Bosna i Hercegovina Босна и Херцеговина

Sud Bosne i Hercegovine
Суд Босне и Херцеговине

Case No. S 1 1 K 020968 17 Kžk

Session held on: 2 April 2018
Written copy sent out on: 7 June 2018

Before a Panel composed of:

Judge Mirza Jusufović, Presiding
Judge Dragomir Vukoje, PhD
Judge Tihomir Lukes

PROSECUTOR'S OFFICE OF BOSNIA AND HERZEGOVINA

v.

EDIN SAKOČ

SECOND-INSTANCE JUDGMENT

Counsel for the Prosecutor's Office of Bosnia and Herzegovina: Mr. Stanko Blagić

Counsel for the accused Mate Baotić: Ms. Tatjana Savić

TABLE OF CONTENT:

Number: S1 1 K 020968 17 Kžk
Sarajevo, 2 April 2018

IN THE NAME OF BOSNIA AND HERZEGOVINA!

The Court of Bosnia and Herzegovina, Section I for War Crimes, sitting as a Panel of the Appellate Division composed of Judge Mirza Jusufović, presiding, and judges Dragomir Vukoje, PhD, and Tihomir Lukes, *and* legal adviser Elma Čorbadžić as the record-taker, in the criminal case against the accused Edin Sakoč charged with the criminal offense of War Crimes against Civilians under Article 173(1)(c) as read with Articles 29 and 21, taken in conjunction with Article 180(1) of the Criminal Code of Bosnia and Herzegovina, with reference to the Amended Indictment of the Prosecutor's Office of Bosnia and Herzegovina No. T20 0 KTRZ 0011801 16 of 20 February 2017, having held a hearing in the presence of Prosecutor of the Prosecutor's Office of BiH, the Accused and his counsel, rendered and on 2 April 2018 in open session announced the following

JUDGMENT

The accused Edin Sakoč, ..., born in Stolac on 7 March 1959, residing in ..., JMBG /Unique Master Citizen Number/ ..., ..., citizen of ..., butcher by trade, literate, secondary school qualifications, married, father of two children one of whom is a minor, completed the compulsory military service in 1978/79, holds no rank, received no medals, of average financial standing, no previous criminal record, no other ongoing criminal proceedings.

I

IS GUILTY

Because he:

In July 1992, in the territory of Čapljina municipality, during the war in Bosnia and Herzegovina and the armed conflict between the Croatian Defense Council and the armed forces of the Serbian Republic of BiH taking place in a wider area of Čapljina Municipality in 1992, as a member of the Croatian Defense Council, in concert with another member of the Croatian Defense Council called Boban whom he knew, acted in violation of rules of international humanitarian law, breaching the provision of Article 3(1)(a) and (c) of the Geneva Convention

relative to the Protection of Civilian Persons in Time of War of 12 August 1949, ***knowingly and willingly*** **aided** a person called Boban in ***the murder*** of two civilians of ... ethnicity who did not belong to any military formation or take part in armed operations, as follows:

1. On 10 July 1992, at around 03:00 hours, in ..., municipality of Čapljina, together with a member of the Croatian Defense Council called Boban whom he knew, armed with an automatic rifle and handguns, again came to the house of ... On that occasion, upon entering the house 'Boban' asked "where are they?" and fired from an automatic rifle, hitting ... in the forehead with a single bullet. After ... looked up, 'Boban' fired three rounds from the automatic rifle at her, killing both women. After that **the accused** and the person nicknamed Boban carried the bodies of the victims ... and .... outside; 'Boban' poured gasoline on the bodies and set them on fire, jumping as the bodies were burning and saying „burn, Chetniks, burn!".

Consequently, in violation of rules of international humanitarian law in time of war and armed conflict in BiH, the accused Edin Sakoč aided another in the murder of two civilians,

Whereby he, as the aider, committed the criminal offense of War Crimes against the Civilian Population under Article 142(1) of the adopted Criminal Code of the Socialist Federal Republic of Yugoslavia, as read with Article 24 thereof.

As a result, the Court, by applying Articles 33, 38 and 41 of the Socialist Federal Republic of Yugoslavia,

SENTENCES THE ACCUSED

TO IMPRISONMENT FOR A TERM OF FIVE (5) YEARS

Pursuant to Article 50 of the Socialist Federal Republic of Yugoslavia, the time that the Accused spent in pre-trial custody from 19 February 2016 until 17 March 2016 shall be credited towards the imposed sentence of imprisonment.

II

In contrast, pursuant to Article 284(1)(c) of the Criminal Procedure Code of Bosnia and Herzegovina

THE ACCUSED EDIN SAKOČ IS ACQUITTED OF THE CHARGE

That he:

In July 1992, in the territory of Čapljina municipality, during the war in Bosnia and Herzegovina and the armed conflict between the Croatian Defense Council and the armed forces of the Serbian Republic of BiH taking place in a wider area of Čapljina Municipality in 1992, as a member of the Croatian Defense Council in the period from 19 September 1991 until 13 November 1993, ***pursuant to a prior agreement***, in concert with another member of the Croatian Defense Council whom he knew (currently unavailable), acted in violation of rules of international humanitarian law, breaching the provision of Article 3(1)(a) and (c) of the Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949, knowingly and willingly ***raped*** a civilian of ... ethnicity, as follows:

2. On 9 July 1992, at around 22:00 hours, in ..., municipality of Čapljina, together with a member of the Croatian Defense Council called Boban whom he knew, wearing stocking masks, armed with an automatic rifle and handguns, arrived at the house of ...., which is when the Accused asked ... "what kind of Chetniks do you hide?" and entered the house; ..., ... and S. were in the house as well as three persons of ... ethnicity (..., ... and ...) who were hiding in the house of ... during the night for safety reasons. Upon entering the house the person called Boban took a piece of cloth and hit the injured parties with it, whereupon the Accused used the same cloth to blindfold ....; she was ordered to accompany them for interrogation. The Accused pushed her onto the back seat of a Fiat 1300 owned by the Accused; the Accused was driving whereas Boban was sitting on the passenger seat. From there they drove away in the direction of ...; Boban got out of the car at... whereas the Accused continued driving the injured party in the direction of Dretelj camp. On the way the Accused treated the injured party **inhumanely** by strangling her and beating her with a rope. After that the Accused knocked the injured party down onto a seat of his car, lifted her skirt and raped her, calling her 'Chetnik'. The injured party was screaming, putting up resistance, but to no avail. After that, on the way to Dretelj camp, the Accused kicked and punched (with brass knuckles) the injured party; during that time the injured party .... was subjected to ***severe physical and mental abuse and rape***. As the injured party was not admitted at Dretelj camp, he drove her to the old post office in Čapljina and turned her over to Mirsad Muminagić aka Tadija;

Whereby he, as charged, would have committed the criminal offense of War Crimes against Civilians under Article 173(1)(e) of the Criminal Code of Bosnia and Herzegovina.

III

Pursuant to Article 188(1) of the Criminal Procedure Code of Bosnia and Herzegovina, the Accused is ordered to reimburse costs of the criminal proceedings, to be determined by the Court in a separate decision upon obtaining the necessary information. With regard to the acquitting part of the judgment, pursuant to Article 189(1) of the Criminal Procedure Code of Bosnia and Herzegovina, the Accused is relieved of the duty to reimburse costs of the criminal proceedings, which shall be paid from within the Court's budgetary appropriations.

Pursuant to Article 198(2) and (3) of the Criminal Procedure Code of Bosnia and Herzegovina, the Court instructed the injured parties to take civil action to pursue their redress claims.

Reasons

I. PROCEDURAL HISTORY

1. The Court of Bosnia and Herzegovina /Court of BiH, Court), by Judgment No. S1 1 K 020968 16 Kri of 10 March 2017, found the accused Edin Sakoč guilty because he, by the acts described in section I of the enacting clause of the judgment, committed the criminal offense of War Crimes against the Civilian Population under Article 142(1) of the adopted Criminal Code of the Socialist Federal Republic of Yugoslavia /CC SFRY/, as read with Article 22 thereof. By applying Articles 33, 38 and 41 of the CC SFRY, the Court sentenced the Accused to seven (7) years' imprisonment. Pursuant to Article 50 of the CC SFRY, the time that the Accused spent in pre-trial custody from 19 February 2016 until 17 March 2016 is to be credited towards the imposed sentence of imprisonment.

2. Pursuant to Article 284(1)(c) of the Criminal Procedure Code of Bosnia and Herzegovina /CPC BiH/, the same judgment acquitted the accused Edin Sakoč of the charge that he, by the acts described in section II of the enacting clause of the judgment, committed the criminal offense of War Crimes against Civilians under Article 173(1)(e) of the Criminal Code of Bosnia and Herzegovina /CC BiH/.

3. Pursuant to Article 188(1) of the CPC BiH, the Accused is ordered to reimburse costs of the criminal proceedings, to be determined by the Court in a separate decision. With regard to the acquitting part of the judgment, pursuant to Article 189(1) of the CPC BiH, the Accused is relieved of the duty to reimburse costs of the criminal proceedings, which shall be paid from

within the Court's budgetary appropriations. Pursuant to Article 198(2) and (3) of the CPC BiH, the Court instructed the injured parties to take civil action to pursue their redress claims.

4. The Prosecutor's Office of BiH (Prosecution) and the Accused, through his counsel Tatjana Savić, appealed the referenced judgment within a set deadline.

5. The Appellate Panel of the Court of BiH issued Decision No. S 1 1 K 020968 17 Krž 2 on 31 October 2017, granting the appeals filed by, respectively, the Prosecution and counsel for the accused Edin Sakoč against the Judgment of the Court of BiH No. S 1 1 K 020968 16 Kri of 10 March 2017; the judgment was revoked and a trial before the Appellate Panel ordered.

6. Pursuant to Article 317 of the CPC BiH, trial commenced before the Appellate Panel on 26 January 2018. Prosecutor stated that he stood by his Indictment and the opening statement from the first-instance trial.

A. CLOSING ARGUMENTS

a. Prosecution

7. After the trial was held before the Appellate Division Panel, Prosecutor noted in his closing argument that there is only one witness for Count 1 of the Indictment, which is the injured party who corroborated the charges from the Indictment that the Accused had raped her. She did give several statements, answering the questions that were put to her, but she never said that she had not been raped. According to the Prosecutor, evidence corroborating Count 1 of the Indictment includes the testimony by witness ... who said that the Accused told her that regardless of her age the injured party looked like a *'rjuferica'*, as well as the circumstance that the Accused is a person ... and that that was the reason why he was wearing a mask to avoid being recognized. Prosecutor argued that the Defense's only reason for challenging the credibility of witness Boško Buntić is because this witness said that the Accused had said at the checkpoint "we killed two Chetnik women"; Prosecutor stressed that this witness's testimony has been corroborated by other witnesses who testified about the said circumstances.

8. With regard to Count 2 of the Indictment, Prosecutor argued that he has demonstrated that the accused Edin Sakoč and the person called Boban together carried the bodies outside, whereas the reports referenced by the Defense indicate that witness .... said that ... and Boban had buried the bodies together, not mentioning that bodies were carried outside. According to the Prosecution, it is unacceptable to give credence to this claim as against everything that the

witnesses testified in court, when they were given an opportunity to comment on any discrepancies. In addition, according to witness Blago Doko, the Accused told him "we killed two Chetnik women"; when the two of them subsequently met, the Accused asked him why he had to say who killed those women. Prosecutor further submitted that the principle of *ne bis in idem* has not been violated and, to that end, referred to a piece of evidence that has been tendered, namely a letter from the U.S. Department of Justice indicating that the Accused has never been tried for a war crime. As for the circumstances that have been characterized as mitigating by the Trial Panel, Prosecutor argued that the Court should instead characterize those circumstances as aggravating.

b. Defense

9. Defense maintained its closing argument from the first-instance trial proceedings in its entirety, noting that the part of the Defense's appeal pertaining to factual interventions by the Trial Panel in Count 1 of the Indictment has been granted. Attorney Tatjana Savić, counsel for the accused Edin Sakoč, commented in detail on amendments to the account of facts made throughout the proceedings in relation to each particular count of the Indictment in the light of the principle of ban on *reformatio in peius*. In that connection, counsel argued that on the face of it the Trial Panel's interventions in the account of facts in the convicting part of the enacting clause of the judgment are more favorable to the perpetrator, but the account of facts has been altered to the point that it constitutes a new charge against which the Accused would probably have mounted a different defense. Specifically, the Defense is of the view that the amendments to the account of facts had a decisive influence on the rendering of a lawful and proper judgment, arguing that the Trial Panel would have been bound to render an acquittal had the factual account from the amended Indictment remained intact and had the Trial Panel found that all the facts omitted from the factual account have not been proved. The Defense therefore petitions the Appellate Panel to render an acquittal in view of the fact that the Panel is not allowed to determine any fact to the detriment of the Accused because only the Defense appealed this part of the judgment. Further in the closing argument, defense counsel, by analyzing witness testimony in the present case as well as the notions of co-perpetration and complicity, pointed out that the only right decision to be made is to acquit the Accused of the charge under Count II of the Indictment. Specifically, counsel noted that it is clear that there is no co-perpetration because the Accused was not aware of Boban's intentions, which is the requisite subjective component of co-perpetration. Secondly, the Accused did not give a contribution to the commission of the crime by taking any action, be it an act of perpetration (i.e. deprivation of life) or any other action without which the crime could not have been completed; in this connection, co-perpetration requires a decisive contribution, meaning a

contribution on which the occurrence of a consequence depends. Counsel noted that what remains when all the unproved facts are removed from the account of facts in the enacting clause of the judgment is that the Accused drove Boban to the house of ... and nothing else, and that the presence of the Accused at the crime scene, on its own, does not entail guilt for that crime. Furthermore, counsel pointed to the absence of any form of guilt in the enacting clause of the first-instance judgment. As for the reasons adduced for the judgment, they cite elements of *dolus eventualis*, but this form of intent cannot apply to the situation in question considering that it implies the perpetrator's awareness of his own actions and their possible consequences (to which he consented) and not his awareness of actions of another. In addition, counsel noted that in no way could the Accused's intent cover the murder of the victims, and that his knowledge of Boban's intentions ended at his consent to bring in ... ...

