

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

EDIN DZEKO,

Defendant.

Civil Action No. 1:18-cv-759

**COMPLAINT TO REVOKE  
NATURALIZATION**

The United States of America (“Plaintiff”) brings this civil action against Defendant Edin Dzeko (“Dzeko”) under 8 U.S.C. § 1451(a) to revoke his naturalized U.S. citizenship. In support of its complaint, Plaintiff alleges as follows:

**I. PRELIMINARY STATEMENT**

Bosnia and Herzegovina was in the midst of war on the dawn of April 16, 1993, when Dzeko, executed a well-prepared attack on the village of Trusina with members of his unit, the Zulfikar Special Forces Detachment made up of elite, primarily ethnic Bosniak soldiers. The attack, however, had no legitimate military purpose or objective, and resulted in war crimes committed against the ethnic Croats residing therein because of their Christian religion and Croat nationality. By early afternoon, Dzeko’s unit had summarily executed twenty-two unarmed ethnic Croats, including women and the elderly, and seriously wounded four others, including a two-year-old girl. The incident became known as the Trusina massacre. Dzeko personally participated in the murder of at least eight of the victims: an elderly Bosnian Croat couple and six prisoners of war taken during the attack.

For sixteen years, Dzeko escaped accountability for the war crimes he committed at Trusina. After leaving the Army of the Republic of Bosnia and Herzegovina, Dzeko was

admitted to the United States in 2001 as a refugee—a class of persons fleeing the very type of atrocities he committed at Trusina—by claiming that he had never persecuted others based on their religion, ethnicity, or nationality. He became a permanent resident in 2004, and then a citizen of the United States in 2006, all the while serially misrepresenting and concealing his participation in the Trusina massacre.

Dzeko's participation in the murders came to light years later, following comprehensive investigative efforts by the government of Bosnia and Herzegovina. At the request of the Bosnian-Herzegovinian government, the United States extradited Dzeko in 2011 to face accountability for the massacre and stand trial for war crimes against civilians and prisoners of war. On June 6, 2014, Dzeko was found guilty in a Bosnian-Herzegovinian court for war crimes against civilians and war crimes against prisoners of war, for which he was ultimately sentenced to thirteen years' imprisonment. Dzeko continues to serve his thirteen-year sentence in Bosnia and Herzegovina.

The United States now brings this civil action against Dzeko to revoke his naturalized U.S. citizenship. He misrepresented and concealed his war crimes and other material information on multiple immigration forms and while under oath at his naturalization interview, thereby procuring naturalization which indisputably would have been denied otherwise. As discussed below, Dzeko is subject to the civil denaturalization statute, 8 U.S.C. § 1451, on the basis of his unlawful naturalization, and this Court must order his denaturalization.

## **II. JURISDICTION, VENUE, AND PARTIES**

1. This is an action filed under 8 U.S.C. § 1451(a) to revoke and set aside the order admitting Dzeko to U.S. citizenship and to cancel Dzeko's Certificate of Naturalization.
2. This Court has subject matter jurisdiction pursuant to 8 U.S.C. § 1451(a) and 28 U.S.C. §§ 1331 and 1345.

3. Plaintiff is the United States of America.

4. Defendant is a naturalized U.S. citizen. He is currently incarcerated in Sarajevo, Bosnia and Herzegovina.

5. Dzeko does not reside in any judicial district of the United States. Venue is therefore proper in the U.S. District Court for the District of Columbia pursuant to 8 U.S.C. § 1451(a).

6. As required by 8 U.S.C. § 1451(a), an affidavit showing good cause for this action, signed by Michael DeGraaff, Special Agent, U.S. Immigration and Customs Enforcement, an agency within the Department of Homeland Security, is attached to as Exhibit A.

### **III. FACTUAL BACKGROUND**

#### **A. A Brief Overview of the Balkans Conflict.**

7. Dzeko was born in 1972 in Socialist Federal Republic of Yugoslavia (“Yugoslavia”).

8. At the time, Yugoslavia comprised six socialist republics. Dzeko’s birthplace was located in the Socialist Republic of Bosnia and Herzegovina.

9. The Socialist Republic of Bosnia and Herzegovina was home to three ethnic nations: Bosnian Muslims, Bosnian Serbs, and Bosnian Croats.

10. The Bosnian Muslims, or Bosniaks, are, as their name suggests, predominantly Muslim.

11. Dzeko is a Bosnian Muslim.

12. Serbs from Bosnia and Herzegovina are predominantly Eastern Orthodox Christians. This Complaint refers to Serbs from Bosnia and Herzegovina as “Bosnian Serbs” for brevity.

13. Croats from Bosnia and Herzegovina are predominantly Roman-Catholic Christians. This Complaint refers to Croats from Bosnia and Herzegovina as “Bosnian Croats” for brevity.

14. In the early 1990s, some of Yugoslavia’s republics began seceding, which triggered a series of ethnic-based conflicts.

15. In early 1992, the republic of Bosnia and Herzegovina held a referendum on independence from Yugoslavia. The Bosnian Serbs largely boycotted this referendum, as they generally favored remaining with Yugoslavia. Bosnian Muslims and Bosnian Croats overwhelmingly supported the measure and declared independence on March 3, 1992, as the Republic of Bosnia and Herzegovina.

16. Shortly thereafter, the Bosnian Serbs attacked the new state’s government. The Bosnian Serbs, who were loyal to the remaining Yugoslav state, declared sovereignty over ethnically Serbian territory within Bosnia and Herzegovina. In addition to their own army, the Bosnian Serbs drew the support of the Yugoslav People’s Army, which was based out of Belgrade.

17. The new Republic of Bosnia and Herzegovina was defended jointly by the Bosnian Muslims and the Bosnian Croats, which maintained separate military forces. The Bosnian Muslims commanded the Army of the Republic of Bosnia and Herzegovina (“Army of the Republic of the BiH”); the Bosnian Croats commanded the Croatian Defense Council.

18. Although the Bosnian Muslims and Bosnian Croats had both overwhelmingly supported the Republic of Bosnia and Herzegovina’s independence and were initially allied against the Serbs and Bosnian Serbs, distrust grew and their partnership began to deteriorate.

19. By January 1993, the underlying tensions developed into open conflict in the central parts of Bosnia and Herzegovina in what became known as the Croat-Bosniak War.

20. As part of this Croat-Bosniak War, members of the Army of the Republic of BiH targeted Bosnian Croats because of their Bosnian Croat nationality, Christian faith, or both.

**B. The Trusina Massacre of April 16, 1993.**

21. The Trusina massacre, in which Dzeko participated, was part of this war-within-a-war between the Bosnian Muslims and the Bosnian Croats.

22. In April 1993, Dzeko served in the special-forces unit within the Supreme Command Staff of the Army of the Republic of BiH, called the Zulfikar Special Purposes Detachment (“Zulfikar” or “Zulfikar Special Purposes Detachment”).

23. On April 16, 1993, Dzeko and other members of Zulfikar, engaged in a “previously planned attack” on the village of Trusina, a village in what is now central Bosnia and Herzegovina. Ex. B, First Instance Verdict at 5, *Prosecutor’s Office of Bosnia & Herzegovina v. Edin Dzeko*, S1 1 K 010294 14 Kri (Court of Bosnia and Herzegovina, Section I for War Crimes, June 6, 2014).

24. Dzeko and other members of Zulfikar were ordered by Zulfikar’s deputy commander to leave no Bosnian Croat survivors in Trusina.

25. Trusina’s population was roughly divided between Bosnian Muslims and Bosnian Croats. Bosnian Muslims lived in the Trusina hamlet of Brdo, and Bosnian Croats lived in the Trusina hamlet of Gaj.

26. The attack began in the early morning hours of April 16, 1993.

27. The Bosnian Muslim villagers in Trusina had been made aware of the attack ahead of time, and some Bosnian Muslim villagers served as guides during the attacks. Bosnian

Croat villagers, however, were left unaware by their Bosnian Muslim neighbors and were taken by surprise.

28. During the attack, Dzeko and his fellow Zulfikar members specifically targeted not only Croatian Defense Council soldiers, but also Bosnian Croat civilians.

29. Zulfikar members captured several Croatian Defense Council soldiers by telling them that they would kill the soldiers' wives and children if they did not surrender.

30. Members of Zulfikar also rounded up Bosnian Croat civilians.

31. Dzeko and other members of Zulfikar broke into the home of 67-year-old Ilija Ivankovic and his wife, 57-year-old Andja Ivankovic, two Bosnian Croats.

32. Dzeko entered the Ivankovic household and dragged Ilija Ivankovic—whose legs had been wounded—out of his home and threw him outside of the door and onto the dirt.

33. Dzeko stood over Ilija as he lay on the ground and shot him multiple times in the chest and abdomen, killing him.

34. Andja Ivankovic saw Dzeko kill her husband.

35. She rushed to her husband's body and kneeled over him. Realizing he was dead, she let out screams and wrapped herself around her husband.

36. Dzeko, unhappy with Andja Ivankovic's refusal to stop grieving, shot her in the back as she was weeping over the body of her husband.

37. Shortly after noon, Dzeko and other members of Zulfikar lined up all the captured Bosnian Croat soldiers, as well as some civilians, against a wall for execution.

38. After the women and children were removed from the lineup, seven men remained in line. These individuals stood in a line facing the wall.

39. One of these seven men tried to escape from the firing squad. He was shot in the back by the firing squad as he attempted to vault a wall in order to escape.

40. Under orders from the Zulfikar deputy commander, the firing squad made up of Dzeko and five other Zulfikar members, opened fire on, and killed, the remaining six unarmed men.

41. These executions occurred within earshot of the victims' families and neighbors.

42. As they intended to do at the beginning of the attack on Trusina, Dzeko and other Zulfikar members specifically targeted these six victims for their Christian religion and Croat ethnicity.

43. Dzeko's victims were six prisoners of war:

- Ivan (son of Andrija) Drljo, b. 1971 (age 22);
- Nedeljko (son of Marinko) Kreso, b. 1953 (age 40);
- Pero (son of Smiljko) Kreso, b. 1961 (age 32);
- Zdravko (son of Ivan) Drljo, b. 1963 (age 30);
- Zeljko (son of Slavko) Blazevic, b. 1965 (age 28); and
- Franjo (son of Ilija) Drljo, b. 1942 (age 51).

Ex. B at 5 (First Instance Verdict).<sup>1</sup>

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<sup>1</sup> Fellow Zulfikar member Rasema Handanovic a/k/a Sammy Rasema Yetisen a/k/a Zoja, was also convicted for these murders. In her case, the trial court found that three of these individuals—Ivan Drljo, Nedeljko Kreso, and Pero Kreso—were prisoners of war but that the remaining three—Zdravko Drljo, Zeljko Blazevic, and Franjo Drljo—were civilians. First Instance Verdict, *Prosecutor's Office of Bosnia and Herzegovina v. Rasema Handanovic*, No. S1 1 K 009162 12 Kro (Court of Bosnia and Herzegovina, Section I for War Crimes, April 30, 2012), available for download at [http://www.sudbih.gov.ba/bundles/websitenews/gallery/predmet/2918/9162\\_1K\\_HR\\_prvostupanjaska\\_30\\_04\\_2012\\_ENG.pdf](http://www.sudbih.gov.ba/bundles/websitenews/gallery/predmet/2918/9162_1K_HR_prvostupanjaska_30_04_2012_ENG.pdf). For purposes of this § 1451(a) denaturalization action, it is irrelevant whether the latter three of these men are more properly classified as prisoners of war or as civilians.

44. Zulfikar used the surviving Bosnian Croat villagers as human shields to cover their retreat from the village of Trusina.

45. In addition to the six victims executed by firing squad and the elderly couple killed by Dzeko, fourteen other Bosnian Croats were murdered in Trusina by Zulfikar members during the Trusina massacre.

**C. Dzeko's Admission into the United States and Concealment of His Role in the Trusina Massacre.**

46. Upon information and belief, Dzeko left Zulfikar in 1995, two and a half years after the Trusina massacre.

47. In May 2000, Dzeko traveled to a facility of the legacy Immigration and Naturalization Service ("INS")<sup>2</sup> in Croatia.

48. Dzeko sought refugee status in the United States by filing a Form I-590, Registration for Classification as a Refugee ("Form I-590"). Ex. C, Form I-590.

49. Dzeko's Form I-590 contained at least two willful misrepresentations.

50. *First*, Dzeko's Form I-590, in Part 5, asked for the reasons he qualified as a refugee.

51. In an attached "case summary," Dzeko claimed that Serb forces arrested him in April 1992 and sent him to a detention camp to perform hard labor. Dzeko claimed that between June 1992, when he was released from the detention camp, and June 1993, he lived in a refugee camp in Croatia. These representations were false.

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<sup>2</sup> On March 1, 2003, INS ceased to exist and many of its relevant functions were transferred to the U.S. Department of Homeland Security. *See* Homeland Security Act of 2002, Pub. L. No. 107-296, 110 Stat. 2135 (Nov. 25, 2002). Because many of the events in this case took place prior to the transfer, however, "INS" will be referenced where accurate.

52. Dzeko's "case summary" failed to disclose that between June 1992 and September 1995, he was actually in Bosnia and Herzegovina serving in the Army of the Republic of BiH.

53. *Second*, Dzeko's Form I-590, in Part 13, asked him to list the dates of any military service.

54. Dzeko responded to Part 13 by writing only that he served in the "JNA" from 1991-92.

55. By "JNA," Dzeko was referring to the Yugoslav People's Army, which is separate from the Army of the Republic of BiH.

56. Because Dzeko actually served in the Zulfikar Special Purposes Detachment, a unit of the Army of the Republic of BiH, and because he was serving in the Army of the Republic of the BiH at least as late as April 16, 1993, that representation was false.

57. Thus, Dzeko's representations in Parts 5 and 13 of his Form I-590 were false or materially incomplete.

58. Dzeko signed the certification on his Form I-590, which stated, "I, Edin Dzeko, do swear (affirm) that I know the contents of this registration subscribed by me including the attached documents, [and] that the same are true to the best of my knowledge . . . ."

59. On January 17, 2001, an INS officer interviewed Dzeko in conjunction with Dzeko's Form I-590.

60. The officer's interview notes indicate Dzeko claimed that he served in the JNA as a cook from 1991-92 and was captured in April 1992 by the Serb army because he was a Muslim.

61. During the interview, Dzeko signed a Form G-646, Sworn Statement of Refugee Applying for Entry into the United States (“Form G-646”). Ex. D, Form G-646.

62. Dzeko’s Form G-646 contained at least two willful misrepresentations.

63. *First*, Dzeko’s Form G-646 advised that several classes of aliens were not admissible to the United States. The first class listed on the form is “[a]liens who have committed or who have been convicted of a crime involving moral turpitude.”

64. The Form G-646 asked whether any of the classes listed applied to the applicant.

65. In response, Dzeko marked “No.” That representation was false in light of his role in the Trusina massacre.

66. *Second*, Dzeko’s Form G-646 contained a statement above the applicant’s signature line which states, “*Further, I have never ordered, assisted or otherwise participated in the persecution of any person because of race, religion or political opinion.*” (Emphasis in original).

67. Dzeko signed directly beneath that statement. That representation was false in light of his role in the Trusina massacre.

68. Based on the statements in Dzeko’s Form I-590 and Form G-646, and his sworn testimony during his INS interview, INS approved his request for refugee status on January 17, 2001.

69. On March 21, 2001, Dzeko was admitted to the United States as a refugee.

**D. Dzeko Obtains Permanent Resident Status by Falsely Maintaining that He Had Never Served in the Military and that He Had Never Committed Crimes Involving Moral Turpitude.**

70. In April 2002, Dzeko filed a Form I-485, Application to Register Permanent Resident or Adjust Status. Ex. E, Form I-485.

71. Dzeko's Form I-485 contained at least three willful misrepresentations.

72. *First*, Dzeko's Form I-485, in Part 3, Section C, instructed him, "List your present and past membership in or affiliation with every political organization, association, fund, foundation, party, club, society or similar group in the United States or in other places since your 16th birthday. Include any foreign military service in this part."

73. In response, Dzeko left this section blank, indicating he had no qualifying foreign military service. That representation was false because he had served in the Zulfikar Special Purposes Detachment of the Army of the Republic of BiH.

74. *Second*, Dzeko's Form I-485, in Part 3, Question 1(a), asked, "Have you ever, in or outside the U.S. . . . knowingly committed any crime of moral turpitude . . . for which you have not been arrested?"

75. In response, Dzeko marked "No." That representation was false because he had knowingly committed war crimes—which involve moral turpitude—for which he had not been arrested.

76. *Third*, Dzeko's Form I-485, in Part 3, Question 8, asked, "Have you ever engaged in genocide, or otherwise ordered, incited, assisted or otherwise participated in the killing of any person because of race, religion, nationality, ethnic origin or political opinion?"

77. In response, Dzeko marked "No." That representation was false because in committing his war crimes at Trusina, he had specifically targeted and killed Bosnian Croats because of their nationality and religious beliefs.

78. Dzeko's Form I-485, in Part 4, states: "I certify, under penalty of perjury under the laws of the United States of America, that this application and the evidence submitted with it is all true and correct."

79. Dzeko signed beneath that statement, certifying under penalty of perjury that his responses to the questions on the Form I-485 were true and correct.

80. On April 1, 2004, INS approved the application and granted Dzeko lawful permanent resident status, retroactive to March 21, 2001.

**E. Dzeko Naturalized by Falsely Maintaining that He Was Properly Admitted for Permanent Residence and that He Possessed the Requisite Good Moral Character.**

81. On April 10, 2006, Dzeko applied for naturalization by filing a Form N-400, Application for Naturalization (“Form N-400”). Ex. F, Form N-400.

82. Dzeko’s Form N-400 contained at least four willful misrepresentations.

83. *First*, Dzeko’s Form N-400, in Part 10, Section B, Question 11, asked, “Have you **EVER** persecuted (*either directly or indirectly*) any person because of race, religion, national origin, membership in a particular social group, or political opinion?” (emphasis in original).

84. In response, Dzeko marked “No.” That representation was false because in committing his war crimes at Trusina, he had specifically targeted and killed Bosnian Croats because of their nationality and religious beliefs.

85. *Second*, Dzeko’s Form N-400, in Part 10, Section D, Question 15, asked, “Have you **EVER** committed a crime or offense for which you were NOT arrested?” (emphasis in original).

86. In response, Dzeko marked “No.” That representation was false because he had knowingly committed war crimes for which he had not been arrested.

87. *Third*, Dzeko’s Form N-400, in Part 10, Section D, Question 23, asked, “Have you **EVER** given false or misleading information to any U.S. government official while applying for any immigration benefit or to prevent deportation, exclusion, or removal?” (emphasis in original).

88. In response, Dzeko marked “No.” That representation was false because he had made false statements on three documents submitted in applications for immigration benefits: his Form I-590, Registration for Classification as Refugee; his Form G-646, Sworn Statement of Refugee; and his Form I-485, Application to Register Permanent Resident or Adjust Status.

89. *Fourth*, Dzeko’s Form N-400, in Part 10, Section D, Question 24, asked, “Have you **EVER** lied to any U.S. government official to gain entry or admission into the United States?” (emphasis in original).

90. In response, Dzeko marked “No.” That representation was false because he made false statements on his Form I-590, his Form G-646, and his Form I-485, to gain entry and admission to the United States first as a refugee and then as a permanent resident.

91. Dzeko’s Form N-400, in Part 11, states: “I certify, under penalty of perjury under the laws of the United States of America, that this application, and the evidence submitted with it, are all true and correct.”

92. Dzeko signed beneath that statement, certifying under penalty of perjury that his responses to the questions on the Form N-400 were true and correct.

93. On July 20, 2006, USCIS officer David Obedoza examined Dzeko regarding his Form N-400 application and qualifications for U.S. citizenship.

94. At the beginning of the interview, Dzeko took an oath or affirmed that he would answer all questions truthfully.

95. Officer Obedoza marked all corrections or changes to the Form N-400 by numbering each one with a circle around it, and reviewed all such numbered changes with Dzeko at the end of the interview.

96. Consistent with his written response in Part 10, Section B, question 11 of the Form N-400, Dzeko testified that he had never persecuted, either directly or indirectly, any person because of race, religion, national origin, membership in a particular social group, or political opinion.

97. Consistent with his written response in Part 10, Section D, question 15 of the Form N-400, Dzeko testified that he had never committed a crime or offense for which he had not been arrested.

98. Consistent with his written response in Part 10, Section D, question 23 of the N-400, Dzeko testified that he had never given false or misleading information to any U.S. Government official while applying for any immigration benefit or to prevent deportation, exclusion, or removal.

99. Consistent with his written response in Part 10, Section D, question 24 of the N-400, Dzeko testified that he had never lied to any U.S. Government official to gain entry or admission into the United States.

100. As set forth above, the foregoing representations were false in light of his role in the Trusina massacre and his misrepresentations and concealment of his crimes during his refugee and adjustment proceedings.

101. At the end of his naturalization examination, Dzeko again signed his Form N-400 under penalty of perjury under the laws of the United States, thereby certifying that the information in his application for naturalization (including two numbered corrections) was true to the best of his knowledge and belief.

102. At no point during the naturalization process did Dzeko disclose to USCIS his commission of persecutory war crimes at Trusina or his presence during and participation in the Trusina massacre.

103. Based on Dzeko's statements in his Form N-400, and his sworn testimony during his naturalization interview, USCIS approved his Form N-400 on July 20, 2006.

104. On July 27, 2006, Dzeko took the oath of allegiance and was naturalized as a U.S. citizen.

105. Dzeko was issued Certificate of Naturalization No. 29542887. Ex. G, Certificate of Naturalization.

106. At the time, Dzeko was living in the State of Washington.

**F. Dzeko's Extradition to Bosnia and Herzegovina to Stand Trial for War Crimes for which He Was Convicted.**

107. On September 21, 2009, the Prosecutor's Office of Bosnia and Herzegovina issued a Warrant of Arrest for Dzeko, accusing him of participating in the execution-style killings of several civilians and prisoners of war during the April 16, 1993 attack in Trusina, which is located in the modern state of Bosnia and Herzegovina.

108. The Warrant of Arrest accused Dzeko of, among other crimes, violating Criminal Code of Bosnia and Herzegovina Article 173, War Crimes against Civilians, in conjunction with Article 180(1) and Article 29.<sup>3</sup>

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<sup>3</sup> These provisions impose personal liability for conspiratorial acts. Criminal Code of Bosn. & Herz. arts. 180(1), 29.

109. Article 173(1) of the Criminal Code of Bosnia and Herzegovina provides:

**War Crimes against Civilians**

(1) Whoever in violation of rules of international law in time of war, armed conflict or occupation, orders or perpetrates any of the following acts: . . .

- a) Attack on civilian population, settlement, individual civilians or persons unable to fight, which results in the death, grave bodily injuries or serious damaging of people's health;
- b) Attack without selecting a target, by which civilian population is harmed . . .
- . . .

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

Criminal Code of Bosn. & Herz. art. 173(1), *available at* Bosnia and Herzegovina,

Ministry of Security: State Investigation and Protection Agency,

<http://www.sipa.gov.ba/assets/files/laws/en/kz37-03.pdf> (last visited Mar. 21, 2018).

110. Bosnia and Herzegovina submitted an extradition request to the United States for Dzeko on these allegations based upon a mutual extradition treaty. *See* Treaty between the United States and Servia for the Mutual Extradition of Fugitives from Justice, 32 Stat. 1890, 1902 WL 17946 (May 17, 1902).

111. That treaty permits the United States to extradite persons charged with an array of offenses, including “[m]urder,” “attempt to commit murder,” and “manslaughter, when voluntary.” *Id.* at art. II(1), 1902 WL 17946, at \*1.

112. The U.S. Attorney's Office for the Western District of Washington filed a complaint for extradition, and Dzeko was arrested. Ex. H, Compl., *United States v. Dzeko*, No. 2:11-mj-160-JPD, ECF No. 1 (W.D. Wash. Apr. 11, 2011). Dzeko submitted an affidavit to the U.S. District Court waiving his right to an extradition hearing. In the affidavit, Dzeko agreed

that he was the person whose extradition was being sought under a current extradition treaty covering the crimes alleged, and that probable cause existed to believe he committed the offenses for which extradition was requested. Ex. I, Affidavit Waiving Extradition Hearing, *United States v. Dzeko*, No. 2:11-mj-160-JPD, ECF No. 14 (W.D. Wash. Nov. 15, 2011).

113. On November 15, 2011, the U.S. District Court for the Western District of Washington granted the United States' request for a certificate of extraditability. Ex. J, Order, *United States v. Dzeko*, No. 2:11-mj-160-JPD, ECF No. 15 (W.D. Wash. Nov. 15, 2011).

114. In December 2011, the United States extradited Dzeko to Bosnia and Herzegovina pursuant to the extradition request.

115. The Prosecutor for Bosnia and Herzegovina filed an indictment against Dzeko *inter alia* for war crimes against prisoners of war and war crimes against civilians.

116. On June 6, 2014, the trial panel of the Court of Bosnia and Herzegovina, Section I for War Crimes, found Dzeko guilty of War Crimes Against Prisoners of War, in violation of Article 144<sup>4</sup> of the Criminal Code of the Socialist Federal Republic of Yugoslavia, by participating in the killing of six Croatian Defense Council soldiers who had previously surrendered: Ivan Drjlo, Nedeljko Kreso, Pero Kreso, Zdravko Drljo, Zeljko Blazevic, and Franjo Drljo. Ex. B at 5-6 (First Instance Verdict).

117. The court further found Dzeko guilty of War Crimes Against Civilian Population, in violation of Article 142(1) of the Criminal Code of the Socialist Federal Republic of Yugoslavia, by murdering an elderly Bosnian Croat couple, Ilija Ivankovic and Andja Ivankovic.

