the border between Turkey and Syria, entered Syria and went to the city of Manbij, where he went with the intent to fight for the so-called Islamic

State, organized in the territories of Syria and Iraq, and with terrorist groups of the Islamic State of Iraq and the Levant (ISIL) operating in the territories of Syria and Iraq. On 30 May 2013, on the basis of the 1999 Resolution R-1267 and other related resolutions, including the 2012 Resolution 2083 and the 2004 Resolution 1526, the UN Security Council entered these organizations on the list of terrorist groups and organizations. The goal of the referenced groups was destabilization and forcible change of the political and constitutional order in Syria, while their members, by way of launching daily armed actions, that is, attacks on the population, killings, unlawful detention, hostage-taking and other actions, intended to force the legitimate authorities in Syria to change the constitutional order and the political regime. The Accused stayed in Syria until 19 December 2019 and participated in terrorist activities together with other individuals from B-H who were in Syria with the same intention, including Bajro Ikanović and Ibro Ćufurović, and used the name *Muatesim*, rendered assistance to and fought for the ISIL forces in Syria and against the legitimate military forces of the state of Syria, in the cities of Manbij, Kobane, Raqqa and Al-Bab as a member of the *Bayt Commandos* unit which later changed its name to *Al-Aqsa*,

Therefore, he became a member of a terrorist group and rendered assistance to a terrorist group,

Whereby he committed the criminal offense of Organizing a Terrorist Group in violation of Article 202d(2), as read with Paragraph (1), of the CC B-H, all as read with the criminal offense of Terrorism under Article 201 of the CC B-H,

Thereby the Court, in application of the referenced statutory provisions and pursuant to Articles 39, 42 and 48 of the CC B-H, **imposes** on the Accused:

A SENTENCE OF IMPRISONMENT FOR A TERM OF 3 (THREE) YEARS

Pursuant to Article 56 of the CC B-H, the time the Accused will have spent in custody since 19 December 2019 shall be credited toward the imposed sentence of imprisonment.

Pursuant to Article 188(1) of the Criminal Procedure Code of Bosnia and Herzegovina (CPC B-H), the Accused must pay the scheduled amount of 500.00 BAM (five hundred convertible

marks) within 15 days of the day the Judgment becomes final. Pursuant to Article 188(4) of the CPC B-H, the Court relieved the Accused of the duty to cover other costs of the criminal proceedings, such as remuneration of the court-appointed Defense Counsel and potential other costs, since the payment thereof would jeopardize the support of the Accused and the persons whom the Accused is required to support financially.

R e a s o n i n g

On 13 March 2020, the Prosecutor's Office of B-H filed an Indictment No. T20 0 KTT 0010333 15, charging Senad Kasupović with the perpetration of the criminal offense of Organizing a Terrorist Group in violation of Article 202d(2), as read with Paragraph (1), all as read with the criminal offense of Terrorism in violation of Article 201 of the CC B-H. The Preliminary Hearing Judge confirmed the Indictment on 16 March 2020.

At a plea hearing held on 8 April 2020, the Accused Kasupović pleaded not guilty of the acts he was charged with under the confirmed Indictment, whereupon the case was referred to a Trial Panel on 13 April 2020 to schedule and hold a trial. The main trial commenced on 20 May 2020 with the reading of the Indictment.

1. Charges

Upon the Prosecutor's Motion, the following witnesses were examined during the evidentiary proceedings at the main trial: ..., ..., Mario Janiček, ..., ..., ..., ... and S3, witness under protection measures. Upon the Prosecutor's Motion, the following expert witnesses were examined as well: Professor Vlado Azinović, PhD, Dino Osmankadić, Munib Dedović, Primarius Omer Čemalović, MD, and Professor Azra Alajbegović, MD, PhD. During the proceedings the Prosecutor withdrew the witnesses Mela Horić, Sabrija Horić and Rifet Šabić.

Under the Prosecution motion the following Prosecution evidence was adduced at the trial and tendered into the case file: **DT-1** – Expert study by Vlado Azinović, PhD, of 10 May 2020; **DT-2** – Record of investigation by the State Investigation and Protection Agency (SIPA), Banja Luka Regional Office, No. I-16-14/1-04-1-748/13, 29 May 2019, with attached CD

optical drive and photo-documentation by SIPA, Banja Luka Regional Office, No. I-16-14/1-04-1-748/13, 29 May 2019; **DT-3** – Finding and opinion about comparison of biometric characteristics on the basis of photographs, made by expert witness Dina Osmankadić, Ministry of the Interior (MUP) of Sarajevo Canton, Police Administration, Crime Police Sector, Forensic Department, Sarajevo, No. 02/3-6-19-1176, 17 June 2020; **DT-4** – Finding and opinion of forensic analysis in neuropsychiatry for Senad Kasupović made by Primarius Omer Ćemalović, MD, standing court expert witness in neuropsychiatry, dated 17 January 2020; **DT-5** – Record of identification of a person, SIPA B-H, No. 16-04/1-SZ-27/20, 3 March 2020, submitted with cover letter by SIPA B-H, No. I-16-04/1-04-1-748-2961/13, 4 March 2020; **DT-6** – Letter by the Border Police of B-H No. P-17-5-2-04-7-248/15-24, 8 April 2015, with attachment – Excerpt from border check application (Chart of border crossing check for an individual person); **DT-7** – Letter by the Una-Sana Canton MUP, Fourth Police Department, Velika Kladuša Police Station (PS), No. 05-04/09-1-258/16, 29 January 2016; **DT-8** – Certificate of citizenship for Senad Kasupović by the Registrar's Office of Velika Kladuša Municipality No. 07/2-13-1-10721/2019, 28 May 2019; **DT-9** – Information by the Ministry of Security of B-H No. 08-1-04-2-2208-1/15, 8 April 2015, with attachments; **DT-10** – Finding and opinion of fingerprint analysis of Sarajevo Canton MUP, Police Administration, No. T-02/3-458/19, 26 December 2019, made by expert witnesses Munib Dedović and Emira Plavčić, with attached photo-documentation of the analysis; **DT-11** – Criminal records certificate for Senad Kasupović, Una-Sana Canton MUP, Fourth Police Department, Velika Kladuša PS, Crime Police Department, No. 05-04/10-1-1-2-219/19, 22 May 2019; **DT-12** – Order for forensic analysis, Prosecutor's Office of B-H, No. T20 0 KTT 0011872 16, 8 October 2020; **DT-13** – Finding and opinion of standing court expert witness Prof. Azra Alajbegović, for witness ... of 14 October 2020; **DT-14** – Finding and opinion of standing court expert witness Prof. Azra Alajbegović, MD, for witness ... of 14 October 2020; **DT-15** – Finding and opinion of standing court expert witness Prof. Azra Alajbegović, for witness ... of 14 October 2020; **DT-16** – Finding and opinion of standing court expert witness Prof. Azra Alajbegović, for witness ... of 14 October 2020; **DT-17** – Letter by the Ministry of Justice of B-H, No. 08-14-5-177/20, 2 November 2020, with attachment: Letter by the US Department No. CRM-182-72026 of 23 October 2020; **DT-18** – Letter by the Office of the Legal Attaché of the US Embassy No. 187935180 of 6 August 2019, with attachments – Summary about Senad Kasupović, person in custody; **DT-19** – Witness Examination Record for ..., SIPA B-H, No. 16-04/1-25/19, 20 December 2019; **DT-20** – Record of identification of persons, SIPA B-H, No. 16-04/1-SZ-32/20, 6 March 2020; **DT-21** – Record of identification of persons, SIPA B-

H, No. 16-04/1-SZ-38/20, 10 March 2020; **DT-22** – Witness Examination Record for ..., SIPA B-H, No. 16-04/1-26/19, 20 December 2019; **DT-23** –Witness Examination Record for ..., SIPA B-H, No. 16-04/1-29/19, 21 December 2019; **DT-24** –Witness Examination Record for ..., SIPA B-H, No. 16-04/1-30/19, 21 December 2019; **DT-25** – Witness Examination Record for ..., SIPA B-H, No. 16-04/1-32/19, 22 December 2019; **DT-26** – Witness Examination Record for ..., SIPA B-H, No. 16-16/1-56/19, 20/21 December 2019; **DT-27** –Witness Examination Record for ..., SIPA B-H, No. 16-16/1-62/19, 23 December 2019; **DT-28** – Witness Examination Record for ..., SIPA B-H, No. 16-04/1-31/19, 22 December 2019.

Giving a recapitulation of the facts of the Indictment and the evidence adduced to prove them, in his closing argument the Prosecutor primarily emphasized that with the adduced evidence it was proven beyond reasonable doubt that the Accused committed the criminal offense of Organizing a Terrorist Group in violation of Article 202d(2), as read with Paragraph (1), all as read with Article 201 of the CC B-H. The Prosecutor added that the adduced evidence of the Defense did not challenge a single fact in the Indictment. Having analyzed each argument in the Indictment, the Prosecutor, referring to the tendered documentary evidence, primarily stressed that it was established beyond doubt that the Accused left B-H at the time and the place indicated in the Indictment and illegally crossed to Syria via Turkey, where he went with the intent to fight for the so-called Islamic State of Iraq and the Levant (ISIL), whereby the Prosecutor contested Defense Counsel's contention that the Accused's motive to go there was to marry a Syrian national.

In an analysis of the statement of expert witness Vlado Azinović, university professor and long-time researcher of the phenomenon of terrorism, the Prosecutor pointed at the structure, operation, goals and other facts and circumstances related to the Islamic State, particularly emphasizing the cruelty and severe consequences that the operations of that terrorist organization left on civilization.

Mario Janiček, employee of the Ministry of Security, testified about the character and the manner of declaring ISIL a terrorist organization, and the Prosecutor referred to this witness' statement establishing its correspondence with the documentary evidence tendered about these circumstances.

The Prosecutor argued that the Accused Kasupović's motive for going to Syria was his intent to fight for ISIL, where, as a member of the *Bayt Commandos* unit, which later changed its name to *Al-Aqsa*, he took part in the fighting in the manner described in the Indictment. The Prosecutor corroborated his argument by making reference to the statements of the examined witnesses, that is, the witnesses whose statements were read out at the main trial. In that respect, the Prosecutor provided a detailed recapitulation and analysis of the statement of witness S3, stressing that the witness, as a person who returned from Syria (Syrian front), confirmed that he had got to know the Accused there under the name of *Muatesim* and that he had seen him in the company of Ibro Ćufurović, who has been convicted of the same criminal offense. The Prosecutor particularly stressed the part of this witness' statement where he testified that the Accused was a member of the *Al-Aqsa* unit and that he used to see the Accused going to stand guard wearing a camouflage uniform and carrying an automatic rifle.