10. As for the part of the closing argument pertaining to Count I of the Indictment, defense counsel first of all observed that the Trial Panel made unauthorized interventions in the account of facts in the acquitting part of the judgment; as the Prosecution did not appeal along those lines, an issue arises as to the ground for discussion of such matters before the Appellate Panel. According to the Defense, Count I of the Amended Indictment relies on uncorroborated, indirect evidence, i.e. statements by ... that contain many inconsistencies and have not been corroborated on essential points by witnesses who testified in court. For this reason, the Prosecution was forced to amend the Indictment and charge Boban with many of the acts that had been originally attributed to the Accused, i.e. it turned out that all the acts that ... attributed to the Accused (which occurred in the presence of other witnesses) were wrongly attributed and that they were in fact perpetrated by Boban. Further in its closing argument, the Defense referred to the submissions made in the appeal regarding the incorrectly determined status of ... as a civilian and the Accused's membership of HVO, noting that he did not belong to any armed formation after 30 June 1992. Lastly, referring to the standards of proof in the Anglo-Saxon and domestic legal system, defense counsel contended that the Prosecution failed to prove *beyond reasonable doubt* (not to mention with certainty) that the Accused is guilty of the crimes charged, so the Defense accordingly takes the view that the only proper and law-based decision to be taken by the Panel is a judgment acquitting the Accused of the charge.

11. The Accused joined the submissions of his counsel in their entirety.

C. PRESENTED EVIDENCE

12. Pursuant to Article 317(2) of the CPC BiH, the Appellate Panel, upon a Prosecution's motion, accepted all the pieces of evidence presented during the first-instance trial and

admitted them into evidence. During the trial before the second-instance Panel, the Prosecution did not file any new evidentiary motions, whereas the Defense petitioned that the part of the testimony given by witness ... as to whether the Accused pointed a rifle at the stomach of ... be played back, that the respective testimony by witness ... and the Accused be played back, and that all the other pieces of evidence presented during the first-instance trial be admitted.

13. Furthermore, the Defense petitioned that an Investigation Report dated 28 June 2012 concerning the interview of ... and a Report on the interview of Boško Buntić dated 19 September 2012 be presented as evidence, and that Mr. Seth Fiore, special agent of the Investigations Division of the U.S. Department of Homeland Security who conducted an investigation against Edin Sakoč in the USA and composed the referenced reports, be examined via video-conference link with regard to the authenticity of the documents, the manner in which the reports were composed and the procedures applied in the USA.

14. Regarding new evidence, on the subject of credibility of witness Boško Buntić, the Defense petitioned the Panel, in line with Article 4 of the LoTC[1], to accept as proven a fact from ICTY's Trial Judgment in *Prlić* (paragraph 251, volume 3 of 6), as well as Official Note no. 02-4-06/2-197/93 of 20 December 1993.

15. According to the referenced official note, Boško Buntić conducted an investigation and concluded that ... prisoners at Gabela prison killed each other. The purported fact from *Prlić* pertains to the same incident, with the Trial Chamber finding that a prisoner was killed by Boško Previšić (a guard at Gabela prison). The Defense requested certification of the said document by the ICTY through the Criminal Defense Section of the Ministry of Justice of BiH.

16. In its oral submissions the Prosecution opposed the admission of Mr. Seth Fiore's reports, arguing that witnesses ... and Boško Buntić who are referred to in the reports gave evidence before the Court and that the Defense had an opportunity to cross-examine the witness.

17. The Panel ruled on 26 January 2018 that the testimony given by witnesses ..., ... and the Accused be played back. On the other hand, the Panel denied the Defense's motion seeking examination of agent Seth Fiore as unnecessary because the said documents have been composed following the procedures applied in the USA, noting that the reports that he had composed would be admitted into evidence as documents. The Panel added that

[1] Law on the Transfer of Cases from the International Criminal Tribunal for the former Yugoslavia to the Prosecutor's Office of Bosnia and Herzegovina and the use of Evidence Collected by the International Criminal Tribunal for the former Yugoslavia in Proceedings before the Courts in Bosnia and Herzegovina.

authorized official persons are normally examined to verify that a particular piece of evidence was obtained lawfully, not to challenge the credibility of a particular witness (which is the purpose of cross examination), which is why it denied the Defense's motion.

18. The Appellate Panel accepted and admitted into evidence the Official Notes no. 02-4/3-06/2-197/93 of 20 December 1993, but denied the Defense's motion to accept as proven a fact from the judgment of the ICTY Trial Chamber in Case No. IT-04-74-T (Prlić et al.) of 29 May 2013, paragraph 251, volume 3 of 6. For the sake of clarity, the Defense petitioned that the entire paragraph 251 be taken judicial notice of.

19. In view of the fact that the LoTC does not contain criteria that need to be met to accept a particular fact as being established by the ICTY, the Panel has applied the criteria established by the ICTY in *Prosecutor v. Vujadin Popović et al.* and *Prosecutor v. Momčilo Krajišnik* to the case at hand, and found that the proposed fact is not sufficiently distinct and concrete, and that by its character it is not a fact that can be taken judicial notice of. Specifically, paragraph 251 of the judgment in *Prlić et al.* – petitioned by the Defense to be taken over as an established fact – is in effect an analysis of witness testimony and other evidence, and contains a finding of the ICTY Chamber about the murder of prisoner Mustafa Obradović and the identity of the perpetrator of that murder, but it is not a concrete fact that meets the requisite criteria to be taken judicial notice of in the present case.

20. The fact proposed by the Defense (paragraph 251) reads as follows:

> *Several witnesses explained that Boško Previšić killed the ABiH soldier Mustafa Obradović during his detention at Gabela Prison. The Chamber has no information on the exact date of his death but notes that the witnesses who testified about it were all detained at Gabela Prison and can accordingly infer that the death of Mustafa Obradović occurred at that time. As to the circumstances of his death, the witnesses explained that when he discovered a piece of bread on the detainee, Boško Previšić seized the weapon of a Domobrani, and fired at Mustafa Obradović in front of the other detainees – including the victim's own father – and then left the body on the ground where it remained till the next day. During a meeting of the working group tasked with implementing Mate Boban"s order on closing down the detention centers, held on 11 December 1993, Boško Previšić stated that he killed a detainee who attacked him. On 15 December 1993, Marjan Biškić ordered the Military Police Administration to conduct an inquiry into the death of Mustafa Obradović. During his testimony before the Chamber, Marjan Biškić stated that he was unaware of the results of the inquiry. The Chamber has no information to support a finding that Boško Previšić was sanctioned following the inquiry. Based on all the evidence, the Chamber finds that Boško Previšić, the warden of Gabela Prison, shot and killed the ABiH soldier, Mustafa Obradović, while he was detained at Gabela Prison.*

21. Article 4 of the LoTC[2] reads as follows: *At the request of a party or proprio motu, the courts, after hearing the parties, may decide to accept as proven those facts that are established by legally binding decisions in any other proceedings by the ICTY or to accept documentary evidence from proceedings of the ICTY relating to matters at issue in the current proceedings.*

22. The first formal requirement in the cited rule for taking a decision on the issue of taking judicial notice of established facts has been met by hearing the parties.

23. The Court recalls that the LoTC is *lex specialis* and that it is applicable as such in proceedings before the courts in Bosnia and Herzegovina. The underlying purpose of Article 4 of the LoTC is judicial efficiency and economy. Judicial efficiency implies condensing the proceedings to what is essential for presentation of evidence by parties to the proceedings and eliminating the need to prove facts that have already been established in past proceedings. When giving a discretionary right to courts to accept "as proven" facts for the purpose of achieving judicial economy, the legislator's intention also included promotion of the rights of accused to a trial within a reasonable time, as well as appreciation of witnesses by reducing the number of courts before which they needed to appear again to testify to avoid their additional traumatization.

24. Pursuant to Article 15 of the CPC, the Court is not under obligation to base its judgment on any fact that has been accepted as proven, considering that all such facts will upon completion of criminal proceedings be weighed individually and in the context of all the pieces of evidence presented at a trial, resulting in a judgment containing an assessment of all the presented pieces of evidence.

25. Considering that neither the LoTC nor the CPC BiH contains criteria that need to be met to take judicial notice of a fact established by the ICTY, the Court, being guided by its duty to respect the right to a fair trial guaranteed by the European Convention and the CPC BiH, has applied the criteria established by the ICTY in *Prosecutor v. Vujadin Popović et al.* (Case No. IT-05-88-T) and *Prosecutor v. Momčilo Krajišnik* (Case No. IT-00-39-T).

26. According to the view taken by the Trial Chamber in *Prosecutor v. Momčilo Krajišnik*, a fact needs to meet the following criteria in order to be capable of admission: 1) it is distinct,

[2] LoTC Article 4: *At the request of a party or proprio motu, the courts, after hearing the parties, may decide to accept as proven those facts that are established by legally binding decisions in any other proceedings by the ICTY or to accept documentary evidence from proceedings of the ICTY relating to matters at issue in the current proceedings.*

concrete and identifiable; 2) it is restricted to factual findings and does not include legal characterizations; 3) it was contested at trial and forms part of a judgment which has either not been appealed or has been finally settled on appeal; or 4) it was contested at trial and now forms part of a judgment which is under appeal, but falls within issues which are not in dispute during the appeal; 5) it does not attest to criminal responsibility of the Accused; 6) it is not the subject of (reasonable) dispute between the Parties in the present case; 7) it is not based on plea agreements in previous cases; and 8) it does not impact on the right of the Accused to a fair trial.[3]

27. According to the decision in *Prosecutor v. Vujadin Popović et al.*, the admissibility requirements for taking judicial notice of a purported adjudicated fact include: 1) the fact must have some relevance to an issue in the current proceedings; 2) the fact must be distinct, concrete and identifiable; 3) the fact as formulated by the moving party must not differ in any substantial way from the formulation of the original judgment; 4) the fact must not be unclear or misleading in the context in which it is placed in the moving party's motion; 5) the fact must be precise; 6) the fact must not contain characterizations of an essentially legal nature; 7) the fact must not be based on an agreement between the parties to the original proceedings; 8) the fact must not relate to the acts, conduct or mental state of the accused; 9) the fact must clearly not be subject to pending appeal or review.

28. It is obvious that the criteria for taking judicial notice of adjudicated facts in *Krajišnik* and *Popović* cases are similar, with the criteria in *Popović* being further elaborated. Both decisions state that a fact must be distinct, concrete and identifiable, it must be precise, it must not contain legal characterizations, it must form part of a judgment which has either not been appealed or has been finally settled on appeal, it was contested at trial and now forms part of a judgment which is under appeal, but falls within issues which are not in dispute during the appeal.

29. According to the ICTY's decision in *Popović et al.*, in order to meet the distinct and concrete criterion, a purported fact must not be inextricably commingled either with other facts that do not themselves fulfil the requirements for judicial notice or with other accessory facts that serve to obscure the principal fact. In order to make this determination, the Chamber must examine the purported fact in the context of the original judgment.[4]

---

[3] ICTY's decision on motion for judicial notice of adjudicated facts in *Momčilo Krajišnik* no. IT-00-39-T of 28 February 2003.