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<sup>4</sup> Although Dzeko was originally charged with violating Articles 173 and 175 of the Criminal Code of Bosnia and Herzegovina, the Court of Bosnia and Herzegovina held that it was required to apply "the more favorable law" then existing, i.e. the Criminal Code of the Socialist Federal Republic of Yugoslavia, which had "provisions regarding the same criminal offense[s]," because they "would lead to a more favorable outcome" for Dzeko. *See* Ex. B at 26-27.

118. On June 6, 2014, the Court of Bosnia and Herzegovina, Section I for War Crimes, sentenced Dzeko to a combined term of twelve years' imprisonment. *Id.* at 6.

119. Dzeko and the prosecution cross-appealed. An appellate panel of the court dismissed Dzeko's appeal and affirmed his conviction. The court sustained the prosecution's appeal of the sentence, and increased Dzeko's sentence to thirteen years. Ex. K, Second Instance Verdict at 4-5, *Prosecutor's Office of Bosnia & Herzegovina v. Edin Dzeko*, S1 1 K 010294 14 Krž6 ¶¶ 23–27 (Sud Bosne i Hercegovine, Appellate Panel, Dec. 4, 2014), *available for download at* [http://www.sudbih.gov.ba/bundles/websitenews/gallery/predmet/2981/10294\\_1K\\_DzE\\_drugostepena\\_4\\_12\\_2014\\_eng.pdf](http://www.sudbih.gov.ba/bundles/websitenews/gallery/predmet/2981/10294_1K_DzE_drugostepena_4_12_2014_eng.pdf).

120. Dzeko remains imprisoned in Bosnia and Herzegovina.

#### IV. GOVERNING LAW

##### A. **Congressionally-imposed prerequisites to the acquisition of citizenship.**

121. No alien has a right to naturalization “unless all statutory requirements are complied with.” *United States v. Ginsberg*, 243 U.S. 472, 474-75 (1917). Indeed, the Supreme Court has underscored that “[t]here must be strict compliance with all the congressionally imposed prerequisites to the acquisition of citizenship.” *Fedorenko v. United States*, 449 U.S. 490, 506 (1981); *see also id.* (“An alien who seeks political rights as a member of this Nation can rightfully obtain them only upon the terms and conditions specified by Congress.” (quoting *Ginsberg*, 243 U.S. at 474)).

122. As a threshold matter, to qualify for naturalization, an applicant must have been “lawfully” admitted to the United States for permanent residence. *See* 8 U.S.C. § 1427(a)(1); *see also id.* §§ 1429, 1255(a).

123. An alien has been “lawfully accorded” permanent resident status only if he actually satisfies the immigration laws. *Ampe v. Johnson*, 157 F. Supp. 3d 1, 10 (D.D.C. 2016) (“Since [2003], every circuit to have considered the issue has agreed that to demonstrate that she was lawfully admitted for permanent residence, an applicant must do more than simply show that she was granted [lawful permanent resident] status; she must further demonstrate that the grant of that status was in substantive compliance with the immigration laws.” (internal quotation marks omitted) (collecting cases)).

124. Congress has also mandated that an individual may not naturalize unless that person “during all periods referred to in this subsection has been and still is a person of good moral character.” *See* 8 U.S.C. § 1427(a)(3). The required statutory period for good moral character begins five years before the date the applicant files the application for naturalization, and it continues until the applicant takes the oath of allegiance and becomes a U.S. citizen. *Id.*; 8 C.F.R. § 316.10(a)(1).

125. As a matter of law, an applicant necessarily lacks good moral character if he or she commits a crime involving moral turpitude during the statutory period and later either is convicted of the crime or admits his or her commission of the criminal activity. 8 U.S.C. § 1101(f)(3) (cross-referencing 8 U.S.C. § 1182(a)(2)(A)); 8 C.F.R. § 316.10(b)(2)(i) (providing that an applicant “shall be found to lack good moral character” if, for example, they committed and were convicted of one or more crimes involving moral turpitude).

126. “[A] conviction during the statutory period is not necessary for a finding that an applicant lacks good moral character . . . . [I]t is enough that the offense was ‘committed’ during that time.” *United States v. Zhou*, 815 F.3d 639, 644 (9th Cir. 2016) (quoting *United States v. Suarez*, 664 F.3d 655, 661 (7th Cir. 2011)). Nevertheless, an individual who is convicted is

collaterally estopped from contesting all issues necessarily decided in the criminal matter. *See Zhou*, 815 F.3d at 644.

127. Congress has also explicitly precluded individuals who give false testimony for the purpose of obtaining immigration benefits from being able to establish the good moral character necessary to naturalize. 8 U.S.C. § 1101(f)(6).

128. Further, Congress created a catch-all provision, which states, “[t]he fact that any person is not within any of the foregoing classes shall not preclude a finding that for other reasons such person is or was not of good moral character.” 8 U.S.C. § 1101(f).

129. Under the regulation enacted pursuant to the catch-all provision, individuals who commit unlawful acts adversely reflecting upon their moral character cannot meet the good moral character requirement, unless they prove that extenuating circumstances exist. *See* 8 C.F.R. § 316.10(b)(3)(iii); 8 U.S.C. § 1101(f).

**B. The Denaturalization Statute.**

130. Recognizing that there are situations in which an individual has naturalized despite failing to comply with all congressionally-imposed prerequisites to the acquisition of citizenship or by concealing or misrepresenting facts that are material to the decision on whether to grant his naturalization application, Congress enacted 8 U.S.C. § 1451.

131. Under 8 U.S.C. § 1451(a), a court must revoke a defendant’s naturalization and cancel his Certificate of Naturalization if his naturalization was either: (a) illegally procured; or (b) procured by concealment of a material fact or by willful misrepresentation.

132. “Illegal procurement” has occurred where an applicant naturalized despite failing to comply with all congressionally-imposed prerequisites to the acquisition of citizenship. *Fedorenko*, 449 U.S. at 517.

133. Naturalization was procured by concealment of a material fact or by willful misrepresentation, where: (1) the naturalized citizen misrepresented or concealed some fact during the naturalization process; (2) the misrepresentation or concealment was willful; (3) the fact was material; and (4) the naturalized citizen procured citizenship as a result of the misrepresentation or concealment. *Kungys v. United States*, 485 U.S. 759, 767 (1988).

134. Where the Government establishes that the defendant's citizenship was procured illegally or by concealment or willful misrepresentation of material facts, "district courts lack equitable discretion to refrain from entering a judgment of denaturalization." *Fedorenko*, 449 U.S. at 517.

135. There is no statute of limitations in an action under 8 U.S.C. § 1451(a). *Costello v. United States*, 365 U.S. 265, 283 (1961).

## V. CAUSES OF ACTION

### COUNT I

#### **ILLEGAL PROCUREMENT OF NATURALIZATION NOT LAWFULLY ADMITTED FOR PERMANENT RESIDENCE (PERSECUTOR INELIGIBLE FOR ADMISSION AS REFUGEE)**

136. Plaintiff re-alleges and incorporates by reference the foregoing paragraphs.

137. To qualify for naturalization, an applicant must have been lawfully admitted to the United States for permanent residence. *See* 8 U.S.C. §§ 1427(a)(1), 1429.

138. The term "lawfully" requires compliance with the substantive legal requirements for admission, and not mere procedural regularity. *Ampe*, 157 F. Supp. 3d at 10.

139. Dzeko entered the United States as a refugee and adjusted to permanent resident status based on that entry.

140. An alien who was granted refugee status cannot *lawfully* adjust status therefrom unless he demonstrates that he meets the statutory definition of “refugee.” 8 U.S.C. § 1159(b)(3).

141. The Immigration and Nationality Act (“INA”) defines the term “refugee” to exclude anyone who “ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion.” 8 U.S.C. § 1101(a)(42).

142. Murder perpetrated on account of an 8 U.S.C. § 1101(a)(42)-protected ground constitutes “persecution.” *See, e.g., Chand v. I.N.S.*, 222 F.3d 1066, 1073 (9th Cir. 2000) (“Physical harm has consistently been treated as persecution.”); *Aldana-Ramos v. Holder*, 757 F.3d 9, 16 (1st Cir. 2014) (holding that threats of murder constitute persecution).

143. As set forth above, Dzeko participated in the execution-style murders of several Bosnian Croat civilians and prisoners of war at Trusina, targeting the victims because of their religion, nationality, or both.

144. As such, those killings were acts of persecution under 8 U.S.C. § 1101(a)(42), and they precluded Dzeko from establishing that he satisfied the legal definition of a refugee.

145. Because Dzeko never met the legal definition of a refugee under 8 U.S.C. § 1101(a)(42), he was never eligible for adjustment of status to that of a permanent resident under 8 U.S.C. § 1159(b)(3).

146. Because Dzeko was not lawfully admitted for permanent residence, he was and remains ineligible to naturalize under 8 U.S.C. §§ 1427(a)(1) and 1429.

147. Because he was ineligible to naturalize, Dzeko procured his citizenship illegally, and this Court must revoke his citizenship, as provided for by 8 U.S.C. § 1451(a).

**COUNT II**

**ILLEGAL PROCUREMENT OF NATURALIZATION  
NOT LAWFULLY ADMITTED FOR PERMANENT RESIDENCE  
(PROCURED BY FRAUD OR WILLFUL MISREPRESENTATION)**

148. Plaintiff re-alleges and incorporates by reference the foregoing paragraphs.

149. As set forth above, to qualify for naturalization, an applicant must have been lawfully admitted to the United States for permanent residence. *See* 8 U.S.C. §§ 1427(a)(1), 1429.

150. The term “lawfully” requires compliance with the substantive legal requirements for admission, and not mere procedural regularity. *Ampe*, 157 F. Supp. 3d at 10.

151. An alien is inadmissible if he, by fraud or willfully misrepresenting a material fact, sought to procure, or has procured a visa, other documentation, or admission into the United States or any other immigration benefit. 8 U.S.C. § 1182(a)(6)(C)(i).

152. Dzeko was never lawfully admitted as a permanent resident and cannot satisfy the requirements of 8 U.S.C. §§ 1427(a)(1) and 1429, because he was inadmissible at the time of his admission as a permanent resident based on his fraudulent and willful misrepresentations of material facts.

153. Specifically, as set forth above in paragraphs 46 through 80, in his applications for refugee status and, later, permanent resident status in the United States, Dzeko misrepresented at least: the dates and nature of his military service; whether he had ever committed a crime involving moral turpitude; and whether he had ordered, assisted, or otherwise participated in the persecution of any person because of race, religion, or political opinion.

154. Dzeko's misrepresentations were willful because he knew or should have known that his representations were false. Dzeko could not have plausibly forgotten that in 1993 he murdered eight unarmed people, six of them execution-style, because they were Bosnian Croats.

155. Dzeko's misrepresentations were material, having a natural tendency to influence a decision by INS to approve his applications, because they concealed his participation in the Trusina massacre. The murders committed during the Trusina massacre constitute persecution, which would have precluded him from receiving refugee status or permanent residency had he disclosed them.

156. Dzeko's misrepresentations of material information made him substantively inadmissible to the United States at the time he adjusted status pursuant to 8 U.S.C. § 1182(a)(6)(C)(i).

157. Because Dzeko was not lawfully admitted for permanent residence, he was and remains ineligible to naturalize under 8 U.S.C. §§ 1427(a)(1) and 1429.

158. Because he was ineligible to naturalize, Dzeko procured his citizenship illegally, and this Court must revoke his citizenship, as provided for by 8 U.S.C. § 1451(a).

### **COUNT III**

#### **ILLEGAL PROCUREMENT OF NATURALIZATION LACK OF GOOD MORAL CHARACTER (EXTRAJUDICIAL KILLINGS)**

159. Plaintiff re-alleges and incorporates by reference the foregoing paragraphs.

160. To be eligible for naturalization an applicant must show that he has been a person of good moral character for at least the five-year statutory period before he files a naturalization application, and until the time he becomes a naturalized U.S. citizen. 8 U.S.C. § 1427(a)(3); 8 C.F.R. § 316.10(a)(1). Thus, Dzeko was required to establish that he was a person of good moral

character from April 10, 2001, until the date he was admitted to U.S. citizenship, July 27, 2006 (the “statutory period”).

161. A naturalization applicant is barred from establishing good moral character if he “at any time has engaged in conduct described in section 1182(a)(3)(E)” of Title 8 of the United States Code. 8 U.S.C. § 1101(f)(9).

162. Section 1182(a)(3)(E) describes “[c]ommission of acts of torture or extrajudicial killings,” specifically “any alien who, outside the United States, committed, ordered, incited, assisted, or otherwise participated in the commission of— . . . (II) under color of law of any foreign nation, any extrajudicial killing, as defined in section 3(a) of the Torture Victim Protection Act of 1991 (28 U.S.C. § 1350 note).” 8 U.S.C. § 1182(a)(2)(E)(iii) (2006).

163. “Extrajudicial killing” is defined as “a deliberated killing not authorized by a previous judgment pronounced by a regularly constituted court affording all the judicial guarantees which are recognized as indispensable by civilized peoples.” 28 U.S.C. § 1350 note, § 3(a).

164. As set forth above in paragraphs 21 through 45, Dzeko committed, assisted in, and participated in the summary execution of six captured Bosnian Croat soldiers and the murder of two Bosnian Croat villagers, all of which constitute extrajudicial killings.

165. Those extrajudicial killings precluded Dzeko from demonstrating that he had good moral character. *See* 8 U.S.C. §§ 1101(f)(9), 1182(a)(3)(E)(iii).

166. Because Dzeko was not a person of good moral character, he was ineligible to naturalize under 8 U.S.C. § 1427(a)(3).

167. Because he was ineligible to naturalize, Dzeko procured his citizenship illegally, and this Court must revoke his citizenship, as provided for by 8 U.S.C. § 1451(a).

**COUNT IV**

**ILLEGAL PROCUREMENT OF NATURALIZATION  
LACK OF GOOD MORAL CHARACTER  
(FALSE TESTIMONY)**

168. Plaintiff re-alleges and incorporates by reference the foregoing paragraphs.

169. As set forth above, Dzeko was required to establish that he was a person of good moral character from April 10, 2001, until the date he was admitted to U.S. citizenship, July 27, 2006. *See* 8 U.S.C. § 1427(a)(3); 8 C.F.R. § 316.10(a)(1).

170. A naturalization applicant is barred from establishing good moral character if, during the statutory period, he has given false testimony, under oath, for the purpose of receiving an immigration benefit. 8 U.S.C. § 1101(f)(6).

171. As set forth above, Dzeko provided false testimony for the purpose of obtaining an immigration benefit when he testified, under oath, during his July 20, 2006 naturalization interview, that:

- a. he had never persecuted, either directly or indirectly, any person because of race, religion, national origin, membership in a particular social group, or political opinion;
- b. he had never committed a crime or offense for which he had not been arrested;
- c. he had never given false or misleading information to any U.S. government official while applying for any immigration benefit or to prevent deportation, exclusion, or removal; and
- d. he had never lied to any U.S. government official to gain entry or admission into the United States.

172. Because Dzeko provided false testimony, under oath, during the statutory period for the purpose of obtaining his naturalization, he was barred under 8 U.S.C. § 1101(f)(6) from showing that he possessed the good moral character necessary to become a naturalized U.S. citizen.

173. Because Dzeko was not a person of good moral character, he was ineligible to naturalize under 8 U.S.C. § 1427(a)(3).

174. Because he was ineligible to naturalize, Dzeko procured his citizenship illegally, and this Court must revoke his citizenship, as provided for by 8 U.S.C. § 1451(a).

### **COUNT V**

#### **ILLEGAL PROCUREMENT OF NATURALIZATION LACK OF GOOD MORAL CHARACTER (UNLAWFUL ACTS)**

175. Plaintiff re-alleges and incorporates by reference the foregoing paragraphs.

176. As set forth above, Dzeko was required to establish that he was a person of good moral character from April 10, 2001, until the date he was admitted to U.S. citizenship, July 27, 2006. *See* 8 U.S.C. § 1427(a)(3); 8 C.F.R. § 316.10(a)(1).

177. A naturalization applicant is barred from showing that he is a person of good moral character if, during the statutory period, he “[c]ommitted unlawful acts that adversely reflect upon the applicant’s moral character,” and there are no extenuating circumstances. 8 C.F.R. § 316.10(b)(3)(iii).

178. During the statutory period, Dzeko committed acts that constitute the essential elements of three federal crimes: false swearing in an immigration matter, in violation of 18 U.S.C. § 1546(a); making false statements, in violation of 18 U.S.C. § 1001(a); and perjury, in violation of 18 U.S.C. § 1621(2).

179. *First*, it is unlawful to knowingly make, under oath or under penalty of perjury, a false statement with regard to a material fact in an immigration application. 18 U.S.C. § 1546(a). During the statutory period, Dzeko knowingly made, under oath or penalty of perjury, false statements in his Form N-400, Application for Naturalization, and during his naturalization interview, denying that he had ever: ordered, assisted, or otherwise participated in the persecution of any person because of race, religion or political opinion; committed a crime for which he had not been arrested; or given false information to immigration authorities for an immigration benefit or admission to the United States. Dzeko knew these statements to be false. His actions thus violated 18 U.S.C. § 1546(a).

180. *Second*, it is unlawful to knowingly and willfully conceal a material fact or make a materially false representation in connection with “any matter within the jurisdiction of the executive . . . branch.” 18 U.S.C. § 1001(a). During the statutory period, Dzeko knowingly and willfully concealed material facts and made materially false representations in his Form N-400 and during his naturalization interview, denying that he had ever: ordered, assisted, or otherwise participated in the persecution of any person because of race, religion, or political opinion; committed a crime for which he had not been arrested; or given false information to immigration authorities for an immigration benefit or admission to the United States. Dzeko knew this testimony to be false. His actions thus violated 18 U.S.C. § 1001(a).

181. *Third*, it is unlawful to willfully subscribe as true under penalty of perjury any material matter which one does not believe to be true. 18 U.S.C. § 1621(2). During the statutory period, Dzeko knowingly subscribed as true, under penalty of perjury, false statements in his Form N-400 and during his naturalization interview, denying that he had ever: ordered, assisted, or otherwise participated in the persecution of any person because of race, religion, or political

opinion; committed a crime for which he had not been arrested; or given false information to immigration authorities for an immigration benefit or admission to the United States. Dzeko knew these statements to be false. His actions thus violated 18 U.S.C. § 1621(2).

182. False swearing in an immigration matter, in violation of 18 U.S.C. § 1546(a), making false statements, in violation of 18 U.S.C. § 1001; and perjury, in violation of 18 U.S.C. § 1621(2), adversely reflect on Dzeko's moral character and he cannot avoid the regulatory bar on establishing good moral character found in 8 C.F.R. § 316.10(b)(3)(iii). Indeed, these crimes involve moral turpitude.

183. Because Dzeko committed unlawful acts during the statutory period that adversely reflected on his moral character, he was not a person of good moral character, and was ineligible to naturalize under 8 U.S.C. § 1427(a)(3).

184. Because he was ineligible to naturalize, Dzeko illegally procured his citizenship, and this Court must revoke his citizenship, as provided for by 8 U.S.C. § 1451(a).

#### **COUNT VI**

#### **PROCUREMENT OF NATURALIZATION BY CONCEALMENT OF A MATERIAL FACT OR BY WILLFUL MISREPRESENTATION**

185. Plaintiff re-alleges and incorporates by reference the foregoing paragraphs.

186. Under 8 U.S.C. § 1451(a), the Court must revoke a naturalized person's citizenship and cancel his certificate of naturalization if that person procured his naturalization by concealment of a material fact or by willful misrepresentation.

187. As set forth above, Dzeko willfully misrepresented and concealed his military service and his participation in the summary executions of two civilians and six prisoners of war during the Trusina massacre, for which he was later convicted.

188. Specifically, Dzeko made, under oath or penalty of perjury, false statements in his Form N-400 and during his naturalization interview denying that he had ever: ordered, assisted, or otherwise participated in the persecution of any person because of race, religion, or political opinion; committed a crime for which he had not been arrested; given false or misleading information to immigration authorities to obtain an immigration benefit; or lied to any U.S. government official to gain entry or admission into the United States.

189. Dzeko knew these statements to be false. Dzeko knew at the time he completed his Form N-400, and at the time of his naturalization interview, that he had, in fact, participated in the summary executions of civilians and prisoners of war during the Trusina massacre and lied about and concealed such actions in earlier immigration proceedings.

190. Dzeko made his misrepresentations and concealments deliberately and voluntarily. He knew or should have known that his representations were false in light of his execution-style killing of eight unarmed people because they were Christian and Bosnian Croats. Therefore, Dzeko made his misrepresentations and concealments willfully.

191. Dzeko's misrepresentations and concealments were material to his naturalization because they had a natural tendency to influence USCIS's decision whether to approve Dzeko's naturalization application. Indeed, Dzeko's participation in the summary executions of six prisoners of war and murder of two civilians during the Trusina massacre rendered him ineligible for citizenship. USCIS would have denied Dzeko's naturalization application had he been truthful.

192. Dzeko therefore procured his citizenship by concealment of material fact and willful misrepresentation, and this Court must revoke his citizenship, as provided for by 8 U.S.C. § 1451(a).

**VI. PRAYER FOR RELIEF**

WHEREFORE, Plaintiff, the United States of America, respectfully requests:

- A. A declaration that Dzeko illegally procured his U.S. citizenship;
- B. A declaration that Dzeko procured his U.S. citizenship by concealment or willful misrepresentation of material facts;
- C. Judgment revoking and setting aside the naturalization of Dzeko, and canceling Certificate of Naturalization No. 29542887, effective as of the original date of the order and certificate, July 27, 2006;
- D. Judgment forever restraining and enjoining Dzeko from claiming any rights, privileges, benefits, or advantages related to U.S. citizenship;
- E. Judgment requiring Dzeko, within ten days of judgment, to surrender and deliver his Certificate of Naturalization, No. 29542887, and any copies thereof in his possession, and to make good faith efforts to recover and surrender any copies thereof that he knows are in the possession of others, to the Attorney General, or his representative, including undersigned counsel;
- F. Judgment requiring Dzeko, within ten days of judgment, to surrender and deliver any other indicia of U.S. citizenship (including, but not limited to, any U.S. passport, voter identification card, and other voting documents), and any copies thereof in his possession, and to make good faith efforts to recover and then surrender any copies thereof that he knows are in the possession of others, to the Attorney General, or his representative, including undersigned counsel; and
- G. Judgment granting the United States such other relief as may be lawful and proper.

Dated: April 4, 2018

JESSIE K. LIU, D.C. Bar #472845  
United States Attorney  
District of Columbia

DANIEL F. VAN HORN, D.C. Bar #924092  
Chief, Civil Division

*s/ Wynne P. Kelly*

\_\_\_\_\_  
WYNNE P. KELLY  
Assistant United States Attorney  
United States Attorney's Office  
District of Columbia  
555 Fourth St., NW  
Washington, DC 20530  
Phone: (202) 252-2545  
Email: wynne.kelly@usdoj.gov

Respectfully submitted,

CHAD A. READLER  
Acting Assistant Attorney General  
U.S. Department of Justice, Civil Division

WILLIAM C. PEACHEY  
Director, District Court Section  
Office of Immigration Litigation

*s/ Timothy M. Belsan*

\_\_\_\_\_  
TIMOTHY M. BELSAN  
Deputy Chief  
National Security & Affirmative Litigation Unit  
District Court Section  
Office of Immigration Litigation  
U.S. Department of Justice, Civil Division  
P.O. Box 868, Ben Franklin Station  
Washington, DC 20044  
Phone: (202) 532-4596  
Fax: (202) 305-7000  
Email: timothy.m.belsan@usdoj.gov

ARAM A. GAVOOR  
Senior Counsel for National Security

*s/ Steven A. Platt*

\_\_\_\_\_  
STEVEN A. PLATT  
Trial Attorney  
Phone: (202) 532-4074  
Email: steven.a.platt@usdoj.gov

*Counsel for Plaintiff*

# **EXHIBIT**

# **A**



United States. On January 17, 2001, the former INS interviewed Mr. Dzeko in Split, Croatia, and approved his Form I-590. On March 21, 2001, Mr. Dzeko was admitted to the United States at New York, New York, as a refugee, under section 207 of the Immigration and Nationality Act (“INA”), 8 U.S.C. § 1157. On May 6, 2002, Mr. Dzeko submitted a Form I-485, Application to Register Permanent Residence or Adjust Status. Mr. Dzeko did not seek a waiver of inadmissibility. On April 1, 2004, U.S. Citizenship and Immigration Services (“USCIS”) granted Mr. Dzeko’s Form I-485 and adjusted his status to that of lawful permanent resident under INA § 209(a), 8 U.S.C. § 1159(a), retroactive to March 21, 2001. On or about April 1, 2006, Mr. Dzeko filed a Form N-400, Application for Naturalization, with USCIS’s Seattle, Washington, District Office, pursuant to INA § 316(a), 8 U.S.C. § 1427(a). USCIS approved Mr. Dzeko’s Form N-400 after an interview conducted on July 20, 2006. On July 27, 2006, Mr. Dzeko took the oath of allegiance and was admitted as a citizen of the United States at Seattle, WA. He was issued a Certificate of Naturalization, number 29542887.

IV. Mr. Dzeko unlawfully procured his citizenship. Specifically, Mr. Dzeko illegally procured his naturalization because he was statutorily ineligible to naturalize at the time he took the oath of allegiance on two grounds. First, Mr. Dzeko was not lawfully admitted as a permanent resident. Second, Mr. Dzeko was unable to establish good moral character for the requisite period before his naturalization. Additionally, Mr. Dzeko procured his naturalization by concealing or willfully misrepresenting material facts

V. Mr. Dzeko illegally procured his naturalization because he was not lawfully admitted for permanent residence in accordance with all applicable provisions of the INA. *See* INA § 316, 8 U.S.C. § 1427; INA § 318, 8 U.S.C. § 1429.