The Prosecutor dedicated the prevailing part of his closing argument to the analysis of the statement of witness S3, and, consequently, with a view to corroborating the witness' contentions, he established correspondence between the witness' statement and the statements of the witnesses given in the investigation which were read out at the main trial, that is, the statements of the women who had returned from the Syrian front and who gave an account of the circumstances of their travel to and stay in Syria. The Prosecutor considered that in important parts these statements were consistent with each other and with the statement of witness S3. In order to prove that the Accused was in Syria, the Prosecutor also referred to the tendered exhibit, the SIPA Record of investigation with attached CD optical drive and photo-documentation, correlating it to the Finding and Opinion of expert witness Dino Osmankadić, who conducted a forensic analysis of the video-recording on an optical disc and who isolated the Accused on four photographs with high probability, and established the Accused's facial features on these photographs that matched the ones on his indisputable photographs.

In the final part of the closing argument the Prosecutor contested the Defense contentions, primarily the ones that the Accused went to Syria in order to get married, and that he was not fit for military service because he had been wounded in childhood. The Prosecutor concluded that these contentions were not corroborated in any way but were completely contested by the adduced evidence of the Prosecution.

Finally, the Prosecutor moved the Court to render a convicting Judgment that would help achieve the goals of both the specific and the general deterrence, and express condemnation of the persons who persisted as members of a terrorist organization such is ISIL. With respect to the extenuating and aggravating circumstances for the Accused, the Prosecutor stressed that he did not find a single extenuating circumstance, while he regarded as an aggravating circumstance the duration of the Accused's stay in Syria during which he acted as a member of ISIL, whereby he demonstrated persistence in the perpetration of the criminal offense.

2. Defense

During the proceedings, Defense Counsel for the Accused Senad Kasupović adduced the testimonial evidence by examining the Accused in the capacity as a witness, and adduced the documentary evidence which was admitted and tendered into the case file, as follows: **DO-1** – Finding and opinion of a specialist doctor for Senad Kasupović of 5 April 2005, Health Center, Velika Kladuša, Center for ..., ...; **DO-2** – Referral letter for Senad Kasupović of 1 June 1995, Brigade Infirmary; **DO-1** – Diagnosis, operation and post-operation finding for Senad Kasupović, *Svjetlost* Special Ophthalmology Hospital, Ophthalmology Clinic of the School of Medicine of the University in Rijeka, of 25 January 2013, with three ultrasound images.

Defense Counsel formulated and presented his closing argument in such a way that in the first part he commented on the Prosecutor's closing argument, while in the second part he presented his view and evaluation of the evidence adduced at the main trial. In order to challenge the Prosecutor's contentions about the Accused's motive for going to and staying in Syria, and to corroborate with arguments the Defense contention that the Accused's motive had been to marry a Syrian national, Defense Counsel contested the statement of witness S3 and the statements of female witnesses who had returned from Syria, which were read out at the trial and which referred to the Accused's participation in war operations, by comparing them with the statement the Accused gave as a witness. When challenging the credibility of witness S3, Defense Counsel stressed that he was underage when he was in Syria, that he did not keep company with the Accused, that he was not familiar with the facts from the life of the Accused, and that he did not give convincing answers to Defense Counsel's questions. Likewise, the Defense also challenged the contentions of the female witnesses claiming that they neither knew the Accused personally nor were familiar with any

details about him, and by pointing at the flaws in their statements, challenging their witness capacity at the time they gave the statements.

Defense Counsel also contested the relevance of the finding/forensic analysis of expert witness Prof. Vlado Azinović, and the authenticity and lawfulness of the video footage analyzed by Dino Osmankadić, stating that its origin and author were not known or whether its contents were manipulated with.

In his closing argument the Counsel also pointed that the Accused was not fit for military service, stressing that he was a disabled person and blind in one eye, referring to the Defense exhibits tendered about these circumstances.

Finally, the Counsel contested that the Accused possessed intent to commit the criminal offense he was charged with, and pointed at the extenuating circumstances for him, such as the fact that he was a family man, father of two underage children, and that he had no prior conviction. Defense Counsel proposed the acquittal of the Accused.

The Accused Senad Kasupović agreed with his Counsel's arguments and denied that he committed any criminal offense.

3. Relevant substantive law

Article 202.d of the CC B-H – Organizing a Terrorist Group: (1) Whoever organizes a terrorist group or otherwise unites a minimum of three individuals for the purpose of perpetration of any of the criminal offenses referred to in the following Articles of this Code: 191 (Taking Hostages), 192 (Endangering Internationally Protected Persons), 194 (Illicit Procurement and Disposal of Nuclear Material), 194a (Endangering Nuclear Facilities), 196 (Piracy), 197 (Hijacking an Aircraft or a Ship or Seizing a Fixed Platform), 198 (Endangering the Safety of Air Traffic and Maritime Navigation or Fixed Platforms), 199 (Destruction and Removal of Signal Devices Utilized for Air Traffic Safety), 200 (Misuse of Telecommunication Signals), 201 (Terrorism), 202 (Funding of Terrorist Activities), 202a (Encouraging Terrorist Activities in Public), 202b (Recruitment for Terrorist Activities) or 202c (Training to Perform Terrorist Activities), shall be punished by imprisonment for a term of not less than five years.

(2) Whoever becomes a member of the group referred to in paragraph 1 of this Article or otherwise participates in the activities of a terrorist group, which includes providing financial or any other assistance, shall be punished by imprisonment for a term of not less than three years.

Article 201 of the CC B-H - Terrorism

(1) Whoever perpetrates a terrorist act with the aim of seriously intimidating a population or unduly compelling the Bosnia and Herzegovina authorities, government of another state or international organization to perform or abstain from performing any act, or with the aim of seriously destabilizing or destroying the fundamental political, constitutional, economic or social structures of Bosnia and Herzegovina, of another state or international organization, shall be punished by imprisonment for a term of not less than five years.

(2) If the criminal offense referred to in paragraph 1 of this Article resulted in the death of one or more persons, the perpetrator shall be punished by imprisonment for a term of not less than eight years.

(3) If in the course of the perpetration of the criminal offense referred to in paragraph 1 of this Article the perpetrator intentionally deprived another person of his life, he shall be punished by imprisonment for a term of not less than ten years or a long-term imprisonment.

(4) Whoever procures or prepares any means of, or removes an obstacle to, or undertakes any other act to create conditions for the perpetration of the criminal offense under paragraph 1 of this Article, shall be punished by imprisonment for a term of between one and ten years.

(5) A terrorist act, in terms of this Article, means one of the following acts which, given its nature or context, may cause serious damage to a state or international organization:

- a) attack upon a person's life, which may cause his/her death;
- b) attack upon the physical integrity of a person;
- c) unlawful confinement of another person, keeping confined or in some other manner depriving or restricting another person's freedom of movement, with the aim of forcing him or some other person to act or refrain from acting or to bear something (kidnapping) or taking hostages;
- d) causing extensive destruction to facilities of Bosnia and Herzegovina, of another state government, or to a public facility, a transport system, an infrastructure facility, including an information system, a fixed platform located on the continental shelf, a public place or private property, likely to endanger human life or result in major economic loss;
- e) seizure of an aircraft, ship or other means of public or goods transportation;

- f) manufacture, possession, acquisition, transport, supply, use of or training for the use of weapons, explosives, nuclear, biological or chemical weapons or radioactive materials, as well as research into and development of biological and chemical weapons or radioactive materials;
- g) release of dangerous substances, or causing fires, explosions or floods the effect of which is to endanger human life;
- h) interfering with or disrupting the supply of water, power or any other fundamental natural resource the effect of which is to endanger human life;
- i) threatening to commit any of the acts listed to in items a) through h) of this paragraph.

4. General considerations and standards of proof

The Court evaluated the adduced evidence in the case at hand in line with the basic principles of the CPC B-H, primarily Article 3(1) of the CPC B-H ordaining that a person shall be considered innocent of a crime until guilt has been established by a final judgment.

As Article 3(2) of the CPC B-H envisages, in case of a doubt with respect to the existence of facts constituting the elements of a criminal offense, the decision of the Court must be the most favorable for the accused. For that reason, the burden of proof lies with the Prosecutor who must prove the guilt of the accused beyond reasonable doubt.

When rendering a decision in the case at hand the Court took into account all evidence adduced at the main trial and based its decision solely on the relevant evidence, conducting a detailed analysis thereof to the extent necessary and relevant for rendering a lawful and proper decision, within the meaning of Article 15 of the CPC B-H which envisages the principle of free evaluation of evidence.

When evaluating the witnesses' evidence, the Court took into account their demeanor when giving evidence, reviewed the consistency of their statements given in the courtroom, compared the facts that the witnesses testified about and the facts established by the evaluation of the other witnesses' statements and the evaluation of the documentary evidence, in order to establish whether they were corroborated or contested by other evidence in the case at hand, guided by the elementary formal logical and psychological rules and the average human experience. When evaluating the evidence, the Court also reviewed

the tendered documentary evidence in order to decide about its lawfulness, relevance, authenticity, reliability and probative value.

5. Procedural decisions rendered during the trial

5.1. Decision on protective measures for a witness

Pursuant to Article 3(1) of the Law on the Protection of Witnesses under Threat and Vulnerable Witnesses (Law on Protection of Witnesses), the Court rendered a decision No. S1 2 K 020784 20 Krn 4 on 11 March 2020 during the investigation stage, granting protective measures to the witness under the pseudonym S-3, by declaring confidential all personal details of the witness listed in a confidential attachment (Witness Examination Record, Prosecutor's Office of B-H, No. T20 0 KTT 010462 15 and T20 0 KTT 0010333 15 of 3 March 2020) to the Prosecution Motion No. T20 0 KTT 0010333 15 of 9 March 2020, as the Court found that the witness was a witness under threat whose personal security or the security of his family would be endangered with a disclosure of his identity. Also, pursuant to Article 13(1) of the Law on Protection of Witnesses, the Court ordered additional protective measures for the witness, as follows: testifying from a separate room by using technical means for transferring image and sound and with distortion of image and sound. Throughout the whole proceedings the Panel was mindful of protection of the identity of the witness under protective measures ensuring that the witness' full name would not be mentioned at the trial and in the Judgment, but that he would be referred to only with the given pseudonym, whereas his full details would be in the case file which was also under special protection of the Court.

5.2. Prohibition of publishing witnesses' personal details in the media

At the hearing held on 3 June 2020, the Court rendered a decision not to publish in the media personal details (personal and family name) of witnesses ... and ..., for protection of the witnesses' interests. An identical decision for identical reason was rendered at the hearing held on 1 July 2020 with respect to witnesses ..., ... and ..., and at the hearing held on 15 July 2020 with respect to witness

The referenced decisions were rendered for each of the witnesses upon the Prosecutor's motion and with Defense Counsel's consent. All referenced witnesses acted in the criminal proceedings at hand as authorized official persons of the State Investigation and Protection Agency (SIPA) and actively participated in the conduct of investigative operations, about which circumstances their testimony was proposed, and it is likely that they will act in that capacity in future similar cases as well.

Given the witnesses' statements and the circumstances presented by the Prosecutor, the Court concluded that it was necessary for the protection of the referenced witnesses' interest to prohibit the publishing of their personal details, that is, their personal and family names in the media. The Court found it important to emphasize that all witnesses were examined at a public session, and that the contents of their evidence was not covered by the referenced decision, whereby the Court considered that the public nature of the proceedings was secured and the interest of the witnesses protected at the same time.