[4] See: ICTY's decision on motion for judicial notice of adjudicated facts in *Vujadin Popović et al.*, Case No. IT-05-88-T, 26 September 2006, para 6.

30. These criteria have been supplemented through the case law of the ICTY and of the Court of BiH, and this Panel assessed each fact in the following manner:

31. A fact is truly "a fact" if it is:

a) sufficiently distinct, concrete and identifiable;
b) not a finding, opinion or oral testimony;[5]

32. This Panel has assessed the purported fact in line with the said criteria, and found that it does not meet the necessary requirements.

33. Having analyzed the purported adjudicated fact in the context of it being a legal finding and whether it is sufficiently distinct and concrete, this Panel has found that it is a finding of the ICTY Chamber in *Prlić et al.* (the Chamber found, by relying on witness testimony, that *Boško Previšić, the warden of Gabela Prison, shot and killed the ABiH soldier, Mustafa Obradović, while he was detained at Gabela Prison*), which is not sufficiently distinct and concrete, or relevant for a decision in the present case.

34. While refusing to take judicial notice of the purported fact, regarding Defense's motion undermining the credibility of witness Boško Buntić in this case by, on the one hand, presenting the content of the established fact and the ICTY Trial Chamber's finding concerning the murder of Mustafa Obradović and, on the other, by presenting the conclusion made by Boško Buntić who conducted an investigation into the murder of Mustafa Obradović, the Panel notes that witness Boško Buntić was examined before this Court so the Defense had and took an opportunity to challenge the witness's credibility through cross-examination.

35. Furthermore, this Panel is of the view that the undermining of this witness's credibility through, on the one hand, the incident involving the murder of Mustafa Obradović and the ICTY Trial Chamber's findings and, on the other, Boško Buntić's conclusions (directly contradicting those of the ICTY) does not constitute a sufficient basis to infer that Boško Buntić is biased against the Accused, for the purpose of implementing the policy of covering up the crimes committed by HVO members of ... ethnicity, as portrayed by the Defense. Either way, even if Buntić told a lie on one occasion, that does not mean that he can never be trusted. In any case, his testimony – assessed in light of Defense's remarks as well as part of assessment of all the other pieces of evidence – is not of particular significance to the establishment of decisive facts about the Accused's acts as charged.

---

[5] Case Law of the Court of BiH: Decision of the Court of BiH No. X-KR-07/394 of 13 November 2008, Decision of the Court of BiH No. X-KR-06/202 of 3 July 2007, Decision of the Court of BiH No. X-KR/06/165 of 26 June 2007.

36. All the pieces of evidence that have been admitted are included in the Annex to this Judgment and constitute an integral part thereof.

37. Having weighed all the presented pieces of evidence individually and in combination, pursuant to Article 285 of the CPC BiH, the Appellate Panel has found that the Accused, by the acts under section 1 of the convicting part of the judgment (Count 2 of the Indictment), is responsible for committing the criminal offense of War Crime against the Civilian Population under Article 142(1) as read with Article 24 of the CC SFRY. Pursuant to Article 284 of the CPC BiH, the Panel acquitted the Accused of the charges under section 1 of the acquitting part of the judgment (Count 1 of the Indictment).

D. SUBSTANTIVE LAW

38. The Appellate Panel fully accepts the arguments adduced in the trial judgment of the Court of BiH in support of application of substantive law (namely, the adopted CC SFRY) to the case in question. First of all, the Panel took into consideration that the Indictment indicated that the crime charged was committed in 1992, at the time when the CC SFRY was in effect; the CC SFRY has been adopted on the basis of the Law on the Application of the Criminal Code of the Republic of Bosnia and Herzegovina and the CC SFRY.

39. When deliberating on the application of substantive law and the legal qualification of the crime, the Panel was mindful of the principles laid down in Articles 3 and 4 of the CC BiH and Article 7(1) of the European Convention on Human Rights /ECHR/ and, by applying the cited provisions, found that the Accused is guilty of committing the criminal offense of War Crime against the Civilian Population under Article 142(1) of the adopted CC SFRY as read with Article 224 thereof.

40. Article 3 of the CC BiH lays down the principle of legality, namely that no punishment or any other criminal sanctions may be imposed on any person for an act which, prior to being perpetrated, has not been defined as a criminal offense by law or international law, and for which no punishment has been prescribed by law (*nullum crimen sine lege, nulla poena sine lege*).
However, Articles 3 and 4 of this Code shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of international law (Article 4a of the CC BiH). The principle of legality is described in a similar manner in Article 7 of the ECHR.

41. The cited statutory provisions stipulate that, as a rule, the law that was in effect at the time of commission of the crime shall apply to the perpetrator thereof. This principle can be departed from only if that is in the interest of an accused, that being a situation where an amended law is more lenient to the perpetrator. The panels assess which law is more lenient to the perpetrator on a case-by-case basis. In light of the views taken by the Constitutional Court of BiH with regard to substantive law, the Panel has found that it is necessary to apply the adopted CC SFRY as the law in effect at the time of commission of the crime, holding that it is more lenient to the perpetrator in the case in question considering the punishment prescribed for the crime.

42. A simple comparison of the texts of the codes in the case at hand can provide a reliable answer only if the new code has decriminalized something that constituted a crime under the previous code, in which case the new code is obviously more lenient. In a situation when the crime is punishable under both laws, one needs to determine all the circumstances that are relevant to the decision as to which law is more lenient in the present case, taking into consideration all the provisions pertaining to sentencing. In doing so, one must be mindful of the provisions on prescribed criminal sanctions (types and measures, meting out and mitigation), security measures, accessory punishments, measures that substitute for penalties and other relevant sentencing provisions.

43. However, it is not sufficient to determine which law offers greater possibilities for a more favorable judgment, but which of the two ensures a more favorable outcome in the specific case for the specific perpetrator, as clearly stated in Article 4(2) of the CC BiH that "*the law that is more lenient to the perpetrator*" shall apply. Accordingly, it is possible that the law stipulating a heavier penalty is ultimately more favorable to the perpetrator because the application of some other provisions of that law will result in a more favorable solution for the perpetrator.

44. In the case in question, both the law that was in effect at the time of the crime (adopted CC SFRY) and the law that is currently in effect (CC BiH) define the criminal acts of which the Accused has been found guilty as the criminal offense of War Crime against Civilians, of which the Accused has been acquitted. In view of this, it is clear that statutory requirements for conducting criminal proceedings against the perpetrator for the said crimes and his punishment have been met.

45. Based on the foregoing, and taking into account the view of the Constitutional Court of BiH that departs from the case law of the European Court of Human Rights /ECtHR/ (namely,

that a review of which law is more lenient shall not be made on a case-by-case basis and that the adopted CC SFRY shall apply in all the cases where both codes prescribe the same crime), the Panel has applied this code to the case in question considering that a view taken by the Constitutional Court of BiH is binding on the Court of BiH.

46. As the criminal offense of War Crimes against Civilians under Article 173 of the CC BiH (with which the Accused is charged in the present case) was prescribed by Article 142 of the CC SFRY, based on the foregoing and in line with the views taken by the Constitutional Court of BiH with regard to substantive law, it is necessary to apply the adopted CC SFRY as the law in effect at the time of commission of the crime and as the law that the Constitutional Court of BiH regards to be more lenient than the CC BiH.

E. DEFENSE'S ARGUMENT - VIOLATION OF *NE BIS IN IDEM*

47. Regarding the Defense's argument that the principle of *ne bis in idem* has been violated in the case in question, this Panel has concluded that the Trial Panel's arguments that the alleged principle has not been violated in the case in question are completely logical and acceptable.

48. Specifically, the *res iudicata* assertion is based on the argument that the accused Edin Sakoč has already been held accountable for the same criminal acts and the criminal offense of War Crime against Civilian Population before the U.S. judicial authorities.

49. In this connection, the Court recalls that the principle of *ne bis in idem* is one of the fundamental principles of criminal legislation, laid down in Article 4 of the CPC BiH:

> *No person shall be tried again for the criminal offense he has already been tried for and for which the legally binding decision has been rendered.*

50. The Trial Panel has analyzed this issue and properly found that the principle of *ne bis in idem* has not been violated in the present case. This Panel accepts this finding in its entirety and notes that the finding that the principle of *ne bis in idem* has not been violated is supported by ECtHR's case law providing that Article 4 of Protocol No. 7 to the ECHR (the right not to be tried or punished twice) applies only to courts within the same country (*Boheim v. Italy*), with the case in question involving proceedings conducted in different countries.

51. Besides, Exhibit T-70 (letter from the U.S. Department of Justice) indicates that Edin Sakoč has been prosecuted for violating Section 1425 (a)[6] of Title 18 of the U.S. Code (fraud relating to naturalization), and that the Indictment[7] charged Edin Sakoč with committing fraud during the immigration process by making false statements in his application for naturalization. Namely, he stated that he had never persecuted any person on the grounds of race, religion or ethnic origin; that he had never committed any crime for which he had not been arrested; that he had never given any false information to any government official while applying for immigration, and that he had never been accused of the criminal offense of war crimes or the criminal offenses of rape or murder. The letter further indicates that the judgment is not final unless the Court issues an order on conviction. While a jury has found Edin Sakoč guilty[8], the U.S. District Court for the District of Vermont ordered a new trial during which the parties to the proceedings filed with the Court an agreement on imposing alternative measures, with the Accused agreeing to forfeit his U.S. citizenship, give up the status of lawful resident and admit that he has obtained the refugee status unlawfully.

52. Having analyzed all the pieces of evidence, the Panel concludes that the case against the Accused in the USA was not conducted on suspicion that he committed a crime in BiH but because he made false statements during the naturalization process. Those are two separate crimes and their (constituent) elements are not part of the same criminal conduct, for which reason the Panel concludes that the principle of *ne bis in idem* has not been violated in the instant case.

II. APPELLATE PANEL'S FINDINGS OF FACT (CONVICTING PART) – ESSENTIAL ELEMENTS OF THE CRIMINAL OFFENSE OF WAR CRIMES AGAINST THE CIVILIAN POPULATION UNDER ARTICLE 142(1) OF THE CC SFRY

53. Prior to addressing the specific acts of perpetration with which the Accused is charged, the Panel assessed the existence of all the elements of the criminal offense of War Crimes against the Civilian Population: the perpetrator's act must be committed in violation of rules of international law, the violation must be committed in time of war, the perpetrator's act must be

---

[6] The Panel noted that U.S. Code Title 18 Section 1425 (b) relates to procurement of citizenship or naturalization unlawfully, with an entire chapter of Title 18 dealing with nationality and citizenship.

[7] Under the Indictment filed in the U.S. District Court for the District of Vermont, Edin Sakoč is charged with two counts in violation of the cited section 1425 (b) of U.S. Code Title 18.

[8] On 23 January 2015, the jury found Edin Sakoč guilty of naturalization fraud in violation of Section 1425 (a) of U.S. Code Title 18. On 13 June 2015, the Court granted the defendant Edin Sakoč's motion for a new trial. On 16 December 2015, the parties to the criminal proceedings filed with the Court an agreement on imposing alternative measures, with the defendant agreeing to forfeit his U.S. citizenship, renounce the status of lawful permanent resident and admit obtaining the refugee status unlawfully.

associated with war and the perpetrator must order or commit the act, and found that the accused Edin Sakoč satisfied all the elements under Article 142(1) of the CC SFRY.

54. Under the confirmed Indictment of the Prosecutor's Office of BiH, the accused Edin Sakoč is charged that he, as a co-perpetrator, perpetrated acts of murder amounting to the criminal offense of War Crimes against Civilians under Article 173(1)(c) and (e) of the CC BiH, thereby violating Article 3 of the Geneva Convention relative to the Protection of Civilians Persons in Time of War of 12 August 1949.

55. As stated above, the Panel did not accept the legal qualification from the Indictment (that the Accused was a co-perpetrator) but found that the Accused is responsible under Article 142(1) of the CC SFRY as read with Article 24 thereof (as an aider).

56. Article 142(1) reads:

> *Whoever in violation of rules of international war effective at the time of war, armed conflict or occupation orders an attack against civilian population, settlement, individual civilians or persons unable to fight, which results in* ***the death****, grave bodily injuries or serious damage to people's health; an indiscriminate attack targeting civilian population; that civilian population be subjected to killings, torture, […], immense suffering or violation of bodily integrity or health; […], inhumane treatment, […], forcible prostitution or rape, or who commits one of the foregoing acts;*
>
> *shall be punished with a sentence of imprisonment for not less than five years or by the death penalty.*

57. Elements of the criminal offense are as follows:

- Resort to armed force by two or more enemy parties at the time and in the place where the alleged act occurred (armed conflict)
- The victim must be protected under international humanitarian law (protected persons)
- There must be a sufficient link between the crime charged and the armed conflict (nexus)
- The violation must be in contravention of customs or covenants of international humanitarian law binding on the accused (applicable international humanitarian law)
- The violation must be grave and encompass grave consequences for the victim (gravity)

- The violation must entail individual criminal liability of the person breaking the law (individual criminal liability),
- That the accused was aware of the existence of the armed conflict (awareness).