A. Mr. Dzeko was not eligible for adjustment of status because he did not meet the definition of a refugee when he entered the U.S. and he did not continue to be a refugee as required by INA § 209(b)(3), 8 U.S.C. § 1159(b)(3). As a result, he was not lawfully admitted for permanent residence.

1. A refugee may adjust to permanent resident status under INA § 209 if the following criteria are met: 1) the applicant applies for adjustment; 2) the applicant has been physically present in the U.S. for at least one year; 3) the applicant continues to be a refugee, the spouse, or child of a refugee within the meaning of the INA; 4) the applicant is not firmly resettled in another country; and 5) the applicant is admissible, except as otherwise provided in this section. *See* INA § 209(b), 8 U.S.C. § 1159(b).

2. Mr. Dzeko was not a refugee within the meaning of the INA when he was admitted to the United States, nor when he adjusted to permanent resident status. INA § 101(a)(42), 8 U.S.C. § 1101(a)(42), defines the term “refugee” and excludes anyone who “ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion.” Mr. Dzeko did not qualify as a refugee because he committed acts of persecution, as described in the INA, while serving in the Army of the Republic of Bosnia and Herzegovina.

3. On August 10, 2010, the U.S. Department of State received a formal request from Bosnia and Herzegovina seeking Mr. Dzeko's extradition for charges of war crimes against prisoners of war and war crimes against civilians. On April 13, 2011, Mr. Dzeko was arrested in Everett, Washington, on a federal arrest warrant associated extradition request. On November 15, 2011, Mr. Dzeko submitted an affidavit waiving an extradition hearing. In his affidavit, Mr. Dzeko agreed that he was the person whose extradition was being sought under a current extradition treaty covering the crimes alleged, and that probable cause existed to believe he committed the offenses for which extradition was requested. On the same date, an order was issued by the U.S. District Court for the Western District of Washington ordering Mr. Dzeko to be extradited to Bosnia and Herzegovina.
4. On June 6, 2014 the trial panel of the Criminal Court of Bosnia and Herzegovina found Mr. Dzeko guilty of War Crimes against Civilians and War Crimes against Prisoners of War, under Articles 173(1)(c), (e), and (f), and 175(1)(a) of the Criminal Code of Bosnia and Herzegovina. He was sentenced to twelve years' imprisonment. On December 4, 2014, a three judge panel of the Appellate Division Panel of Section 1 for War Crimes dismissed Mr. Dzeko's appeal and affirmed his conviction. The Court found for the prosecution in its appeal of the sentence, and increased Mr. Dzeko's sentence from twelve years to thirteen years. Mr. Dzeko

remains incarcerated at the Kazнено-Popravni Zavod (KPZ) Sarajevo in The Republic of Bosnia and Herzegovina.

5. In reaching its verdict, the Criminal Court of Bosnia and Herzegovina found the following: Mr. Dzeko was a member of the Zulfikar Special Purposes Detachment (“Zulfikar Detachment”) within the Army of Republic of Bosnia and Herzegovina during the time of war in Bosnia and Herzegovina. As part of this Detachment, he participated in an attack on the village of Trusina with orders from Zulfikar’s deputy commander to leave no Croat survivors (commonly referred to as the “Trusina massacre”). During this attack, Mr. Dzeko participated in the execution of two Croat civilians and six Croat prisoners of war (“POWs”) from the Croatian Defense Council.
  6. These acts, committed on account of religion and nationality, constitute persecution and preclude Mr. Dzeko from establishing that he is a refugee under the INA. As a result, he was ineligible for admission as a refugee and ineligible for adjustment of status pursuant to INA § 209, 8 U.S.C. § 1159. Because Mr. Dzeko was not lawfully admitted as a permanent resident, he was ineligible for naturalization under INA § 316(a); 8 U.S.C. § 1427(a).
- B. Mr. Dzeko’s admission for permanent residence was not lawful because he was inadmissible under INA § 212(a)(6)(C)(i) for having obtained his refugee status through fraud. *See* INA § 212(a)(6)(C)(i) (1998), 8 U.S.C. § 1182(a)(6)(C)(i).

1. In his refugee application process, Mr. Dzeko failed to disclose his membership in the notorious Zulfikar Detachment, as well as his involvement in executing two civilians and six POWs during the Trusina massacre. This information is material because had he disclosed the information, he would not have been classified as a refugee. As noted above, the definition of “refugee” excludes anyone who “ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion.” INA § 101(a)(42), 8 U.S.C. § 1101(a)(42).
2. On January 17, 2001, Mr. Dzeko appeared for an in person interview with the former INS in Split, Croatia. Mr. Dzeko claimed, under oath, to be among a class of aliens not inadmissible to the United States. During that interview, Mr. Dzeko denied any participation in persecution. Mr. Dzeko also signed a form in which he swore or affirmed that he had “never ordered, assisted or otherwise participated in the persecution of any person because of race, religion or political opinion.”
3. In completing his Form I-485, Application to Register Permanent Residence or Adjust Status, Mr. Dzeko checked the box indicating a ‘no’ answer to the question: “Have you ever engaged in genocide, or otherwise ordered, incited, assisted or otherwise participated in the killing of any person because of race, religion, nationality, ethnic origin or political opinion?”

4. Mr. Dzeko's participation in the execution of two civilians and six POWs constitutes persecution and would have precluded him from obtaining refugee status, had it been disclosed. His misrepresentation of this material information made him inadmissible to the United States at the time of adjustment of status.

5. Because Mr. Dzeko was not lawfully admitted as a permanent resident, he was ineligible for naturalization under INA § 316(a); 8 U.S.C. § 1427(a).

VI. Mr. Dzeko illegally procured his naturalization because he could not have established that he was a person of good moral character, as described in INA § 101(f), 8 U.S.C. § 1101(f).

A. Mr. Dzeko could not establish good moral character because he committed, assisted in, and/or otherwise participated in extrajudicial killings. *See* INA § 101(f)(9), 8 U.S.C. § 1101(f)(9).

1. A naturalization applicant is barred from establishing good moral character if he at any time "committed, ordered, incited, assisted, or otherwise participated in the commission of— . . . (II) under color of law of any foreign nation, any extrajudicial killing, as defined in section 3(a) of the Torture Victim Protection Act of 1991 (28 U.S.C. § 1350 note)." INA § 212(a)(2)(E)(iii) (2006), 8 U.S.C. § 1182(a)(2)(E)(iii).

2. "Extrajudicial killing" is defined as "a deliberated killing not authorized by a previous judgment pronounced by a regularly constituted court affording all the judicial guarantees which are recognized as indispensable by civilized peoples." 28 U.S.C. § 1350 note, § 3(a).

3. Mr. Dzeko's integral role in carrying out the Trusina massacre falls within the scope of extrajudicial killings.
  4. Because Mr. Dzeko participated in extrajudicial killings prior to naturalization, he could not establish that he possessed good moral character. *See* INA § 101(f)(9); 8 U.S.C. § 1101(f)(9). Therefore, he was ineligible for naturalization.
- B. Mr. Dzeko could not establish good moral character because he provided false testimony in his naturalization interview. *See* INA § 101(f)(6), 8 U.S.C. § 1101(f)(6).
1. An applicant for naturalization must establish that he has been a person of good moral character for the statutory period of five (5) years immediately preceding the application's filing, and until the oath of allegiance is taken. *See* INA § 316(a)(3); 8 U.S.C. § 1427(a)(3); 8 C.F.R. § 316.10(a)(1).
  2. As an applicant for naturalization pursuant to INA § 316(a), Mr. Dzeko was required to prove that he was, and continued to be, a person of good moral character for the statutory period before his application was filed and through the date of his naturalization – from April 10, 2001 until July 27, 2006. *See* INA § 316(a)(3), 8 U.S.C. § 1427(a)(3).
  3. On July 20, 2006, USCIS District Adjudications Officer David Obedoza conducted a naturalization interview of Mr. Dzeko in Seattle, Washington. At the start of the interview, Mr. Dzeko took an oath, swearing or affirming that he would answer all questions truthfully.

4. Part 10, Question 11 of Mr. Dzeko's naturalization application asked: "Have you EVER, persecuted (*either directly or indirectly*) any person because of race, religion, national origin, membership in a particular social group, or political opinion?" In response to this question, Mr. Dzeko checked the box for "No."
5. During the July 20, 2006 naturalization interview, Officer Obedoza asked Mr. Dzeko Part 10, Question 11. In response, Mr. Dzeko verbally denied any involvement in acts of persecution while under oath during his interview.
6. Mr. Dzeko's testimony in this regard was false. In fact, Mr. Dzeko participated in the execution of two civilians and six POWs on account of their religion and nationality during the Trusina massacre. For his actions, he was later convicted of committing war crimes by the Court of Bosnia and Herzegovina, Section 1 for War Crimes, and this conviction was upheld by the Appellate Panel of that Court.
7. Mr. Dzeko's actions during the Trusina massacre were an act of persecution.
8. Because Mr. Dzeko provided false testimony, under oath, during the statutory period prior to naturalization, he could not establish that he possessed good moral character. *See* INA § 101(f)(6); 8 U.S.C. § 1101(f)(6); 8 C.F.R. § 316.10(b)(2)(vi). Therefore, he was ineligible for naturalization.

- C. Mr. Dzeko could not establish good moral character because he participated in the execution-style murders of two civilians and six POWs at Trusina. *See* INA § 101(f), 8 U.S.C. § 1101(f); 8 C.F.R. § 316.10(b)(3)(iii).
1. Although the Government must consider at least the five-year statutory period when assessing an applicant's moral character, the Government may consider an applicant's conduct at any time prior to the statutory period if his conduct during the statutory period does not reflect a reform of character, or if the earlier conduct is relevant to a determination of his moral character at the time he seeks to naturalize. *See* INA § 316(a)(3), 8 U.S.C. § 1427(e); 8 C.F.R. § 316.10(a)(2).
  2. Absent extenuating circumstances, an applicant for naturalization cannot establish good moral character if he has "committed unlawful acts that adversely reflect upon the applicant's moral character." 8 C.F.R. §316.10(b)(3)(iii).
  3. Furthermore, the INA's definition of good moral character contains a residual provision, which states, "[t]he fact that any person is not within any of the foregoing classes shall not preclude a finding that for other reasons such person is or was not of good moral character." INA § 101(f), 8 U.S.C. § 1101(f).
  4. The determination of good moral character is based on the "the standards of the average citizen in the community of residence." 8 C.F.R. § 316.10(a)(2) (referencing INA § 101(f), 8 U.S.C. § 1101(f)).

5. Eight years prior to the beginning of the statutory period, Mr. Dzeko committed the crime of murder by participating in the execution-style murders of two unarmed civilians and six POWs in Trusina because of their religion and nationality. Over the next several years—including during the statutory period—Mr. Dzeko violated federal law by misrepresenting and concealing his role in the Trusina massacre, thereby concealing from immigration officials that he had committed the murders, and ultimately securing U.S. citizenship.
  6. Mr. Dzeko’s commission of these murders prior to the statutory period, and his subsequent efforts within the statutory period to conceal those crimes, indicate that he had not reformed his character and was not a person of good moral character under “the standards of the average citizen in the community of residence.” 8 C.F.R. § 316.10(a)(2).
  7. Because Mr. Dzeko could not establish that he possessed good moral character during the statutory period before naturalization, he was ineligible to naturalize. *See* INA § 101(f)(6), 8 U.S.C. § 1101(f)(6); 8 C.F.R. § 316.10(b)(3)(iii).
- D. Mr. Dzeko could not establish good moral character because, during the statutory period, he committed unlawful acts which constitute federal crimes, including false swearing in an immigration matter, making false statements, and perjury. *See* INA § 101(f), 8 U.S.C. § 1101(f).
1. During the statutory period, Mr. Dzeko knowingly made, under oath of penalty of perjury, false written and oral statements in immigration

matters and in executive branch matters. Specifically, he stated on his Form N-400 and testified during his naturalization interview that he had never: ordered, assisted, or otherwise participated in the persecution of any person because of race, religion, national origin, or political opinion; committed a crime for which he had not been arrested; or given false information to immigration authorities for an immigration benefit or admission to the United States.

2. These false statements constitute the essential elements of three federal crimes: false swearing in an immigration matter, in violation of 18 U.S.C. § 1546(a); making false statements, in violation of 18 U.S.C. § 1001(a); and perjury, in violation of 18 U.S.C. § 1621(1). Such crimes adversely reflect on Mr. Dzeko's moral character at the time he sought to naturalize.
3. Because Mr. Dzeko committed unlawful acts during the statutory period that adversely reflected on his moral character, he was not a person of good moral character, and was ineligible to naturalize under INA § 316(a)(3), 8 U.S.C. § 1427(a)(3). *See* 8 C.F.R. § 316.10(b)(3)(iii).

VII. Mr. Dzeko illegally procured his naturalization because he procured citizenship by concealing and misrepresenting material facts. *See* INA § 340(a), 8 U.S.C. § 1451(a).

- A. A fact is material if it would have the natural tendency to influence the immigration official's decision whether to approve an application. Mr. Dzeko made numerous material misrepresentations in his application for naturalization.

B. Specifically, in his naturalization application, Mr. Dzeko concealed or misrepresented his participation in the execution of two civilians and six POWs during the attack on Trusina.

1. Part 10, Question 11 of Mr. Dzeko's Form N-400 asked: "Have you EVER, persecuted (*either directly or indirectly*) any person because of race, religion, national origin, membership in a particular social group, or political opinion?" In response to this question, Mr. Dzeko checked the box for "No."
2. Part 10, Question 15 of Dzeko's Form N-400 asked: "Have you EVER committed a crime or offense for which you were NOT arrested?" In response to this question, Mr. Dzeko checked the box for "No."
3. Part 10, Question 23 of the Form N-400 asks: "Have you EVER given false or misleading information to any U.S. government official while applying for any immigration benefit or to prevent deportation, exclusion, or removal?" In response to this question, Mr. Dzeko checked the box for "No."
4. Part 10, Question 24 of Mr. Dzeko's Form N-400 asked: "Have you EVER lied to any U.S. government official to gain entry or admission into the United States?" In response to this question, Mr. Dzeko checked the box for "No."
5. During his naturalization interview on July 20, 2006, Mr. Dzeko testified, under oath, that he had never: participated in the persecution of any person because of race, religion, national origin, or political opinion; knowingly

committed any crime for which he had not been arrested; or given false or misleading information a U.S. government official to gain admission to the United States or an immigration benefit.

6. Mr. Dzeko signed the Form N-400 on July 20, 2006, under oath, before Officer Obedoza, thereby certifying, under penalty of perjury, that the information in his naturalization application was true and correct.

7. Throughout his naturalization proceedings, Mr. Dzeko concealed and misrepresented his involvement in the executions of two civilians and six POWs on account of their religion and nationality during the Trusina massacre. In fact, his involvement in the executions constitutes persecution of others and the crime of murder. Mr. Dzeko's misrepresentation and concealment was material to determining his eligibility to naturalize because it would have had the natural tendency to influence the decision of USCIS whether to approve the application. Had this information been disclosed his Form N-400 would have been denied. As a result, his naturalization was illegally procured.

VIII. Based on the facts outlined above, good cause exists to institute proceedings pursuant to INA § 340(a), 8 U.S.C. § 1451(a), to revoke Mr. Dzeko's citizenship and to cancel his certificate of naturalization.

IX. The last known address for Edin Dzeko is:

████████████████████ Sarajevo  
Bosnia and Herzegovina

Declaration in Lieu of Jurat  
(28 U.S.C. § 1746)

I declare under penalty of perjury that the foregoing is true and correct.

Executed: 12/28/2017

  
\_\_\_\_\_  
Michael DeGraaff  
Special Agent  
U.S. Department of Homeland Security  
U.S. Immigration and Custom Enforcement

# **EXHIBIT**

# **B**

**Bosnia and Herzegovina**

**[TN: Bilingual- Serbian text]**



**The Court of Bosnia and Herzegovina**  
**[TN: Bilingual- Serbian text]**

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**Case no: S1 1 K 010294 12 Kri**

**Date of Verdict: June 6, 2014**

**Date of Written Verdict: August 25, 2014**

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**Before the Following Judicial Panel: Judge Saban Maksumic, Panel President**  
**Judge Vesna Jesenkovic**  
**Judge Stanisa Gluhajic**

**THE PROSECUTOR'S OFFICE OF BOSNIA AND HERZEGOVINA**  
**VS**  
**Edin Dzeko**

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**THE VERDICT**

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**The Prosecutor for the Prosecutor's Office of Bosnia and Herzegovina: Vesna Ilic**

**The Counsel for the Defendant: Vasvija Vidovic, Attorney**  
**Edina Residovic, Attorney**

The Court of Bosnia and Herzegovina, Sarajevo, ul. Kraljice Jelene br. 88  
Phone: 033 707 100, 707 596; Fax: 033 707 155

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Case No: **S1 K 10294 12 Kri**  
Sarajevo, June 6, 2014

**IN THE NAME OF BOSNIA AND HERZEGOVINA**

The Court of Bosnia and Herzegovina, Department 1 for War Crimes, represented by a judicial panel consisting of Judge Saban Maksumovic, presiding, and Judges Vesna Jesenkovic and Stanisa Gluhajic as panel members, assisted by the legal assistant Stanislava Radivojevic, acting as the court secretary, in the criminal case against Edin Dzeko indicted of committing the criminal offense of a war crime against civilian population as defined in Article 173, Section 1, Paragraphs c), e) and f) and a war crime against prisoners of war as defined in Article 175, Section 1, Paragraph a) of the Code of Criminal Procedure of Bosnia and Herzegovina, and related to Article 180, Section 1 and Article 29 of the Code, in the matter of the Indictment brought by the Office of the Prosecutor of Bosnia and Herzegovina no: T 20 0 KTRZ 0002954 12, dated June 15, 2012, and modified on March 11, 2015, after the main public oral arguments, which were only partly closed to the public, in the presence of Prosecutor Vesna Ilic from the Office of the Prosecutor of Bosnia and Herzegovina, the defendant Edin Dzeko and his defense counsel Vasvija Vidovic and Edina Residovic, attorneys from Sarajevo, reached and publicly announced the following:

**VERDICT**

**THE DEFENDANT:**

**EDIN DZEKO**, son of father [REDACTED] and mother [REDACTED], born on [REDACTED] 1972 in Gacko, currently residing at ....., unique identification number ....., citizen of ....., with completed high school education specializing in nutrition, employed in a barracks in the U.S., married, father of two underage children, literate, served military service in the Yugoslav National Army (1989/90) in Slovenia and Bihac, no rank and no commendations, middle class, no prior convictions, party to no other criminal proceedings, detained on the territory of the United States based on the order of the Court of Bosnia and Herzegovina of April 14, 2011, kept in detention from December 20, 2011 to June 3, 2013,

**I**

**HAS BEEN FOUND GUILTY**

**OF:**

Acting against Article 3, Section 1, Paragraph a) of the Geneva Convention "relative to the Protection of Civilian Persons in Time of War" of August 12, and Article 3, Section 1, Paragraph a) of the Geneva Convention "relative to the Treatment of Prisoners of War" of August 12, 1949 while a member of the Zulfikar Special Unit of the Army of Bosnia and Herzegovina (SOPN ARBIH "Zulfikar") during the war in Bosnia and Herzegovina and the armed conflict between the units of the Army of Bosnia and Herzegovina and the Croatian Defense Council as follows:

1. In the morning hours of April 16, 1993, the defendant participated in a previously planned attack on the village of Trusina in Konjic Municipality. The attack started from a hill above the village. The village was attacked from multiple directions. During the attack, the defendant, together with Rasem Handanovic, nicknamed Zolja, and other members of the Zulfikar Special Unit, whose identity is known to him, participated in the killing of the following fighters of the Croatian Defense Council (HVO): Ivan Drljo, son of Andrija, born in 1971; Nedeljko Kreso, son of Marinko, born in 1953; Pero Kreso, son of Smiljko, born in 1961; Zdravko Drljo, son of Ivan, born in 1963; Zeljko Blazevic, son of Slavko, born in 1965, and Franjo Drljo, son of Ilija, born in 1942. The HVO fighters had previously surrendered and were lined up when they were killed;
2. In the morning hours of April 16, 1993, the defendant participated in a previously planned attack on the village of Trusina in Konjic Municipality. The attack started from a hill above the village. The village was attacked from multiple directions. During the attack, the defendant fired shots at Ilija Ivankovic, son of Ante, born in 1926, and Andja Ivankovic, daughter of Jure, born in 1936, thereby killing both of them;

**THEREFORE**, the defendant has participated in the killings of prisoners of war and civilians during a war or an armed conflict,

**Thereby committing the criminal offenses according to:**

**Section 1 of the verdict, the criminal offense of the war crime against prisoners of war from Article 144 of the Criminal Code of the Socialist Federal Republic of Yugoslavia, later incorporated into Article 22 of the Code of Criminal Procedure of Bosnia and Herzegovina on the basis of the Act on the Integration of the Criminal Code of Bosnia and Herzegovina and the Criminal Code of the Socialist Federal Republic of Yugoslavia (SFRJ)<sup>1</sup>,**

**Section 2 of the verdict, the criminal offense of the war crime against civilian population according to Article 142, Section 1 of the Criminal Code of the SFRJ.**

**Based on the above and the application of Articles 33, 38 and 41 of the Criminal Code of the SFRJ,**

**The Court sentences the defendant to**

**Ten (10) years in prison for the criminal offense of the war crime against prisoners of war according to Article 144 of the Criminal Code of the SFRJ,**

**Seven (7) years in prison for the criminal offense of the war crime against civilian population according to Article 142, Section 1 of the Criminal Code of the SFRJ,**

**And, based on the application of the Article 48 of the Criminal Code of the SFRJ,**

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<sup>1</sup> Later in the text: KZ SFRJ – the Assembly of the SFRJ adopted the Criminal Code of Bosnia and Herzegovina at a session of the Federal Council held on July 28, 1976 and published it in the Official Bulletin of the SFRJ, issue 44, dated October 8, 1976. After the declaration of independence of Bosnia and Herzegovina, KZ SFRJ was adopted as a law of Bosnia and Herzegovina (with minor modifications) based on the Legal Order dated May 22, 1992, and went into effect the same day.

**THE COURT SENTENCES THE DEFENDANT  
TO A COMBINED PRISON TERM OF TWELVE (12) YEARS**

\*\*\*

In accordance with Article 50, Section 1 of the Criminal Code of the SFRJ, the time Edin Dzeko already served in detention, from December 20, 2011 to June 3, 2014, will be credited towards his sentence.

\*\*\*

In accordance with Article 188, Section 1, of the Criminal Code of Bosnia and Herzegovina, and in connection with Article 186, Section 2 of the Code, the defendant will pay the costs of the criminal proceedings against him and a pre-payment which the Court will determine in a separate decision.

\*\*\*

In accordance with Article 198, Section 2, of the Code of Criminal Procedure of Bosnia and Herzegovina, any claimants with property or financial liability claims are instructed to file separate lawsuits.

**II**

**Based on Article 284, Section 1, Paragraphs a) and c) of the Code of Criminal Procedure of Bosnia and Herzegovina, the Court finds the defendant, Edin Dzeko,**

**NOT GUILTY OF THE FOLLOWING COUNTS OF THE INDICTMENT**

**In which it is claimed that:**

During the war in Bosnia and Herzegovina and the armed conflict between the units of the Army of the Republic of Bosnia and Herzegovina and the Croatian Defense Council, as a member of the Zulfikar Special Unit attached to the Headquarters of the Supreme Command of the Army of the Republic of Bosnia and Herzegovina (SOPN SVK ARBIH "Zulfikar"), acted in violation of Article 3, Section 1, Paragraph a) of the Geneva Convention "relative to the Protection of Civilian Persons in Time of War" of August 12, and Article 3, Section 1, Paragraph a) of the Geneva Convention "relative to the Treatment of Prisoners of War" of August 12, 1949 as follows:

1. On an unknown date in September 1993, the defendant took a captured civilian of Croatian nationality, Mirko Zelenika, from the cellar in the Rogica kuca complex in Donja Jablanica, where the Zulfikar Special Unit was then based. The defendant then took Zelenika to Jablanica, pointed his pistol at him and, threatening to kill him, forced him to take 3.500 German marks from his friends and relatives in exchange for his life. Zelenika did as he was told and the defendant then made him hand the money over to him;

2. On an unknown date in October 1993, the defendant ordered a captured civilian of Croatian nationality, known as "J3", to get out of the barn in the Rogica kuca complex in Donja Jablanica, where the Zulfikar Special Unit was based. Following orders of his commander, Alispaga Zulfikar, called Zuka, the defendant drove the civilian to the civilian's house and, acting on the orders, took 3.500 thousand [sic] German marks from him as well as a bottle of whiskey. He then left the civilian in the house, telling him that he is now under their control and is not allowed to go anywhere;
3. On unknown dates in the second half of 1993, on the highway between Jablanica and Mostar, close to the Prenj Restaurant which provided daily meals to captured civilians and prisoners of war of Croatian nationality from Rogica kuca in Donja Jablanica, where the Zulfikar Special Unit was then based, together with the deputy commander of the Zulfikar Special Unit Nihad Bojadzic, the defendant ordered the captives, including Mirko Zelenika, Miroslav Soko and Marinko Ljoljo, to line up on the highway, while shells fired from nearby positions of the Croatian Defense Council (HVO) were falling around them and yelled at them, "We will kill you if you move, and the HVO will kill you if you don't."
4. On unknown dates in September and October 1993, on the highway between Jablanica and Mostar, close to the Prenj Restaurant which provided daily meals to captured civilians and prisoners of war of Croatian nationality from Rogica kuca in Donja Jablanica, where the Zulfikar Special Unit was then based, together with other members of the Zulfikar Special Unit whose identity is known only to him, used his arms and legs to beat the captured civilians Miroslav Soko and Mirko Zelenika on different parts of their bodies while they were going to or coming back from the restaurant before or after their meals;
5. In the afternoon hours of September 8, 1993, somewhere in Jablanica Municipality, together with the members of the Zulfikar Special Unit Nedzad Hodzic, called Dzoni or Dzoni Vejn, Enis Popara and another member of the Military Police of the Army of Bosnia and Herzegovina, whose identity is known only to him, the defendant:
  - a) Participated in the unlawful capture of the following civilians of Croatian nationality from Jablanica: Mirko Zelenika, Marko Zelenika, Miroslav Soko, Marinko Ljoljo, Ivo Juric, Jure Juric, Vinko Ljubas, Vlado Curic, Mate Bilos. The defendant also participated when the captured civilians were unlawfully locked up in the cellar in the Rogica kuca complex in Donja Jablanica, where the Zulfikar Special Unit was then based;
  - b) While unlawfully detaining the civilian of Croatian nationality Miroslav Soko, the defendant, together with Nedzad Hodzic, also called Dzoni or Dzon Vejn, forcefully hit and kicked Soko on different parts of his body, inflicting on Soko great pain and suffering, endangering his physical integrity and health, while Enis Popara was standing in front of the apartment building where Miroslav Soko lived at the time;
  - c) After unlawfully detaining the civilians of Croatian nationality Mirko Zelenika, Marko Zelenika, Miroslav Soko, Marinko Ljoljo, Ivo Juric, Juro Juric, Vinko Ljubas, Vlado Curic and Mato Bilus, the defendant and others drove the detained civilians through the streets of Jablanica, while the defendant, Edin Dzoko, would yell, "Look at ustashe" [derogatory term for ethnic Bosnian Croats] when they would run into Muslim citizens of Jablanica. Some of the Muslims would then verbally harass the captives, which made them deeply embarrassed, afraid and ashamed.