5.3. Admission of the Prosecution proposed evidence (reading of the witnesses' statements given in the investigation) and prohibition of publishing the witnesses' personal details in the media

The hearing scheduled for 7 October 2020 for which examination of female witnesses ..., ... and ... was planned, was postponed on 6 October 2020, because at a hearing held on the previous day in another criminal proceedings conducted before this Court the planned examination of the referenced witnesses (and additional witness ...) was postponed/cancelled because the witnesses became nauseous after they arrived at the Court.¹ At a hearing held on 21 October 2020, the Prosecutor seised of the case informed the Court that expert witness Prof. Azra Alajbegović had conducted a medical forensic analysis of the referenced witnesses, and proposed that the expert witness be summoned to and examined about the referenced circumstances at the next hearing.

At the hearing held on 18 November 2020, expert witness Prof. Azra Alajbegović was examined about the Finding and Opinion of 14 October 2020 made about the witness capacity of witnesses ..., ..., ... and The expert witness explained that she had made the

¹ An Official Note was made about it on 6 October 2020 which is included in the case file.

Finding and Opinion following the Order of the Prosecutor's Office of B-H No. T20 0 KTT 0011872 16 of 8 October 2020, ordering forensic analysis of the witnesses proposed in the Indictment - ..., ..., ... and ..., by way of carrying out a review of the submitted medical documentation, conducting psychiatric interviews as required, and by drafting, on the basis thereof, the finding and opinion regarding the general health condition of the witnesses, in order to answer the following questions: 1) whether the witnesses, given their health condition, were capable of testifying in the criminal proceedings at hand, that is, appear before the Court of B-H and give witness statement; 2) whether potential attendance at the court and giving evidence would have implications on the witnesses' health condition.

The expert witness clarified that with a view to executing the Prosecutor's Office's order, she got in touch with the contact person referred to in the order with whose mediation the witnesses came to her office where she conducted an interview with each of the witnesses. A separate finding was made for each witness and submitted to the Prosecutor's Office of B-H.

The expert witness structured, that is, presented her evidence at the trial by explaining which particular psychiatric methods she applied when drafting the finding and opinion for each analyzed witness, whether she was submitted medical documentation for the witnesses, and, if so, which particular documentation, whereupon she gave her opinion about the competence of each of the witnesses.

The expert witness provided an identical conclusion about the competence of witnesses ..., ... and ..., stressing that none of them was fit for coming to the Court or testifying, adding that such attendance would be burdening for witnesses ... and ..., that is, painful, for witness

With respect to witness ..., the expert witness said that her capacity to testify was conditioned by psychological assistance in the form of physical presence of a person of trust when giving evidence, but that such relationship of trust, that is, in the words of the expert witness --- positive transfer, between the witness and the person of trust should be established earlier (before the evidence) through a lasting psychological support. Asked by Defense Counsel, the expert witness specifically stated that the establishment of such relationship was a long-lasting and continuous process.

The referenced Finding and Opinion by expert witness Prof. Azra Alajbegović about the witness competence, that is, competence to give evidence in the capacity as a witness, concerning the witnesses ..., ..., ... and ..., was tendered into the case file as Exhibit No. DT-13 through to DT-16 (for each witness individually). Commenting on the tendered Finding and opinion of the expert witness, Defense Counsel explicitly stated that he would not contest it. At the same time, the Counsel contested the capacity of the witnesses at the time of their statements in the investigating procedure (which statements were afterward read out at the trial), which objection the Court reviewed, and the reasoning thereof will be provided further in the text, when evaluating the probative value of the referenced statements.

At the same hearing (held on 18 November 2020), the Court rendered a Decision not to publish in the media the witnesses' personal details (personal and family names) for the protection of their interests. The decision was rendered upon the Prosecutor's motion with the explicit consent of the Defense. When explaining her Finding and Opinion, expert witness Prof. Azra Alajbegović continually stressed that during the specialist/psychiatric interview each witness stressed that after her name had been published in the media regarding the previous testimonies, she suffered a kind of stigmatization, secondary victimization or re-traumatization, manifested as condemnation by the community, which aggravated her health, that is, made the process of assimilation into the society more difficult.

Considering the contentions presented by the expert witness and the circumstances described by the Prosecutor, the Court found that, in order to protect the interests of the referenced witnesses, it was necessary to prohibit publishing their personal details in the media, that is, their personal and family names referred to during the presentation of the Finding and Opinion of expert witness, Prof. Azra Alajbegović. The Court considers it important to emphasize that the witnesses' statements were read out at a public session, and that the contents thereof were not covered by the referenced Decision, whereby the Court considers that the public nature of the proceedings was guaranteed, while the interest of the witnesses was protected at the same time. The Court notes that the Decision was also in effect during the hearings at which the evidence was presented by reading the referenced witnesses' statements (hearings held on 2 December 2020 and 16 December 2020), but, as stressed earlier, the Decision pertained only to the prohibition of publishing the witnesses' personal and family names, not to the contents of their statements.

At the hearing held on 2 December 2020, referring to the results of the conducted psychiatric forensic analysis, that is, the results contained in the Finding and Opinion by expert witness Prof. Azra Alajbegović about the competence of the witnesses, the Prosecutor proposed reading of the statements given in the investigation by the witnesses whose examination was proposed in Counts 2, 3, 6 and 7 of the Indictment, that is, witnesses ..., ..., ... and ...

Commenting on the Prosecution Motion, Defense Counsel neither explicitly agreed with nor opposed it. The Counsel noted that with such way of evidence presentation, that is, by reading statements of a large number of witnesses, as would be the case in the proceedings at hand, the right of the Accused to a fair trial, that is, the right to defense, would be violated, since in that way – by denying the right to cross-examination – a check of the witnesses' statements would be rendered impossible, whereby their probative value would be reduced. The Counsel also once again contested the competence of the witnesses when they had given the statements in the investigation stage.

Article 273(2) of the CPC B-H reads that *records of statements given during the investigative phase, ... 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.*

Having decided on the Prosecution Motion, the Panel accepted that the statements of the referenced witnesses should be read out at the trial, pursuant to Article 273(2) of the CPC B-H, whereupon the records of examination at the investigation stage of witnesses ..., ..., ... and... were tendered as the Prosecution evidence. When rendering this decision, the Panel was mindful of the results of the conducted psychiatric forensic examination, that is, the results in the Finding and Opinion made by expert witness Prof. Azra Alajbegović, which contained an explicit conclusion that because of their health/psychological condition witnesses ..., ... and ... were not capable of appearing before the Court or giving a witness statement, that is, that the arrival at the court would be burdensome for the referenced witnesses (... and ...), that is, painful (...), and that it would cause their re-traumatization. With respect to witness ..., the Court considered that her presence at the Court would be very difficult, that is, that the securing of her attendance would result in a disproportionate prolonging of the proceedings with a very uncertain outcome. The Court made such

conclusion having in mind all required conditions, that is, the expert witness' statement that the referenced witness' capacity to testify was conditioned with psychological assistance by way of physical presence of a person of trust when giving evidence, but that such relationship of trust (positive transfer) between the witness and a person of trust should be established earlier (before the testimony) through a longer psychological support. In the Court's opinion, the grounds on which Defense Counsel based his objection were not as important as to bring about a different (procedural) decision given the fact that it concerned only the rendering of a decision about the (in)admissibility of tendering the relevant records into the body of evidence, not an evaluation of their legality or probative value in the context of the charges against the Accused.

6. Analysis and evaluation of evidence, state of facts

After the completion of the evidentiary procedure and a comprehensive evaluation of the adduced pieces of evidence, both individually and in terms of their correspondence with each other, the Court concluded beyond reasonable doubt that the acts of the Accused Senad Kasupović fully satisfied the elements of the criminal offense of Organizing a Terrorist Group in violation of Article 202d(2), as read with Paragraph (1) of the CC B-H, as read with the criminal offense of Terrorism in violation of Article 201 of the CC B-H.

Therefore, based on all adduced evidence the Court found that on 12 July 2013, at 10.48 hrs, the Accused Senad Kasupović flew off from the Sarajevo International Airport for Istanbul and thus left the territory of Bosnia and Herzegovina. He travelled to the Republic of Turkey wherefrom he illegally crossed the border between Turkey and Syria, entered Syria and went to the city of Manbij, where he went with the intent to fight for the so-called Islamic State of Iraq and the Levant (ISIL), organized in the territories of Syria and Iraq, and terrorist groups of the Islamic State of Iraq and the Levant operating in the territories of Syria and Iraq. On 30 May 2013, on the basis of the 1999 Resolution R-1267 and other related resolutions, including the 2012 Resolution 2083 and the 2004 Resolution 1526, the UN Security Council entered these organizations on the list of terrorist groups and organizations. The goal of the referenced groups is destabilization and forcible change of the political and constitutional order in Syria, while their members, by way of launching daily armed actions, that is, attacks on the population, killings, unlawful detention, hostage-taking and other actions, intended to force the legitimate authorities in Syria to change the constitutional order and the political

regime. The Accused stayed in Syria until 19 December 2019 and participated in terrorist activities together with other individuals from B-H who were in Syria with the same intention, including Bajro Ikanović and Ibro Ćufurović, and used the name of *Muatesim*, rendered assistance to and fought for the ISIL forces in Syria and against the legitimate military forces of the state of Syria, in the cities of Manbij, Kobane, Raqqa and Al-Bab as a member of the *Bayt Commandos* unit, which later changed its name to *Al-Aqsa*.

The Court made such conclusion after a detailed analysis of the examined witnesses, primarily the witness under protective measures with pseudonym S3, a returnee from the Syrian front, who described in his evidence at the main trial clearly and in detail on which occasions and at what time he had seen the Accused. With respect to the referenced testimonial evidence, the Court also established direct correspondence between the statements of the witnesses – authorized official persons of SIPA who described in detail at the main trial the investigative actions they had undertaken in the case at hand, expert witness Dino Osmankadić, and the read-out statements of female witnesses – returnees from the Syrian front, whose contentions the Court regarded as corroborating the statements of witness S3, as well as the other adduced testimonial and documentary evidence.

In this criminal matter the Court's primary obligation was to establish whether the group that the Accused had joined was a terrorist organization.