58. The Panel has weighed all the elements required for determining the existence of the criminal offense and criminal liability in light of the evidence presented during the trial.

1. **Existence of war and armed conflict**

59. The Appellate Panel upholds the ICTY's view that *"an armed conflict exists whenever there is a resort to armed force between States or protracted violence between governmental authorities and organized armed groups or between such groups within a State"*.[9]

60. The criminal offense committed need not have taken place at the location of or during the hostilities/combat. A specific act may be geographically and temporally outside the location of the crime.

61. At its session held on 20 June 1992, the Presidency of the Republic of Bosnia and Herzegovina adopted a Decision proclaiming a state of war[10] in the territory of the Republic of Bosnia and Herzegovina. The state of war lasted until 28 December 1995, which is when the Presidency adopted a Decision terminating the state of war.[11] The cited piece of evidence suggests that the crime referred to in the convicting part of the judgment was committed after the proclamation of the state of war in BiH.

62. Based on the cited documentary evidence, the Panel concludes that there was a state of war in the territory of BiH in the period from June 1992 until December 1995. That there were two opposing parties operating in a wider area of Čapljina municipality is first of all suggested by documentary evidence – regular daily reports[12] referring to activities of units of the Army of the Serbian Republic of BiH and the existence of enemy forces: the Croatian Defense Forces and the Croatian Defense Council /HVO/.

63. That a Croatian Community of "Herceg-Bosna" and HVO units existed during the referenced period in a wider area of Čapljina municipality is suggested by documentary

---

[9] *Tadić*, Decision on jurisdiction, para 70; see *Kordić and Čerkez* Appeal Judgment, IT-95-14/2-A, 17 December 2004, para 341.
[10] Prosecution exhibits T-7 and T-8.
[11] Prosecution Exhibit T-9.
[12] Prosecution exhibits T-16 through T-26.

evidence, primarily crime scene investigation records, reports and the official notes tendered in the case file[13].

64. Furthermore, the testimony by many witnesses examined at the trial clearly shows that the two opposing parties – the HVO and the Army of the Serbian Republic of BiH – formed military units in the territory of Čapljina municipality after the proclamation of the state of war.

65. At the trial the Prosecution also made efforts to demonstrate that an armed conflict existed in the place and at the time of the committed crime, and while the requirement is that only one of the elements pointing to circumstances under which the crime occurred is satisfied,..."in time of war, armed conflict or occupation..." the Panel nevertheless weighed the evidence presented in that regard.

66. Every war implies the existence of an armed conflict, but not every armed conflict is a war. The official proclamation of a state of war in the territory of a country must be preceded by an actual armed conflict.

67. In addition to the cited documentary evidence pointing to the existence of an armed conflict[14], the witnesses who have been examined spoke about the situation on the ground and the events in the territory of Čapljina municipality.

68. Witnesses ..., ..., ... described events in the territory of Čapljina municipality, indicating that when war clashes broke out in April 1992 they, together with ..., left ..., the hamlet of ..., after ... reservists broke into the village; they returned about two months later, when the HVO won back the territory and established its rule.

69. Witness ... gave a more detailed account of events in the territory of Čapljina municipality, indicating that the HVO and HOS /Croatian Defense Forces/ troops broke into the territory of Čapljina municipality in June or July 1992, and that the residents of ... ethnicity abandoned the village in fear for their safety.

70. The witnesses testified consistently that upon their return only three persons of ... ethnicity remained in the village: injured parties ..., ... and ... They stated that they were hiding in ... ...; later on during the day they would stay in their house and in the night time they would come to ... ... because they felt safer in the company of ... Witnesses Blago Doko and Boško Buntić corroborated these testimonies, stating that following the arrival of .... troops the injured parties ... and ... remained in the village and moved to the house of ... and ...

---

[13] Prosecution exhibits T-46, T-47 and T-61.
[14] Additional Protocol I.

71. Based on the cited documentary and testimonial evidence, the Panel has found beyond a reasonable doubt that at the time of the incident and when the prohibited acts of which the accused Edin Sakoč has been convicted were undertaken, there was an armed conflict between two enemy parties fighting in a wider area of Čapljina municipality, and that there was a state of war/war in BiH.

2. **Violation of rules of international law**

72. In order for an act to be characterized as a war crime there must be a violation of international humanitarian law.

73. Article 142(1) of the CC SFRY provides that an accused must act in violation of "rules of international law". "Rules of international law applicable in armed conflict" means the rules set forth in international agreements to which the Parties to the conflict are Parties and the generally recognized principles and rules of international law.[15]

74. According to the Indictment of the Prosecutor's Office of BiH, the Accused is charged with violating Article 3 of the Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949.[16] The rules contained in common Article 3 to all the Geneva Convention are regarded as covenants and represent the minimum standard from which the warring parties must never depart, and the parties are required to comply with it.

75. Taking into account the charge referred to in the Indictment, the Panel concludes that the rules of international humanitarian law are contained in Article 3 of the Geneva Conventions as a common article to all the conventions[17] and that therefore these provisions of international humanitarian law are applicable to the present case insofar as they meet the requirements of Article 142(1) of the CC SFRY and rules of international law applicable to all types of armed conflicts, i.e. this article does not require proving the type of conflict.

Common article 3 of the Geneva Conventions reads as follows:

In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions: (1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed 'hors de combat' by sickness, wounds, detention or any other cause, shall in all circumstances be treated

---

[15] Additional Protocol I.
[16] Hereinafter: IV Geneva Convention.
[17] Common article 3 of the Geneva Conventions of 12 August 1949.

humanely, without any adverse distinction founded on race, color, religion or faith, sex, birth or wealth, or any other similar criteria.

To this end, the following acts ***are and shall remain prohibited*** *at any time an in any place whatsoever with respect to the above-mentioned persons:*

a) violence to life and person, in particular ***murder of all kinds****, mutilation, cruel treatment and torture;*

b) taking of hostages;

c) outrages upon personal dignity, in particular humiliating and degrading treatment;

d) the passing of sentences and the carrying out of executions without previous judgment being pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.

(2) The wounded and sick shall be collected and cared for.

An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict.

The Parties should further endeavor to bring into force, by means of special agreements, all or part of the other provisions of the present Convention.

The application of the preceding provisions shall not affect the legal status of the Parties to the conflict.

"International humanitarian law applies from the initiation of such armed conflicts and extends beyond the cessation of hostilities".[18]

76. The Panel concludes, with a more detailed explanation already given, that there was an armed conflict between the HVO, on the one part, and the Army of the Republika Srpska, on the other, in the territory of BiH (i.e. Čapljina municipality) in the period covered by the Indictment. The Panel recalls that the rules of international humanitarian law (namely, common Article 3) were applicable in the territory of Bosnia and Herzegovina during the 1992-1995 period.[19]

77. The Accused was charged with murdering two civilians as a co-perpetrator, whereas the Panel found that the Accused's actions amounted to aiding constituting prohibited conduct under international humanitarian law, the prohibited conduct being listed in the relevant

[18] ICTY Appeals Chamber in *Tadić,* Decision on jurisdiction, para 70.
[19] Ratified by the SFRY on 11 June 1989. See the Declaration on the Secession of Bosnia and Herzegovina of 31 December 1992, stating that Bosnia and Herzegovina became a signatory to the Geneva Conventions and the Additional Protocols on the day of declaration of independence, i.e. 6 March 1992.

provision of common Article 3 ("*violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture*").

78. Lastly, regarding *mens rea*, it suffices if the person acted in violation of the cited norms. In this connection, the person need not have knowledge of the existence of the norms or be able to define the legal qualifications of the crime he/she had committed; the person need only be aware that his/her actions and intentions are criminal.

79. However, the person must have the specific *mens rea* applicable to the crime charged in order to be found guilty either as a perpetrator or co-perpetrator.

80. In order to find whether rules of international law were violated in the case in question, it is necessary to determine that the act was directed against a protected category of persons and under the circumstances envisaged in the IV Geneva Convention.

81. The Panel recalls that in cases where crimes are punishable under Article 142(1) of the CC SFRY by virtue of common Article 3 of the Geneva Conventions it is required that the victims of alleged violation of rules of international law did not take an active part in the hostilities, including members of armed forces who have laid down their arms and those placed 'hors de combat' by sickness, wounds, detention or any other cause.

3. **Status of victims**

82. The fact that a prohibited act was committed against a person is not sufficient for the existence of all the elements of the said crime; rather, it must be determined whether that person enjoyed protection under international humanitarian law during the war or armed conflict. The wording of Article 142 of the CC BiH ... *Whoever in violation of rules of international war effective at the time of war, armed conflict or occupation...* points to the blanket character of the criminal offense of War Crime against Civilian Population. The crime of murder, as a breach of common article 3, aside from the *actus reus* reflected in the unlawful and intentional killing of a human and the *mens rea* on the part of the perpetrator, also requires that the Prosecution demonstrate that the victim did not take an active part in the hostilities.

83. The Panel finds that the acts of which the Panel found the Accused guilty were committed in violation of common Article 3 of the Geneva Conventions of 1949 that protects certain categories of persons in time of war, armed conflict or occupation. According to common Article 3 of the Geneva Conventions, a protected category of population is consisted of persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed 'hors de combat' by any reason. The factors that may

assist in determining whether a person is a civilian include clothes, activities performed, age and gender.

84. While the Defense did not contest the civilian status of the victims under Count 2 of the Indictment during the trial, the Panel will nonetheless address the key evidence on which it relied to arrive at the conclusion that the injured parties had the status of civilians. The Panel therefore paid attention to determining the status of the injured parties ... and ... against whom the prohibited acts were undertaken.

85. The evidence presented at the trial (testimonial and documentary evidence alike) indicates beyond doubt that injured parties ... and ... are persons of ... ethnicity and that they were living in ..., municipality of Čapljina, up until the moment of the crime.

86. This was corroborated by witnesses ..., ... and .... who consistently described the circumstances under which the injured parties from ...moved to the house of ... and ..., where they were hiding following the arrival of HVO troops in early June 1992.

87. When applying the provisions of common Article 3 of the Geneva Conventions and the criteria for determining the status of the injured parties, the Panel was guided by the following factors: activities performed, age and gender. Specifically, the testimony given by eyewitnesses to the incident in question indicate that at the time of their death the injured parties were hiding in .... in fear of their own lives. Taking into consideration that the injured parties ... and ... are women and of ... age, the Panel finds that the injured parties were killed while having the status of female civilians.

88. Based on the foregoing, it follows that at the time when the accused Edin Sakoč undertook the prohibited acts of which he has been found guilty, the injured parties were not combatants, they did not wear a uniform and they were not armed, nor did the Panel hear any evidence (documentary or testimonial) that the injured parties took part in the hostilities in any form whatsoever. Having said that, the Panel concludes beyond a reasonable doubt that the injured parties (victims of the acts charged) had the status of a protected category, i.e. they were civilians.

4. **The perpetrator's act must be associated with a war or armed conflict**

89. A requirement that also needs to be met in order to make a distinction between a criminal offense committed during a war and a criminal offense committed in peacetime is the existence of a nexus between an accused's act and the armed conflict.

90. In fact, "The armed conflict need not have been causal to the commission of the crime, but the existence of an armed conflict must, at a minimum, have played a substantial part in the perpetrator's ability to commit it, his decision to commit it, the manner in which it was committed or the purpose for which it was committed. It is sufficient if the perpetrator acted in furtherance of or under the guise of the armed conflict."[20]

91. This requirement is met if the alleged crime was committed in furtherance of or, at a minimum, under the guise of a situation arising out of an armed conflict. The ICTY Trial Chamber in *Prosecutor v. Dragojub Kunarac et al.* pointed out:" ..... *Humanitarian law continues to apply in the whole of the territory under the control of one of the parties, whether or not actual combat continues at the place where the events in question took place. It is therefore sufficient that the crimes were closely related to the hostilities occurring in other parts of the territories controlled by the parties to the conflict..."* [21]

92. That the accused Edin Sakoč belonged to one of the enemy parties is indicated by a Register of military conscripts[22], providing that Edin Sakoč was a member of HVO units in the period between 1 July 1992 and 1 July 1993 and that he received salary as an HVO member[23].