6. On an unspecified date in September 1993, in the Rogica kuca complex in Donja Jablanica, where the Zulfikar Special Unit was then based, the defendant ordered three other members of the Special Unit, whose identity is known only to him, to extract information about other members of the HVO from the captive of Croatian nationality known as "J2" by beating him with wood boards and concrete blocks and by submerging his head in a barrel full of water. They did this multiple times, while the defendant, who was standing right next to them, egged them on, saying, "Kill him, kill him." This treatment caused severe physical pain in the captive "J2".

**All this in relation to Sections 1 through 4 of the charges resulted that were dismissed in the verdict based on Article 284, Section 1, Paragraph a) of the Code of Criminal Procedure of Bosnia and Herzegovina, and in relation to Sections 5 and 6 of the charges that were dismissed in the verdict based on Article 284, Section 1, Paragraph c) of the Code of Criminal Procedure of Bosnia and Herzegovina,**

**Whereby the defendant Edin Dzeko:**

- **Committed the criminal offense of a war crime against civilian population as defined in Article 173, Section 1, Paragraph f) by engaging in actions described in Sections 1 and 2 (of the "not guilty" part of the charges),**
- **Committed the criminal offense of a war crime against civilian population as defined in Article 173, Section 1, Paragraph c) of the Criminal Code of Bosnia and Herzegovina by engaging in actions described in Sections 3, 4, 5 b), 5 c) and 6 (of the "not guilty" part of the charges),**
- **Committed the criminal offense of a war crime against civilian population as defined in Article 173, Section 1, Paragraph e) of the Criminal Code of Bosnia and Herzegovina by engaging in actions described in Sections 5 a) (of the "not guilty" part of the charges).**

\*\*\*

With respect to the "not guilty" part of the verdict, the defendant is excused from having to pay the costs of the proceedings in accordance with Article 188, Section 4 of the Code of Criminal Procedure of Bosnia and Herzegovina. The costs will be covered by the Court.

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Pursuant to Article 198, Section 3 of the Code of Criminal Procedure of Bosnia and Herzegovina, any claimants with property or financial liability claims are instructed to file separate lawsuits.

## **I. EXPLANATION**

### **A. CRIMINAL PROCEEDINGS**

1. On June 15, 2012, the Office of the Prosecutor of Bosnia and Herzegovina filed the indictment no. T20 0 KTRZ 0002954 12 against Edin Dzeko, charging him with the criminal offense of a war crime against civilian population as defined in Article 173, Section 1, Paragraphs c), e) and f) and a war crime against prisoners of war as defined in Article 175, Section 1, Paragraph a) of the Criminal Code of Bosnia and Herzegovina, and related to Article 180, Section 1, and Article 29 of the Criminal Code of Bosnia and Herzegovina. The defendant is charged with having killed nine people, of whom six were civilians and three were prisoners of war, in the village of Trusina in 1993, and of having participated in unlawful arrests and detainment, looting and inhumane treatment of civilians of Croatian nationality in Jablanica in 1993 during the war on the territory of Bosnia and Herzegovina and during the armed conflict between the Army of the Republic of Bosnia and Herzegovina and the Croatian Defense Council (HVO).

2. At a pre-trial court date on August 15, 2012, in accordance with Article 233.a of the Code of Criminal Procedure of Bosnia and Herzegovina, matters relevant to the main trial, that is, to a more efficient conduct of the trial, were discussed. The main trial started on August 21, 2012 with the reading of the indictment and the introductory remarks by the Office of the Prosecutor of Bosnian and Herzegovina.

3. On March 11, 2014, the Office of the Prosecutor of Bosnia and Herzegovina submitted the amended indictment pursuant to Article 35, Section 2, Paragraph i), Article 226, Section 1 and Article 275 of the Code of Criminal Procedure of Bosnia and Herzegovina. The defense offered no objections to the amended indictment, and the Panel accepted the indictment and continued the proceedings accordingly.

4. At the court date to continue the main trial on March 18, 2014, the Prosecutor stressed that the amended indictment contained a typographical error in the section dealing with the legal qualification of the criminal offense. The Prosecutor said that the reference to Paragraph j) on the criminal offense of a war crime against civilian population as defined by Article 173, Section 1 should be replaced by a reference to Paragraph f) of the said Article of the Criminal Code.

5. The evidentiary proceeding was completed at the court date set for the main hearing on May 13, 2014, after the closing arguments by the prosecution and the defense.

### **B. PROCEDURAL DECISIONS**

#### **1. Decision to exclude the public from part of the trial**

6. Acting in its official capacity, the Panel of the Judges excluded the public from certain parts of the main hearing in accordance with Article 237 of the Code of Criminal Procedure of Bosnia and Herzegovina, which states that “The decision to exclude the public shall be made by the Judge, that is, the Panel, by issuing a decision which must be explained and made public.” The decision to exclude the public was justified by the need to preserve the interests of the witnesses in accordance with Article 235 of the Code of Criminal Procedure of Bosnia and Herzegovina, and had arisen in the continuation of the main hearing held on the following dates: October 10, 2012, October 23, 2012, as well as on January 28, January 26, March 12, March 19, September 11, and November 27, 2013.

7. The Panel made the decision to exclude the public in order to decide on additional security measures to protect the witnesses for the prosecution, that is, to protect the identity of the witnesses who had testified under the aliases “C”, “J4”, “U”, “S” and “R”. In these concrete cases, the public was temporarily excluded from the proceedings while the Prosecutor and the witnesses were presenting the reasons why they were asking for additional security measures, and the defense reacted to the reasons presented.

8. In all of the above cases, having in mind that it is not always possible to anticipate and totally control the dynamics of testimony on legal and factual questions the content of which, if publicly disclosed, could harm the rights and interests of the protected witnesses and thus have negative consequences for the proceedings, the Panel made the decision to exclude the public from the part of the hearing in which the parties were discussing matters related to security measures appropriate in the given circumstances.

9. The Panel also made a decision to partially exclude the public from the hearing when the witnesses for the prosecution under the aliases “E”, “U”, “J2” and “J4”, as well as the defense witness known as “N” were testifying in order to protect the witnesses. The decision was made due to a concern that a witness could be recognized in the public if certain information which could compromise the concealed identity of the witness was revealed through either questions or answers. The public was also temporarily excluded from the hearing when the witness for the Prosecutor Mirko Zelenika was giving his testimony in order to protect the identity of another witness who was mentioned in Zelenika’s testimony, and whose identity was ordered to be protected.

10. During the cross-examination of the witness Rasema Handanovic, the public was temporarily excluded from the hearing on the request of the defense, which was not opposed by the Prosecutor, in accordance with Article 235 of the Code of Criminal Procedure of Bosnia and Herzegovina, because the questions asked of her dealt with details of her private life.

11. In the instances where the public was temporarily excluded from the hearing, the Panel announced the reasons for the exclusion and the decisions based on those reasons once the exclusion was lifted.

## 2. Decision to accept previously imposed security measures

12. On October 10, 2012, the Panel heard the testimony of the witness “C” by accepting previously imposed security measures, that is, protecting the identity of the witness and hearing his testimony under the alias “C” and by declaring that the witness’s personal information shall be protected for a period of 30 years from the effective date of the verdict<sup>2</sup>. Consequently, the witness was given additional security measures<sup>3</sup> in another legal proceeding, in which he gave his testimony hidden from view behind a screen in the courtroom in accordance with Article 3 of the Act on the Protection of Threatened and Endangered Witnesses (ZoZSP) since the witness in question was threatened and endangered.<sup>4</sup> The Court imposed security measures for the witness in accordance with Article 13, Section 1 of the ZoZSP.

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<sup>2</sup> Decision of the Court of Bosnia and Herzegovina no. X-KRN-09/786 dated October 19, 2009.

<sup>3</sup> Court of Bosnia and Herzegovina Case “Mensur Memic et al” no. S1 1 K 003369 10 KRL, the main hearing held on February 10, 2012.

<sup>4</sup> Article 3 of the ZoZSP (1): “**A threatened witness** is a witness whose personal security or the security of his family has been endangered because of his participation in the proceedings, as a result of threats, intimidation or other actions of a similar nature related to his testimony; or a witness who believes there is a reasonable basis for a fear that such danger could probably result from his testimony. (2) **An endangered witness** is a witness who has been seriously physically and psychologically traumatized due to the circumstances in which the criminal offense in question was committed, or a witness with severe psychological issues which make him particularly sensitive...”.

13. The Panel also accepted previously imposed security measures for the witness “**X**”<sup>5</sup> as well as additional security measures imposed at the main hearing<sup>6</sup>. The witness gave his testimony hidden from view behind a screen in the courtroom in accordance with Article 3 of the Act on the Protection of Threatened and Endangered Witnesses (ZoZSP) since the witness in this case was also threatened and endangered. The Court imposed security measures for the witness in accordance with Article 13, Section 1 of the ZoZSP. The witness testified before the Panel on May 21, 2013.

14. The Panel also accepted previously imposed security measures for the witness “**E**” based on the Decision of the Court of Bosnia and Herzegovina no. x-KRN-09/789 dated October 19, 2009 to refer to the witness by an alias. Consequently, the Panel also imposed additional security measures for the witness “**E**” in the case no. S1 1 K003365 09 Krl, “Mensur Memić et al” dated October 19, 2009 as follows: during the witness’s testimony, their voice and appearance were altered. The Panel also prohibited the video and audio recordings of the witness’s testimony from being released to the public. The witness in this matter testified on October 23, 2012.

15. On January 15, 2013, the Panel also accepted the previously imposed security measures for the witness “**M**” based on the Decision of the Court of Bosnia and Herzegovina no. x-KRN-09/786 dated November 6, 2009 in the matter of Mensur Memić et al. to refer to the witness by an alias. The Panel also decided that the witness’s personal information shall be protected for a maximum period of 30 years from the effective date of the decision. At the main hearing in the matter of Mensur Memić et al., no. S1 1 K 003369 09 dated March 28, 2011, the Panel decided to impose additional security measures for the witness “**M**”. The witness was to testify from a separate room, away from the defendants. During the testimony, the witness’s voice was not altered, while the witness’s appearance was altered with an image-altering device. The Panel could see the unaltered image of the witness “**M**”. In summary, the Panel convened in this matter on January 15, 2013 heard the testimony of the witness “**M**” under the same conditions and with all the mentioned security measures in effect.

16. At the court date to continue the main hearing on January 29, 2013, based on the recommendation of the Office of the Prosecutor of Bosnia and Herzegovina, the Panel decided to exclude the public from the testimony of the protected witness “**R**”. The witness “**R**” had previously already been given the alias “**R**” as a security measure in another proceeding before the Court of Bosnia and Herzegovina<sup>7</sup>. Consequently, the Court imposed additional security measures for the witness “**R**” at the main hearing on June 11, 2012 in accordance with Article s 3 and 13 of the ZoZSP. Accordingly, the witness gave his testimony behind a screen in the courtroom. The Panel also prohibited the video and audio recordings of the witness’s testimony from being released to the public. After hearing the parties’ positions on this matter during the main hearing on January 29, 2013, the Panel made the decision to exclude the public from the entire testimony of the witness “**R**” in accordance with Article 235 of the Code of Criminal Procedure of Bosnia and Herzegovina. The defense agreed with the recommendation of the Prosecutor.

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<sup>5</sup> Decision of the Court of Bosnia and Herzegovina no. X-KRN-09/786 dated October 19, 2009.

<sup>6</sup> Court of Bosnia and Herzegovina Case “Mensur Memić et al” no. S1 1 K 003369 10 KRL, the main hearing held on February 4, 2012.

<sup>7</sup> Court of Bosnia and Herzegovina Case “Mensur Memić et al” no. S1 1 K 003369 10 KRL (connected with: X-KRN-09/786).

17. The Panel also accepted the previously imposed security measures for the witness “N”<sup>8</sup> who had been given an alias in a previous proceeding. Additional security measures were also imposed so the witness “N” testified hidden behind a screen from the public present in the courtroom in accordance with Article 3 of the ZoZSP since the witness in this case was also threatened and endangered. The security measures were imposed in accordance with Article 13, Section 1 of the ZoZSP<sup>9</sup>. The witness gave his testimony in this matter on September 3, 2013.

18. At the main hearing held on February 26, 2014, the Panel accepted the recommendation of the Office of the Prosecutor of Bosnia and Herzegovina to give a new alias, “J4” to a witness. The witness had already testified under another alias in another proceeding, but the Office of the Prosecutor suggested before hearing the witness’s testimony that the alias be changed in order to protect his or her identity. The defense had no objections to the recommendation. The Panel finds it useful to stress that the change of the alias does not essentially change or strengthen the previously imposed security measures, but only changes the way the witness would be referred to during the proceeding. The Panel also accepted the previously imposed security measures<sup>10</sup> which required the witness to give his or her testimony from another room with their voice distorted. The personal information of the witness will be kept confidential for a period of 30 years from the effective date of the verdict.

19. When making the decisions to accept the previously imposed security measures and the reasons which necessitated their imposition, the Panel was guided by the fact that the security measures and the confidentiality of personal information were imposed in the investigative phase of the proceedings when the need and justification for the measures were reviewed, and the fact that the additional security measures for the witnesses were imposed in another case before the Court of Bosnia and Herzegovina, when the reasons to impose the measures were reviewed. The Panel had to follow the measures in this proceeding as well since any different treatment of the witnesses or possible alterations of the previously imposed security measures would jeopardize the security measures from the previous case. The witnesses had agreed to the security measures and no objections were raised against them.

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<sup>8</sup> Court Decision no. X-KRN-09/786 dated November 6, 2009.

<sup>9</sup> Court of Bosnia and Herzegovina Case “Mensur Memic et al” no. S1 1 K 003369 10 KRL (connected with: X-KRN-09/786) – the hearing held on May 21, 2012.

<sup>10</sup> Court of Bosnia and Herzegovina Case “Mensur Memic et al” no. S1 1 K 003369 10 KRL (connected with: X-KRN-09/786) – the hearing held on September 3, 2012.

20. At the hearing on March 5, 2013, the Panel also heard the testimony of the witness “**J1**”. The testimonies of the witnesses “**J2**” and “**J3**” were heard on March 12, 2013, and the testimony of the witness “**U4**” was heard on January 21, 2014. There were security measures in effect for all these witnesses. The security measures had been imposed in the investigative proceeding.<sup>11</sup>

### 3. Decision on additional security measures

21. Besides the previously imposed security measures for the witness “**U**”<sup>12</sup>, the Panel imposed additional security measures for the witness at the main hearing on February 19, 2013. The witness gave his testimony behind a screen to hide his appearance from the public present in the courtroom. Additionally, the public was entirely excluded from the courtroom during certain parts of the witness’s testimony in order to protect his identity and the sensitive information about himself or others which was part of his testimony. In accordance with Article 3 of the ZoZSP, the Panel made the decision to treat the witness as a threatened witness and imposed, with his concurrence, security measures pursuant to Article 13, Section 1 of the ZoZSP.<sup>13</sup> The witness had previously stated in the investigative phase of the proceeding a belief that he is in danger from Nihad Bojadzic and his men.<sup>14</sup> The defense had no objection to the additional security measures.<sup>15</sup>

### 4. Resumption of the adjourned main trial

22. Article 251, Section 2 of the Code of Criminal Procedure of Bosnia and Herzegovina states that “The main trial that has been adjourned must recommence from the beginning if the composition of the Panel has changed, but upon the hearing of the parties, the Panel may decide that in such case the witnesses and experts shall not be examined again and that the new crime scene investigation shall not be conducted, but the minutes of the crime scene investigation and testimony of the witnesses and experts given at the prior main trial shall be read only.”

23. At a hearing held on August 27, 2013 in the main trial, the Presiding Judge on the Panel resumed the adjourned main trial in accordance with Article 251, Section 2 of the Code of Criminal Procedure of Bosnia and Herzegovina since the adjournment had lasted longer than 30 days. With both parties in agreement, the verdict was not read again, and the evidence was not examined again since the parties had agreed to use the previously given testimony by the witnesses and the experts. Consequently, the evidentiary proceeding was resumed.

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<sup>11</sup> Decision of the Court of Bosnia and Herzegovina no. S1 1 K 002675 09 Krn dated June 14, 2012. Decision of the Court of Bosnia and Herzegovina no. S1 1 K 002675 Krn dated June 15, 2012.

<sup>12</sup> Decision of the Court of Bosnia and Herzegovina no. S1 1 K 002675 Krn dated June 14, 2012.

<sup>13</sup> Article 3 of the ZoZSP (1): “**A threatened witness** is a witness whose personal security or the security of his family has been endangered because of his participation in the proceedings, as a result of threats, intimidation or other actions of a similar nature related to his testimony; or a witness who believes there is a reasonable basis for a fear that such danger could probably result from his testimony.”

<sup>14</sup> Nihad Bojadzic is a defendant in a separate case dealing with the same matter before the Court. The case no. is S1 1 K 003369 09 Krl.

<sup>15</sup> Article 13 of the ZoZSP: “(2) After hearing the parties and the defense, the Court can decide to protect the identity of the witness by allowing the witness to testify behind a screen or by using an electronic device which alters the voice or the appearance of the witness, or by using video and audio transmission devices which alter the voice or the appearance of the witness.”

**5. Hearing witness testimony via teleconference**

24. The Panel accepted the suggestion of the defense to have the witness Nezir Vila give his testimony via a teleconference link from another country since the witness could not be physically present at the trial because he lives far away. Having in mind that securing the physical presence of the witness in court was both uncertain and hardly feasible, the Panel accepted the proposal in order to continue the trial in an effective manner with as few interruptions as possible while at the same time respecting the principles of the trial and allowing the parties to present all their evidence and also allowing the Presiding Judge to ensure the thorough examination of the case. The witness Nezir Vila gave his testimony on October 8, 2013 as a witness for the defense in this criminal matter. On February 19, 2013, the protected witness “U” also testified via a video teleconference link in this trial as the witness was facing difficulty in coming to the court for the same reasons as the witness Nezir Vila.

**6. Decision to accept the proposal to examine and enter into evidence by reading the transcript of the interrogation of the witness in accordance with Article 273, Section 2 of the Code of Criminal Procedure of Bosnia and Herzegovina**

25. On May 14, 2015, at the court date for the main trial, the Investigative Panel accepted the suggestion of the Office of the Prosecutor of Bosnia and Herzegovina to have the transcript of the interrogation of the witness Marija Loncar in the investigation read in court in accordance with Article 273, Section 2 of the Code of Criminal Procedure of Bosnia and Herzegovina. The witness had died before the trial and the Office of the Prosecutor submitted her death certificate. The defense had no objections to having the transcript read in court, stressing there was no objection to introducing the death certificate issued by the Split County Attorney’s Office on April 19, 2012 as the proof of death, but did raise objections as to the credibility of the witness’s testimony since the witness was closely related to the witness Mirko Zelenika. Additionally, the defense also objected to the validity of the document, as the dead witness could not be cross-examined. The counsel for the defendant Dzeko used the existing legal provision to raise questions that would have been asked of the witness in cross-examination.<sup>16</sup>

**7. Decision to reject the proposal of the Prosecutor’s Office of Bosnia and Herzegovina to examine and enter into evidence the interrogation of the witness Safet Haketa and Vahid Karavelic in accordance with Article 261, Section 2, Paragraph c) of the Code of Criminal Procedure of Bosnia and Herzegovina**

26. On February 17, 2014, the Office of the Prosecutor of Bosnia and Herzegovina submitted a proposal to examine and enter into evidence the copies of the interrogations of the witnesses Safet Haketa and Vahid Karavelic in accordance with Article 261, Section 3, Paragraph c) of the Code of Criminal Procedure of Bosnia and Herzegovina. The defense presented as evidence: the Order of the Supreme Command Headquarters of the Armed Forces of Bosnia and Herzegovina no. 14/75-22 dated March 11, 1993 and the evidence submitted by the Prosecutor, the Decision of the Supreme Command Headquarters of the Armed Forces of Bosnia and Herzegovina, no. 1-10/110-93 dated October, 29, 1993.

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<sup>16</sup> T-1 Transcript of the interrogation of the witness Marija Loncar no. T20 KTRZ 0002954 12 dated May 31, 2012 and Death Certificate no. 2181-06/02-12-2 dated April 19, 2013.

27. At the hearing on February 18, 2014, the office of the Prosecutor of Bosnia and Herzegovina explained the reasons for the mentioned proposal stating that the witnesses would be interrogated about the circumstances surrounding the transport of the wounded members of the Special Unit from Parsovic to Suhodol. Furthermore, the Office of the Prosecutor of Bosnia and Herzegovina stated that the witness Vahid Karavelic was the deputy commander of the First Corps and the commander of the First Corps and suggested that he be interrogated about the circumstances surrounding the evidence O-171 as well as the circumstances surrounding the chain of command in the military formations and the circumstances surrounding the knowledge of the witness Karavelic regarding the events in Trusina. Additionally, the Office of the Prosecutor of Bosnia and Herzegovina also suggested that two material pieces of evidence which would be shown to the mentioned witnesses during their testimony also be presented.

28. The counsel for the defendant Edin Dzeko asked for the proposal of the Prosecutor to be rejected because the presentation of the material evidence proposed by the Office of the Prosecutor of Bosnia and Herzegovina does not meet the conditions set forth in Article 261, Section 2, Paragraph c) of the Code of Criminal Procedure of Bosnia and Herzegovina. The defense stated that during the testimony of the Prosecutor's Office's protected witness "U" it was clearly stated that Edin Dzeko did accompany the wounded fighters to the hospital in Suhodol. The defense further stated that although the above mentioned claims by the defense resulted from the cross-examination of the witness for the prosecution, the Office of the Prosecutor of Bosnia and Herzegovina had the opportunity to further refute the defense's claims even after the cross-examination of the witness. Also, the defense maintained this is further proven by the fact that the Office of the Prosecutor of Bosnia and Herzegovina had had the opportunity to refute this claim during the presentation of the other evidence, but had failed to do so. The defense added that, beside the indictment, the Office of the Prosecutor of Bosnia and Herzegovina had suggested that court hear testimonies of Safet Haketa, Himzo Hondo and Sead Cosic, three witnesses who had participated in the transport of the wounded from Parsovic to Suhodol, but later decided against calling the witnesses.

29. Based on all of the above, the defense believes that the Prosecutor's proposal in this phase of the proceedings is contrary to the core values of the Republic. In its explanation of this position, the defense cited numerous practical examples set by the Court of the Bosnia and Herzegovina as well as other international courts. In summary, the defense claims that the prosecution should have stated clearly which pieces of the defense's evidence it would refute because Article 261, Section 2 of the Code of Criminal Procedure of Bosnia and Herzegovina that the presentation of the evidence of the defense should be followed by the rebutting evidence of the prosecution. Finally, the defense claimed that this was not the rebutting evidence of the prosecution, but an attempt by the Office of the Prosecutor of Bosnia and Herzegovina to rectify the previous failure to present the said evidence during the evidentiary proceedings of the defense.

30. Regarding the presentation of the material evidence, the defense stated no objections to the presentation of the following evidence: Order of the of the Supreme Command Headquarters of the Armed Forces of Bosnia and Herzegovina no. 14/75-22 dated March 11, 1993, since the defense had previously entered the same piece of evidence designated as O-49. Regarding the Decision of the Supreme Command Headquarters of the Armed Forces of Bosnia and Herzegovina no 1-10/110-93 dated October 29, 1993, the defense said it would leave it up to the Court to decide.

31. The Panel rejected the proposal by the Office of the Prosecutor of Bosnia and Herzegovina to hear the testimony of the witnesses Safet Haketa and Vahid Karavelic as the rebutting evidence of the prosecution. The Panel accepted the objections of the defense and found that any further interrogation of the witnesses regarding the circumstances and the transport of the wounded members of the Special Unit on the day in question, and the circumstances surrounding the chain of command in the military units in which the defendant served, would be irrelevant. Regarding the witness Safet Haketa, the Panel accepted the objection of the defense that the witness was not part of the rebutting evidence of the prosecution since

his interrogation was originally proposed in the indictment, but the Office of the Prosecutor had since decided against interrogating him and had furthermore decided that the facts to which the witness would testify were irrelevant in the light of the previously presented evidence.