The Court concludes that it was established beyond doubt from the adduced Prosecution evidence that on 30 May 2013 the Islamic State of Iraq and the Levant (ISIL) was entered on the list of terrorist groups and organizations on the basis of the UN Security Council's decision No. SC/11019. The foregoing follows from the Letter of the Ministry of Security of B-H No. 08-1-04-2-2208-1/15 of 8 April 2015, that is, Exhibit DT-9, about which circumstances witness Mario Janiček, employee of the Ministry of Security of B-H, was examined. The referenced organization is linked to Al-Qaida, also listed for sanctions under the 1999 UN Security Council Resolution No. 1267 (as the basic Resolution) and the other related and supplementing resolutions – Resolution No. 2083 (2012) and Resolution No. 1526 (2004), which only broadened the scope of the basic Resolution in accordance with new terrorist challenges. The self-proclaimed Islamic State of Iraq forms a part of Al-Qaida in Iraq, which changed its name to the Islamic State of Iraq and the Levant (ISIL) after expanding its activities to the territory of Syria. Pursuant to the Letter of Recommendation and the Report

of the UN Security Council No. S//2014/815 of 14 November 2014, also referred to by the Letter of the Ministry of Security of B-H, ISIL poses an open threat to international peace and security, which is particularly apparent from their brutal extremism and terrorism against the population of the Middle East which is presently under their control. In addition, particularly dangerous is their network of foreign terrorist warriors (thousands of warriors from 80 states), in addition to the propaganda including radicalism, calling for murders and terrorist campaigns. It also ensues from the Letter of the Ministry of Security of B-H that, pursuant to Article 4 of the Decision of the Council of Ministers of B-H of 9 November 2011 concerning the implementation of restrictive measures defined under the UN Security Council Resolutions (*Official Gazette of B-H*, No. 103/11), this Ministry is under obligation to publish on its own web site the updated consolidated lists of the UN Security Council's relevant bodies received in their original form.

At the hearing held on 17 June 2020, Mario Janiček, employee of the Ministry of Security of B-H, gave evidence regarding the listing of ISIL as a terrorist organization by the UN Security Council. He confirmed that ISIL was proclaimed a terrorist organization on 30 May 2013. The witness clarified that the legal ground for listing, that is, proclaiming an organization a terrorist one, was the basic resolution – the 1999 Resolution 1267, while the other related resolutions only broadened the scope of its coverage, as indicated in the Letter of the Ministry of Security of B-H (Exhibit DT-9). The witness explicitly explained the procedure followed by the Ministry of Security when it used to receive information that an organization was considered a terrorist one, stating that, pursuant to the 2006 Law on the Implementation of International Restrictive Measures² and the Decision on the Implementation of Restrictive Measures against Al-Qaida, the Taliban and ISIL, such information³ (that an organization was proclaimed a terrorist organization) received by the Ministry of Foreign Affairs would be submitted to authorized agencies, more specifically, police agencies, banking agencies, and the Ministry of Foreign Trade. The witness explained that the lists of terrorist organizations were subject to change

² The full name of the law is: Law on the Implementation of Certain Provisional Measures in Support of Effective Implementation of the Mandate of the International Criminal Tribunal for the former Yugoslavia (ICTY) and Other International Restrictive Measures (*Official Gazette of B-H* 25/06)

³ Full name: Decision on the Implementation of Restrictive Measures Established under UN Security Council Resolutions Nos. 1267 (1999), 1333 (2000), 1363 (2001), 1373 (2001), 1390 (2002), 1452 (2002), 1455 (2003), 1526 (2004), 1617 (2005), 1735 (2006), 1822 (2008) and 1904 (2009), against members of Al-Qaida, Usama Bin Ladin, the Taliban and other individuals, groups, economic organizations and related organizations (*Official Gazette of B-H* 103/11).

and that the responsible committee of the United Nations, that is, the Security Council, updated the lists on a monthly basis on average, and that the lists were publicly accessible on the web sites of the UN Security Council, the Ministry of Security and many other sites.

The Court points that the cited Decision of the Council of Ministers of B-H of 9 November 2011 about the implementation of restrictive measures established under the UN Security Council Resolutions⁴, clearly prescribed the obligation of B-H regarding the measures that the country was obliged to implement concerning the entities linked to terrorist organizations, which measures, *inter alia*, include the obligation to deny travelling to the persons who wish to join such organizations, as well as the obligation of criminal prosecution of such persons. The subsequent listing of the ISIL of 30 May 2013, does not contest the obligations of B-H as it only concerns an expansion of terrorist groups/organizations, whilst the obligations and restrictive measures remain unchanged. Witness Janiček clearly explained at the hearing that the obligation of the Ministry of Security was to update the list on a regular basis, while the restrictive measures were clearly and explicitly listed in the Decision of the Council of Ministers of B-H of 9 November 2011, which is still applied as legal framework.

As the Court has already concluded from the adduced evidence, the self-proclaimed Islamic State of Iraq is a component part of Al-Qaida in Iraq, which changed its name into the Islamic State of Iraq and the Levant (ISIL) after expanding its activities to the territory of Syria, for which reason the Decision of the Council of Ministers rendered after the 1999 UN Security Council Resolution No. 1267 certainly also pertains to the Decision of the UN Security Council No. SC/11019 proclaiming ISIL a terrorist organization.

Mindful of the foregoing, the Court concluded that, in the period for which the Accused was charged (from 12 July 2013 to 19 December 2019), the ISIL group was listed by the UN Security Council as a terrorist organization.

At the hearing held on 15 July 2020, expert witness Prof. Vlado Azinović gave evidence about the origin, manner of operation, goals and other circumstances related to this terrorist organization (ISIL). Under the order of the Prosecution, he had made an Expert Study about

⁴ *Official Gazette of B-H* 103/11.

the referenced circumstances which was tendered into the case file as Exhibit DT-1 after his examination⁵. At the main trial, the expert witness exhaustively presented the facts he had compiled acting in compliance with the relevant Order and included in his Study. In that respect, he described in detail the emergence of the Islamic State, its military formations in Syria and Iraq, the phenomenon and reasons why B-H citizens had gone to these regions, the structure of ISIL as a military formation and the units of which B-H citizens were members, ISIL's goals, the threat the returnees from the fronts in Syria and Iraq might pose for B-H security, and the international obligations of B-H toward members of terrorist organizations listed by the United Nations, and provided the final conclusion that the Islamic State was considered one of "the most bloodthirsty organizations" that caused the suffering of dozens of thousands of people because they did not accept ISIL's ideological narrative. The expert witness also explained that B-H nationals' departure to foreign frontlines posed a certain security threat, given the fact that returnees were skillful with weapons and explosives, that they had spent a lot of time on the battlefields and were ideologically charged as they had spent a considerable period of time in that region, for which reason there existed a whole body of obligations that Bosnia and Herzegovina, as a member of the UN and the Council of Europe and a candidate for the European Union, took over by virtue of its status in these organizations, starting from the UN Resolutions 21 and 78 proclaiming ISIL a terrorist organization, prescribing member States' obligations when dealing with such organizations' members.

The Court accepted the Finding and opinion of expert witness Prof. Vlado Azinović as impartial and made in accordance with the rules of the trade, having evaluated it exclusively with respect to the proposed part – the one concerning the circumstances of the origin, the manner of operation, goals and other characteristics of ISIL as a terrorist organization, not at all with respect to the specific incrimination that the Accused Kasupović was charged with under the Indictment.

In addition to the foregoing, the other decisive fact that the Court was to find during the proceedings was whether the Accused became a member of this terrorist group.

⁵ Expert study by Vlado Azinović, PhD, of 10 May 2020.

Under the Indictment, Senad Kasupović was accused that on 12 July 2013, at 10.48 hrs, he flew off from the Sarajevo International Airport for Istanbul and thus left the territory of B-H. He travelled to the Republic of Turkey wherefrom he illegally crossed the border between Turkey and Syria, entered Syria and went to the city of Manbij, where he went with the intent to fight for ISIL and where he stayed until 19 February 2019.

The Court found primarily from the Letter of the Border Police of B-H, No. P-17-5-2-047-248/15-24 of 8 April 2015 (DT-6) that on 12 July 2013, precisely at the time indicated in the Indictment, that is, at 10.48 hrs, the Accused left Bosnia and Herzegovina from the Sarajevo International Airport on a Sarajevo-Istanbul flight.

From the contents of the evidence given by witness S3, witnesses – authorized official persons of SIPA, and expert witness Dino Osmankadić, and the read-out statements of female witnesses – returnees from the Syrian front, as well as from the other adduced testimonial and physical evidence, the Court found that during the relevant period, the Accused Senad Kasupović, having left B-H in the manner described, illegally crossed the border between Turkey and Syria (where he entered the city of Manbij), where he rendered assistance to and fought for ISIL.

Witness Vladimir ..., authorized official person of SIPA, that is, an investigator of the Section for Combating Terrorism and Trafficking in Nuclear, Biological and Chemical Weapons, was examined at the hearing held on 1 July 2020. He described in detail the receiving of the initial intelligence about Senad Kasupović, stating that in the course of his regular duties he gathered intelligence about the persons who could be linked to terrorist activities in any way. In that respect, in the period from 2012, authorized official persons intensively gathered intelligence about the persons from the territory covered by their regional office (Regional Office Banja Luka) who had left for Syria and who were suspected of having joined certain paramilitary or parapolice forces. The Accused Kasupović from Velika Kladuša was among the persons for whom they gathered certain intelligence. The witness explained specifically that after the received initial intelligence, in the period from 2013 to 2015, certain evidence was collected and special investigative actions were conducted, which in 2015 resulted in the filing of a report about the committed criminal offense against the then suspect Senad Kasupović. After that, according to the witness, with intensive gathering of information from social networks and examination of a certain number of witnesses, additional allegations

against the referenced person were corroborated. With respect to the research on social networks relative to the Accused, the witness stated that in 2019, while browsing the *Telegram* social network, they found a video footage shorter than 5 minutes on an open profile *Abdul Aziz*. The Accused Senad Kasupović appeared in several segments of that footage dedicated to Suad Šabić from Velika Kladuša who had been killed. The witness explained how they had established that these very persons – Suad Šabić and Senad Kasupović – featured in the referenced footage. After they received information that those persons had set off toward Turkey whereupon they arrived in Syria, they also received a confirmation from the Border Police, on the basis of which they carried out identification via the IDEEA (Agency for Identification Documents, Registers and Data Exchange of Bosnia and Herzegovina) database from which they gathered photographs of these persons, compared them against the video footage and thus established that those persons featured in the footage. He knows that there was an arrest warrant for Kasupović. As part of the warrant, all police organizations, SIPA included, were forwarded a photograph of the person (the Accused Kasupović), in which way they carried out an additional identification of the person. Speaking about further actions aimed at corroborating the evidence, the witness stated that after the identification of the described footage found on the *Telegram* social network, and after the establishment of the grounds for suspicion that suspect Kasupović featured in the footage, the Prosecutor seised of the case was informed about the foregoing, whereupon he authorized an investigation. The witness described the manner of the investigation: the video footage was reproduced on an official computer, and in the presence of forensic officers photographing of certain segments of the footage (in which they recognized the Accused Kasupović) was carried out, whereupon a record was made, while the footage was “written” on a CD. The witness explained that the footage was found on the *Telegram* social network, specifically on the profile named Abdul Aziz, its public part, which is an open profile that anyone can access, meaning that access to that profile does not require any code or password. Finally, the witness emphasized that all referenced files - footage, photographs, record, and the supplementary report about the committed criminal offense were submitted to the Prosecutor's Office of B-H. The witness was shown the referenced documents, Record of investigation by SIPA, Regional Office Banja Luka, No. I-16-14/1-04-1-748/13 of 29 May 2019 with attached CD optical drive and photo-documentation by SIPA, Regional Office Banja Luka, No. I-16-14/1-04-1-748/13 of 29 May 2019. The witness confirmed the authenticity of the signature thereon, so they were tendered as Exhibit DT-2.