93. The Panel has concluded that the accused Edin Sakoč was a soldier and, as such, a participant in a clash with the opposing party, that he was old enough and had sufficient military experience to understand what was going on around him and that he was aware that he was operating in a time of war and as part of an armed conflict.

94. Furthermore, the Panel has found that he went to the village of ... in the night time, aware of the aforementioned circumstances, and that he went there with another member of the HVO he knew was ready to do anything, which is the reason why the Panel concludes that he was fully aware that he may commit the prohibited act of aiding during the hostilities with impunity.

95. Regarding the Defense's contention that the Accused was not a member of any armed formation after 30 June 1992, this Panel notes that Article 142(1) of the CC SFRY does not require that the person who committed a crime be a member of armed forces; instead, the element of nexus (a close link between the act and the armed conflict) needs to be determined, which has been done in the case in question.

---

[20] ICTY Appeal Judgment in *Kunarac, Kovač and Vuković,* IT-96-23 and IT-96-23/1-A, 12 June 2002, para 58.
[21] *Kunarac et al* Appeal Judgment, para 58-59.
[22] Prosecution Exhibit BiH T-50.
[23] Prosecution exhibits T-58 and T-59.

96. Consequently, based on the presented evidence, by applying appropriate criteria, the Panel has concluded that the criminal offense referred to in the Indictment is closely related to the armed conflict, i.e. the war in BiH in the 1992-1995 period, and that the Accused took advantage of a situation resulting from the fighting between the HVO and the Army of the Serbian Republic of BiH and was fully aware that his act was part of the activities that were taking place in that area at that time.

B. SECTION I OF THE ENACTING CLAUSE OF THE JUDGMENT - MURDER

97. Having weighed the presented pieces of evidence individually and in combination, the Appellate Panel, pursuant to Article 285 of the CPC BiH, has found that the Accused, by the acts under Count 2 of the specified Indictment (Section 1 of the convicting part of the judgment), is responsible for committing the criminal offense of War Crime against Civilian Population under Article 142(1) as read with Article 24 of the CC SFRY – aiding.

98. Under the Amended Indictment, as an act of perpetration of the act, the Accused knowingly and willingly arrived again with the HVO member named Boban at ... ..., after the injured party ... was previously taken to Dretelj and then to the building of the old post office in Čapljina. According to the Indictment, the purpose of this new visit was the murder of ... by the person called Boban. As charged, the next action that the Accused did was his address to ... using the words "no one heard or saw", and then he, together with Boban, placed the bodies of the victims onto blankets and carried them outside the house. There Boban poured gasoline onto the bodies and set them on fire; as the bodies were burning, Boban was jumping around and saying "burn, Chetniks, burn!" whereas the Accused was standing close to Boban.

99. On this subject, the Defense referred to the principle of ban on *reformatio in peius* contained in Article 307 of the CPC BiH, reading: "if an appeal has been filed only in favor of an accused, the judgment may not be modified to the detriment of the accused".[24]

100. In the case in question, the Trial Judgment No. S 1 1 K 020968 16 Kri of 10 March 2017 has been revoked by granting the appeals of, respectively, the Prosecution and counsel for the accused Edin Sakoč. However, in the context of application of the principle of ban on *reformatio in peius*, it is important to stress that only counsel for the accused Edin Sakoč

[24] A paper by Ms. Ljiljana Filipović, PhD, Judge of the Supreme Court of Federation of Bosnia and Herzegovina – Rule on the ban on *reformatio in peius* in practice, page 10 – „...It can be inferred from the above that a second-instance court, when delivering a judgment upon a completed trial conducted after an appeal/appeals was/were granted and a trial judgment revoked, is required to be mindful of not only the correspondence between judgment and indictment but also the content of the trial judgment **and the reasons from the appeals contesting the judgment.**

appealed the convicting part of the trial judgment (the murder of two ...). Namely, in the contested judgment the Trial Panel made certain changes to the account of facts as compared to the Indictment by omitting certain acts of the Accused having found that they have not been proved during the first-instance trial. The Defense argued that those acts could no longer be a topic of discussion as the Prosecution did not appeal this part.

101. Having analyzed the above, the Panel has concluded that the omitted acts were in fact to the detriment of the Accused and increased the criminal quantity. This includes the omission of parts pertaining to the utterance of the words "no one heard or saw", the Accused's standing close to the bodies as the bodies were burning, and the part of the account of facts pertaining to the Accused's awareness of committing acts together with Boban and accepting his acts as his own – co-perpetration. As only the Defense appealed that part of the trial judgment, based on the principle of the ban on *reformatio in peius* those acts/parts of the Indictment could not have been re-added to the account of facts in Section 1 and be examined during the second-instance proceedings/subject of reconsideration.

102. For the same reasons, the account of facts in the enacting clause of this judgment should not have included the parts added by the Trial Panel to the account of facts in the trial judgment; those parts were not contained in the Amended Indictment and they too were detrimental to the Accused to some degree.

103. In view of the foregoing, the following remained as the Accused's acts of perpetration: his repeated visit to ... Đ., together with Boban, armed, and carrying the bodies of the victims ... and ... outside ..., together with Boban, where Boban poured gasoline on the bodies and set them on fire.

104. Regarding the first act, the Panel had no dilemma whatsoever that on the said night the Accused did indeed arrive in his FIAT 1300 at ... ..., together with an HVO member named Boban and that he, armed with a handgun, followed Boban into the house.
The Accused himself did not contest that. Furthermore, the Panel had no dilemma that it was Boban who, immediately upon entering ..., opened fire from an automatic rifle that he was carrying and killed .... and .... This has been corroborated beyond doubt by testimony given by witnesses ...., ..., ..., ... The Panel had no reason to distrust the witnesses and has assessed their testimony as truthful and impartial, accepting them as reliable and credible.

105. In addition, it is beyond doubt that the murder occurred in .... and that sometime later the bodies of the victims were taken outside ..., poured with gasoline and set on fire. In light of the statements given by the said witnesses ... and ..., in particular ... there is no dilemma

whatsoever that Boban was the one who poured gasoline on the bodies and set them on fire, jumping around as the bodies were burning and saying "burn, Chetniks, burn!".

106. The Trial Panel gave a detailed analysis of witness testimony relating to the aforementioned circumstances, and this Panel accepts it in its entirety. In contrast to the injured party ... claiming that the accused Sakoč killed ... (she did not see it "but only heard about it"), witnesses ... and ..., as well as ... were clear and adamant that Boban did all that, which was the reason why the Prosecutor amended the original Indictment to match the witnesses' statements.

107. The trial judgment gives a detailed analysis of the testimony given by witnesses .., ... and ... as well as the physical appearance of the persons who came to the house.[25] The fact that the Accused Edin Sakoč was the masked soldier follows beyond doubt from the testimony given by witness Blago Doko; this witness recognized him when the latter stopped on the way back, following the murder of the civilians. The witnesses who were with Blago Doko on the occasion in question – Cviko Doko, Dario Doko and Boško Buntić – testified consistently that the Accused removed the mask from his face on that occasion and that Blago Doko recognized him and said that it was Edin Sakoč.

108. The Panel's assessment that the statements given by the aforementioned witnesses are true and acceptable is also supported by the fact that during his trial testimony the accused Sakoč did not deny being stopped by a group of armed locals on the evening in question or that he at the time had something over his face. However, the Accused said that it was a sweatband with an amulet that he got from his grandmother, about 10 cm wide, that he had on his face. The Panel could not accept that, especially because the Accused himself claimed that Boban ordered him to put that on his face upon their arrival at the house. In the Panel's view, it is illogical that Boban would give such an order, especially during the night when he himself did not have anything on his face. On the other hand, the witness testimony indicate beyond doubt that the purpose of the item was to conceal the face, which cannot be achieved with a sweatband.

---

[25] The said witnesses described that two soldiers wearing uniforms came to their house in the night of 9 July 1992 (at around 22:00 hours) and 10 July 1992 (at around 03:00 hours) and that the face of one of them was covered. The witnesses gave varied descriptions of the way in which the face of one of the soldiers was covered, specifically ... said that the soldier was masked, ... described the masked soldier as having a black stocking on his head not covering his eyes, ..., a masked soldier with a stocking on his head, Doko Cvitko said that the soldier had a balaclava on his head that covered his face, Dario Doko said that the soldier had a ski mask on his head, Boško Buntić said that the soldier had a slightly torn up black stocking on his face. What is important in the assessment of this evidence is that all the witnesses saw that one of the soldiers had something over his face, that is, he was hiding his face.

109. Consistent testimony given by ... and ..., as well as ... confirm that the Accused and Boban entered ... together and armed, and that the masked person was following 'Boban', that both of them went towards ... where ... ... and .... were located and that 'Boban' opened fire at them as soon as he appeared at the door to the room. The witnesses stated consistently that 'Boban' fired three rounds at one injured party and one round at the other injured party. They also stated consistently that it all happened so fast that ... were caught by surprise and did not have time to react.

110. The fact that ... . and ... were killed on that occasion follows not only from the testimony of witnesses who witnessed the incident, primarily ... ..., but also witnesses who were at the checkpoint as well as the following corroborating documentary evidence: Crime Scene Investigation Report-HZ HB /Croatian Community of Herceg-Bosna/-HVO-Basic Court Čapljina no. Kri: 63/90 of 10 July 1992[26], certificate of death of ... [27], certificate of death of ... [28], as well as exhumation reports[29] showing that mortal remains of the said persons have been exhumed.

111. What was at issue is whether the Accused, at departure or during the ride with Boban, i.e. prior to entering ... ... was aware of Boban's intention to murder ... who remained in the house, and whether he knowingly and willingly joined Boban's intention to commit a crime by murdering ..., agreeing to Boban's plan, i.e. whether in the situation in question he was a co-perpetrator or whether he aided Boban in the commission of his (Boban's) act.

112. Also at issue is whether the Accused, together with Boban, carried the bodies of the victims outside ... or whether... did that with Boban, as claimed by the Accused. In light of eyewitness accounts it is beyond dispute that after the bodies of the victims... were taken outside Boban poured gasoline onto the bodies; the gasoline had been brought there by ... acting on Boban's order. It is also beyond dispute that Boban set the bodies on fire and jumped around as the bodies were burning.

113. Regarding the spot on which the Accused was standing as the bodies were burning (close to Boban or not), witness testimonies reveal certain variances. However, that part of the account of facts (*that the Accused* ***was standing close to Boban*** as the bodies were burning and that Boban was jumping around) was not in the enacting clause of the trial judgment. Therefore, based on the principle of ban on *reformatio in peius* and the fact that the Prosecution did not contest the trial judgment in that regard, that part could not have been restored to the

[26] T-46
[27] T-41
[28] T-43
[29] T-45

account of facts mentioned in this judgment because it involves an act that is detrimental to the Accused to some degree. The same applies to the utterance of the words "no one heard or saw" by the Accused, also not found in the enacting clause of the trial judgment (witnesses claimed that those words were uttered by Boban and not the Accused as stated in the Amended Indictment).

114. As for the act of carrying the bodies outside ..., the witness ... stated that she saw that Boban and Sakoč carried ... outside. In contrast, the witness ... claimed that Boban, having murdered ..., ordered the witness to carry the bodies with him; the witness could not do it and then "Boban and the masked person carried... outside" (the witness subsequently learned from ... that the masked person was the accused Edin Sakoč).

115. Regarding the Defense's contention that witness ... always gave her statements in the presence of ... and that she accordingly said that the Accused and Boban carried the bodies outside the house (even though ... did that with Boban), the witness, in response to defense counsel's question at the trial to clarify her statement given to an investigator from the USA[30], said that she never said that ... carried the bodies but that she saw Boban and Sakoč carrying the bodies outside. In view of the aforesaid, as well as the referenced statements by witness ... and ..., to which the Panel gave full credence, the Panel, notwithstanding the Defense's insistent challenges, concluded that the Accused was the one who carried the bodies of the victims outside the house together with Boban.

116. With regard to the role of the Accused in the murder of ..., i.e. the existence of his awareness of and will to commit the act of murder, the Panel, having considered the presented evidence, concluded that the evidence presented by the Prosecution has not proved the will and role of the Accused as a co-perpetrator. However, through his activities the Accused did knowingly and willingly contribute to the crime committed by Boban, i.e. he aided Boban in the implementation of his plan and intention to murder ....