32. Regarding the witness Vahid Karavelic, the Panel found his testimony on the circumstances surrounding the organization of the military units and the events in Trusina, because Karavelic was not an eye-witness, nor did he have any first-hand knowledge which could be relevant to the matter in this criminal proceeding which forms the basis of the indictment against the defendant Edin Dzeko.

33. The Panel agreed to accept the following material evidence: the Order of the Supreme Command Headquarters of the Armed Forces of Bosnia and Herzegovina no. 14/75-22 dated March 11, 1993<sup>17</sup> and the Decision of the Supreme Command Headquarters of the Armed Forces of Bosnia and Herzegovina, no. 1-10/110-93 dated October, 29, 1993.<sup>18</sup> The defense had no objections and would examine the evidence together with other evidence presented at the trial.

#### **8. Decision on the defense complaint about irregularities in the Investigative process and the extradition of the defendant**

34. In its closing argument, the defense raised a concern about the legality of the extradition of the defendant Edin Dzeko from the United States, stating that the defendant had agreed to a faster, unconditional extradition. The defense also stated that the fact that the defendant was sought starting in 2009 and was only extradited in late 2011 cannot be blamed on the defendant because the Office of the Prosecutor of Bosnia and Herzegovina had not even attempted to summon the defendant. Moreover, the Office of the Prosecutor of Bosnia and Herzegovina kept sending to the U.S. authorities incomplete extradition requests which led to delays in the process of extradition. The defense counsel pointed out that the Office of the Prosecutor of Bosnia and Herzegovina acted very unprofessionally and even illegally in this matter thus bringing into question the legality of the entire proceeding. The defense counsel also stated that the U.S. authorities based their decision on the extradition of the defendant on an entirely different set of facts than that finally presented in the indictment against the defendant. The counsel stressed that the Prosecutor did not list the charges against Dzeko set forth in the indictment in her extradition request and did not include evidence to support those charges. Consequently, the trial based on the charges against the defendant is contrary to the Extradition Agreement between the United States and Bosnia and Herzegovina since the agreement stipulates that there can be no proceedings outside of what was requested in the extradition request.

35. After reviewing the document, the Panel concluded that the same objection had already been raised with respect to the indictment and was rejected by the Court as baseless since the defendant Dzeko had not been extradited as part of the regular extradition process as he had already waived his right to formal extradition and a hearing in the extradition process. In the context of all of the above, the Court decided that there were no obstacles to the defendant being tried for the criminal offenses with which he had been charged, regardless of the fact that certain charges from the indictment were not included in the initial extradition request.

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<sup>17</sup> Evidence T-110 and evidence O-49.

<sup>18</sup> Evidence T-111.

36. The defense also claimed that the Prosecutor in the investigation had severely broken the rules regarding prosecutorial independence and impartiality as set forth in Article 2 of the Act on the Office of the Prosecutor of Bosnia and Herzegovina, Article 5 of the Regulations Governing the Internal Organization of the Prosecutor of Bosnia and Herzegovina, Article 1 of the Code of Prosecutorial Ethics and also legal principles from Article 2 of the Code of Criminal Procedure of Bosnia and Herzegovina as well as the provisions of Article 6 of the European Convention on Human Rights, primarily by directly bringing into the investigation an employee of the highest executive body of the republic, Mato Zeko. This is evident from the reply of the Secretariat of the Presidency of Bosnia and Herzegovina dated January 13, 2012, which, according to the defense, clearly shows that Mate Zeko was not an employee of the Office of the Prosecutor of Bosnia and Herzegovina or an authorized police officer, but an employee of the Presidency of Bosnia and Herzegovina.

37. The Panel rejected the objection of the defense as unfounded as the defense had not submitted any concrete proof that Mate Zeko had in any way jeopardized the investigation, that is, in any way that would harm the defendant. That is, the defense did not list any consequences of the alleged participation of Mate Zeko in the investigative process, especially in light of the fact that the defense never objected to the legality of the evidence presented on account of the participation of Mate Zeko in the collection of material evidence.

38. The defense also claims that the defendant's rights to defense were severely violated in this criminal proceeding since numerous pieces of material evidence, such as documents, statements and official notes and transcripts made during the interrogation of the witnesses were not submitted or made available. This is a serious violation of the defendant's right to a fair trial and the duty of the Office of the Prosecutor of Bosnia and Herzegovina to submit all files and evidence for inspection to the defense attorney in accordance with Article 47, Section 3 of the Code of Criminal Procedure of Bosnia and Herzegovina.

39. The Panel rejected this objection because the defense had not previously suggested that the investigation be postponed or that witnesses be interrogated later in situations when such testimony which came to light during the interrogation of a witness in the main trial is not obtained, even when the Panel would accept such a suggestion. The defense could have, having possibly obtained new evidence, proposed that the witness be heard as a witness for the defense or even in additional evidence. However, there were no such proposals and the Panel had no knowledge or indication that the Office of the Prosecutor could be in possession of any evidence that had not been made available to the defense.

### **C. EVIDENTIARY PROCEDURE**

40. The following witnesses testified as proposed by the Office of the Prosecutor of Bosnia and Herzegovina: Ramiz Beciri on August 28, 2012, Rasema Handanovic on September 11, 2012, Salko Sahinovic on October 2, 2012, the witness "C" on October 10, 2012, the witness "E" on October 23, 2012, Anica Blazevic on October 30, 2012, Mara Delinac on October 30, 2012, Dragan Drljo on November 13, 2012, Milka Drljo on November 12, 2012, Mara Drljo on November 20, 2012, Cecilija Simunovic on November 20, 2012, the witness "S" on November 27, 2012, Nikola Drljo on November 27, 2012, Luca Kreso on December 4, 2012, Marija Miskic on December 4, 2012, Atif Karovic on December 18, 2012, the witness "M" on January 15, 2013, the witness "R" on January 29, 2013, the witness "U" on February 19, 2013, the witness "J4" on February 26, 2013, the witness "J1" on March 5, 2013, the witness "J2" on March 12, 2013, the witness "J3" on March 12, 2013, Mirko Zelenika on March 19, 2013 and March 26, 2013, Marinko Ljoljo on April 2, 2013, Vinko Ljubas on April 9, 2013, Miroslav Soko on April 16, 2013, Marinko Dreznjak on April 23, 2013, Marinko Rozic on May 7, 2013, Ivan Pavlovic on May 14, 2013, Maksim Kujundzic on May 14, 2013 and the witness "X" on May 21, 2013.

41. The Office of the Prosecutor of Bosnia and Herzegovina presented and submitted into evidence the material evidence listed in the Appendix to the Verdict. Accordingly, the testimony of the witness Marija Loncar given during the investigation was read in the courtroom during the main trial on May 14, 2013 in accordance with Article 273 of the Code of Criminal Procedure of Bosnia and Herzegovina.

42. The following witnesses testified as witnesses for the defense: Remzija Siljak on July 16, 2013, Senad Mikic on July 16, 2013, Redzo Poturovic on July 23, 2013, Mustafa Hakalovic on July 23, 2013, Zijo Causevic on July 23, 2013, Nazif Keskin on August 27, 2013, Vahidin Pozder on August 27, 2013, Elvir Murvat on August 27, 2013, the witness "N" on September 3, 2013, Muharem Hakalovic on September 3, 2013, Alma Merdzanic on September 24, 2013, Nusret Djelilovic on September 24, 2013, Nehru Manjusak on October 1, 2013, Branislav Manigoda on October 1, 2013, Nezir Vila on October 8, 2013, Miralem Muratovic on October 22, 2013, Irfan Maslesa on October 22, 2013, Erdin Arnautovic on October 29, 2013, Elvedin Ibrahimovic on November 5, 2013, Suvad Rogo on November 5, 2013, and the witness "U4" on January 21, 2014. As proposed by the defense, the defendant Edin Dzeko gave his testimony as a witness on December 10, 2013 and the defense presented a substantial amount of material evidence listed in the Appendix to this verdict.

#### **D. CLOSING ARGUMENTS**

##### **1. The Office of the Prosecutor of Bosnia and Herzegovina**

43. The Office of the Prosecutor of Bosnia and Herzegovina presented its closing argument on April 8, 2014. The Prosecutor that the general elements of the criminal offense of a war crime against civilian population from Article 173, Section 1, Paragraphs c), e) and f) and the criminal offense of a war crime against prisoners of war from Article 175, Section 1, Paragraph a) of the Criminal Code of Bosnia and Herzegovina had been proven. In this context, the Prosecutor briefly summarized the general elements of the two criminal offenses and pointed out that it had been proven that the act committed by the defendant was a violation of international law, that the violation occurred during a war, an occupation or an armed conflict, and it was connected to a war, an armed conflict or an occupation, and that the defendant had to either order or commit the said act. The Prosecutor detailed each general element and mentioned the supporting evidence. Continuing her closing argument, the prosecutor summarized the proceeding and the evidence presented, paying particular attention to the witness testimony as it related to each charge in the indictment and she also gave a timeline of the events.

44. The Office of the Prosecutor of Bosnia and Herzegovina claimed that the defendant Edin Dzeko committed the criminal offenses with which he is charged while a member of the Zulfikar Special Unit attached to the Headquarters of the Supreme Command of the Army of the Republic of Bosnia and Herzegovina together with other members of the Special Unit whose identity is known only to him, but also that he committed certain criminal offenses by himself and thus bears personal responsibility for them. The Prosecutor maintained that it was proven beyond reasonable doubt during the course of the evidentiary process that the defendant Edin Dzeko had been a member of the so-called Zuka's unit starting in August 1992 and that the unit was renamed as Zulfikar Special Unit attached to the Headquarters of the Supreme Command of the Army of the Republic of Bosnia and Herzegovina (SOPN SVK) on January 22, 1993. Furthermore, the Prosecutor said that the defense had tried to prove that the SOPN SVK unit ceased its operations as a unit when it was incorporated first into the First Corps of the Army of Bosnia and Herzegovina and later into the Fourth Corps, which would mean that the unit no longer operated under the Headquarters of the Supreme Command, but the evidence labeled as T-117 (Decision of October 5, 1993) shows that the Zulfikar unit did not enter the chain of command of the Fourth Corps and that it continued to exist as the independent unit SOPN SVK OS. According to the Office of the Prosecutor of Bosnia and Herzegovina, it is undeniable that the defendant Edin Dzeko was a member of the Special Unit as late as April 1993 as well as in September and October 1993.

45. Summarizing Sections 1 and 2 of the Indictment, the Office of the Prosecutor of Bosnia and Herzegovina recapitulated in detail the statements of the witnesses for the prosecution and the witnesses for the defense who had testified about the circumstances surrounding the events. The Prosecutor pointed out that there are discrepancies in the testimonies of the eyewitnesses, especially those members of the Special Unit who had participated in the attack on Trusina, but that only proves that they were telling the truth, that is, they were recounting what they saw that day. Furthermore, the Prosecutor stated that the defense had from the beginning put forth a theory that the defendant drove away with the wounded and that he did not return to Trusina and that, although witnesses testified to that, this theory by the defense was hard to accept. The Prosecutor also stated that the defense claimed that the defendant was armed with a semi-automatic sniper rifle with no scope and could not have participated in the firing squad because, according to the defense, such a sniper rifle cannot be used to fire upon and kill people at close range. However, according to the Prosecutor, the witnesses were firm in their testimony that the defendant was carrying an M-16 rifle capable of firing burst of fire that day.

46. With respect to Section 3, Paragraphs a), b) and c) and Sections 4, 5, 6, 7 and 8, the Prosecutor in her closing argument analyzed in detail all the witness testimony and rejected the defense's claim that the defendant was only accompanying the individuals of Croatian nationality as they were being taken away in Donja Jablanica, that is, he was only doing their duty and that the incriminating actions could actually be ascribed to another individual called Dzeki due to a similar name or a person who was wearing a hat at the time. The Prosecutor also rejected the defense's claims that the defendant never beat anybody, that he was rarely present in the Special Unit's base in Donja Jablanica, that he lived in town, that he was mistaken for another man, that there was no shelling in Donja Jablanica, and that the cook was not wounded in the leg but fell down the stairs instead. The Prosecutor pointed out that the witnesses did not make any mistakes regarding the identity of the defendant, and that his former fellow fighters were firm in their claims that the defendant had committed criminal offenses and that not even the witnesses for the defense had confirmed mistaking the defendant for Dzeki.

47. Finally, the Office of the Prosecutor stated that the Judges Panel can clearly and incontrovertibly make a conclusion about the criminal and legal responsibility of the defendant Edin Dzeko, that is, that the defendant is responsible for the actions amounting to the criminal offense of a war crime against civilian and a war crime against prisoners of war. The Office of the Prosecutor of Bosnia and Herzegovina stated that there are no mitigating factors to be taken into account, because the defendant's age and marital status cannot be considered as mitigating factors, and his good behavior during the trial also cannot be used as a mitigating factor. The Prosecutor maintained that the following facts are aggravating factors in this case: the defendant was already an experienced fighter when he committed the criminal offenses for which he was being tried, that he participated in combat operations, that he could have been an example to his fellow fighters, and that the Panel should also take into consideration the number of the criminal offenses he had committed and the manner in which they were committed as well as the number of the victims he had killed and physically abused.

48. In the light of all the evidence presented, the Office of the Prosecutor of Bosnia and Herzegovina asked the Court to impose a long prison sentence and to extend any existing restrictive measures already imposed on the defendant until the effective date of the verdict in accordance with Article 126.b Section 5 of the Code of Criminal Procedure of Bosnia and Herzegovina.

## **2. Defense**

49. In its closing argument before the Panel, the defense refuted the claim that in the time period encompassing the events in the indictment, that is, from April 12, 1993 to the end of 1993, the Special Unit was organizationally attached to the Headquarters of the Supreme Command of the Army of Bosnia and Herzegovina, and that the Prosecutor had presented a considerable amount of evidence during the evidentiary process which do not confirm the claim by the Prosecutor that the Zulfikar Special Unit was an organizational part of the the Headquarters of the Supreme Command of the Army of Bosnia and Herzegovina. According to the defense, the accurate examination of the evidence during the proceeding showed that the Special Unit was not an integral part of the Headquarters of the Supreme Command at the time the events under consideration took place in 1993, and that the defendant Dzeko was then just a regular member of the Special Unit.

50. With respect to Section 1 of the indictment, the defense does not deny that the event in question took place on April 16, 1993 and that, on that day, six people were killed by a firing squad in the hamlet of Gaj. The names of the victims were included in the indictment. The defense does not deny that this event happened during the armed conflict on the territory of Bosnia and Herzegovina, that the attack started from several directions on a rise above the village of Trusina. However, the defense questions the status of the victims, especially the individuals who were described as civilians in Section 1 of the indictment, and also denies the claim that the attack on the village of Trusina was planned in advance and well prepared, as well as the claim that during the attack no care was taken to distinguish between civilian and military targets. The defense particularly denies that the defendant Dzeko participated in the killings of the fighters of the Croatian Defense Council and civilians as stated in the indictment. In its closing argument, the defense also pointed out that it did not dispute the fact that there was an armed conflict between the Army of the Bosnia and Herzegovina and the Croatian Defense Council at the time of the events described in the indictment, and that the clashes were particularly brutal in the area of Konjic and Jablanica as corroborated by substantial evidence submitted by the Office of the Prosecutor of Bosnia and Herzegovina and the defense.

51. The defense described in detail the movements of the accused Edin Dzeko at the beginning of the attack on the village of Trusina as well as after it became known that his fellow fighter Samko and the protected witness "U" had been wounded, which gives particular weight to the defense's claim that the defendant was not present in Gaj and could not have participated in the killing of the captured fighters of the Croatian Defense Council. According to the defense, all the evidence presented shows that the defendant

Dzeko drove the wounded member of his unit, Samko, and the protected witness "U" from the location where they were wounded at the intersection in the village of Trusina to the improvised field hospital in the village of Gostovici. The defense also claimed that the drive from the point where Samko and the protected witness "U" were wounded to the improvised field hospital in the village of Gostovici lasted from 15 to 20 minutes and that it also took from 15 to 20 minutes to administer the first aid to the wounded in the field hospital in the village of Gostovici. In its closing argument the defense claimed that the evidence presented shows that the defendant was present all throughout while the first aid was being administered to the wounded in the Ilica kuce complex in the village of Gostovic, and that from the moment the two members of the Special Unit were wounded at the intersection in the village of Trusina until the moment the captured members of the Croatian Defense Council were killed by a firing squad in the hamlet of Gaj some 15 to 30 minutes passed. Therefore, according to the defense, the evidence clearly shows that the defendant Dzeko, having transported the wounded Special Unit members, could not have reached the hamlet of Gaj in time to participate in the killing of the captured members of the Croatian Defense Council. The defense counsel pointed out that the Prosecutor's claim that the defendant Dzeko had had enough time to return from the village of Gostovici to the hamlet of Gaj and participate in the criminal offense is, according to the defense, not believable, objectively impossible and not supported by any evidence.

52. With respect to the appearance of the defendant during the incriminating events from Section 1 of the indictment, the defense pointed out that, although several witnesses had said that the defendant Dzeko had worn a black uniform in Trusina, those claims were not confirmed beyond a reasonable doubt. Furthermore, contrary to the Prosecutor's claims, the defense stated that, during the action in the village of Trusina, the defendant Dzeko was armed with a semi-automatic Serbian "Crvena zastava" sniper rifle with a wood stock which is not capable of firing bursts of fire. With respect to Section 2 of the indictment, the defense stated that the Office of the Prosecutor of Bosnia and Herzegovina did not prove beyond a reasonable doubt that the defendant Edin Dzeko had participated in the killings of the civilians Ilija and Andja Ivankovic. The defense counsel that the defendant was not present close to the location where Ilija and Andja Ivankovic were killed, that is, he was not either near the shop nor at the place where the victims were killed in the hamlet of Sahici in Trusina. Also, the defense counsel addressed the credibility of the protected witness "E" and Rasema Handanovic, stating that those witnesses cannot be believed because they had themselves participated in the killings in the hamlet of Sahici and were most probably the actual perpetrators of the killings of Andja and Ilija Ivankovic. Analyzing the evidence presented, the defense concluded that the defendant Dzeko was at the time not physically present near the shop where the killings took place, and that he did not have a rifle capable of firing burst of fire. The defense, therefore, asked that this charge against the defendant be dismissed.

53. With respect to the killing of Kata Drljo, with which the defendant is charged in Section 2 of the indictment, the defense lawyer claimed that the Office of the Prosecutor of Bosnia and Herzegovina had not proven this part of the indictment beyond a reasonable doubt either. The counsel pointed out that the Prosecutor in her closing argument analyzed the testimony of the witnesses who had testified about the killings of Ante Drljo, his wife Kata Drljo and his mother, also Kata Drljo, but that none of the testimony specifies which Kata Drljo was being discussed, and, especially, none of the testimony points to the defendant Edin Dzeko as the perpetrator of the killings. Therefore, the defense asked the Court to dismiss the charges against the defendant Edin Dzeko in the matter of the killing of Kata Drljo.

54. In her closing argument, the defense counsel addressed the credibility of the witnesses, particularly Ramiz Beciri, the protected witness "R", the protected witness "E", the protected witness "J4", the witness Rasema Handanovic and the protected witness "X".

55. Furthermore, with respect to Section 3 of the Indictment, the defense claimed that the defendant Dzeko himself had confirmed that the 44<sup>th</sup> Mountain Brigade had been given orders to arrest some members of the Croatian Defense Council in Jablanica and that the Zulfikar Special Unit and other units were also being ordered to arrest some members of the Croatian Defense Council who were living in Jablanica at the time, that is to say, all the units in the area of Jablanica were given the same order. The defense claims that the defendant Edin Dzeko was carrying out an order given by his commander Zulfikar Alispago, as well as his battle assignments and that, according to his own testimony, he participated in the detention of the members of the Croatian Defense Council Vlado Curic, Vinko Ljubas and another individual with the last name of Juric, and that these activities were assigned to the Military Police of the 44<sup>th</sup> Mountain Brigade. The defense pointed out that the defendant Dzeko went to carry out the assignment with Enis Popara who was carrying the written document, that is, the list of the individuals who were supposed to be detained. According to the defense, all the witnesses who testified about the circumstances surrounding these events confirmed that an MP from Jablanica was present while the arrests were taking place. The defense also stated that there are significant discrepancies in the testimonies of the witnesses and the victims, particularly with respect to the presence and actions of the defendant, the clothes the defendant was wearing, the presence of other individuals and the sequence of the arrests of certain victims. The defense attorney Vidovic also pointed out that the witness statements were unreliable and inadequate in answering the question of whether the defendant was responsible for locking the victims in the cellar in the Rogica kuce complex in Jablanica. The defense counsel stated that the witnesses had confirmed that present in front of the Rogica kuce complex in Jablanica were individuals from the highest command ranks of the Army of Bosnia and Herzegovina, including the commander Zulfikar Alispaga, who was the defendant's commanding officer. Edin Dzeko was not a member of the command nor was he in the position to issue any orders to anyone, especially not in a situation where the Corps commanders and commanders of other units of the Army of Bosnia and Herzegovina were present. The defense therefore believes that there is no evidence which proves beyond a reasonable doubt these charges in the indictment, as required by established international standards, and that the Office of the Prosecutor of Bosnia and Herzegovina did not prove that the defendant Edin Dzeko had in any way participated in the locking the victims up in the cellar.

56. With respect to Section 3. b) of the indictment, the defense stated that the defendant Dzeko was not present at any of the arrests made by Nedžad Hodžić. The defense attorney pointed out that the testimony of the victim Miroslav Soko was unreliable since the witness claimed that Nezir Vila was also present in the apartment when the events described in the factual part of the indictment were taking place. Furthermore, the defense counsel also pointed out the testimony of the defendant himself in which the defendant said he did not know Miroslav Soko nor had he been in any physical contact with him, and that he knows him today only because he used to socialize with his sister and brother-in-law after the war. The defense pointed out that the victims who testified themselves did not confirm that the defendant Dzeko had committed the acts with which he was charged in Section 3 c) of the indictment, namely, that no witness said that Edin Dzeko was yelling, "Look at the Ustashe" and that the defendant Edin Dzeko could not have in any way affected the decision to arrest members of the Croatian Defence Council or the decisions on where and in which conditions those arrested would be detained. The defendant Dzeko was acting on orders from his commanding officer Zulfikar Alispaga and had no reason to suspect the legality of the decision to arrest the named individuals, since he only participated in the arrests as a driver.

57. Contesting that the charges from Section 4 of the indictment have been proven, the defense counsel Vidovic stated that the only witness who had testified about the circumstances surrounding the events described in Section 4 was Mirko Zelenika, that the testimony of the witness Marija Lončar about the said circumstances was read in court, and that based on the other evidence presented in court, the charges from the indictment had not been proven beyond a reasonable doubt, and that there are credible reasons to believe that the matter was a case of mistaken identity, that is, the defendant Edin Dzeko was mistaken for the individual known as Dzeki. Even if the Office of the Prosecutor of Bosnia and Herzegovina had proven the facts in the indictment, the defense maintained that not one of the cumulative elements of the criminal

offense of a war crime against the civilian population in this case had not been met, especially not a serious violation of international humanitarian law.

58. Furthermore, with respect to Section 5 of the Indictment, the defense counsel stated that the defendant Edin Dzeko did not deny that he went to the Zulfikar Special Unit base with the witness “J3”, that is, to his apartment and took the envelope, but he maintains he was only following orders of his commanding officer Zulfikar Alispago. There are no elements of any criminal offense in this as regards the criminal offense with which the defendant was charged in Section 5 of the Indictment. Particularly, there are no elements of a war crime against the civilian population so it is unclear with which criminal offense the Office of the Prosecutor of Bosnia and Herzegovina charged the defendant in Section 5 of the indictment. The defendant was acting on orders of his commanding officer and this was confirmed even by the victim. The order the defendant was following was in no way obviously illegal so he could not disobey. The defendant did not know nor was he supposed to know what was in the envelope. As the witness “J3” confirmed, Edin Dzeko did not open the envelope and examine its contents in front of him. Thus the actions of the defendant do not qualify as a criminal offense, especially not as a war crime against civilian population, particularly since there was no violation of international humanitarian law.

59. The defense also stated that, according to Article 147 of the IV Geneva Convention “*extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly*” constitutes a grave violation of the convention. Therefore, in accordance with the Comment of the International Committee of the Red Cross on the IV Geneva Convention, the “*appropriation*” from Article 147 must be “*extensive*” and “*an isolated incident does not qualify as such.*” With respect to the above, the defense pointed out that there was no evidence which would support the statements of the witnesses who were accusing the defendant Edin Dzeko of criminal offenses from Section 6 of the indictment. Furthermore, the statements of the said witnesses were contradictory, and there is also evidence that supports the possibility that the event in question never took place. The defense also pointed out that there was no information on a possible shelling in the area of Donja Jablanica and the Prenj Restaurant in the period of time addressed by the witnesses, particularly not three days in a row. There is also no evidence that a cook from the Zulfikar Special Unit was wounded in any shelling. There was not a single witness who had testified before the Court of Bosnia and Herzegovina in this matter and had previously mentioned this while testifying about their detention in 1993. Furthermore, the defense pointed out that no witness had testified that the words attributed to the defendant Edin Dzeko in this section of the indictment were uttered by him, and that the witnesses contradicted each other in this matter, especially when it comes to the defendant’s presence at certain locations and his actions there. According to the defense, with respect to this charge in the indictment, the Office of the Prosecutor of Bosnia and Herzegovina did not prove a single element whose cumulative existence is necessary to determine that the criminal offense of a war crime against civilian population had been committed.