On 1 July 2020, witness ... gave evidence about the same circumstances. The witness had worked together with witness ... on the discovering and documenting of the video footage from the Telegram social network, found on the *Abdul Aziz* open profile, and he completely confirmed the contentions of witness

In the course of the proceedings, the Defense contested the authenticity of the discovered footage, stressing primarily that its author was unknown and that it was not known who uploaded it on the Internet, that is, the Telegram network. Also, given the fact that the footage was made of a series of still images presented in sequence with background music and captions in certain segments (the so-called slideshow), the second objection of the Defense addressed potential doctoring of the footage by way of adding certain photographs to the original form of the video footage.

First of all, the Court considers it important to stress the specific nature of the intelligence and evidence gathering for this kind of criminal offenses, that is, terrorism-related criminal offenses, as noted in the briefing by the European Parliamentary Research Service, stressing that “the increasingly widespread use of photos and video footage by terrorist groups, and individual combatants posting self-incriminating material on the social media (e.g. Facebook) provides additional paths for gathering evidence”⁶ Also, it is common knowledge that transnational criminal organizations and terrorist groups such as ISIL use social media for disseminating propaganda and easier transmission of their messages. Such communication is decentralized and difficult to control and restrict. It is extremely difficult to subject it to censorship, yet it is available to everyone. Members of terrorist organizations and their supporters use the Internet primarily as weapons (cyber terrorism), then as a means of communication, and, finally, as a channel for addressing the public.

The Court dismissed the referenced Defense objection as unfounded, since, as witness ... explained in detail, it was a video footage dedicated to the killed Suad Šabić (who had fought in Syria), posted on the Telegram public network and on the public profile Abdul Aziz. Finally, the footage was lawfully recorded/downloaded from the Internet, of which procedure witness ... testified in detail and presented valid documentary evidence about these circumstances

⁶ P. Bakowski and L. Puccio, European Parliamentary Research Service, *Foreign Fighters – Member State Responses and EU Action*, Report, March 2016, available at <http://www.europarl.europa.eu/EPRS/EPRS-Briefing-579080- Foreignfighters-rev-FINAL.pdf>, p. 8. ¶

explaining the recording procedure, which this Court does not consider disputable. The expert witness clearly said that the referenced footage of the Accused's address was publicly posted on the Internet, the Telegram network, on an open profile named Abdul Aziz, (which was) accessible to anyone without any obstacles in terms of passwords or other signs. The fact that the person who recorded and uploaded the video footage is unidentified does not affect the lawfulness thereof, in the opinion of the Court, especially if one is mindful of the previously analyzed specific character of terrorist organizations' usage of social media for propaganda purposes, that is, frequent posting of (self-)incriminating material, which consequently provides a greater possibility for evidence gathering with respect to terrorism-related criminal offenses.

The Court also dismissed the Defense objection alleging doctoring of the footage by adding certain photographs to the original form of the footage, given the fact that, except for a general contention of potential manipulation, Defense Counsel did not cite specific facts that would have brought about reasonable doubt in that respect, did not explain what the potential manipulation consisted of, and did not propose/adduce any evidence to prove it. In that respect, particularly important is the clarification by witness ..., which the Court found to be logical and well-founded, who answered the Defense question by stating clearly that in case of a doubt about the authenticity of a footage, including the one at hand, other measures would be undertaken for the purpose of verifying the authenticity of the contents, that is, additional methods would be applied for authorization of the footage, but that in the case at hand the authorized official persons did not have any such doubt.

The forensic analysis of the compiled evidence - Record of investigation by SIPA, Regional Office Banja Luka, No. I-16-14/1-04-1-748/13 of 29 May 2019 with attached CD optical drive and photo-documentation by SIPA, Regional Office Banja Luka, No. I-16-14/1-04-1-748/13 of 29 May 2019 (DT-2), following the order of the Prosecutor's Office of B-H (attached to which is the referenced submitted material), was conducted by digital forensics expert witness Dino Osmankadić, who was examined at the hearing held on 12 August 2020. The expert witness explained that his task was to compare the disputable material – video footage (stored on the CD optical drive, subsequently tendered as part of Exhibit DT2) and the indisputable photographs of the Accused (the expert witness confirmed that he had taken these photographs himself on the premises of the Prosecutor's Office on 10 March 2020) for the purpose of establishing the identity, that is, match of biometric characteristics. The

witness described in detail the actions he had undertaken with a view to executing the Prosecutor's Office's order, stressing that he had first "split" (extracted) video footage into photographs and then selected the most suitable photographs (featuring multiple persons), that is, practically extracted a detail of a photograph, specifically, the face/head of one particular person in order to establish whether that was Senad Kasupović. The witness explained that he made a comparison between the indisputable material (the photograph of the Accused that the witness had made) and the disputable material (parts of the photographs extracted from the video footage) by applying a subjective method, which implies a subjective identification of a person by general characteristics, and that with the subsequent use of the so-called biometrics, by using certain program tools, he tried to prove, that is, compare certain measures, that is, characteristic details on the disputable and the indisputable photographs alike. The witness clarified that he used program tools to measure the distance between pixels, drew a chart, conducted a comparison of the data of the identical details on the disputable and the indisputable photographs, made a statistical analysis of the data in terms of a deviation of the referenced details, and, finally, presented his opinion whether the deviation was acceptable or unacceptable in terms of matches between the compared samples. Finally, on the basis of the processed data, the expert witness gave his opinion that the video footage was unsuitable for making a positive verification that one of the persons visible on the footage was indeed Senad Kasupović, except on a certain number of photographs on which there are acceptable general elements of characteristics of similarity (but he could not corroborate it with a biometric analysis because of the quality of the photographs and obvious changes to the face), stressing that those were photographs 19, 20, 27 and 28 in his Finding and Opinion.

Having inspected the referenced Finding and Opinion, especially the photographs referred to by the expert witness, the Court found that on certain photographs there was a person for whom the expert witness established that his face had acceptably visible similarity with the face of the Accused Kasupović. These are photograph number 19, where he features together with three other men (one of whom is in uniform), and photograph number 27, where he is in the company of four other men, some of whom are uniformed and armed⁷. Having analyzed the Finding and Opinion, which was correlated to the video footage discovered on

⁷ Photographs 20 and 28 are the extracted and enlarged segments of photographs 19 and 27, which feature the face of the person for whom the expert witness established that his face had acceptably visible similarity with the face of the Accused Kasupović.

the Abdul Aziz open profile on the Telegram network, the Court found, with the limitations of objective nature that the expert witness emphasized (finding on the basis of subjective method), that the Accused Senad Kasupović featured in multiple segments of the footage dedicated to Suad Šabić, who had been killed on the Syrian front.

The fact that the Accused Senad Kasupović was in Syria fighting for ISIL in the relevant period, as the Indictment charged him, follows from the other evidence, the testimonial and the physical alike, which will be analyzed further in the text.

Witness S3, who was examined at the hearing held on 23 September 2020, explained that in 2013 he had travelled to Syria, together with his family, where he stayed until late 2016, living in different cities. He stated the chronological order of his travels saying that he went from Sarajevo via Turkey to Syria, first to the city of Azad, whereupon he spent one period of time in 2014 in the city of Al-Bab, whereupon, in mid-2015 he went to the city of Raqqa. The witness added that after that, in 2016, he spent some time in the city of Manbij, whereupon he returned to Al-Bab, where he stayed until his return to B-H. The witness stressed that in all these cities he used to see persons from B-H and confirmed that he got to know them personally. The witness named some of the persons from B-H whom he had met in Syria, stating that he had also used to meet Ibro Ćufurović and the Accused Senad Kasupović, stressing that, when they had first met, Kasupović had introduced himself as Muatesim (and that he learned his real full name only upon returning to B-H). The witness said that he first met Muatesim in the city of Manbij, that is, one area between the cities of Manbij and Al-Bab where he was deployed with his unit. The witness explicitly stated that the unit that the Accused was a member of was called *Al-Aqsa*, that is, *Bayt Commandos*, and stressed that he knew that other persons from B-H were also in that unit – one guy from Krajina, whose name he could not remember, and Ibro Ćufurović, adding that Bajro Ikanović commanded the unit in one period. The witness clarified that he knew that the unit whose member was the Accused Kasupović among others, *Al-Aqsa*, that is, *Bayt Commandos*, was intended for war battles, that is, for special assignments, and that it was a part of ISIL, stressing that these facts were known to everyone who was there. The witness also described in detail the circumstances of getting acquainted with the Accused Kasupović, saying that he met Kasupović near the city of Al-Bab in 2014, when he visited that unit (*Al-Aqsa*, that is, *Bayt Commandos*) where he got to know “Ibro Ćufurović, Senad and another guy”. He stressed that they did not introduce themselves with their real names, but only told him that they were

from Krajina. The witness said that in that period the *Al-Aqsa*, that is, *Bayt Commandos* unit fought in battles in every territory controlled by ISIL. He described the Accused's appearance at that time, stating that he was of average height, that he had slightly long orange or reddish hair, that he was armed with an automatic rifle, that he had a beard, and that he was dressed "like the majority of the people there, in camouflage uniforms". He could not remember if the unit members had any insignia on their uniforms. Defense Counsel observed that the witness could not identify members of units by insignia and uniforms in one city, but the witness explained that the majority of ISIL fighters, Bosnians and foreigners alike, wore identical uniforms.

The witness explained unambiguously how he learned that the name Muatesim was linked to the Accused Kasupović, stressing that during his stay in Syria he had not learned his true name, that is, that everyone had known him under the name of Muatesim. The witness learned his real name upon returning from Syria when he was shown a photograph of the Accused with his real name during the identification procedure at SIPA.

The witness also described subsequent encounters with the Accused (after the first one in the city of Al-Bab in 2014), stating that he used to come across members of the *Al-Aqsa (Bayt Commandos)* unit in 2015-2016 in the city of Manbij, controlled by ISIL at that time, stressing that the unit members whom he would come across most often were Ibro Ćufurović, Senad Kasupović and "two other guys", and that they used to talk about Manbij, where he got to know them better, that is, learned more about them. He clarified that at that time they were deployed in Manbij and that the unit they were in operated between Al-Bab and Manbij. He added that they most often met on the street and in an Internet cafe, mostly in Manbij, and they had ordinary conversations about where they had gone, when they would return, what had happened, when they would go again and so on. He stressed that it was not any kind of questioning or information giving, but that they had "only normal, customary conversations". In these conversations they would tell him that they had been engaged in special tasks, battles or standing guard, adding that they had most often been deployed in the border zone between Syria and Iraq. He emphasized that he did not often meet members of *Al-Aqsa* since they were on battlefields most of the time, and that he would mostly meet them at an Internet cafe (in Manbij), which the persons who were there visited in order to "get in touch with their families, acquaintances, friends". He confirmed that he also used to meet the Accused Kasupović in that Internet cafe.

In addition to these encounters in Al-Bab and Manbij, the witness also said that when he had just arrived in Syria he would encounter members of the *Al-Aqsa*, that is, *Bayt Commandos* unit in the city of Haritan, where he would also meet Bosnian nationals, but he did not remember having seen the Accused Kasupović among them.