117. In this Panel's view, the Accused became aware of Boban's intentions as soon as Boban called him to revisit ...,. Namely, the testimony given by the Accused during the trial as a Defense witness clearly indicates that prior to their initial visit to... the Accused knew what Boban was like, what he was willing to do and what can be expected from him. Allegedly the Accused used to see him taking drugs in a café and yet he answered Boban's call to drive him. According to the Accused's testimony, he did not even make an attempt to avoid driving Boban to the house of ..., to at least try to lie that the car had a breakdown of some sort, that he had to go elsewhere and the like to "dodge" driving Boban, which would be reasonable to expect

[30] According to the Defense, in that report ... said that ... carried the bodies.

from someone who refused to join a violent guy as he and others perceived Boban, and be a part of his plan, being afraid to turn Boban down.

118. The Accused did not express any form of disagreement with Boban's intentions or non-acceptance of Boban's actions either during the ride or later on. They drove for hours, taking roundabout ways and avoiding checkpoints – an indication that there existed knowledge and awareness that something unlawful would be done. The Accused ultimately put a mask on his face to conceal his identity, although it is logical that he had no reason or need for the mask if he did not know that something unlawful would follow. This in particular during the first visit, when witness ... was taken away (according to the Accused's testimony, Boban told him that he had a warrant for her arrest and that that was the reason why he needed to drive him). Similarly, the absence of any reaction on the part of the Accused after Boban opened fire at ... as soon as he appeared at the door clearly indicates that the Accused was aware of what would happen and that Boban's action was no surprise to him. This is further indicated by his subsequent calmness, as mentioned by witness ..., which is completely illogical for someone who attended a heinous act such as the one performed by Boban (the murder and the burning of the bodies). In such a situation, it stands to reason that in case the Accused was not aware of Boban's intentions and did not agree with his act, the Accused would in some way express his surprise and disagreement with Boban's actions, distance himself in any way and make it known ... that he disagreed with what Boban had done. On the contrary, his words ... that he was not afraid and that Boban would not kill them indicate that he knew that Boban's evil intentions were directed towards ... ... ethnicity and not towards ... who were of ... ethnicity.

119. The Trial Panel also analyzed the issue whether the Accused really had to go with 'Boban' because he was afraid of him, as pointed out by the Accused in his testimony, or whether he accompanied him because he accepted his criminal intention directed at civilians of ... ethnicity and joined him because of it. In that connection, the Trial Panel adduced clear and concrete arguments and this Panel accepts them as logical and valid.

120. In addition to the aforesaid, this Panel too, by relying on the presented evidence, concludes that the Accused's contention that he had to go with Boban because he was afraid of him is not correct. On the contrary, on the basis of the respective testimony by witnesses Blago Doko and Boško Buntić, the Panel concludes that the Accused actually made an effort to protect himself and Boban in front of them. Specifically, according to the testimony by the referenced witnesses, at the checkpoint the Accused removed the mask from his head to reveal his identity to the armed soldiers whom he knew and who knew him, thereby making it possible for him and Boban to pass through freely. At that moment the Accused told witness Boško Buntić that "two women" had been killed, not indicating in any way that the act was

committed by Boban and that he had nothing to do with the murders, that he was forced to drive Boban, that he was afraid of him and the like.

121. The testimony given by witness Blago Doko too indicates that the Accused removed the mask covering his face when he was stopped at the checkpoint by armed HVO soldiers. Witness Blago Doko confirmed that he knew the Accused, giving a very detailed account from the present point of view, that he, immediately upon learning that a house in the village was burning and that something had happened in ... house, set out armed together with Cvitko Doko, Dario Doko and Boško Buntić, the witnesses who corroborated decisive facts from Blago Doko's testimony and with respect to whom (Buntić included) the Panel found no legitimate or rational reason to distrust what they said.

122. For the foregoing reasons, the Panel finds that it has been proved that there was awareness and will on the part of the Accused that by his acts he was aiding Boban in the commission of the criminal act of murder of innocent civilians - ... ... ethnicity, thereby being responsible for committing that act as an aider and not as a co-perpetrator as charged. Namely, the Prosecution, bearing the burden of proof, failed to offer evidence indicating beyond any reasonable doubt that the Accused took an active part in the murder of ... or that Boban relied on the Accused's contribution to the commission of murder "substantially", i.e. that Boban would not have committed the act of murder without the accused Sakoč's contribution.

123. While the Accused was charged in the Indictment as a co-perpetrator of the murder of ..., this Panel, by relying on the presented evidence, determined that in the situation in question the Accused aided the person called Boban; the Accused drove Boban to the house of ... in his (the Accused's) car, they entered the house together under arms and they carried the bodies of the victims outside the house.

124. Aiding essentially means that an aider, physically or mentally (morally), by action or omission undertakes certain acts that assist the perpetrator in committing a crime. The subjective component includes: 1) that the aider is aware that he is assisting the perpetrator in the commission of a crime, and 2) that he/she is aware of essential elements of the crime. On the other hand, co-perpetration requires a substantial contribution (according to the CC BiH, "a decisive contribution") without which a crime would not have been committed. According to case law, the difference between a substantial contribution required for co-perpetration and an ordinary contribution required for aiding is a causal link. Ordinary contribution is not *conditio sine qua non* for a crime, as is the case with substantial contribution and co-perpetration. In any event, when it comes to aiding, aside from the fact that by his actions the aider is contributing to the commission of a crime the aider's intent also needs to encompass all the elements of that crime (crime committed by another).

125. In the case in question, this Panel is of the view that the Accused's actions specified in the Amended Indictment, coupled with the absence of previously mentioned actions omitted from the account of facts on the basis of the principle of ban on *reformatio in peius*, have not reached the threshold required for co-perpetration (as a mode of perpetration) because those actions were not *conditio sine qua non* for the crime committed by Boban.
This in particular concerning the carrying of dead bodies with Boban, which occurred after Boban committed the murder. While the actions taken by the Accused do not reach the co-perpetration threshold, this Panel finds that those actions contributed to the commission of the murder by Boban.

126. In this Panel's view, the accused Edin Sakoč undertook the said actions knowingly and willingly, aware that by his actions he was aiding the perpetrator (Boban) in the commission of the act of murder of civilians, and aware of essential elements of the acts committed by Boban. By undertaking the acts that the Panel described, the Accused intentionally violated the prohibitions under Article 3 of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, as explained in the previous parts of the judgment.

127. Based on the foregoing, the time and all the other cited circumstances under which the crime was committed, as well as the fact that the Accused's competence *tempore criminis* has not been called into question during the trial, the Panel has found beyond any reasonable doubt that the accused Edin Sakoč aided in the murder of civilians ... and ..., thereby committing the criminal offense of War Crimes Against Civilian Population under Article 142(1) of the CC SFRY as read with Article 24 thereof.

1. **Criminal sanction**

128. Determining that it has been proved beyond doubt that the accused Edin Sakoč committed the crime of which he has been found guilty under this judgment, the Panel, in fixing the punishment, took into account all the circumstances bearing on the magnitude of punishment referred to in Article 41 of the CC SFRY, in particular: the punishment boundaries stipulated by law (minimum 5 years), the degree of criminal responsibility, the motives for which the act was committed, the degree of danger or injury to the protected object, the circumstances in which the act was committed, the past conduct of the offender and his personal situation, and his conduct after the fact.

129. As far as the extenuating circumstances are concerned, the Panel has taken into consideration the past conduct of the Accused, his personal situation and his conduct after the fact. As for the aggravating circumstances, the Panel has taken into consideration the circumstances in which the crime was committed and the gravity of the ensuing consequences.

130. According to this Panel, the circumstance in which the crime was committed is an aggravating factor – late in the night when the Accused and Boban first entered the house of ... and took away ..., only to return with Boban and, as an aider, take part in the murder of ... ... and ...; the witnesses to that incident, members of the family of ... spent that night in a state of fear and uncertainty for their lives. On the one hand, by taking advantage of his domination and power and, on the other, by taking advantage of the helplessness of the victims, the Accused committed a crime by attacking a protected object constituting universal human values that as such enjoy absolute protection. So, what we have here are values that are not only a requirement and basis but also a positive obligation requiring humane treatment.

131. On the other hand, with regard to the personal and family situation, i.e. the personality of the Accused and his conduct before and after the fact, the Panel has taken into consideration that Defense witnesses Edina Rakić and Zlatan Rakić (the Court found no reason to distrust them) described the Accused as a responsible person who took care of the entire family following the death of his father, that he did not hate people of other ethnicities because his ... was married to ..., that ... killed his ..., and imprisoned ... and ...

132. This Panel too has accepted the testimony by the referenced witnesses as being truthful, accepting by extension the fact that the Accused did not hate people of other ethnicities. However, the fact is that at the time of the crime the Accused was on the side that treated ... as enemies and that he took advantage of his position of domination and power constitutes an aggravating factor in the situation in question. As for the fact that his grandmother was killed and members of his immediate family imprisoned, one should bear in mind that that those events occurred in 1993, meaning after the commission of the crime with which the Accused is charged, and during the time when the Accused was no longer a member of the HVO.

133. The life of the Accused, which was beyond reproach prior to the crime, his care for the family following the death of his father, his hard life before and after the war in BiH, and his conduct after the fact, have been characterized by the Court as extenuating factors in meting out the punishment, as well as the fact that the Accused acted as an aider and that under the law the aiders may receive a lighter penalty.

134. Based on the foregoing as well as the purpose of punishment, the Panel sentenced the Accused to five (5) years' imprisonment, holding that the punishment is proportional to the gravity of the crime and the participation and role of the Accused in the commission of the crime, and that the imposed punishment will achieve general and specific purpose of criminal sanctions and punishment under Article 33 of the CC SFRY.

135. The length of a prison sentence for a crime is a legitimate means of prevention, allowing an accused to contemplate on the consequences of his actions on the victims, reflect on his mistakes from the past and redress the wrong caused by his actions. Similarly, the Panel holds that the imposed punishment will have an impact on the thinking of others and raise awareness among them that they would be punished if they commit these or similar crimes, thereby achieving the purpose of general deterrence.

136. Pursuant to Article 50 of the CC SFRY, the time that the Accused spent in pre-trial custody from 19 February 2016 until 17 March 2016 shall be credited towards the imposed sentence.

III. ACQUITTING PART – THE RAPE OF ...

137. On the other hand, as a result of lack of evidence in support of section 1 of the acquitting part of the judgment (Count 1 of the specified Indictment), pursuant to Article 284(c) of the CPC BiH, the Panel acquitted the Accused of the charge.

138. Specifically, according to the case law expressed in numerous decisions of the ICTY, the Constitutional Court of BiH and the panels of this Court, the principle of *in dubio pro reo* laid down in Article 3 of the CPC BiH implies that all the facts to the detriment (*in peius*) of an accused must be proved with certainty; otherwise, such facts do not exist. On the other hand, all the facts benefitting (*in favorem*) an accused are accepted as existing even if it has been established that they are merely plausible.

139. Under Count 1 of the specified Indictment, the accused Edin Sakoč was charged that he, on 9 July 1992, by raping the injured party ... he committed War Crimes against Civilians under Article 173(1)(e) as read with Articles 29 and 21, taken in conjunction with Article 180(1) of the CC BiH.

140. With regard to the circumstances surrounding the incident referred to in Section I of the acquitting part of the Judgment, the Court heard evidence – reading out of three statements given by witness-injured party ..., the statement given by witness Mirsad Muminagić, ..., and witness "A". These pieces of evidence have been weighed individually and in combination with the other presented evidence.

141. In view of the fact that injured party ... has died, pursuant to Article 273(2) of the CPC BiH, concerning the circumstances surrounding the incident in question, at the trial the Prosecutor read out her statements given to, respectively, the State Investigation and

Protection Agency /SIPA/ Mostar and the Trebinje Public Security Center /CJB/[31], whereas the Defense read out and tendered a prior statement of this witness[32].

142. A total of five statements given by injured party... have been tendered, in the chronological order: statement from 1992 – Record of questioning of accused .., of 3 September 1992 before the Basic Court in Čapljina (O-6); statement from 1994 – Record of Examination of Witness ... of 7 October 1994 before the Basic Court in Trebinje against the accused NN (O-4); statement from 2005 given to SIPA, - Record of Interview of Witness ... no. 14-12/1-31/05 of 21 September 2005 (T-5) and a statement of ... of 15 March 2007, no. KT-RZ-26/05 given on the premises of the Prosecutor's Office of BiH in the case against Srećko Herceg, Ivan Medić, Zvonimir Bjeliša and Marina Grubešić (O-7); and, finally, statement from 2014 - Record of taking a statement from ..., no. 12-02/4-17/14 of 15 April 2014, RS MUP /Republika Srpska Ministry of the Interior/ - Trebinje CJB (T-5).