60. The defense also believes that the charges from Section 7 of the indictment are not at all supported by the evidence, either material or testimonial, presented at the main trial and that the evidence actually shows that the defendant Edin Dzeko only occasionally visited the base of the Zulfikar Special Unit in Donja Jablanica, and that he did not take his meals at the Prenj Restaurant. Even when he went to the base, he was not with a group of Croats which included Mirko Zelenika and Miroslav Soko. The defendant was wounded in October 1993 and could not move around at that time. According to the defense, with respect to this charge in the indictment, the Office of the Prosecutor of Bosnia and Herzegovina did not prove a single element whose cumulative existence is necessary to determine that the criminal offense of a war crime against the civilian population with which the defendant was charged had been committed. This is particularly the case since the victims were not civilians and, according to established legal practice, the prosecution must prove that the inhuman treatment was of such intensity that it constituted a violation of international humanitarian law.

61. The defense also pointed out that it was clear that the defendant was not a commanding officer and could not issue orders to anybody. The defense counsel also stated that the injuries and inhumane treatment that the witness "J2" had described could be characterized as grave and could have as such had severe consequences for the witness "J2", but the witness "J2" never presented the medical documentation he claimed to have which would have corroborated his claims of having suffered injuries. Furthermore, the Office of the Prosecutor of Bosnia and Herzegovina had never presented any medical documentation as evidence in this proceeding.

62. Contrary to the testimony of the witness "J2", who testified that the defendant Edin Dzeko had ordered that he be abused, the witness Marko Rozic, who claims to have been present when this happened, stated clearly that Dzeko was not present at all. The witness Rozic recognized only Deba as the individual who was beating the witness "J2". Based on this fact, the defense counsel presented the possibility that an individual with a similar name as the defendant Edin Dzeko, a certain Dzeki, was wearing a black hat which the witness "J2" had described. Also, other witnesses had also testified that they had never seen the defendant Edin Dzeko wearing a hat and the witness Marko Rozic said clearly in his testimony that he did not see Edin Dzeko when the witness "J2" was beaten.

63. The defense pointed out that the statements by the witness "J2" contain flagrant contradictions. According to the defense, in his initial statements the witness "J2" said that he was not referring to the defendant Edin Dzeko at all when he was talking about the individual who had allegedly ordered his beating and drowning in a bucket of water. In the end the defense stated that the Office of the Prosecutor of Bosnia and Herzegovina had not proven the existence of the elements of the criminal offense of a war crime against civilian population, especially with respect to the status of the victim "J2" as a civilian as the victim had himself stated in his testimony before the Court of Bosnia and Hergovina that he had been a member of a unit of the Croatian Defense Council at the time of the events under consideration.

64. The defense also summarized the complaints regarding the violation of the procedure in this criminal proceeding, primarily the process of extradition of the defendant Edin Dzeko from the United Nations. According to the defense, the defendant himself had agreed to unconditional extradition. The defense also stated that the fact that the defendant was sought starting in 2009 and was only extradited in late 2011 cannot be blamed on the defendant because the Office of the Prosecutor of Bosnia and Herzegovina had not even attempted to summon the defendant. Moreover, the Office of the Prosecutor of Bosnia and Herzegovina kept sending to the U.S. authorities incomplete extradition requests which led to delays in the process of extradition. The defense counsel also stated that the U.S. authorities based their decision on the extradition of the defendant on an entirely different set of fact than that which was finally presented in the indictment against the defendant. Consequently, the trial based on the charges against the defendant is contrary to the Extradition Agreement between the United States and Bosnia and Herzegovina since the agreement stipulates that there can be no proceedings outside of what was requested in the extradition request.

65. Furthermore, the defense claims that the legality of the proceeding was further violated when the Office of the Prosecutor of Bosnia and Herzegovina decided to involve Mate Zeko, an employee of the country's highest executive body, in the investigation against the defendant Edin Dzeko. The defense also claims that the defendant's right to defense has been violated since numerous pieces of material evidence were not revealed and submitted to the defense for examination. This includes documents as well as official notes made during the witnesses' testimony. According to the defense, this represents a grave violation of the defendant's right to a fair trial and the duty of the Office of the Prosecutor of Bosnia and Herzegovina to submit all the evidence for inspection in accordance with Article 4, Section 3 of the Code of Criminal Procedure of Bosnia and Herzegovina.

**E. APPLICATION OF SUBSTANTIVE LAW**

66. The Panel of the Judges considered the application of substantive law, particularly with respect to the claims in the indictment that the incriminating acts were committed in the period between April and October 1993, when the Criminal Code of the Socialist Federal Republic of Yugoslavia (SFRJ) was in effect. The Code was later adopted by Bosnia and Herzegovina in accordance with the Act on the Adoption of the Criminal Code of Bosnia and Herzegovina and the Criminal Code of the SFRJ.

67. With respect to the application of substantive law and the legal qualification of the criminal offense, the Panel was guided by the principles outlined in Articles 3 and 4 of the Criminal Code of Bosnia and Herzegovina; Article 7, Section 1 of the European Convention on Human Rights; Article 15, Section 1 of the International Pact on Civil and Political Rights, and Article 24, Section 2 of the Rome Statute of the International Criminal Court (the Rome Statute). By applying the mentioned laws, the Panel made a determination that the defendant had in fact committed the criminal offense of a war crime against prisoners of war from Article 144 and the criminal offense of a war crime against civilian population from Article 142 of the Criminal Code of the SFRJ as described in the code.

68. Article 3 of the Criminal Code of Bosnia and Herzegovina defines the principle of legality as one of the main principles of the criminal proceeding as follows:

*“(1) Criminal offences and criminal sanctions shall be prescribed only by law.*

*(2) No punishment or other criminal sanction may be imposed on any person for an act which, prior to being perpetrated, has not been defined as a criminal offence by law or international law, and for which a punishment has not been prescribed by law.”*

69. Furthermore, Article 4 of the Criminal Code of Bosnia and Herzegovina defines the principle of time constraints on the applicability of the criminal code as follows:

*“(1) The law that was in effect at the time when the criminal offence was perpetrated shall apply to the perpetrator of the criminal offence.*

*(2) If the law has been amended on one or more occasions after the criminal offence was perpetrated, the law that is more lenient to the perpetrator shall be applied.”*

70. Similarly, Article 7, Section 1 of the European Convention on Human Rights states:

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

71. Article 15, Section 1 of the International Covenant on Civil and Political Rights states:

*“No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of a lighter penalty, the offender shall benefit thereby.”*

72. Article 24, Section 2 of the Rome Statute states:

*“In the event of a change in the law applicable to a given case prior to a final judgement, the law more favorable to the person being investigated, prosecuted or convicted shall apply.”*

73. It is evident from the above that, in general, the law which was in effect when the criminal offense was committed (*tempus regit actum*) should be applied first.

74. This principle can be ignored only in the interest of the defendant, that is, only if the law was changed after the criminal act was committed and the changes result in a lighter penalty for the defendant. The question of which law would result in a lighter penalty for the defendant is resolved *in concreto*, that is, by comparing the old and the new law or laws in each particular case, because the same law can in one case result in a lighter penalty and in another case in a more severe penalty, depending on which offense the defendant has been charged with as well as the existing rules regulating the charging and sentencing for the said act. It is necessary to examine all the circumstances which might be relevant in making the determination as to which law should be applied in order to achieve a more favorable outcome for the defendant, that is, it should be determined which law is more likely to result in a more favorable decision in a given case (the principle of concreteness).<sup>19</sup>

75. A simple comparison of the text of the laws applicable to a concrete case can yield a firm answer only if the new law decriminalizes something which used to be defined as a criminal offense in the old law, because in that case, the new law is obviously more favorable to the defendant. In an instance when a criminal offense is punishable under both the old and the new laws, it is necessary to examine all the circumstances which might be relevant to the sentencing in the actual case. Therefore, the Court should keep in mind all the rules regarding the existing legal sanctions, types and measures, their imposition and possible mitigation, as well as security measures, secondary penalties, measures amounting to substitute penalties, and other relevant rules guiding sentencing.

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<sup>19</sup> Comments on the Criminal Codes of Bosnia and Herzegovina, Council of Europe, 2003, p. 66.

76. However, it is not enough to identify the law which has a better chance in resulting in a more lenient penalty. Instead, it is necessary to identify the law which would lead to a more favorable outcome for the actual defendant in a given case<sup>20</sup>, as follows from the above mentioned Article 4, Section 2 of the Criminal Code of Bosnia and Herzegovina which states that the law “that is more lenient to the perpetrator shall be applied.” Consequently, it is possible that a law providing a harsher penalty can actually be more favorable for the defendant because the application of some of its provisions could result in a lighter penalty.<sup>21</sup>

77. In this case, both the law which was in effect when the criminal offense was committed, the Criminal Code of the SFRJ, and the law which is currently in effect, the Criminal Code of Bosnia and Herzegovina, have provisions which define the actions for which the defendant has been found guilty as the criminal offense of a war crime against prisoners of war and the criminal offense of a war crime against the civilian population. Consequently, it is clear that there exists a legal basis for a criminal proceeding against the defendant accused of the said criminal offenses and for imposing a sentence against him.

78. The questions of the retroactive application of criminal codes is of paramount legal significance and has already been analyzed and parsed in several decisions of the Constitutional Court and the European Court of Human Rights (the European Court), which have direct implications for the actions of the Court of Bosnia and Herzegovina in matters of war crimes since these decisions are binding in domestic and international legal practice.

79. In the context of all the above, the Panel applied the Criminal Code of the SFRJ in this case. The Panel was guided by the decisions of the the Constitutional Court of Bosnia and Herzegovina, which do not follow the European Court in proscribing that the application of the more favorable law be considered in a given case, but state that the Criminal Code of the SFRJ shall be applied in all the cases in which both laws have provisions regarding the same criminal offense. Furthermore, the decisions of the Constitutional Court of Bosnia and Herzegovina are binding for the Court of Bosnia and Herzegovina.

80. Since the criminal offense of a war crime against the civilian population from Article 173 of the Criminal Code of Bosnia and Herzegovina and the criminal offense of a war crime against prisoners of war from Article 175 of the Criminal Code of Bosnia and Herzegovina, with which the defendant was charged, were also defined in Articles 142 and 144 of the Criminal Code of the SFRJ, the Panel decided that the Criminal Code of the SFRJ should be applied in this case, as the code was in effect when the criminal offenses were committed and is, according to the Constitutional Court of Bosnia and Herzegovina, a more lenient law in this case. The application of the code also follows the guidance of the Constitutional Code of Bosnia and Herzegovina.

## **F. STANDARDS OF EVIDENCE**

81. When reviewing and evaluating the evidence which had been presented at the main trial, the Panel was guided by certain basic principles proscribed in the Code of Criminal Procedure of Bosnia and Herzegovina and in the Convention, as listed below.

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<sup>20</sup> Ibid.

<sup>21</sup> Ibid, p. 67.

82. Article 3, Section 1 of the Code of Criminal Procedure of Bosnia and Herzegovina states that a person shall be considered innocent of a crime until guilt has been established by a final verdict.

83. The purpose of the legal proceeding is to make sure that an innocent person is acquitted and for a perpetrator of an offense is pronounced a criminal sanction in legally prescribed proceedings under the conditions provided by the Criminal Code of Bosnia and Herzegovina (Article 2, Section 1 of the Code of Criminal Procedure of Bosnia and Herzegovina).

84. Furthermore, it is the prosecutor's duty to prove the guilt of the accused beyond any reasonable doubt, since doubt with respect to the existence of facts composing characteristics of a criminal offense or on which depends an application of certain provisions of criminal legislation will result in a verdict that is the most favorable for the accused (Article 3, Section 2 of the Code of Criminal Procedure of Bosnia and Herzegovina).

85. Finally, the Court is bound to objectively study and establish with equal attention facts that are exculpatory as well as inculpatory for the suspect or the accused (Article 14 of the Code of Criminal Procedure of Bosnia and Herzegovina).

86. Article 6, Section 1 of the Convention states that all the courts are bound to "clearly show the basis of their decisions"<sup>22</sup>. Although recognizing the primacy of the domestic judiciary in determining what is relevant and admissible, Article 6, Section 2 of the European Convention imposes upon domestic courts a duty to examine evidence, arguments and other submissions by the parties in an adequate manner.<sup>23</sup> Additionally, the courts must examine and clarify all the discrepancies in the witness statements, show if any of the contested evidence is inadmissible and, if so, demonstrate the basis of their decision.<sup>24</sup>

87. When evaluating the testimony by the witnesses who have testified before the court, the Panel strove to examine their testimonies in their entirety, taking into account not only the content of a given testimony, but also the behavior and appearance of the witness on the witness stand. A witness's credibility depends not only on their knowledge of the event about which they are testifying, but also on their honesty and trustworthiness, and their awareness of the obligation to tell the truth assumed when taking the oath before the court.

88. A witness's testimony should not only be given truthfully, but it should also be trustworthy. The Panel maintained that the trustworthiness of one witness's testimony depends on the witness's knowledge of the facts, but also on the passage of time, the transitory nature of human perception and the traumatic nature of the event itself. The Panel compared the facts about which a given witness testified with the facts corroborated by other witnesses and the relevant material evidence in order to determine if the testimony has been confirmed or contradicted by the other evidence in the case.

89. The Panel also examined the material evidence presented during the proceeding in order to evaluate its trustworthiness and evidentiary value.

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<sup>22</sup> European Court of Human Rights, *Georgiadis v. Greece*, 1997, para 606.

<sup>23</sup> *Van de urk v. The Netherlands*, April 19, 1994, Par. 59.

<sup>24</sup> *Khamidov v. Russia*, June 2, 2008, Par. 173

90. Records on previously given testimony which was included in the proceeding pursuant to Article 273, Section 1 of the Code of Criminal Procedure of Bosnia and Herzegovina were considered by the Court only if there were discrepancies between the previously given testimony and the testimony a witness gave at the main trial. The Court considered only those disparate parts that were questioned by either the prosecutor or the defense.

91. Pursuant to Article 15 of the Code of Criminal Procedure of Bosnia and Herzegovina, the Court has the right to to evaluate the evidence. The Panel carefully evaluated all the evidence presented, both individually and in conjunction with other evidence, and will present its evaluation, as well as the evidence on which its decision is based, in the part of the verdict in which the factual and legal analysis of the charges against the defendant is given.

92. The evidence which was not listed by the Panel in the summary of the verdict was not, in the opinion of the Panel, legally relevant for the determination of the facts, which is why the Panel did not explain it.

## **G. COURT DECISION – GUILTY COUNTS**

### **1. GENERAL ELEMENTS OF CRIMINAL OFFENSES OF WAR CRIMES AGAINST CIVILIAN POPULATION (ARTICLE 142, SECTION 1 OF THE CRIMINAL CODE OF THE SOCIALIST FEDERAL REPUBLIC OF YUGOSLAVIA) AND WAR CRIMES AGAINST PRISONERS OF WAR (ARTICLE 144 OF THE CRIMINAL CODE OF THE SOCIALIST FEDERAL REPLUBLIC OF YUGOSLAVIA)**

93. The Panel found the defendant Edin Dzeko guilty of the criminal offense of a war crime against the civilian population defined in Article 142, Section 1 of the Criminal Code of the SFRJ and the criminal offense of a war crime against prisoners of war defined in Article 144 of the Criminal Code of the SFRJ, and related to Article 22 of the said Code.

94. Article 142, Section 1 of the Criminal Code of the SFRJ states:

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

shall be punished by imprisonment for not less than five years or by the death penalty.”

95. Article 144 of the Criminal Code of the SFRJ states:

“Whoever, in violation of the rules of international law, orders **murders**, tortures or inhuman treatment **of prisoners of war**, including therein biological experiments, causing of great sufferings or serious injury to the bodily integrity or health, compulsive enlistment into the armed forces of an enemy power, or deprivation of the right to a fair and impartial trial, or who commits some of the foregoing acts,

shall be punished by imprisonment for not less than five years or by the death penalty.”

96. For the said criminal offenses to have occurred, it essential that the actions taken in the commission of the offenses represent violations of international law, which points to a blanket character of the criminal offense. These violations are prohibited by the Geneva Conventions and additional protocols, and the basis for the criminal offenses related to war crimes results from the said Conventions.

97. The legal provisions quoted above constitute the basis for the following general elements of the criminal offenses of a war crime against the civilian population and a war crime against prisoners of war:

- The offense committed by the defendant must have been committed in violation of international law;
- The violation must have occurred at the time of war, an armed conflict or an occupation;
- The offense committed must have been related to a war, an armed conflict or an occupation, and
- The perpetrator must have ordered or committed the said act.

98. Therefore, in order to categorize the incriminating actions by the defendant as the criminal offense of a war crime, it is necessary to determine, that is, to conclude based on the evidence presented, that the above-mentioned general elements or conditions for the presence of those elements of the said criminal offenses did indeed exist. The general conditions or elements required for both of the said criminal offenses are the same although the provisions of Article 144 of the Criminal Code of the SFRJ do not require the determination of a war, an armed conflict or an occupation, even though the presence of the same is assumed based on the nature of the criminal offense of a war crime. The protected category of “prisoners of war” from Article 144 of the Criminal Code of the SFRJ also points to the same determination. The said criminal offense can be committed not only in the time of war or an armed conflict but also after their end while there are still prisoners of war under the authority of the country in which they were captured. Prisoners of war enjoy the status of persons protected under international law until the moment of their repatriation.<sup>25</sup>

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<sup>25</sup> Multiple Authors: Comments on the Criminal Code of the SFRJ, Novi Sad, 1978, p. 504.

99. When the legal definitions of the criminal offenses in this case are considered, it is evident that for these offenses to exist it is not necessary to determine the nature, that is, the character of the armed conflict, because a determination of the international or non-international nature of a conflict does not represent a material element of every one of the criminal offenses from Article 142, Section 1 and Article 144 of the Criminal Code of the SFRJ. The character of the conflict must be determined with respect to applicability, that is, protection it affords based on the Geneva Conventions and the related protocols, unless the defendant has been charged with violating Article 3 of the Conventions applicable both in international and non-international armed conflicts, that is, unless the defendant is charged with violation certain provisions of the Conventions which had become settled international common law in every case regardless of the character of a given conflict.

100. Considering the above, in this particular case it is not a necessary pre-condition for the defendant to be aware of the factual circumstances determining the character of the conflict<sup>26</sup>. Instead it suffices if the defendant was conscious of the existence of the armed conflict. This will be further elaborated on later in the verdict.

101. The Panel has determined that, by acting as described in Section 1 of the verdict in violation of rules of international law during the war and conflict between the Army of Bosnia and Herzegovina and the Croatian Defense Council, the defendant participated in the killings of prisoners of war in the village of Trusina, Konjic Municipality, thus committing the criminal offense of a war crime against prisoners of war from Article 144 of the Criminal Code of the SFRJ in connection with Article 22 of the said Code as follows: on April 16, 1993, the defendant, together with Rasema Handanovic, called Zolja, and other members of the Zulfikar Special Unit whose identity is known to him participated in the killings of Ivan Drljo, Nedeljko Kreso, Pero Kreso, Zdravko Drljo, Zeljko Blazevic and Franjo Drljo. The victims were fighters of the Croatian Defense Council who had already surrendered and were lined up in a line.

102. Furthermore, the Panel has decided it has been proven that the defendant did, by acting as described in Section 2 of the verdict and in violation of international law, in fact participate in the killing of civilians in the village of Trusina, Konjic Municipality and did thereby commit the criminal offense of a war crime against civilian population from Article 142, Section 1 of the Criminal Code of the SFRJ as follows: on April 16, 1993, the defendant opened fire at and killed the civilians Ilija Ivankovic and Andja Ivankovic. Considering the elements of the criminal offenses of a war crime against civilian population and a war crime against prisoners of war which say that the act must have been committed in violation of the rules of international law, that the violation must have occurred during the time of war, that the act committed by the defendant must have been related to the war, and that the defendant must have either ordered or committed the act, the Panel has found that all these elements are present in the case of Edin Dzeko.

**(a) The act by the defendant must be committed against the rules of international law**

103. The indictment charges the defendant Edin Dzeko with a criminal offense against civilian population from Article 173 of the Criminal Code of Bosnia and Herzegovina, that is, that the defendant's actions at the incriminated time were violations of the provisions of Article 3, Section 2, Paragraph a) of the 1949 Geneva Convention Relative to the Protection of Civilian Persons in Times of War. The defendant

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<sup>26</sup> Verdict of the Appellate Panel of the International Criminal Tribunal for Former Yugoslavia in the Strugar case, January 2005, Par. 216.

is also charged with violating Article 3, Section a) of the Geneva Convention Relative to the Treatment of Prisoners of War of August 12, 1949. Article 3, Section 1, Paragraph a) of the Geneva Conventions (I-IV) states: “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 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 and 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;”

104. The article quoted above is part of all the Geneva Conventions, that is, it is incorporated in all the four Geneva Conventions of August 12, 1949. The essence of the article is not only that it applies in all kinds of conflict (both international and non-international), but that it guarantees certain rights to all the persons who do not participate directly in hostilities, that is, they are guaranteed humane treatment. The article also prohibits certain actions listed in the sections of the Article 3 of the Convention.

105. In order to determine if rules of international law have been violated in a given case, it is necessary to determine if the act committed was aimed against one of the protected categories of persons covered by the provisions of the Geneva Conventions.

**(i) Prisoners of War (Section 1 of the guilty counts)**

106. In Section 1 of the Indictment the defendant was charged with the criminal offenses of a war crime against civilian population and a war crime against prisoners of war as a co-perpetrator in the killings of six persons, including three civilians and three fighters of the Croatian Defense Council who had already surrendered and were lined up in a line.

107. The parties in the proceeding did not question the nature of the conflict. However, the applicability of the law which provides the basis for the criminal proceedings against the defendant depends on the nature of the conflict and is of essential significance in this decision. Therefore, the Panel will discuss this question as well.

108. According to the Third Geneva Convention, protections afforded to prisoners of war depend on the nature of the given conflict. The difference between an armed conflict which does not have the character of an international conflict and an international armed conflict is essential to the protections provided by the Geneva Conventions. For instance, the Geneva Convention Relative to the Treatment of Prisoners of War of August 12, 1949 (the Third Geneva Convention) describes two level of protection to be afforded to prisoners of war. In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties,” Article 3 provides for a minimal level of protection for persons not taking active part in the hostilities in an internal conflict. The rest of the Convention deals with cases of international armed conflict between two High Contracting Parties and provides for protection for prisoners of war captured in the course of an international conflict. This protection is much wider than the protection

afforded to persons captured in a conflict which does not have the character of an international conflict.<sup>27</sup> This distinction is pointed out in each of the four Geneva Conventions to which Bosnia and Herzegovina is a signatory.

109. Article 144 of the Criminal Code of the SFRJ<sup>28</sup> deals with the criminal offense of a war crime against prisoners of war and contains a phrase about “severe violations” of Article 130 of the Third Geneva Convention.

110. The Panel confirms that Article 144 is closely related to the Third Geneva Convention as the rights protected by Article 144 originate from Article 130 of the Third Geneva Convention. However, it is not at all evident that Article 144 contains the same distinction between an armed conflict not of an international character and an armed conflict of an international character, which resulted in some panels only determining the existence of an armed conflict.<sup>29</sup>

111. The Investigative Panel also took into account the opinion of the Court of Bosnia and Herzegovina in the case against Suljo Karajic, where the Panel, regarding the context of the factual circumstances of the case, decided that the existence of a war between the parties in conflict has been proven. Consequently, the Panel decided that armed conflict as a wider term encompasses war, but that war as a term maintains its autonomous meaning and that this *eo ipso* excludes the need to determine the character of the armed conflict, that is, whether the said conflict is of an international or non-international character. **Based on all of the above**, the Panel decided that the chosen approach which focuses on the existence of war gives a wider legal protection to prisoners of war as protected persons since the Conventions afford a wider degree of protection to prisoners of war in international conflicts than in conflicts of a non-international nature.<sup>30</sup>

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<sup>27</sup> *Office of the Prosecutor v. Blaskic*, IT-95-14-A, verdict of July 29, 2004, Section 170. See also *Office of the Prosecutor v. Brdjanin*, IT-99-36-T, verdict of September 1, 2004, Section 121; *Office of the Prosecutor v. Mladen Naletilic and Vinko Martinovic*, IT-98-34-T, verdict of March 31, 2003, Section 176.

<sup>28</sup> “Whoever, in violation of the rules of international law, orders murders, tortures or inhuman treatment of prisoners of war, including therein biological experiments, causing of great sufferings or serious injury to the bodily integrity or health, compulsive enlistment into the armed forces of an enemy power, or deprivation of the right to a fair and impartial trial, or who commits some of the foregoing acts, shall be punished by imprisonment for not less than five years or by the death penalty.”

<sup>29</sup> Verdict of the Court of Bosnia and Herzegovina in the *Case against Suljo Karajic*, no. S 1 1 K 005379 11 Kzk of November 28, 2011, *Case against Suad Kapic*, X-KRZ-07/431, appellate decision of September 11, 2009. (The appellate panel states that, although Article 175, Section a) of the Criminal Code of Bosnia and Herzegovina does not explicitly require the existence of a war or an armed conflict, it does mention only violations of applicable rules of international law. International law or rules of war are closely related to the existence of an armed conflict and, consequently, it is not possible to commit a war crime if there is no armed conflict and if there is no obvious connection between the accused’s actions and the conflict. Consequently, the Panel has concluded that Article 175 requires the existence of an armed conflict.”); *Case against Veiz Bjelic*, X-KR-07/430/1, verdict of March 28, 2008, p. 6 (“The application of certain principles of international law in this case is woven into the same Articles which the accused is charged with violating [...] It is evident from Article 173, Section 1 of the Criminal Code of Bosnia and Herzegovina that the said article is applicable prima facie to armed conflicts without making a special distinction between internal and international conflicts. The same can be said of Article 175, Section 1 of the Criminal Code of Bosnia and Herzegovina which does not explicitly mention the existence of armed conflict (although the Third Geneva Convention, which prescribes the rules applicable to prisoners of war, also applies in the case of armed conflict.”).