The witness also explained the origin, that is, the change of the unit's name from *Bayt Commandos* to *Al-Aqsa*, stating that the unit's name was *Bayt Commandos* when they were in Haritan, and that it later changed the name to *Al-Aqsa* for the reasons unknown to him. He stressed that it was one and the same unit that was commanded by Bajro Ikanović. He also explained that at the time when he used to come across that unit in Manbij, its commander was Omar al-Shishani of Chechen origin. He explained that he knew this because such information spread quickly among the people who were there, especially among Bosnians.

The witness also provided specific additional information about the Accused Kasupović, repeating that while he was in Syria he got to know the Accused under the name of Muatesim, that he knew that he was from Krajina, and that he learned his true name upon returning to B-H during the identification procedure when he was shown the Accused's photograph. He noted that he did not often meet the Accused in Al-Bab and Manbij because they used to be engaged to stand guard in one period, but that he did meet him multiple times. He knows that Muatesim had a female slave, that he was the only Bosnian who had a woman whom he had paid for, and that he lived close to Ibro Ćufurović.

Finally, witness S3 carried out the identification of the person whom he had got to know under the nickname of Muatesim on the Record of identification of a person on a photograph, SIPA, No. 16-04/1-SZ-27/20 of 3 March 2020 (tendered as Exhibit DT-5). Defense Counsel did not have any objection to the identification procedure during which, as required by the imperative provision of Article 85 of the CPC B-H, the witness had first described the person known as Muatesim, stating that he was "around 33-35, had slightly long yellow-reddish hair, slightly long beard, was of normal height, around 180-cm tall, had one visible injury, I think to his right eye, so I would be able to recognize him as soon as I'd see him", whereupon he recognized him on one of the six presented photographs, under number 3. The Record reads that it was stated that the person under number 3 was Senad Kasupović, son of Mehmed, born on 23 January 1980 in the place of Grabovac, with registered residence at 131 Grabovac Street,

Municipality of Velika Kladuša. The Record was shown to the witness during his examination at the main trial, and he confirmed the authenticity of his signature on it.

Based on the foregoing, the Court regarded the statement of witness S3 as credible, given that the witness testified about his direct and personal knowledge, that is, that his statement contained a description of the situations he had experienced directly. It is particularly important that the respective periods of the Accused's stay in Syria (from 12 July 2013 to 19 December 2019) and witness S3's stay in Syria (from 2013 until late 2016) overlap in the prevailing part. The Court credited witness S3's statement because it contained plenty of details, comprehensive descriptions of individual situations in which he found himself and the events in which he participated, especially those that concern the manner and the occasions in which he met the Accused, even a detailed description of the physical traits of the Accused at the time, so it is beyond dispute that such statement could be given only by a direct participant/eyewitness of the referenced events.

Defense Counsel's attempts to discredit the witness did not in any way make the Panel doubt the accuracy of his account, because the witness had a logical and absolutely acceptable answer to each question/comment of the Counsel. The Counsel attempted to contest the witness' acquaintanceship with the Accused in the context of the knowledge of the facts he testified about, claiming that the witness did not know anything about the life of the Accused and that the Accused did not have any motive to keep company with someone with whom he was more than 10 years apart in age. The witness clarified that he neither kept company with the Accused nor was his friend (or enemy), but that they were just acquaintances. Also, asked by the Counsel, the witness explicitly confirmed that he had not seen the Accused fighting in war, that is, that he had not fought together with him, but emphasized that he used to see him when he was wounded. The very fact that the witness confirmed that he had not seen the Accused fighting tells clearly that he did not have an intention of incriminating the Accused without grounds, that is, incriminating him with the facts that he had no knowledge of. To the Prosecutor's additional question, the witness explained that he used to see the Accused in Manbij after the Accused's return from the frontline, when he was wounded, and that he had a fixator attached to his leg during one period. Asked by the Presiding Judge, the witness confirmed that he would see the Accused in free time, when there were no ongoing combat activities.

With respect to the Counsel's objection that the existence of the *Al-Aqsa*, that is, *Bayt Commandos* unit was not proven, that there is no available information about its existence, and that its existence was established on the basis of witness S3's statement alone, the Court points that during the examination at the main trial, at the explicit question of the Prosecutor, expert witness Vlado Azinović confirmed that it indeed existed within the ISIL structure, and that B-H nationals, too, were its members (the same fact also features in the expert witness' study of 10 May 2020 on p. 10).

In addition to the foregoing, the statement of witness S3 was also corroborated by the read-out statements of female witnesses – returnees from the Syrian front, who also confirmed that they had known and seen the Accused in Syria, as well as with other adduced evidence, which will be elaborated on further in the reasoning.

In line with the procedural decision of the Court, at the hearings held on 2 December 2020 and 16 December 2020, the Prosecution evidence was adduced by reading of the records of examination of female witnesses ..., ..., ... and

Therefore, as indicated earlier, the Court evaluated the statements of the referenced female witnesses exclusively as corroborating evidence, primarily with respect to the contentions of witness S3, as well as to the other adduced evidence, mindful of the customary case law⁸ in the context of the right to a fair trial, according to which a judgment cannot be based exclusively or to a decisive extent on the statements of unavailable witnesses which were read out and thus made unverifiable.

Witness ..., in the statement she gave in the investigation⁹, described that she went to Syria at the urging of her husband ..., whom she married under the Sharia law rules (in Bosnia and Herzegovina) and whom she had got to know and communicated with on social media. The witness said that she had gone to Syria in March 2015, when she left Sarajevo for Vienna wherefrom, after a few days of stay there, together with her husband's first wife, Merjem, and the two children her husband had with Merjem, she arrived in Turkey via Hungary, Romania and Bulgaria. In Turkey they stayed for a few days in Istanbul, where one AbdulRahim had

⁸ See Judgments by the Court of B-H: S1 1 K 020380 18 Krž 2 of 24 May 2018, X-KRŽ-05/139 (I) of 15 March 2010, S1 1 K 017182 19 Krž of 6 June 2019, S1 3 K 031036 19 Kž 5 of 8 January 2020.

⁹ DT-22 – Witness Examination Record for ..., SIPA B-H, No. 16-04/1-26/19, 20 December 2019.

waited for them, in whose apartment she stayed and whose task was to organize transport and crossing into Syria. The witness added that they arrived in Syria having set off from Istanbul, via Gaziantep, and that they crossed the border at the Al Raj illegal crossing. At that crossing there were two relatively small buildings in which women were separated from men, according to the witness, who said that on that occasion they confiscated her, Merjem's and the children's passports. Her husband Senad later told her that his passport had also been confiscated. When the witness and Merjem and her children arrived in Syria, one Edin Muftić called Ebu Ali welcomed them and drove them to the place of Al-Bab, where they stayed one day, whereupon they left for Manbij. In Manbij, Edin Muftić took them to a *mudafa* (a facility in which women and children stayed) and told them to choose "new names" for themselves, which they did. The witness also described the circumstances there and then, and the Bosnian nationals whom she would see in Syria, that is, in the *mudafa* in which she lived. After a couple of days of the stay in the referenced *mudafa*, together with (her husband) Senad, Merjem and the children she moved to an apartment in Manbij which Ebu Ali had found for them. She gave birth in a hospital there, but after Senad's departure to military training, *muasker*, they returned to the *mudafa* in which they had stayed originally. They stayed there for about a month, after which they moved to another *mudafa*, where they stayed for another month and a half, whereupon Senad came to take the witness, Merjem and the children and moved them first into one house and then into an apartment in Manbij, where they stayed until February 2016. The witness clearly stated on the record that Senad Kasupović called Muatesim visited them together with his wife, who was a Syrian, in that apartment in Manbij among other people. She added that he, like the others, was also armed and dressed in a military uniform at that time.

Therefore, the statement of witness ... in this part is consistent with the statement of witness S3, who also said that he used to see the Accused Kasupović in the city of Manbij in 2015 and 2016, clad in military uniform and armed with an automatic rifle.

Also, the statement of witness ... referred to the events after her husband Senad ... had got killed on 19 February 2016. Thus the witness said that a month and a half after her husband's death, an order arrived that all women whose husbands were killed had to vacate the apartments, whereupon she was transferred, together with Merjem (first wife of Senad ...), to a *mudafa* in the village of Meslema, located between Manbij and Raqqa, in which women from Bosnia and Kosovo were staying. They stayed there until mid-June 2016, which is when,

as the witness stated, the people in charge of the *mudafa* ordered them to move to Raqqa because Manbij was almost captured by Bashar al-Assad.

The witness also described how Edina Mulalić, whom she knew from the first *mudafa* in which she had stayed, visited her in Raqqa, among other people, and offered to her to marry her husband, which the witness refused. She said that afterward, in August 2016, she was visited by a Syrian woman whose name was Džumana, whom she knew was in a Shariah law marriage with Senad Kasupović with whom she had two children. Džumana proposed to her to marry “one brother whose name is Ibro”, a Bosnian who had kept company with her husband. The witness said that Džumana praised Ibro and that she re-visited her in a month, and then the witness ... (...) told her that she agreed to marry Ibro. The witness entered into a Sharia law marriage with Ibro Ćufurović in September 2016, whereupon Ibro found them a new accommodation. According to the witness, they were visited there by Senad Kasupović, among others, for whom she said (as well as for the other persons who used to visit them) that she knew he had gone to *ribats*, that is, the places where the lines of the Islamic State were guarded, that is, that he was engaged militarily. They stayed in Raqqa until its shelling in June 2017, which is when they left to Mayadin, where the witness also used to see the Accused Kasupović, as she said. They stayed in Mayadin until September 2017, when they set out on the road again with the intention of leaving the Islamic State and returning to B-H.

Further statements of the witness concern the descriptions of her personal movements and experiences not relevant for the proceedings at hand with respect to the criminal offense the Accused Kasupović was charged with.

Witness Examination Record for ... was adduced as a Prosecution exhibit and tendered into the case file ...¹⁰, in which the witness described the Accused Senad Kasupović as follows: “*I know that he participated in military operations and ribats until 2015 and that he was wounded several times. I think that the last time he was wounded was in Kobane. I used to see him in Manbij and he had a fixator attached to his leg. I also know that he was wounded in the stomach and underwent surgery. He is married to a Syrian woman and has two children with her. The last time I saw him was in Mayadin in July 2017*”. She recognized him on one of the 189 photographs that were shown to her.

¹⁰ DT-23 - Witness Examination Record for ..., SIPA B-H, No. 16-04/1-30/19, 21 December 2019

The Court states here that accurate is the contention of the Defense that in both cited witness examination records (DT-22 and DT-23) she was named as "...", although, according to the established personal data of the witness, her name is "...". However, in the opinion of the Court, in the case at hand that was just a *lapsus calami*, that is, a clerical error that occurred in the course of the drafting of the Record, which error does not call into question the witness' identity or make the referenced evidence flawed in any way, given the fact that the referenced error in both records was made only in the part where the persons present during the examination were listed, whilst in the part where pursuant to Article 86(3) of the CPC B-H the full personal data of the witness were cited, the name "..." was properly written. In addition, pursuant to Article 154(2) of the CPC B-H, the witness put her signature with her personal and family names "..." in her own hand on every page of both records.