143. Of the statements that the injured party gave, in four of them the injured party had the status of witness whereas in one (from 1992) she had the status of an accused. Next, of the four statements in which she had the status of a witness (from the years 1994, 2005, 2007 and 2014), she gave a detailed account of the incident from July 1992 in only two (the 2005 and 2017 statements); the first time when the injured party mentioned the rape was in the statement from 2014. In her 2007 statement given in the case of Srećko Herceg et al., responding to a Prosecutor's question, she only clarified that she did not sustain injuries at Dretelj, but she was injured by Edin Sakoč along the way (the Prosecutor did not ask follow-up questions). In her 1994 statement she but briefly described the arrest procedure and that she was arrested by two masked men and taken to Dretelj, without mentioning any details; she did mention learning at Dretelj that ... were killed that same night and that that was done by Edin Sakoč. Therefore, in the text below the Panel will analyze **the 2005 and 2014 statements** in which the injured party described the arrest in more detail; the Panel notes that she mentioned the rape no sooner than in 2014 at the Trebinje CJB.

144. Having analyzed the witness's statements, this Panel, concurring with the Trial Panel, finds beyond doubt that on 9 July 1992, at around 22:00 hours, the injured party ... was taken by the accused Edin Sakoč and a person called Boban outside the house of ..., where the injured party was hiding together with ... and ...

---

[31] T-5 Record of Interview of Witness ...., SIPA, Regional Office Mostar, no. 14-12/131/05 of 21 September 2005; T -5-1 Record of taking a statement from ...., Ministry of the Interior, Trebinje CJB, no. 12-02/4-17/14 of 15 April 2014.

[32] Record of Examination of Witness ... no. Kri 57/94 of 7 October 1994, composed before the Basic Court in Trebinje.

145. By relying on the statements of the injured party ... and other witnesses, this Panel too has found that the injured party was subjected to physical violence and rape on the night in question. However, it is the view of the Panel that the injured party's statements are not sufficiently reliable to be used, along with 'hearsay" evidence by witness A and other witnesses, as a basis for an unequivocal conclusion that the acts were committed by the Accused as charged.

146. As the act in question is that of rape, it is beyond doubt that the victim can give the most reliable testimony about it. However, in the case in question the Panel has concluded that the statements by the injured party ..., presented during the trial, do not offer a sufficient foundation for an inference that it was the Accused who ill-treated and raped the injured party during the ride and then handed her over to Mirsad Muminović at the old post office in Čapljina. In that connection the Trial Panel too pointed to a series of discrepancies and contradictions in the injured party's statements, as well as a series of discrepancies between her statements and those of witnesses who were examined in relation to this count of the Indictment.

147. The discrepancies between the statement given by injured party ... in 2005 and the one given in 2014 is that the latter statement (the one from 2014) departs from the 2005 statement in that the 2014 statement provides that both men were masked, that she did not know anyone, that she saw the man who brought her to Mirsad Tadija only when he brought her there (she did not recognize him, but she did describe his height and hair color). In contrast, in her 2005 statement she said that he recognized one of the two masked persons; it was Edin Sakoč of Tasovčići and he took a white cloth and started hitting her with it.

148. Furthermore, contrary to her prior statements, the injured party ... mentioned the rape for the first time in her 2014 statement, and said the following in that regard: *"I would like to point out that this other masked man got out of the car at ..., and I remained in the car with the man* ***that I did not know*** *at the time. On the way he was beating and strangling me with a cord that I felt but did not see. He then knocked me down onto a car seat, lifted my skirt and raped me, cursing and saying 'you Chetnik woman!' I fought back and screamed, but to no avail. During the ride he was kicking me (with boots on) in a leg, punching me, he had a piece of iron on his hand, like brass knuckles with which he was hitting me. Twenty years later I still experience pain in my legs and I have scars on my legs".*

149. Therefore, in 2014 the injured party said that she had been raped by an unknown man, stating that not until she arrived at Dretelj did she learn that ... and ... were killed that same night and that that was done by the masked soldier who brought her to Dretelj and who raped her, that he set the house on fire and forced a cousin of ... to do the same. Thereupon, that soldier set out towards Čapljina, was met on the road by ... Doko Blago, Božo Buntić, Dario

Doko, who stopped his car, removed his cap and saw that it was Edin Sakoč of Tasovčići; she knew his stature.

150. The injured party therefore identified the person who had raped her with the person who killed .... and ..., noting that ... M.. witnessed everything. The eyewitness's role was also confirmed by a cousin of ...., but he was very clear and precise in his claim that ... was killed by Boban, which was further confirmed by witnesses ... and ... In addition, it follows from the testimony given by those three persons that it was Boban who torched the house of ..., whereas the Accused was in the house of ... during that time and was talking to ...

151. The reason why this part of the trial judgment has been revoked is the absence of an assessment of the testimony given by witness ... about what the Accused told her that same evening in connection with the rape of ..., followed by an omission on the part of the Trial Panel to correlate that testimony with the other presented evidence and give reasons as to why it was not accepted.

152. The entire testimony given by ... , the testimony given by.... and the testimony given by the Accused in his capacity as witness were played back during the proceedings before the second-instance Panel. Following a detailed analysis of the referenced testimony, the testimony given by protected witness A during the first-instance trial and the written statement given by witness Mirsad Muminović (the witness died and his statement was read out pursuant to Article 272(2) of the CPC BiH, no cross-examination), this Panel too concluded that the injured party ... was in fact raped on the said night. However, based on the evidence presented by both parties, it cannot be concluded beyond any reasonable doubt that it was the Accused who committed that crime, so the second-instance Panel has no other choice but to observe the principle of *in dubio pro reo* and acquit the Accused of the charge under this count of the Indictment.

153. Notwithstanding the fact that the injured party broke silence on the rape after so many years (in 2014), this Panel believes her and accepts her statement, also taking into account the statements given by, respectively, witness A, witness ... and Mirsad Muminović. In that connection, the Panel notes that the injured party ... is not the first person to have been raped and then decided to break silence on the subject many years later, nor will she surely be the last. On the contrary, this has become common and the Panel understands it and accepts it as a reality. However, the problem is that the injured party ... died after the Indictment was issued and could not have been examined before the Court and account for the observed discrepancies in her statements or cross-examined by the Defense. On the other hand, the Panel was mindful of the view taken by the ICTY, the Constitutional Court of BiH and several panels of this Court in a number of cases that a conviction may not be based solely or to a

decisive extent on the prior statements of witnesses who did not give oral evidence at trial and were not subjected to cross-examination. Aside from the statements given by the injured party ... the statement given by Mirsad Muminović also falls into that category of evidence.

154. In addition to the alleged formal-legal flaw, the Panel has taken into consideration that the statements given by the injured party .... contain a series of contentions that directly contradict the testimony given by witnesses ..., ... and ... as ... of the injured party; the injured party was taken away from their house and the Court had no good reason to distrust them. The discrepancies between the statements given by the injured party and the said witnesses also pertain to activities that preceded the act of rape, contained in the account of facts under this Count. Specifically, there are discrepancies in the statements as to who hit the injured party on the head with a cloth, whether the Accused blindfolded ... whether the Accused pushed the injured party ... onto the back seat of the car.

155. In her 2014 statement the injured party attributed everything that occurred that night to the Accused, including the murder of ... and the torching of the house. She claimed that the Accused was the one who hit her, ... with a white cloth before she was tied up, but the said witnesses - eyewitnesses ... and ... and ... claimed otherwise. For instance, regarding the identity of the person who hit the injured parties with a white cloth, all the witnesses stated that it was Boban.[33]

156. The Accused himself was examined as a witness during the proceedings in connection with the act of rape. He noted in his testimony that he was never alone with the injured party, that he did not rape her and that she was blindfolded the entire time, adding that a person called Boban was with him the entire time and that after stopping at ... to interrogate the injured party they all set out towards Dretelj. These allegations by the Accused contradict what the injured party said on two occasions. Namely in her 2005 and 2014 statements she said that *the other masked man got out of the car at ...* (according to the testimony given by ... and ..., only the Accused was masked and Boban was not).

157. The description of the act of rape itself is reduced to what the injured party said about it: „... *on the way he was beating me and strangling with a cord that I felt but did not see. He then knocked me down onto a car seat, lifted my skirt and raped me, cursing*... Notwithstanding the injured party's statement, it remains unclear how it was possible for the Accused to drive and at the same time hit ... in a leg with his boots on and strangle her, with her sitting on the

---

[33] .... – After that, Boban took a piece of cloth and used it to hit ... and...? I think it was a scarf. The thing used for covering, a scarf. What you tie around your head. He was flailing about with it, hitting them on the head. **...** - Boban took the cloth and hit the three of them, he heard from family members that Gara was blindfolded, but he did not see that. **...** - Boban hit Cvija with the cloth.

back seat of the car during that time. Regarding the injured party's statement, it remains disputable whether the injured party knew for sure that she remained alone with the Accused in the car considering that she was blindfolded, that she was in a state of fear and shock due to everything that was happening to her, and that she was not able to orient herself in space and time. Therefore, one cannot rule out the possibility that the injured party erred in concluding that the other person exited the car at one point and that she remained in the car with the other, unknown soldier whom she could not see, as properly observed by the Trial Panel.

158. Regarding the testimony given by witness ..., the Panel observes that the Prosecutor stressed only the part of the witness's testimony from the direct examination, ignoring what the witness said during the cross-examination. Namely, the witness, after the Accused told her that ... and that regardless of her age she still looked like *njuferica*[34], asked the Accused if he raped her and the Accused replied that it was not him but Muminović's men.

159. While the Panel accepts as truthful the testimony given by witness ..., it finds that with regard to the determination of the perpetrator of the act in question her testimony is not as important as argued by the Prosecutor. In the first part the referenced testimony does indeed suggest that the Prosecution's contention that the Accused committed the act of rape is well-founded. However, what the witness said subsequently during the cross-examination (that the Accused, when asked explicitly, replied that he did not commit the rape and that that was done by Muminović's men) takes matters back and indicates that this has not been determined with certainty and that someone else may have committed the rape. In this connection, the Panel is mindful of the fact that Muminović himself claimed that there were about 20 people at the post office and that there was another person in the car with which the Accused brought the injured party (responding to Muminović's question, the Accused said that that person was Boban). This further suggests that Boban did not exit at ... as claimed by the injured party, but that he was in the car on the way from ... to Čapljina, until the injured party was handed over at the old post office. In that connection, witness Mirsad Muminović said in his statement: *"In June 1992 I was sitting in an office at the post office, late in the night, with my colleagues,* ***about 20*** *of us, I remember there being Mile of Bileća (currently living in Čapljina), the Cvitanović brothers (born in Čapljina), Rejsul Makoč, Slobodan Jakiša aka Pipa and others. I was in the office when my colleagues Rejsul and Mile showed up and told me that that there was a white Fiat 1300 outside the post office. Edin Sakoč came to the office and brought ... I asked him who was that* ***with him in the car and he said it was Boban.***"

[34] In this regard, witness ... said at the trial that on that same evening when the Accused returned to the house ... with Boban having previously taken the injured party... away together with Boban, the Accused told the witness that ... was taken to ... and that "the guys raped her there" and that "she did not look that old, she was *njoferica*."

160. In view of this, for the purpose of resolving the dilemma about the other potential perpetrators, i.e. proving that what the Accused told witness ... (that he did not rape ...., but that that was done by Muminović's men) was not true, the Prosecutor should have examined one of those twenty or so colleagues of Muminović, especially Rejsul and Mile who informed Muminović about the arrival of a white Fiat 1300 (considering that they saw when the car arrived, it is reasonable to expect that they also saw who was inside the car). In any event, their testimony would contribute to resolving what happened at the post office after the injured party was brought there (according to her own statement, she was blindfolded up to that point and could not see anything, including the identity of her rapist). This would remove doubt that the perpetrator was one of Muminović's men or Boban if Boban was indeed in the car when the car arrived outside the building of the old post office.

161. Regarding the testimony given by protected witness A and her claim that the injured party.... after the Accused was arrested, answering a direct question "Is this one yours?" replied "Yes, it is" without mentioning the word 'rape' at any moment, this Panel is of the view that one cannot rule out the possibility that, as opposed to witness A who was referring to the rape and the Accused as the perpetrator thereof at the moment when she put that question to ... , the injured party .... was referring to the Accused as the person who murdered ... and torched ... as she claimed in her prior statements, and that that was the reason why she said "yes, he is the one". As that could not have been verified through a direct examination of the injured party ...., the testimony given by witness A has not removed doubt about the identity of the rapist.

162. The evidence presented by the Prosecution during the trial was sufficient for the issuance and confirmation of an indictment, but not for a conviction in this part (physical ill-treatment and rape of ....). This requires evidence based on which one could determine beyond any reasonable doubt not only what happened to the injured party on the night in question but also who perpetrated the individual acts, i.e. that they were perpetrated by the Accused as charged. In the case in question, the Prosecution's evidence lacked that quality and did not meet the said standard.