<sup>30</sup> Verdict of the Court of Bosnia and Herzegovina in the *Case against Suljo Karajic*, no. S1 1 K 005379 Kzk of November 28, 2011, p. 45.

112. In this case, the Panel determined that the evidence presented clearly indicates the existence of an armed conflict between the Croatian Defense Council and the Army of Bosnia and Herzegovina in the area of Konjic and Jablanica in 1993. This will be addressed in more detail in the part of the verdict having to do with the proof that the criminal offense in this case occurred during a war, an armed conflict or an occupation.

113. Furthermore, the Panel also took into consideration the noted significant progress in the development of international humanitarian law, whereby the category of a people fighting for self-determination was reclassified from under the heading of non-international to international armed conflict (Article 1, Section 2 of the Supplemental Protocol I). This means that members of resistance movements of these peoples, as well as any other party to the conflict, now have the right to be considered prisoners of war in accordance with the Third Geneva Convention Relative to the Treatment of Prisoners of War. This further means that all the current rules of international humanitarian law in international armed conflicts apply to these persons too.<sup>31</sup>

114. The Panel made the determination that, according to Article 144 of the Criminal Code of the SFRJ, as had been pointed out repeatedly, the existence of armed conflict is not a precondition for the application of the Article. More generally speaking, a person captured during a war may be considered a prisoner of war according to Article 144 of the Criminal Code of the SFRJ, regardless of whether the strict criteria for the recognition of the status of a prisoner of war built into the Geneva Conventions have been met.

115. Furthermore, the Panel certainly gave consideration to the practice of other courts in the region, which seem to confirm that the status of a prisoner of war is primarily given to persons who had fallen under the authority of one of the High Contracting Parties involved in the war. However, this status can also be given to persons in a non-international conflict, if the non-international conflict in question reaches the level of an armed conflict which presupposes organization of armed units in the conflict, and the high intensity which distinguishes the conflict from short-term insurrections and disturbances, and if both parties involved in the conflict have clearly shown the willingness to treat the persons participating in the conflict on one of the sides who fall under the authority of the other side as prisoners of war. Consequently, the norms of humanitarian law have to be applied in such a non-international armed conflict and those persons covered by these norms, especially prisoners of war, should be protected. According to the same practice, if a non-international conflict later grows into an international conflict, this should have no bearing on the status of persons who have already achieved or were in the process of achieving the status of prisoners of war and does not bring into question the application of the provisions of the Third Geneva Convention to persons who have fallen under the authority of one of the parties in the conflict after the character of the conflict has changed.<sup>32</sup>

116. The Panel here also mentions that the conflict between the forces of the Army of Bosnia and Herzegovina and the Croatian Defense Council has been characterized as an international armed conflict in numerous decisions of the International Criminal Tribunal for the former Yugoslavia and the Court of Bosnia and Herzegovina. Consequently, those soldiers fighting for one side in the conflict who fall under

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<sup>31</sup> Modification of the Qualification of Armed Conflict, S. Fabijanic Gagro, Bulletin of the Law School of the Rijeka University, v.29 (2008), no, 2, p. 1071.

<sup>32</sup> Verdict of the Appellate Court of Montenegro, no. Kz-S 24/2012 of July 6, 2012.

the authority of the other side (that is, those soldiers of the Croatian Defense Council who have fallen under the authority of the Army of Bosnia and Herzegovina) should be afforded the protections prescribed by Article 3 of the Third Geneva Convention.

117. By analyzing the evidence related to the victims, the Panel determined that all the individuals who were listed as victims in Section 1 of the Indictment are persons who have the status of prisoners of war. This means that the Panel did not accept the prosecutor's claim from the factual description of the indictment that the victims Zdravko Drljo, Zeljko Blazevic and Franjo Drljo actually had the status of civilians. This was, according to the Panel, clearly shown in the evidence in the court file. That the killed individuals, Ivan Drljo, Nedeljko Kreso, Pero Kreso, Zdravko Drljo, Zeljko Blazevic and Franjo Drljo had had the status of prisoners of war is evident from the testimony of the witnesses heard, particularly the inhabitants of the village of Trusina of Croatian nationality. The testimony given by Dragan Drljo and Mara Drljo shows that fighters of the Croatian Defense Council "Herceg Stjepan" Brigade were present on the position called "Kriz" above the village of Trusina at the time of the attack. **Ivan Drljo, Nedeljko Kreso and Pero Kreso**, all members of the brigade, surrendered at the critical moment.

118. According to the testimony of Milka Drljo and Mara Drljo, the fighters surrendered when the soldiers who had attacked the village sent Milka Drljo to let the soldiers of the village of Trusina who were "holding the line" at the position known as "Kriz" against the positions of the Army of Bosnia and Herzegovina that they must surrender or their wives and children would be killed. The majority of the soldiers surrendered. Among them were the victims Ivan Drljo, Nedeljko Kreso and Pero Kreso, who were unarmed after the surrender and who were then killed. The witness Nikola Drljo corroborated the testimony of Milka Drljo, that she came to get the soldiers who were "holding the line". The witness Nikola Drljo was present when Milka Drljo came to get the soldiers on "Kriz". He testified that Nedeljko Kreso, Pero Kreso and Ivan Drljo did as Milka Drljo told them to do, and followed her back to surrender, while he himself did not surrender, but left the position and went in the direction of Buturovic Polje.

119. Furthermore, it is also evident from the testimony of the witnesses Anica Blazevic and Milka Drljo that the individuals mentioned were members of the armed forces of the Croatian Defense Council. The witness Milka Drljo is the mother of the victim Ivan Drljo. She said in her testimony that he was a fighter of the Croatian Defense Council, that he had a uniform and that he did sentry duty on the "Kriz" position in 1993. All this was also corroborated by the witness Dragan Drljo, a brother of the victim Ivan Drljo. Dragan Drljo also testified in the proceeding. The witness Nikola Drljo also corroborated that the victims Nedeljko Kreso and Pero Kreso were members of the armed forces of the Croatian Defense Council. Also, the witness Luca Kreso, the wife of the victim Pero Kreso also mentioned in her testimony that her husband was a fighter with the Croatian Defense Council in 1993 and that he used to go to the "Kriz" position.

120. On the other hand, the Panel based the conclusion that **Zdravko Drljo, Zeljko Blazevic and Franjo Drljo**, as well as Ivan Drljo, Nedeljko Kreso and Pero Kreso, also had the status of prisoners of war on the evidence, that is, the statements given by the protected witness "S" as well as the witnesses Anica Blazevic, Mara Delinac and Mara Drljo. The witnesses testified that the said individuals also were members of the Croatian Defense Council, which is also evident from the material evidence, namely, the military records of the said individuals and the records of their deaths.

121. The material evidence, that is the military records<sup>33</sup> of Franjo Drljo, Zdravko Drljo and Zeljko Blazevic, and the records and certificates of their deaths show that the three individuals were members of the Croatian Defense Council as follows: Zdravko Drljo<sup>34</sup> was a member from April 6, 1992 to the day of his death; Zeljko Blazevic<sup>35</sup> was a member from September 20, 1991 to April 16, 1993 and Franjo Drljo<sup>36</sup> was a member from April 6, 1992 to April 16, 1993.

122. That the status of prisoners of war also applies to the individuals Franjo Drljo, Zdravko Drljo and Zeljko Blazevic is evident from the records of the interrogations of the surviving inhabitants of the village of Trusina. According to the statements of the surviving witnesses Mara Drljo and Dragan Drljo, who witnessed the events with their own eyes, Franjo Drljo was arrested in his family's house in Gaj and was wearing civilian clothes at the time of the arrest. He was also a fighter of the Croatian Defense Council during the war. This was corroborated by his wife, who said in her testimony that he was a fighter of the Croatian Defense Council in early 1993, but that he had no weapons. The witnesses said that Zdravko Drljo and Zeljko Blazevic were also fighters of the Croatian Defense Council. The witness Anica Blazevic, the wife of the victim Zeljko Blazevic, said in her testimony that her husband was a member of the Croatian Defense Council; that in the night before April 16, 1993, he was on the "Kriz" position, and that he returned the next morning and went to bed to get some sleep. Then gunfire started and Ivan Drljo came to the front door of the house where he was supposed to surrender. Zeljko Blazevic got ready and followed Ivan Drljo. The witness Mara Delinac confirmed that the victim Zeljko Blazevic was not present on the position of the Croatian Defense Council against the positions of the armed forces the Army of Bosnia and Herzegovina. The protected witness "S" said in his testimony that Zdravko Drljo was also a member of the armed forces of the Croatian Defense Council and that he had a uniform which, together with Evidence Item T-100 which shows that military-issue boots and green pants were found with his remains, inevitably leads to the conclusion that the victim was a soldier of the armed forces of the Croatian Defense Council.

123. From all of the above, it is evident that Franjo Drljo, Zdravko Drljo and Zeljko Blazevic were members of the Croatian Defense Council, but also that they were not engaged in fighting and were unarmed when they were killed. The evidence shows that Zdravko Drljo and Zeljko Blazevic were in their respective homes when Ivan Drljo came to get them and told them they they have to surrender. The same holds true for Franjo Drljo, who was taken from his house and put in the line of prisoners right before he was killed.

124. Having analyzed the above-mentioned circumstances in which the victims had fallen under the authority of the other party in the conflict, the Panel also considered the verdicts of the International Criminal Tribunal for the former Yugoslavia in *Prosecutor v. Dario Kordic and Mario Cerkez*<sup>37</sup> in which the Tribunal maintained that members of the armed forces who are at home on leave in the area of the conflict, as well as members of the Territorial Defense Force who are at home keep their fighter status regardless of whether they are participating in fighting for as long as they bear arms. Also, in *Prosecutor v. Blaskic*<sup>38</sup> the Tribunal maintained that special circumstances of the victim at the moment of the criminal offense do not determine the victim's status as a civilian or a non-civilian and if the individual really was a member of an armed organization, the fact that he was unarmed or was not participating in fighting at the moment when the criminal offense was committed does not give him the status of a civilian.

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<sup>33</sup> Decision of the Federal Ministry For Issues Of The Veterans and Disabled Veterans Of The Defensive-Liberation War, no. Pov 07/33-03/1-167/10-01 of December 17, 2010. Evidence Item O-95.

<sup>34</sup> Certificate of the Circumstances of Death no. 1719-07-96-1080 of May 6, 1996, Evidence Item O-96.

<sup>35</sup> Certificate of the Circumstances of Death no. 22-07-49-884/04-01 of December 14, 2004, Evidence Item O-97.

<sup>36</sup> Certificate of the Circumstances of Death no. 22-07-49-899/04-01 of December 14, 2004, Evidence Item O-98.

<sup>37</sup> ICTY Judgment, *Prosecutor v. Dario Kordic and Mario Cerkez*, dated December 17, 2004, Section 51.

<sup>38</sup> ICTY Judgment, *Prosecutor v. Tihomir Blaskic*, dated July 29, 2004, Section 114.

125. The Panel also took into consideration the testimony of the witness Salko Sahinovic, one of the four individuals who were ordered to bury the bodies of the victims killed in the hamlet of Gah. The witness stated that among the others he also found the bodies of Franjo Drljo, who was not wearing a uniform, Ivan Drljo, called Crni, who was wearing a uniform at the time. The witness Sahinovic further said that he had seen the bodies of the victims Nedeljko Kreso and Pero Kreso, also clad in uniforms. The witness also stated that he had seen the body of Zdravko Drljo, called Bosanac, also in a uniform.

126. The Panel also considered the reports by the Croatian Defense Council<sup>39</sup> in the area of Konjic which describe the event which took place on August 16, 1993, as well as other reports<sup>40</sup> which say that “*seven soldiers were killed by a firing squad*”, with certain reports actually referring to the individuals killed as soldiers.

127. The defense objected to the introduction of this evidence by pointing out that the documents have originated from the archives of another country, and that the Office of the Prosecutor of Bosnia and Herzegovina did not prove that the said documents exist either in the original or as authenticated copies and that no expert was called to authenticate the documents. The defense therefore maintained that the authenticity of the documents is suspect. Responding to the objection, the Office of the Prosecutor of Bosnia and Herzegovina stated that all the documents in question were authenticated by the stamp of the International Criminal Tribunal for the former Yugoslavia and that they originated from the Tribunal’s evidence archive.

128. The Panel consequently rejected the objections by the defense questioning the authenticity of the documents, determining that the documents were authenticated by the International Criminal Tribunal for the former Yugoslavia. The Panel accepted the said documents pursuant Article 3 of the Law on the Referral of Cases which says that the evidence obtained in accordance with the Statute and the Rulebook on the Proceedings of the International Criminal Tribunal for the Former Yugoslavia can be used in proceedings before courts in Bosnia and Herzegovina.

129. Based on all of the above, the Panel further determined that all the evidence presented at the main trial by the Office of the Prosecutor of Bosnia and Herzegovina clearly shows that the individuals Ivan Drljo, Nedeljko Kreso, Pero Kreso, Zdravko Drljo, Zeljko Blazevic and Franjo Drljo were members of the Croatian Defense Council in the area of the village of Trusina, Konjic Municipality and that, at the time when they were killed, they enjoyed the protection of the other side in the conflict under which authority they had come. That is, Ivan Drljo, Nedeljko Kreso and Pero Kreso obtained the status of prisoners of war at the moment of their surrender and thus gained the protections provided for by Article 3 of the Third Geneva Conventions, while Franjo Drljo, Zdravko Drljo and Zeljko Blazevic were protected by the same Article because they were not participating in the fighting and were unarmed when they were killed.

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<sup>39</sup> T-19, T-25, T-26, T-28 and T-24.

<sup>40</sup> T-29 and T-32.

**(ii) Civilians (Section 2 of the guilty counts)**

130. With respect to Section 2 of the guilty part of the verdict, the Panel determined beyond any doubt that the defendant Dzeko was guilty as charged of the criminal offenses against the civilians Ilija Ivankovic and Andja Ivankovic.

131. According to the definition of the protected category from Article 3, Section 1 of the Conventions, the protections cover “*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.*” According to the provisions of the common Article 3, an individual is considered a civilian if he “*takes no active part in the hostilities*” and is not a member of armed forces, that is, not a fighter.

132. Taking into account the evidence presented, especially the testimonies of the civilian witnesses Milka Drljo, Cecilija Simunovic, Mara Drljo, the witness “S”, Dragan Drljo, Marija Miskic and Mara Delinac, who were at their homes on the day of the incriminating event and who said that they knew Ilija and Andja Ivankovic, because they lived either in the same or a neighboring village, and the fact that most of the witnesses had seen the bodies of the individuals killed next to their house, the Panel determined beyond any doubt that all the individuals against whom the offenses were committed were protected by the common Article 3 of the Geneva Conventions of August 12, 1949.

133. The testimony of the witnesses heard by the Panel show that the victims were surprised in their homes in the early morning hours, that is, during the attack on the village of Trusina, and that offenses were committed against the individuals who were not participating in the hostilities at the time of their arrests or the individuals who were elderly, that is, born in 1926 and 1936.<sup>41</sup>

134. During the evidentiary proceeding, the defense did not refute the status of Ilija and Andja Ivankovic. Therefore, the file contains no evidence pointing to the contrary.

135. With respect to Section 2 of the Verdict, the Panel therefore finds that Ilija Ivankovic and Andja Ivankovic were civilians, that is, they belonged to a category of persons who are protected by the provisions of the common Article 3 of the Third Geneva Convention.

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<sup>41</sup> Evidence Item T-94 and Evidence Item T-95.

**(b) The act must have been committed during a war, an armed conflict or an occupation**

136. In international judicial practice, it is assumed that an armed conflict exists “*wherever armed forces are being used by states or there is prolonged armed violence between the authorities and organized armed groups, or among such groups within a state.*”<sup>42</sup>

137. Having connected between the violations of international law and the existence of an armed conflict, the Panel stressed that international humanitarian law still applies “*on the entire territory of the states in conflict, that is, in cases of internal conflicts, on the entire territory under the control of one of the parties, regardless of whether there are hostilities there, until peace is concluded or, in cases of internal conflicts, until a peaceful solution is found.*”<sup>43</sup>

138. Before all, the Panel took into consideration the fact that during the proceedings the defense did not deny the existence of an armed conflict between the Army of Bosnia and Herzegovina and the Croatian Defense Council at the time of the events described in the indictment or that the hostilities were particularly severe in the area of Konjic and Jablanica.

139. An additional confirmation of the fact that there was an armed conflict at the time when the criminal offenses were committed is the Decision of the Presidency of Bosnia and Herzegovina of June 20, 1992 to declare a state of war. The Decision was published in the Official Gazette of the Republic of Bosnia and Herzegovina 7/92<sup>44</sup>. The state of war was ended by the Decision of the Presidency of Bosnia and Herzegovina of December 22, 1996 which was also published in the Official Gazette of the Republic of Bosnia and Herzegovina 50/95.<sup>45</sup>

140. Furthermore, it is incontrovertible that there was an armed conflict between the members of the Army of Bosnia and Herzegovina on one and the Croatian Defense Council on the other side on the territory of Bosnia and Herzegovina, that is, in the area of Konjic and Jablanac at the time the criminal offenses were committed. This was corroborated by the witnesses who gave their testimonies during the proceedings (the witnesses Rasema Handanovic, Ramiz Beciri, and the protected witnesses C, E, M, J4, R, the witness Dragan Drljo, the witness Vinko Ljubas). Also, the Office of the Prosecutor of Bosnia and Herzegovina and the defense presented as evidence a significant number of orders and reports<sup>46</sup> related to military actions

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<sup>42</sup> Prosecutor v. Dragoljub Kunarac, Radomir Kovac and Zoan Vukovic. Case no. IT-96-23 and IT-96-23/1-A, Judgment of June 12, 2002 (Kunarac et al, Appellate Decision, Section 56).

<sup>43</sup> Kunarac et al. Decision of the Appellate Panel, Sections 57 and 64. The Appellate Panel states in Section 64: “It is not the prosecutor’s duty to show the existence of the armed conflict on every square inch of the area. The existence of the armed conflict is not limited only to those parts of the territory where the hostilities are occurring but applies to the entire territory under the control of the warring parties.”

<sup>44</sup> Evidence Item T-3.

<sup>45</sup> Evidence Item T-4.

<sup>46</sup> Orders of the Headquarters of the Supreme Command of the Armed Forces of the Republic of Bosnia and Herzegovina (SVK OS RBiH) no: 02/607-1 of June 10, 1993, ERN no. 0090-0239 (Evidence Item T-7); memos of the Fourth Corps Chief of Staff no. 02/1-966-92/93 dated March 27, 1993, ERN no. 0129-8532 (Evidence Item T-8); Combat Report for April 19, 1993 by the Command of the Igman Operations Group no. 03/592/8 dated April 19, 1993 (Evidence Item T-9); Daily Combat Report of the Igman Operations group no. 1/20-8 of April 22, 1993 (Evidence Item T-10); Order to Attack by the Croatian Defense Council no. 01-459 of May 11, 1993 (Evidence Item T-11); Daily Combat Report of the Igman Operations group no. 03/592-4 of April 15, 1993 (Evidence Item T-13); Daily Intelligence Report no. 263/93 by the General Staff of the Military Intelligence Service of the Croatian Defense Council no. 03-442/93 of May 20, 1993 (Evidence Item T-15); Daily Report for April 15, 1993 by the Herceg Stjepan

by the armed groups of the Croatian Defense Council and the Army of Bosnia and Herzegovina in the area of Jablanica and Konjic.

141. Furthermore, even the defense witnesses did not deny that there existed an armed conflict between the Army of the Republic of Bosnia and Herzegovina and the Croatian Defense Council at the time. One of the witnesses for the defense, Mustafa Hakalovic confirmed that at some point in 1993 the two sides clashed in the area of Gostovic. The witness stated his belief that the first clash occurred on March 23, 1993. He said he remembered the date because it was the day of the religious holiday Ramadan Bajram. The witness also confirmed that there were combat operations in the village of Trusina in April 1993.

142. Consequently, based on the presented evidence and the witness testimony the Panel determined beyond any doubt that members of the Zulfikar Special Unit attacked the village of Trusina on April 16, 1993 during the armed conflict between the Army of Bosnia and Herzegovina and the Croatian Defense Council in the area of Konjic. This is corroborated by the contents of the documents<sup>47</sup> submitted by the Office of

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Brigade, Mijat Tomicic Second Battalion – Jablanica (Evidence Item T-18); Order of the Command of the Fourth Corps no. 02-3145-1/93 of April 16, 1993 (Evidence Item T-20); Order of the Bradina Forward Commanding Post of the Igman Operations Group no. 01/15 to the Commander of the Zulfikar Special Unit of April 24, 1993 (Evidence Item T-22); Daily Report for March 24, 1993 by the Herceg Bosna Brigade of the Croatian Defense Council in Konjic of March 24, 1993 (Evidence Item T-24); Peace Agreement Concluded in Zagreb on February 25, 1994, UNPRFOR (Evidence Item T-75); Report on the Conditions in Jablanica by the Communications Center of the Headquarters of the Supreme Command, Department for Crypto Defense no. 02/389-1/93 of April 15, 1993 (Evidence Item T-87); Report by the Army of the Republic of Bosnia and Herzegovina no. 07/379-35/93 of May 21, 1993 (Evidence Item T-88.); Report on Conditions in the Area under the Fourth Corps of the Army of the Republic of Bosnia and Herzegovina no. 02/1-3200-1/93 of April 17, 1993 (Evidence Item T-89); Memo of the Army of the Republic of Bosnia and Herzegovina - Military Police Battalion of the Fourth Corps no. 02/1-3200-1/93 of March, 13/14, 1993 (Evidence Item T-90); Report on Security Conditions in the area of Konjic by the Army of Bosnia and Herzegovina (Command of the Fourth Corps) no. 07-2245/93 of March 24, 1993 (Evidence Item T-91); Order of the ARBiH SVK OS RBiH in Sarajevo no. 14/75-22 of March 1, 1993 (Evidence Item T-110); Order of the SVK OS RBiH – Sarajevo of April 17, 1993, ERN no. 01858750 (Evidence Item T-112); Daily Combat Report by the Commander of the Igman Operations Group no. 1-20/8 of April 22, 1993, ERN no. 0183-2920 – 0183-2921 (Evidence Item O-37); Directive no. 5 to Engage in Combat Operations by the SVK OS Sarajevo no. 02-497-1 of April 14, 1993 (Evidence Item O-53); Report by the Communications Center of the SVK, Department of Crypto Defense of April 15, 1993 (Evidence Item O-56); Command to Engage in Active Measures no. 1 by the Bradina Forward Commanding Post of the Igman Operations Group of April 22, 1993, ERN no. 01853984 (Evidence Item O-62); Regular Combat Report of the Army of the Republic of Bosnia and Herzegovina, Command of the 44<sup>th</sup> Jablanica Mountain Brigade no. 02/70-1-104/93 of April 26, 1993 (Evidence Item O-65); Order to Attack “in Protection of People’s Rights – Vrđi 93” of the Army of the Republic of Bosnia and Herzegovina for PN SVK of September 27, 1993, ERN no. 02098426 (Evidence Item O-110); Daily Combat Report on the Conflict by the Commander of the Igman Operations Group no. 03-592/4 of April 16, 1993 (Evidence Item O-178).

<sup>47</sup> Summary Report for April 16, 1993 by the General Staff of the Croatian Defense Council of April 17, 1993, which mentioned the attack on the village of Trusina, ERN no. 0617-2036 0617-2039 (Evidence Item T-14); Daily Bulleting for April 18, 1993 by the Croatian Defense Council, Military Police Command no. 02/4/3-02-97193, ERN no. 01544499 – 01544501 (Evidence Item T-16); Daily Report for April 16, 1993 by the Croatian Defense Council Herceg Stjepan Brigade Battalion – Konjic of April 16, 1993, ERN no. 01516484 (T-17); Report on Events in the Area of Konjic by Information and Analysis Department of the Main Health Unit of the Croatian Defense Council no. 02-5/1-42/93 of May 4, 1993 which details the sequence of events in the area of Konjic related to the dead and wounded Croatian Defense Council soldiers of Croatian nationality, ERN no. 0150-4401 – 0150-4402 (Evidence Item T-19); Report by the Herceg Stjepan Brigade in Konjic of May 20, 1993, ERN no. 0102-7336 (Evidence Item T-21); Report on Protection and Legal Security of Croats in Konjic – Konjic Municipality Council no. 01-251/95 of March 13, 1995, ERN no. 0157145 – 015152 (Evidence Item T-25); Findings on War Crimes Committed in the Municipalities of Jablanica and Mostar, Security Intelligence Service Center in Mostar no. 02-08-2282/96 of February 5, 1996, ERN no. 0157-1162 – 0157-1174 (Evidence Item T-26); Weekly Report of the Croatian Information Center in Zagreb no.

the Prosecutor of Bosnia and Herzegovina, which show that the village of Trusina was in fact attacked and which also describe the crime in which civilians and soldiers were killed.

143. The evidence mentioned above which covers the period right before the time when the criminal offenses from the indictment were committed as well as the incriminating period from April 16, 1993 to October 1993 clearly show the existence of an armed conflict between the Army of Bosnia and Herzegovina and the armed forces of the Croatian Defense Council on the territory of Bosnia and Herzegovina and, more specifically, in the wider area of Konjic. The Panel consequently determined that this element has been proven beyond any doubt and pointed out again that the said conflict between the two parties has been shown to have certain elements of an international armed conflict in multiple decisions by the International Criminal Tribunal for the former Yugoslavia and the Court of Bosnia and Herzegovina.