Also, related to the Defense objection concerning the Record dated 21 December 2019 (DT-23), specifically, that it was not made in accordance with the law, that is, that the procedure was not in compliance with Article 85 of the CPC B-H (according to which a witness should first describe the person whose identification is being made and then identify the person among persons of similar characteristics), and that the witness' identification of Nusret Imamović was flawed as she said that she recognized him, yet that she had never seen him, as was that of Jasmin Keserović for whom she said she recognized him but did not know him personally¹¹, the Court primarily points that these acts did not constitute identification of persons pursuant to Article 85 of the CPC B-H, according to which a witness should first describe the person (or object) by first describing the person or indicating the person's distinctive signs, after which the person would be shown to the witness together with other persons unknown to him. Having analyzed the referenced Record, the Panel clearly concluded that it was made concerning the identification of photographs of persons who were present in the war theaters in Syria and Iraq, as stated in the Record, which was entitled Witness Examination Record. Essentially, the witness was shown 189 photographs of persons, B-H nationals, for whom there existed information that they were in the territory of Syria, on which photographs the witness descriptively identified the persons whom she had seen directly and had referred to in the previous Witness Examination Record. Therefore, the

¹¹ DT-23 - Witness Examination Record for ..., SIPA B-H, No. 16-04/1-30/19, 21 December 2019, p. 3, paras. 1 and 3.

referenced Record is a certain follow-up on the previous Witness Examination Record (DT-22), in which the witness talked about the persons, B-H nationals, whom she had seen at different times and circumstances during her stay in Syria, whom she afterward recognized on their photographs. The Court notes that Nusret Imamović and Jasmin Keserović are not the subject of the proceedings at hand and that, in addition, on the Witness Examination Record of 20 December 2019 (DT-22), witness ... identified the Accused Kasupović both by description and by his personal and family names, that is, nickname, due to which the Court considers it to be established beyond doubt that she had known, that is, certainly seen him during her stay in Syria.

When a correspondence is established between the statement of this witness and the statements of witness S3 which the Court fully credited because, as explained earlier, it is obvious that the said statements completely match each other with respect to the key facts related to the Accused's stay and military/paramilitary activities in Syria. What is particularly indicative for the Court is the fact that witness ..., identically as witness S3, both of whom are returnees from Syria, knew the Accused under the name of *Muatesim*, that both used to come across him in the city of Manbij in 2015 and 2016, dressed in military uniform and armed with (automatic) rifle, and that they stated consistently that he was wounded at the time and had a fixator attached to his leg. Also, the Court finds it important to stress that witness S3 linked the first instance when he got to know and subsequent encounters with the Accused to the Accused's socializing with Ibro Ćufurović, while witness ..., as said earlier, was Ibro Ćufurović's wife. In addition, witness ... knows that the Accused was married to a Syrian woman, Džumana, with whom he had two children, which the Accused confirmed during his examination as a witness, which will be discussed more further in the text. Finally, the Accused's movements, that is, his stay in the cities in Syria, as he personally said, matched the places where witnesses S3 and ... used to see him, both location- and time-wise.

The other female witnesses – returnees from Syria, ..., ... and ..., in their statements which were also read out at the trial, did not touch in detail on the Accused Kasupović, given that the statements of all these witnesses were such that they talked about their personal experiences and events and generally about all persons whom they had met and got to know, but they confirmed the contentions of witnesses S3 and ... with respect to certain parts. Thus witness ... said that she knew that *Senad Kasupović was wounded after he had stepped on*

a mine¹², while the Witness Examination Record (DT-27¹³), made concerning the identification of the photographs of the persons who had been in the war theaters in Syria and Iraq, reads that she recognized Senad Kasupović aka Muatesim on one of the photographs, that she did not know that he was active militarily, and that she heard that he had been wounded from a mine in the place of Kishma and that he surrendered to the Kurdish army. According to the Witness Examination Record (DT-25¹⁴), made concerning the identification of the photographs of the persons who had been in the war theaters in Syria and Iraq, on photograph number 28 witness ... recognized the person called Muatesim, added that she had once seen him in Syria and that she knew that he was married to a Syrian woman and that he was among the first ones from Baghuz who surrendered.

With respect to the Defense objection to the Records of the examination of the referenced witnesses (DT-27 and DT-25) that they were not made in accordance with the law, that is, in compliance with Article 85 of the CPC B-H, the Court points at the part of the reasoning of the referenced objection to the Witness Examination Record for ... (DT-23) in order to avoid unnecessary repetition, as it is an identical situation and identical objection.

Finally, Defense Counsel challenged the witness capacity of all female witnesses – returnees from Syria (... , ... , ... and ...) at the time they gave the statements contained in the records of their examination that were read out at the main trial, as the Counsel suspected that already at that time the witnesses had manifested the symptoms of mental disorder due to which a decision was made that their statements should be read out at the trial.

The Court dismissed this objection of the Defense considering it to be general and ill-founded given that, except for the unsubstantiated contentions of Defense Counsel, the witness capacity of witnesses ..., ..., ... and ... at the time when they gave the contested statements (in investigation stage) was not called into question in any way. Mindful of the fact that the witness capacity of every person, the referenced witnesses included, is evaluated on the basis of medical forensic analysis, that is, rules of medical profession, about which neither the Court nor the Defense Counsel has relevant professional knowledge so as to be able to render a relevant decision independently, in the case at hand the Court credited the Finding

¹² DT-28 - Witness Examination Record for ..., SIPA B-H, No. 16-04/1-31/19, 22 December 2019

¹³ DT-27 - Witness Examination Record for ..., SIPA B-H, No. 16-16/1-62/19, 23 December 2019

¹⁴ DT-25 - Witness Examination Record for ..., SIPA B-H, No. 16-04/1-32/19, 22 December 2019

and Opinion of expert witness Prof. Azra Alajbegović, who conducted a forensic analysis of the referenced witnesses, as explained earlier. In that respect, the Panel points that during the examination at the trial, to the explicit question of Defense Counsel about the witness capacity of the referenced witnesses at the time when they gave statements in the investigation stage, the expert witness explicitly said that their witness capacity at the relevant time could have been established with certainty only if they had been examined at that time, but that potential troubles that the witnesses might have had in that period were not manifested considerably.

Therefore, the Court accepted the emphasized parts of the referenced witnesses' statements, finding them to be impartial and credible and in full consent with all other adduced evidence, especially the statement of witness S3. The Court considers important the fact that the witnesses described all events they referred to in their statements in the investigation stage with plenty of details, even secondary ones, answering all asked questions comprehensively, convincingly and in detail. According to the Court, the referenced witnesses' statements are in agreement regarding the existence of essential facts concerning the Accused, that is, his physical traits and/or locations and situations in which they used to see him, so their credibility was not called into question. In addition, the Court stresses that all witnesses testified about their personal movements and experiences during their stay in Syria, mentioning the Accused only in the context of and to the extent of their personal knowledge about him, for which reason the Panel is of the opinion that they certainly did not have any motive to incriminate the Accused without grounds, while their statements in important parts were confirmed by the other adduced evidence of the Prosecution.

In addition, as the corroborating evidence of the referenced witnesses' statements about the combat activities of the Accused on the Syrian front, the Panel also evaluated the tendered exhibit of the Prosecution, Letter by the Office of the Legal Attaché of the US Embassy No. 187935180 of 6 August 2019, with attachments – Summary about Senad Kasupović, person in custody,¹⁵ which contains a document – list of persons dated 26 July 2015 with biographic data of the listed foreign fighters who were members of the ISIL terrorist formations, on which list the Accused Kasupović features under number 24, with the nickname of Muatesim, by which he was referred to by all witnesses – returnees from Syria, S3, ..., ... and

¹⁵ Tendered as Exhibit DT-18.

At the hearing held on 30 December 2020, the Accused Senad Kasupović gave a statement in the capacity as a witness. Speaking about the motives and purpose of his stay in Syria, he stressed that his motive for going to Syria was to marry a Syrian national named Džumana, whom he had got to know via social networks. In his evidence, the Accused described in detail all circumstances of his travel to and stay in Syria, and confirmed that he went there from the location and at the time indicated in the Indictment, but that, contrary to the allegation in the Indictment, he crossed the border between Turkey and Syria legally, with the help of “one Syrian and one Turk” whom his wife-to-be had recommended him to contact. Speaking about his affairs there, the Accused stated that while in Manbij, he got a job through his wife’s acquaintances and worked in a hospital on the duties which the emergency ward did not carry out, saying specifically that he used to drive from the streets people injured after bombardments (the wounded). He denied membership in any terrorist organization, especially the *Al-Aqsa*, that is, *Bayt Commandos* unit, acquaintanceship with witness S3 and female witnesses -- returnees from Syria, and claimed that he was not active militarily or even fit for military service. Finally, he described the details of his return to B-H, stating that he was deported in December 2019, but that as early as in 2017, while in Mayadin, he had (unsuccessfully) attempted to leave Syria.

To corroborate the Accused’s contention that he was not fit for military service, the Defense stressed during the proceedings that during the war in B-H the Accused had sustained grave injuries, an injury to the right eye and the loss of hearing to one ear. It was stressed that as a consequence of the wounding the Accused had psychological disturbances (...) and the physical consequence of blindness to the wounded eye that he still suffered from. Defense Counsel tendered into the case file exhibits (enumerated as DO-1 through DO-3) concerning the referenced circumstances.

The Prosecution challenged the relevance of the tendered Defense exhibits, stating that all medical documents related to the Accused had originated much before the events as charged, which objection this Panel sustained. The Panel was of the opinion that the referenced exhibits did not explicitly confirm that the Accused was not fit for military service, but that he suffered from a certain degree of disability. Based on all evaluated evidence and the established facts and circumstances, which primarily concern and indicate a continuous

military engagement of the Accused on the Syrian front, this Panel considers it established beyond doubt that the Accused participated in combats as military.

Therefore, considering the established circumstances and the adduced exhibits, analyzed and evaluated both individually and in terms of their mutual correspondence, the Court could not accept the contention of the Defense that the Accused's sole motive for going to Syria was to marry a Syrian national whom he had met on social media, that is, that he had not committed the criminal offenses the Indictment charged him with. The Court regarded that the Accused's statement given in the capacity as a witness was highly motivated and aimed at diminishing his criminal liability and alleviating his position in the proceedings.