163. Based on the foregoing, as well as the provision of Article 3 of the CPC BiH and the principle of *in dubio pro reo* that the Court is required to observe, the Panel had no choice but to apply Article 284(c) of the CPC BiH and acquit the Accused of the charge of the criminal offense of War Crime against Civilians under Article 173(e) of the CC BiH.

IV. DECISION ON THE COSTS AND REDRESS CLAIM

164. Pursuant to Article 188(1) of the CPC BiH, in view of the outcome of the proceedings and the Accused's financial situation, the Panel decided to order the accused Edin Sakoč to

reimburse costs of the criminal proceedings covering the convicting part of this judgment, to be determined by the Panel in a separate decision pursuant to Article 186(2) of the CPC BiH.

165. Pursuant to Article 189(1) of the CPC BiH, the accused Edin Sakoč is relieved of the duty to reimburse costs of the criminal proceedings covering the acquitting part of the judgment, which shall be paid from the Court's budgetary appropriations.

166. Pursuant to Article 198(2) and (3) of the CPC BiH, the injured parties were instructed to take civil action to pursue their redress claims, considering that the injured parties did not specify such claims during the trial.

Record-taker
Legal adviser
Elma Čorbadžić

PRESIDING JUDGE

Mirza Jusufović

LEGAL MEANS: No appeal is allowed against this judgment.

A. ANNEX A - LIST PROSECUTION'S DOCUMENTARY EVIDENCE

No.	Exhibit
T – 1	Record on taking a statement from witness ... no. 12-02/4-34/14 of 17 June 2014, Trebinje CJB, Criminal Police Sector
T – 2	Record on taking a statement from .... Trebinje CJB, no. 12-02/4-29/14 of 20 May 2014
T – 3	Record of Interview of Witness .... at the Prosecutor's Office of BiH, no. T20 0 KTRZ 0006182 13 of 30 March 2016
T – 4	Record on taking a statement from Cvitko Doko, RS MUP, Trebinje CJB, Criminal Police Sector, no. 12-02/04-30/14 of 20 May 2014
T – 5	Record of Interview of Witness ..., SIPA, Regional Office Mostar, no. 14-12/1-31/05 of 21 September 2005; Record on taking a statement from ...., Ministry of Interior, Trebinje CJB, no. 12-02/4-17/14 of 15 April 2014; Death Certificate, Čapljina, no. 02-15-IV-319/16 of 29 March 2016
T – 6	Record on taking a statement from Mirsad Muminović, Trebinje CJB, Criminal Police Sector, no. 12-02/4-20/14 of 29 April 2014; Death Certificate, Čapljina, no. 02-15-IV-681/16 of 22 August 2016
T – 7	Decision on Proclaiming an Imminent Threat of War, *Official Gazette of RBiH* no. 1 of 9 April 1992
T – 8	Order on Proclaiming General Public Mobilization in the Territory of the Republic of BiH, *Official Gazette of RBiH* no. 7 of 20 June 1992
T – 9	Decision on Terminating the State of War, *Official Gazette of RBiH* no. 50 of 28 December 1995

T – 10	Regular Daily Report, Command of the 13th Corpus, Operational Center, confidential no. 147-10 of 10 January 1992
T – 11	Regular Daily Report, Command of the 13th Corpus, confidential no. 147-74 of 5 March 1992
T – 12	Interim Report, 13th Corps, Operational Center, confidential no.147-75 of 5 March 1992
T – 13	Regular Daily Report, Command of the 13th Corpus, strictly confidential no. 147-78 of 7 March 1992
T – 14	Regular Daily Report, Command of the 13th Corpus, strictly confidential no. 147-80 of 8 March 1992
T – 15	Interim Report, Command of the 13th Corps, strictly confidential no. 147-86 of 13 March 1992
T – 16	Regular Daily Report, Command of the 13th Corpus, strictly confidential no. 147-81 of 9 March 1992
T – 17	Regular Daily Report, Command of the 14th Corpus, strictly confidential no. 147-89 of 14 March 1992
T – 18	Regular Daily Report, Command of the 13th Corpus, strictly confidential no. 147-97 of 16 March 1992
T – 19	Regular Daily Report, Command of the 13th Corpus, strictly confidential no. 147-102 of 19 March 1992
T – 20	Regular Combat Report, Command of the 13th Corpus, strictly confidential no. 147-104 of 20 March 1992
T – 21	Regular Combat Report, Command of the 13th Corpus, strictly confidential no. 147-110 of 24 March 1992
T – 22	Regular Combat Report, Command of the 13th Corpus, strictly confidential no. 147-123 of 6 April 1992
T – 23	Regular Combat Report, Command of the 13th Corpus, strictly confidential no. 147-145 of 8 April 1992

T – 24	Regular Combat Report, Command of the Herzegovina Corps, strictly confidential no. 147-211 of 8 June 1992
T – 25	Decision on Further Operations, Command of the 4th MO /Military District/-IKM /Forward Command Post/, strictly confidential no. 1219-1 of 3 May 1992
T – 26	Directive for Attack, Command of the 4th MO-IKM, strictly confidential no. 1029-1 of 10 April 1992
T – 27d	Decision om transfer of HOS to HVO units, Croatian Community of Herceg-Bosna, HVO, Command of the *Jure Francetić* Brigade – Zenica no. 703/93 of 5 April 1993 – 00493072
T – 28	Case: .... Mostar District Prison Administration no. 51/92
T – 29	Report on release of detainees from the HVO Central Military Prison, Mostar Central Military Prison, of 30 October 1992
T – 30	List of detainees, HZ HB HVO, III Battalion, IV Company, Military Police, no. 02-4/3-06/4-02 of 25 November 1992
T – 31	List of female prisoners, *Bruno Bušić* Barracks Dretelj Čapljina, of 7 August 1992
T – 32	Membership card no. 9 issued to ... Association of Camp Inmates 1991 from eastern Herzegovina
T – 33d	Data on identification-exhumation of 14 bodies, village of Klepci , municipality of Čapljina, 23 March 999
T – 34	Report on forensic examination of dead body no. 9 of 25 March 1999
T – 35	Photo documentation, State Commission for the Exchange of Prisoners of War and Missing Persons of the Republika Srpska Banja Luka, no 9 of 1 April 1999

T – 36	Report on forensic examination of dead body no. 11b of 25 March 1999 and photo documentation, State Commission for the Exchange of Prisoners of War and Missing Persons of the Republika Srpska Banja Luka, no. 11, 11A and 11B, of 1 April 1999
T – 37	District Court of Trebinje Crime Scene Investigation Report no. Kri: 9/99 of 23 March 1999

T – 38	Photo documentation, State Commission for the Exchange of Prisoners of War, of 1 April 1999
T – 39	Missing person's card ... RS team for missing persons
T – 40d	Transit permit for transport of the deceased ... municipality of Bileća, department for commerce and social activities, Health Inspection no. ... of 2 July 2005
T – 41	Certificate of death of ...
T – 42d	Transit permit for transport of the deceased ... municipality of Bileća, department for commerce and social activities, Health Inspection no. 04-510-87/05 of 2 July 2005
T – 43	Certificate of death of ....
T – 44	Missing person's card ...
T – 45	District Court of Trebinje Record no. Kri: 14/99 of 26 March 1999, no objections
T – 46	HB HVO Basic Court of Čapljina Crime Scene Investigation Report no. Kri: 63/90 of 10 July 1992, no objections
T – 47	Notice of a committed murder, HZ HB Mostar PU /Police Department/ Čapljina PS /Police Station/, no. 03-8/54-202-13/94 of 16 March 1993
T – 48	Register V/O 1959
T – 49	Certificate issued to Edin Sakoč, Ministry of Defense, Mostar Defense Administration, Čapljina Defense Section, no. 17-22.12-01-41-1-535/06 of 8 December 2006
T – 50	Register of military conscripts born in 1959, town of Čapljina
T – 51	Certificate issued to Edin Sakoč, Ministry for Veterans' Affairs, Section for Compulsory Service Records Mostar HNK /Herzegovina-Neretva Canton/, Group for Compulsory Service Records Čapljina no. 07/62-01-41/1-109/11 of 28 April 2011
T – 52	Additional file to the name of Edin Sakoč
T – 53	Unit file to the name Edin Sakoč
T – 54	Certificate of salaries disbursed to Edin Sakoč, member of the Armed Forces of the R BiH, of 12 July 1996

T – 55	Archive label for a book VJ 5093 – 442 bbr book 5 (S through Ž) and Archive label for a book (01 through 282) – no objections
T – 56d	List, Edin Sakoč under no. 656
T – 57	Supplement for disbursement of salary for January 1993
T – 58	Payroll sheet, HZ HB HVO, 1st Battalion, fire support platoon, November 1992
T – 59	Monthly report, 1st Battalion, fire support platoon, October 1992
T – 60	Letter no. KT-a 61/92 of 23 November 1992 sent by the Higher Public Prosecutor's Office of Mostar to Čapljina Police Station
T – 61	Official Note by the HZ HB HVO, Main Staff, Military Police, of 9 July 1992
T – 62	Contract of purchase of a motor vehicle (attachment), buyer Edin Sakoč, 18 May 1987
T – 63	Register of motor vehicles and attachments, Edin Sakoč
T – 64	Letter from the F MUP /Federation of BiH Ministry of the Interior/, FBiH Police Administration Sarajevo, no. 09-14/2-04-3-4107 of 20 August 2010
T – 65	Criminal record check for Edin Sakoč, Čapljina, PU, Stolac PS, no. 02-02/6-4-04-608/16 of 25 March 2016
T – 66	Record of identification, witness ... RS MUP, Trebinje CJB, no. 12-02/4-4/14 of 27 May 2014
T – 67	Record of identification, witness Mirsad Muminović, RS MUP, Trebinje CJB, no. 12-02/4-6/14 of 19 June 2014
T – 68	Record of identification, witness Boško Buntić, RS MUP, Trebinje CJB, no. 12-02/4-8/14 of 16 July 2014
T – 69	Record of identification, witness Mirsad Muminović, RS MUP, Trebinje CJB, no. 12-02/4-5/14 of 19 June 2014
T – 70	Letter from the U.S. Department of Justice, of 17 October 2016, confirming that Edin Sakoč has not been charged with or stood trial for war crimes in the USA.

B. ANNEX B – LIST DEFENSE'S DOCUMENTARY EVIDENCE

No.	Exhibit
O – 1	Record of gathering information from witness ..., SIPA, Regional Office Mostar, no. 14-12/3-33/05 of 21 September 2005
O – 2	Transcript of testimony by witness ... of 8 October 2014, original text in English, part of the text translated into B/C/S – *the integral transcript translated into B/C/S*
O – 3	Record of gathering information from witness..., SIPA, Regional Office Mostar, no. 14-12/9-32/05 of 21 September 2005
O – 4	Record of questioning of the accused ..., Basic Court in Čapljina, no. Kri:175/9v/8 of 3 September 1992
O – 5	Decision ordering pre-trial custody ..., Basic Court in Čapljina, no. 175/92 of 3 September 1992
O – 6	Record of Interview of Witness ... no. Kri 57/94 of 7 October 1994, composed before the Basic Court in Trebinje
O – 7	Record of Interview of Witness..., no. KT-RZ-26/05 composed at the Prosecutor's Office of BiH on 15 March 2007
O – 8	Criminal report against N.N. persons, no. KU-97/92 of 10 August 1992, Čapljina Police Station

O – 9	Indictment against Edin Sakoč, U.S. District Court for the District of Vermont, no. 2:13/CR/106 of 25 July 2013 Agreement on imposing alternative measures between the U.S. District Court for the District of Vermont and the defendant Edin Sakoč, no. 2:13-cr-106 of 16 December 2015. Joint submission for giving consent to an agreement and a motion for holding a hearing, no. 2:16-cv-9 of 19 January 2016, U.S. District Court for the District of Vermont. Jury Charge, U.S. District Court for the District of Vermont, no. 2:13-cr-106 of 22 January 2015 Enacting clause of the judgment, U.S. District Court for the District of Vermont, no. 2:13-cr-106 of 23 January 2015 Letter sent to attorney Tatjana Savić, U.S. Attorney's Office, District of Vermont, of 16 March 2016.
O - 10	Certificate issued to Ramiza Sakoč, ICRC baz – 313592-01 of 18 October 2012

List of documentary evidence tendered before the Appellate Panel

Report of an investigation of 28 June 2012 on the examination of ... and a Report on the examination of Boško Buntić of 19 September 2012 – tendered only as documents, not as evidence.

AO-1 Official Note no. 02-4-06/2-197/93 of 20 December 1993