It is important to note that the statement the Accused gave as a witness matches the statements of witness S3 and the female witnesses – returnees from the Syrian front, primarily witness ..., in certain important parts related to the locations, that is, the cities in Syria where the Accused said he had stayed and where the witnesses confirmed having seen him. The Accused confirmed that during his stay in the city of Manbij he had lived close to the location where witness S3 had lived. However, with respect to other circumstances of the Accused's stay in Syria, their respective statements contradict each other. Thus the Accused denied commission of any criminal offense, stating that he worked in the hospital on care and transportation of the wounded, and equalized these tasks with a kind of civilian protection. However, during cross-examination the Accused confirmed that the hospital in which he had allegedly worked was under the control of ISIL, and confirmed to the explicit question of the Presiding Judge that throughout the whole duration of his stay in Syria he had not been for a single moment at the territory controlled by the army of the official Syrian government. In addition to being contrary to the other adduced evidence, the Accused's statement was not corroborated with any other evidence either. Witness S3 and witnesses ..., ... and ... confirmed consistently that they had got to know, that is, knew the Accused under the name of Muatesim. As already stated, under the same nickname, under number 24, he featured in the list submitted with the Letter by the Office of the Legal Attaché of the US Embassy (Exhibit DT-18), which contains the names of foreign fighters, members of ISIL. Also, as already established in the analysis and evaluation of these witnesses' statements, this Panel finds it particularly indicative that witness ..., identically as witness S3, confirmed that she encountered the Accused in the city of Manbij in 2015, that is, 2016 (which matches the period in which the Accused was there, as he personally confirmed), dressed in military

uniform and armed with an (automatic) rifle. Both witnesses stated consistently that he was wounded at that time and that he had a fixator attached to his leg. They also stressed that they knew that the Accused was militarily active. Witness S3 is familiar with a lot of details concerning the combat activities of the Accused, including the one that he was a member of the *Al-Aqsa*, that is, *Bayt Commandos* unit (the existence of this unit was confirmed by the statement, that is, Expert study made by the expert witness Vlado Azinović), which was a part of ISIL, intended for special assignments, war operations or guards. Witness ... also stressed that she knew that the Accused used to go to *ribats*, that is, the places where the lines of the Islamic State were guarded, that is, that he was engaged militarily. It is important to note that witness S3 linked the first instance when he got to know and subsequent encounters with the Accused to the Accused's socializing with Ibro Ćufurović, while witness ... was Ibro Ćufurović's wife, as she herself said. In addition, witnesses ... and ... stated that they knew that the Accused was married to a Syrian woman, and witness ... even gave her name – Džumana, and stressed that she knew that the Accused had two children with her, which facts the Accused confirmed when he was examined as a witness. Finally, the Accused's movements, that is, stay in the cities of Syria, as he personally said, matched the places where witnesses S3 and ... used to see him, both location- and time-wise. It also stems from the referenced witnesses' statements that the Accused stayed in the very cities cited in the Indictment as the places where he participated in combat activities on the side of ISIL.

When the statements of all referenced witnesses are analyzed and when a correspondence is established between them and the statement the Accused gave as a witness, it is clear that there was a mutual correspondence between the witnesses' statements, while the statement of the Accused was directly and, in the Court's opinion, illogically contrary to all of them, save for general parts which do not relate to the specific incrimination against him. The Court fully credited the statements of the examined witnesses and parts of the statements of the female witnesses – returnees read out at the trial, as the Court considered them to be credible, impartial and consistent in all important parts. The Court did not find a single circumstance due to which their statements would have been challenged given that, as the Court reasoned comprehensively in its findings, the witnesses did not have any motive to incriminate the Accused without grounds, whereas, on the other hand, when giving his statement the Accused definitely had a motive to reduce or avoid his criminal liability.

Therefore, based on the adduced evidence, the Court found beyond reasonable doubt that at the relevant time the Accused left B-H and joined the terrorist organizations of the Islamic State of Iraq and the Levant operating in the territories of Syria and Iraq, knowing that they were declared as terrorist organizations and groups by the UN Security Council on 30 May 2013, where he stayed until 19 December 2019, and that together with other persons from B-H who were in Syria with the same intention, including Bajro Ikanović and Ibro Ćufurović, using the name of Muatesim, he rendered assistance to and fought for ISIL forces in the Syrian cities of Manbij, Kobane, Raqqa and Al-Bab in the *Bayt Commandos* unit, which later changed its name to *Al-Aqsa*, which fought against the legitimate military forces of the state of Syria, whereby he satisfied the essential elements of the criminal offense of Organizing a Terrorist Group in violation of Article 202d(2), as read with Paragraph (1) of the CC B-H, as read with the criminal offense of Terrorism in violation of Article 201 of the CC B-H, of which offense the Court found him guilty, which conclusion of the Court the Defense did not challenge in any way.

The Court left out from the description of facts of the Indictment the Prosecution allegations that the Accused “participated in terrorist activities”, because the Court did not find from the adduced evidence that he had participated in some specifically described terrorist activities, although the Court found beyond doubt that he had rendered assistance and fought for the ISIL terrorist organization, as previously explained in detail. The Court harmonized the description of facts of the Indictment with the results of the evidentiary proceedings by having left out from the description of the act the referenced Prosecution allegation for which there was no reliable evidence, noting that the elements of the referenced criminal offense were maintained. In doing so, the Court did not violate the objective identity of the Indictment or exceed the charges, since the Court’s intervention in that respect was done in favor of the Accused.

7. Decision on the criminal sanction and meting out of punishment

Mindful of the circumstances of the perpetration of the criminal offense and the described acts of the Accused, the Court concludes that the Accused perpetrated the referenced offense with intent as a form of guilt. The manner of the commission of the acts and the timeline of the events confirm the Court’s conclusion. In addition, the Court concludes that the Accused was in such mental state that he was able to understand the significance of the

act and control his actions, that is, that his mental responsibility *in tempore criminis* was reduced, but not significantly. The foregoing was confirmed by expert witness Dr. Omer Ćemalović during the examination at the hearing held on 23 September 2020, and the same conclusion was also contained in Exhibit DT-4¹⁶. As the Court found that the Accused's criminal responsibility was not brought into question, the Court found him guilty of the criminal offense of Organizing a Terrorist Group in violation of Article 202d(2), as read with Paragraph (1) of the CC B-H, as read with Article 201 of the CC B-H.

When meting out the punishment, the Court was primarily mindful of the statutory range of the sentence the offense carried, and of all facts and circumstances bearing on the individualization and the magnitude of the statutory punishment (Article 48 of the CC B-H), the importance of the criminal offense and of the protected object, and particularly took into account other circumstances as well, making sure that the punishment were proportionate to the gravity of the perpetrated offense and in the function of achieving the purpose of sentencing (specific and general deterrence).

As an aggravating circumstance for the Accused Kasupović the Panel regarded the fact that he stayed in Syria for a considerably long period of time (more than six years). However, the Panel could not regard as an aggravating circumstance the fact stressed by the Prosecutor in his closing argument concerning the character and cruelty of ISIL's operation as a terrorist organization. It is indisputable that the operations of the organization that the Accused joined left fatal consequences on the whole democratic world, but the Accused cannot be charged with that fact in the sense proposed by the Prosecutor. The Accused Senad Kasupović is held accountable under the principle of individual criminal responsibility, which exists when a person directly perpetrates or contributes to the perpetration of a criminal offense, due to which the overall consequences caused by ISIL's operations cannot be regarded as an aggravating circumstance for an individual, that is, the specific Accused.

On the other hand, the Panel found a number of extenuating circumstances for the Accused Kasupović. In that respect the Panel primarily took into account the fact that, according to the

¹⁶ DT-4 - Finding and opinion of forensic analysis in neuropsychiatry for Senad Kasupović made by Primarius Omer Ćemalović, MD, standing court expert witness in neuropsychiatry, dated 17 January 2020

indisputable criminal records certificate¹⁷, the Accused did not have any prior convictions, that he behaved before the Court with decorum, that is, that during the proceedings he respected the instructions of the Court and behaved politely, and that he was a family man, married with two minor children.

In addition, in the opinion of the Panel, the Accused's intention to return from Syria earlier had to be regarded as another extenuating circumstance for the Accused. During the examination at the main trial, the Accused stressed that as early as in 2017, while in Mayadin, he attempted to get out of Syria, which attempt was thwarted, whereupon he surrendered to the Kurds, that is, the Liberation Army, and spent 10 months in a camp. In addition to the Accused's contention, this was also confirmed by the female witnesses for the Prosecution, ... and ..., who said that they knew that he "surrendered to Kurdish army" (...¹⁸), that is, "that he was among the first ones from Baghuz who surrendered" (...¹⁹).

The Panel evaluated all the foregoing extenuating circumstances and correlated them to the only aggravating circumstance for the Accused (the long stay in Syria).

Mindful of all evaluated circumstances for the Accused, the Panel is of the opinion that the sentence of imprisonment for the term of 3 (three) years was appropriate and proportionate to the gravity of the crime, degree of guilt of the Accused and his personality, the circumstances under which the offense was perpetrated, and all other referenced circumstances bearing on the sentencing. The Panel considers that this punishment will help achieve the goals of both specific and general deterrence, pursuant to Article 39 of the CC B-H.

8. Credit for the period spent in custody

Article 56 of the CC B-H sets forth that the time spent in custody, as well as any deprivation of freedom related to the criminal offense, shall be credited toward the sentence of

¹⁷ DT-11 - Criminal records certificate for Senad Kasupović, Una-Sana Canton MUP, Fourth Police Department, Velika Kladuša PS, Crime Police Department, No. 05-04/10-1-1-2-219/19, 22 May 2019

¹⁸ DT-27 - Witness Examination Record for ..., SIPA B-H, No. 16-16/1-62/19, 23 December 2019.

¹⁹ DT-25 - Witness Examination Record for ..., SIPA B-H, No. 16-04/1-32/19, 22 December 2019.

imprisonment. Having in mind the fact that in the proceedings at hand the Accused Kasupović was ordered into custody during the investigation stage²⁰, which custody was extended after the confirmation of the Indictment²¹ and which lasted throughout the whole main trial, the referenced period of deprivation of freedom since 19 December 2019 shall be credited toward the imposed prison sentence in line with the cited statutory provision.

9. Costs of the criminal proceedings

Article 188(1) of the CPC B-H sets forth that when the Court finds the Accused guilty, it shall declare in the judgment that the Accused must reimburse the costs of the criminal proceedings. In line with the referenced provision, the Court decided that the Accused had to pay the scheduled amount of 500.00 BAM (five hundred convertible mark) within 15 days of the day the Judgment becomes binding. Pursuant to Article 188(4) of the CPC B-H, the Court relieved the Accused of other costs of criminal proceedings, specifically the remuneration of the court-appointed Defense Counsel and potential other costs (costs of the Prosecution), since the payment thereof would jeopardize the support of the Accused and the persons whom the Accused is required to support financially.

When rendering this decision, the Court was guided by the fact that the Accused had spent six years in Syria, that immediately upon the arrest and deportation to B-H he was ordered into custody and that, consequently, he was not able to earn a living, and that he was a father of two minor children for whose sustenance he was legally obliged to provide.

Record-taker

Biljana Janković

PRESIDING JUDGE

Mirsad Strika

LEGAL REMEDY: An appeal from this Judgment may be filed with a Panel of the Court's Appellate Division within 15 (fifteen) days of the day of receipt of a written copy thereof.

²⁰ Decision of the Court of B-H, No. S1 2 K 020784 16 Krn, 19 December 2019.

²¹ Decision of the Court of B-H, No. S1 2 K 020784 20 Ko, 18 March 2020.