**(c) The act must have been connected to a war, an armed conflict or an occupation**

144. One of the conditions set forth Articles 142 and 144 of the Criminal Code of the SFRJ says that the offense committed by the accused must be related to armed conflict. Therefore, in order to establish the existence of the mentioned element, the status of the accused in the given period must be examined. The panel must examine as well whether the commission of the offense depended on the existence of the mentioned armed conflict in the wider area of Konjic. In this particular case, the Panel examined whether *“the existence of the armed conflict had had a significant influence on the ability of the perpetrator to commit the criminal offense, his decision to commit the offense, the manner in which the offense was committed and what the perpetrator was hoping to accomplish by committing the offense.”*<sup>48</sup>

145. This condition is met if the criminal offense has been committed in support of or at least under the pretext of a situation arising from the armed conflict.<sup>49</sup>

146. The ICTY Panel of Judges in the case of *Dragoljub Kunarac et al.* says:

“...Humanitarian law applies in the whole territory of under the control of a party to the conflict, whether or not actual combat takes place where the said events have occurred. It is therefore sufficient that the

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1 of August 9, 1993, ERN no. 0020-1542 – 0020-1548 (Evidence Item 27); Report on the Genocide against the Croatian Population in Konjic Municipality compiled by the Herceg Stjepan Brigade in Konjic and submitted on April 25, 1994 to the General Staff of the Croatian Defense Council, ERN no. 0103-2198 -0103-2199 (Evidence Item T-28); A Short Chronology and Summary of the War Crimes Committed by the Members of the Army of the Republic of Bosnia and Herzegovina in the Municipalities of Mostar, Prozor, Konjic and Jablanica compiled by the Commission on War Crimes of the Croatian Republic of Herzeg-Bosnia no. 27/95 of March 30, 1995, ERN no. 0030-2925 – 0030-2946 (Evidence Item T-29); Memo by the Service for the Exchange of Prisoners and Other Persons of the Croatian Republic of Herzeg-Bosnia no. 01/IP-551/94 of August 16, 1994, ERN no. 0157-0649 – 0157-0656 (Evidence Item T-30); Memo by the Service for the Exchange of Prisoners and Other Persons of the Croatian Republic of Herzeg-Bosnia no. 01/IP-446/04 of June 9, 1994 and related to the Report of the Military Assistant to the UNPROFOR Commander for the Southwest Sector, ERN no. 0129-8931 – 0129-8932 (Evidence Item T-31); Information for the Public issued by the Information Bureau of the Central Bosnia Operations Zone Command, Vitez Forward Command Post no. 08-5-191/93 of May 8, 1993, ERN no. 0102-0689 – 0102-0690 (Evidence Item T-33); Memo by the Commander of the Konjic Herceg Stjepan Brigade of April 23, 1993, ERN no. 0150-7120 (Evidence Item T-34).

<sup>48</sup> Prosecutor v. Kunarac et al, Case no. IT-96-23 and IT-96-23/1-A, Judgment of June 12, 2002, Section 58.

<sup>49</sup> International Criminal Tribunal for the former Yugoslavia (ICTY). Decision of Appellate Panel in *Dragoljub Kunarac et al.*, Paragraph 58-59.

offenses were closely related to the fighting going on in other parts of the territory under the control of the parties in conflict. The requirement that the acts of the accused must be closely related to the armed conflict is met if, as in this case, the offenses were committed as a consequence of the hostilities before the cessation of the combat activities in a given area, and if they were committed in order to achieve a goal or take advantage of a situation resulting from the hostilities...<sup>50</sup>

147. Based on several factors it can be concluded that there existed a nexus between the act of the accused and the armed conflict. The factors can include the following:

- The perpetration was a soldier;
- The victim was not a soldier or the victim was a member of the opposing party;
- It could be said that the act served the ultimate goal of a military campaign, and
- The act was committed as in the course of official duties of the perpetrator.<sup>51</sup>

148. Therefore, the deciding factor is the status of the defendant at the time of the commission of the criminal offense. The defendant Edin Dzeko committed the offense as a member of the Zulfikar Special Unit. This means that his membership in this military unit and the participation of the unit in the attack on the village of Trusina undoubtedly influenced the ability of the defendant to commit the offense as well as the manner in which the offense was committed and the goal behind it.

149. At the time of the offense the defendant was a member of the Zulfikar Special Unit of the Army of the Republic of Bosnia and Herzegovina, which was corroborated by him. This was also shown by the witness testimony (the witnesses Ramiz Beciri, Rasema Handanovic and the protected witness “C”) and the following material evidence: Memo of Ministry for Issues of the Veterans and Disabled Veterans of the Defensive-Liberation War no. 07-03-96-1/11 of January 26, 2012 with Vob-2, Vob-3 and the personal file for Edin Dzeko<sup>52</sup>; Vob 8 of the Army of the Republic of Bosnia and Herzegovina for the individual Edin Dzeko<sup>53</sup>, List of Members of the SVK Special Unit (ERN no. 02098414)<sup>54</sup> and Order of the Fourth Corps of the Army of the Republic of Bosnia and Herzegovina – Special Unit no. 1-10-878/94 of April 16, 1993.<sup>55</sup>

150. Therefore, all the acts committed by the defendant were committed in his capacity of a member of the Zulfikar Special Unit. His membership in the unit made it possible for him to commit the criminal offenses from the indictment, that is, the killings of civilians and prisoners of war at the time and place described in the indictment. These offenses are directly related to the existence of war and armed conflict.

**(d) The perpetrator must order the act to be committed or commit the act**

Finally, the perpetrator must either directly commit the illegal act or order others to commit it to be liable as a direct perpetrator, as was charged in the indictment. Having considered all the evidence presented, the Panel determined that in this case it was proven that the defendant did indeed commit the offenses with which he was charged in Sections 1 and 2 of the indictment (and which will be analyzed and determined in the next section of the verdict). This means that this element of the criminal offense of a war crime against

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<sup>50</sup> ICTY, Decision of the Investigative Panel in Dragoljub Kunarac et al. Paragraph 568.

<sup>51</sup> Verdict in *Kunarac et al.* Appellate Decision, Paragraph 59.

<sup>52</sup> Evidence Item T-2.

<sup>53</sup> Evidence Item T-76.

<sup>54</sup> Evidence Item O-1 under the number 180 – Edin Dzeko.

<sup>55</sup> Evidence Item O-66.

prisoners of war, in which the defendant was a co-perpetrator, has also been determined. This is true of the element of the criminal offense of a war crime against civilian population where the defendant was the perpetrator.

**a. Section 1 of the guilty part of the verdict**

151. Before the analysis of the actual actions of the defendant and his criminal liability, the material findings related to the existence of the Zulfikar Special Unit (SOPN ARBiH “Zulfikar”), the membership of the defendant in the Zulfikar Special Unit and the participation of the defendant and his unit in the attack on the village of Trusina on April 16, 1993 will be discussed.

**i. Formation and Operation of the Zulfikar Special Unit of the Armed Forces of Bosnia and Herzegovina (SOPN ARBIH “Zulfikar”)**

152. Having analyzed the evidence presented, the Panel has determined that the Zulfikar Special Unit operated on the territory of Herzegovina in the first half of 1993, more specifically, in April of that year, 1993. The unit was based in the Mraziste Hotel on the mountain of Igman. In April, a part of the unit was moved from Igman to Bradina, where the unit soon had another base and started combat operations.

153. This is evident primarily from the material evidence, that is, Decision of the Fourth Corps of the Army of Bosnia and Herzegovina on the Special Unit no. 04-10-2303-94 of August 19, 1994, which contains information on the date when the unit was formed. More specifically, it says the unit was formed based on a decision made by the National Defense Council at a meeting on June 20, 1991 under the name “Unit for the Protection of Natural and National Rights of the Republic of Bosnia and Herzegovina, Sandzak and Kosovo – Zulfikar” and that the Special Unit started operating on April 6, 1992.<sup>56</sup> Based on the decision of the Headquarters of the Supreme Command of the armed Forces of the Republic of Bosnia and Herzegovina no. 86-2 of February 5, 1993, the said unit was also given the number T-30372 and the military unit number 5683.<sup>57</sup>

154. Furthermore, the witness “X” said in his testimony before the Investigative Panel that in December of 1992 the said unit was called the “Unit for the Protection of Natural and National Rights of the Republic of Bosnia and Herzegovina, Sandzak and Kosovo”, and then in January 1993 it was renamed into the Special Unit.<sup>58</sup> The witness “J4” also confirmed in his testimony that he had heard in late October 1992 that a special unit was being formed on Igman and that the unit was called the Special Unit of the Headquarters of the Supreme Command.<sup>59</sup> The witness “M” also confirmed that at the time when he applied to be in the unit, on July 17, 1992, the unit was called the “Unit for the Protection of Natural and National Rights of the Republic of Bosnia and Herzegovina, Sandzak and Kosovo” and that it was later renamed into the Special Unit.<sup>60</sup>

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<sup>56</sup> Evidence Item T-105.

<sup>57</sup> Evidence Item T-44.

<sup>58</sup> Transcript of the testimony of the witness “X” of May 21, 2013, p. 5.

<sup>59</sup> Transcript of the testimony of the witness “J4” of February 26, 2013, p. 6.

<sup>60</sup> Transcript of the testimony of the witness “M” of January 15, 2013, pp. 5-6.

155. According to witness testimony, Zulfikar Alispago was the commander of the unit in the incriminating period, and Nihad Bojadzic was his deputy.<sup>61</sup> It is evident that Zulfikar Alispago was the commander of the unit in the incriminating period, and Nihad Bojadzic was his deputy in the first half of 1993 from the Order of the Headquarters of the Supreme Command of the Army of Bosnia and Herzegovina no. 13/37-39 of April 3, 1993 which assigned them to their duties.<sup>62</sup>

156. Furthermore, the said unit was reorganized according to the Order no. 14/75-52 of June 10, 1993 and was moved from the First Corps, where it was a special unit, into the general body of the 6<sup>th</sup> Corps of the Army of the Republic of Bosnia and Herzegovina.<sup>63</sup> Another decision of the SVK OS no 14/75-63 of July 5, 1993 the Zulfikar Special Unit temporarily moved the unit from the 6<sup>th</sup> Corps to the Igman Operations Group which was under the command of the First Corps.<sup>64</sup> Afterwards, the unit was again moved to the 4<sup>th</sup> Corps based on the Order no 14/75-100 of September 1, 1993.<sup>65</sup> This was corroborated by the defense which presented as evidence a decision<sup>66</sup> of the Command of the 4<sup>th</sup> Corps addressed to the commander of the Zulfikar Special Unit related to the integration of the units of the 4<sup>th</sup> Corps, which put the Zulfikar Special Unit under the command of the 4<sup>th</sup> Corps.

157. The defense maintained that the Special Unit stopped operating as such on April 12, 1993 when it was incorporated into the First Corps, and later into the 4<sup>th</sup> Corps, which, according to the defense, meant that the Special Unit was no longer under the command of the Headquarters of the Supreme Command.

158. Since it was not necessary for the Investigative Panel to determine whether the Zulfikar Special Unit operated during the entire period, that is, in the incriminating period, as part of the Headquarters of the Supreme Command, the Panel did not consider this issue specifically, because it was determined that the unit was operating on one side of the conflict, that is, on the side of the Army of the Republic of Bosnia and Herzegovina, regardless of whether and to whom it was factually under whose responsibility, and that it operated within the area in question, as well as the fact that the defendant Dzeko Edin was a member of that unit and that he operated as its member at that time.

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<sup>61</sup> The witnesses Ramiz Beciri and Rasema Handanovic, the witness "C", the witness "X", the witness "R" and the witness "J4".

<sup>62</sup> Evidence Item T-45.

<sup>63</sup> Evidence Item T-116.

<sup>64</sup> Evidence Item O-188.

<sup>65</sup> Evidence Item T-113.

<sup>66</sup> Evidence Item O-109.

159. The fact that the defendant was a part of the Special Unit for Special Needs “Zulfikar” (SOPN „Zulfikar“) at the time in question, can be primarily concluded from the statement by the defendant himself, as not him nor his Defense ever denied that during the year 1993 the defendant was a member of the SOPN „Zulfikar“ and that, as its member, he took part in the “Trusina” action. In his testimony, the defendant stated that his rank in the SOPN in 1993 was a rank of common soldier.

160. Also, all of his comrades who have participated in the attack on the village on that day have stated that the defendant was a member of the SOPN “Zulfikar”. Among others, the aforementioned statement was confirmed by witnesses Beciri Ramiz, Handanovic Rasema, protected witness “C”, witness “R”, witness “J4”, witness “M” and witness “U”.

161. Protected witness “C” stated in his testimony that the defendant Dzeko Edin was a common soldier, just like himself.<sup>67</sup> Other witnesses have also testified about the defendant's status, and have stated that the defendant had some privileges, but none of the witnesses stated accurately nor clearly that the defendant had any command authority.

**ii. Attack on the village of Trusina on April 16, 1993 and the participation of the Zulfikar Special Unit and the defendant in the attack**

162. The Council has found without a doubt, and the Defense never disputed it during the proceedings, that members of the Special Unit for Special Needs of the Army of Bosnia and Hercegovina “Zulfikar” (SOPN ARBiH „Zulfikar“) have attacked the Trusina village on April 16, 1993 from one of the hills above the Trusina village, from several directions.

163. On the other hand, the Defense has highlighted in its closing statement that it disputes that the defendant Dzeko Edin participated in the “*well prepared and previously planned*” attack, as well as that he participated in this attack “*not considering the difference between civilian and military targets*”, as it was stated in the indictment. Since the Council found the claims on preparation of the attack and considering the difference between the targets to be irrelevant, and taking into account the defendant’s status of a common soldier, in the description of facts of the adjudication the Council has left out statements of the “well prepared” and “not considering the difference between civilian and military targets”, while the charges for the previously planned attack the Council finds to be proven, as it will be explained further in the adjudication.

164. Namely, from statements given by witnesses for both the Prosecution and the Defense, it is evident that in April, that is April 13, 1993 the units of the SOPN “Zulfikar” have moved from their headquarters at the Igman mountain, Mraziste Hotel and through Bradina they entered into the building of the elementary school in Parsovic, where the headquarters of the 45<sup>th</sup> Mountain Brigade of the Army of Bosnia and Hercegovina (45. brdska brigada ARBiH) were situated, and where later on they received

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<sup>67</sup> Witness “C”, main search transcript dated October 10, 2012, page 32; an order to start moving tomorrow in morning hours from Parsovici, in the direction of the Trusine village. It is also evident from statements given by witnesses that on that morning, around 40 members of the SOPN, and the defendant Dzeko Edin among them, started the attack on the Trusina village, being previously divided into groups in front of the school building in Parsovici.

165. Witness Beciri Ramiz said in his statement that at dawn of that morning they initiated the attack on the Trusina village and that they were divided into groups, the witness and the defendant Dzeko Edin were in the same group. Hadanovic Rasema nicknamed Zolja, Corbo Ramiz and Logo Edin were also with them. The witness then continues on, saying that there was a hill near the village, on the right side, and one group was assigned to go to that hill where the Croatian Defense Council (HVO) was holding one trench. While his group was assigned to go through the middle, and aside from those two groups, there was another group, which was assigned to go on the left side. In his statement, the witness said that his group attacked first, and that he himself gave a signal to initiate the attack by launching two, three grenades with a RPG launcher on the village, that is, on one of the houses there. After that, they started to move down through a plum orchard, from where they began a raid of the houses in the Trusina village.

166. Also, witness Handanovic Rasema testified on circumstances of the attack on the Trusina village, describing that she, too was a member of the Special Unit for Special Needs "Zulfikar" and that she went into action to the Trusina village in mid-April, 1993 and that this operation was done together with the 45<sup>th</sup> Mountain Brigade (45. brdska brigada). Further in her testimony, the witness states that there were around 40 of them lined up in front of the school building in Parsovici, and that they had received an order to initiate a move on the Trusina village. In her testimony, the witness describes that they were divided into several groups, that they were moving through the village, raiding houses, placing civilians and Croatian Defense Council (HVO) soldiers who weren't on their positions at that moment into groups, by gathering a number of people and isolating them.

167. In addition, witness "C", who, too was a member of the SOPN "Zulfikar", also testified about the same circumstance, stating that he arrived in Parsovici together with the defendant Dzeko and that they left for the Trusina village together, led by guides. The witness stated that he moved along the right part of the village, reaching some houses.

168. Witness "E" also testified about the circumstance of the attack on the Trusina village and stated that he himself was involved in it, testifying that when they reached a hill, where it was agreed that the defendant Dzeko would start the attack on the Kriz hill with one group from, one group was to move through the middle of the hill to the village, and the third group was to move in the direction of Seonice and Sutlici, and then to connect in the Trusina village. Further in his testimony, the witness stated that with his group, the defendant was first to "enter" the Gaj settlement, and then the group to which the witness was assigned followed, and this was how the operation was initiated. The witness also confirmed that the operation lasted five to ten minutes, half an hour the most.

169. In addition, this witness was asked during his testimony if they had discussed that morning in which way entering the Trusina village should be handled, and the witness answered that the members of the Special Unit for Special Needs already knew the manner in which the operation was to be done and which way to proceed.<sup>68</sup>

170. Further in the proceedings, witness “X” testified on circumstances of the attack on the Trusina village, and stated in his testimony that him, too as a member of the Special Unit for Special Needs was a part of the attack in question, and that they moved on to the Trusina village in morning hours. The witness stated that they were lined up and divided into two or three groups, each group having their leader.

171. Also, witness “R” was a member of the Special Unit for Special Needs “Zulfikar” and has stated that they have started the operation in the morning from one hill, and that there were guides guiding them to certain areas, and at this place they were divided into groups.

172. Just like other witnesses testifying on circumstances of the initiation of the attack on the Trusina village, witness “U” also stated that they initiated the operation around 4, or 4:30 a.m. from Parsovici, that is, they began walking at that time towards the Trusina village.

173. During the proceedings, the Defense tried to challenge credibility of some witnesses whose testimonies didn’t match on the number of groups formed and on the number of groups of the unit to initiate the attack on the Trusina village. Some witnesses testified that there were two groups<sup>69</sup>, while others testified that there were three groups<sup>70</sup>, and there were some witnesses who did not confirm any number of groups formed<sup>71</sup>. However, the Council finds that it is difficult to expect from witnesses to remember every single detail or timing of the events, taking into account their exposure to circumstances, whose nature and intensity exceeds the limit of usual stress and fear. To this conclusion, the time lapse should also be added, as well as difference in perceptive abilities of witnesses, which definitely depend individually. In addition, the Council does not find these inconsistencies or differences in testimonies of such scale to significantly influence credibility of testimonies of those witnesses in whole.

174. Based on testimonies of witnesses heard, the Search Council found that several units were involved in the aforementioned operation, apart from the Special Unit for Special Needs “Zulfikar”, the involved being members of the 44<sup>th</sup> Mountain Brigade of the Army of Bosnia and Herzegovina (44. Brdska brigada ARBiH), members of the unit of Tigers, members of the special unit 45<sup>th</sup> Mountain Brigade of the Army of Bosnia and Herzegovina (45. Brdska brigada ARBiH), as well as members of the Army of Bosnia and Herzegovina units from Gornji Vakuf. Also, from testimonies of witnesses heard<sup>72</sup> it is concluded that the

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<sup>68</sup> Witness “E”, Main Search transcript dated October 23, 2012, page 12: **Plaintiff:** Were there any talks on that morning about the manner of entering the Trusina village? **Witness:** As far as I could understand, they already roughly knew from earlier who is to go where, but we talked about it a little in the house and when we went out above Gostovici on that hill above Gostovici, where you can see Kriz, down is Trusina, to the left on the way to Seonica, about who should go where.”

<sup>69</sup> Witness “J4”, transcript dated January 26, 2013, page 9; Witness “M”, transcript dated January 15, 2013, page 9.

<sup>70</sup> Witness “R”, transcript dated January 29, 2013, page 10; Witness Beciri Ramiz, transcript dated August 28, 2014; Witness “E”, transcript dated October 23, 2012, page 13.

<sup>71</sup> Witness Handanovic Rasema, transcript dated September 11, 2012, page 71; Witness “X”, main search transcript dated May 21, 2013, page 7.

<sup>72</sup> Witness Beciri Ramiz, main search transcript dated August 28, 2012, page 9; Witness Handanovic Rasema, main search transcript dated September 11, 2012, page 11; Protected Witness “R”- Transcript dated January 29; Protected

members of the Special Unit for Special Needs “Zulfikar” during the operation on the Trusina village had guides, locals living in the area, who were members of the 45<sup>th</sup> Mountain Brigade, showing direction of movement and positions of enemy, as well as disclosing which houses belonged to Croats and which to Muslims.

175. Based on evidence, or more precisely on testimonies by the witnesses, the Council has undoubtedly found that the defendant Dzeko Edin, as a member of the Special Unit for Special Needs of the Army of Bosnia and Herzegovina “Zulfikar”, has participated in the attack on the Trusina village, which happened on April 16, 1993.

176. Analyzing testimonies by the witnesses heard in this matter, the Council has undoubtedly found that on that day the defendant wore a camouflage uniform with a black waistcoat, and that on that day, during the operation, i.e. attack on the Trusina village, the defendant owned and carried an M-16 rifle. Although most of witnesses in their testimonies stated that the defendant wore a black uniform, the Council took into account the time elapsed and difference in memory connected to the time elapsed, because the two uniforms do not differ drastically, especially having in mind that descriptions of the defendant’s uniform as a black uniform or as a camouflage uniform with a black waistcoat are very much similar, especially under circumstances when there is quite a number of members in the operation, all wearing similar clothes, i.e. uniforms with similar characteristic.

177. During hearing, the defendant himself testified that at the time in question he was wearing a camouflage uniform with a black waistcoat. However, for the weapon he carried, the defendant stated that he owned a Serbian sniper “Crvena Zastava” with a wooden gunstock, but without optics, i.e. that he carried a semi-automatic rifle which had no possibility for burst fire mode. Thus, contrary to the charges connected to the manner of killing people from the Trusina village and conclusions made after hearing testimonies from witnesses that it was burst fire, the defense and the defendant have tried to prove that the defendant carried a semi-automatic rifle during the operation in the Trusina village and that he couldn’t have opened a burst fire with that rifle.

178. However, the Search Council came to the conclusion that on the day in question the defendant wore a camouflage uniform with a black waistcoat and carried an M-16 gun, primarily based on the testimonies made by witnesses, the witness Beciri Ramiz testifying during the main search that the defendant wore a black uniform, but also carried an M-16 gun for a while, stating: “Well, I think that he carried it on that day, too.”<sup>73</sup> Again, at cross-examination the Defense raised the question of the weapon the defendant was carrying on that day, and the witness answered: “*I think it was an M-16.*”<sup>74</sup>

179. Also, witness “E” testified during the main search that on the day of the attack on the Trusina village the defendant carried an M-16, and that most of the members of Zuko’s unit wore black uniforms. Then, at cross-examination the witness confirmed that the defendant wore a black uniform with a battle waistcoat on that day, and that he carried an M-16 for sure.

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witness “J4” dated September 11, 2012, page 11; Protected witness “M” – main search transcript dated January 15, 2013, page 42; Defendant Dzeko E. - main search transcript dated December 10, 2013, page 36.

<sup>73</sup> Witness Beciri Ramiz, main search transcript dated August 28, 2012, page 13.

<sup>74</sup> Witness Beciri Ramiz, main search transcript dated August 28, 2012, page 36.

180. Witness Handanovic Rasema also testified on these circumstances, stating that all members who have participated in the operation in question on that day wore black battle waistcoats, and that the defendants Dzeko, Nedzad and Popara carried M-16 rifles.

181. Witness "C" also stated in his testimony that on the day they began the operation on the Trusina village, all members of the Special Unit for Special Needs "Zulfikar" carried automatic weapon. To the question if they all carried automatic weapon, the witness replied: "*We all did.*"<sup>75</sup>

182. Based on the aforementioned matching statements by witnesses, the Council has concluded that the defendant carried an M-16, i.e. an automatic rifle during the attack.

183. The Council notes, stepping out of the limits of the aforementioned conclusion which says the defendant carried an M-16 rifle that the type of weapon the defendant for situation in question owns doesn't represent a fact of a meaning significant enough to influence a decision, and as such doesn't need to be proven beyond reasonable doubt. Namely, not even the statement made by the defendant that he did not carry any automatic weapon in the situation in question would be exculpating him, because the relevant part is that the defendant's action had been proven without a doubt, i.e. that he'd fired from the weapon capable of inflicting lethal wounds to victims, no matter if the weapon was automatic or semi-automatic, as per the defendant's statement. Since it has been beyond any doubt even for the Defense that some of the unit members in the situation in question, i.e. during the attack on the Trusina village did carry automatic weapon, and considering it has been proven that a number members of the unit (four or five of them) took part in the execution, it is obvious that at least one of them carried automatic weapon, which explains the fact that witnesses heard burst fire sound during execution of the lined-up Croatian Defense Council (HVO) soldiers, facts of which will be explained in details further in the adjudication.

184. At the same time, the Council is reminded about a court practice and facts establishing standard in similar cases of war crimes, according to which it is possible that several people act together and are responsible as immediate perpetrators for killing a number of victims, if it is possible to conclude, based on evidence available, that each of the perpetrators was physically involved in material elements of the criminal act of murder, together with other perpetrators, and considering circumstances of the act of murder and position of victims, as well as that it is not necessary to show whose bullet killed each victim. Councils have found those perpetrators guilty for deaths of all victims, regardless if the defendant himself had fired the lethal bullet.<sup>76</sup>

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<sup>75</sup> Witness "C", main search transcript dated October 10, 2012, page 10.

<sup>76</sup> Second instance court adjudication in the *Limaj et al.* case, paragraphs 47-50. See also First instance court adjudication in the *Limaj et al.* case, paragraphs 664, 670, 741. Second instance court adjudication in the *Lukic et al.* case, paragraph 162, number IT-98-32/1-A, dated December 4, 2012.

**iii. Facts about the wounding of two members of the Zulfikar Special Unit**

185. Based on testimonies of witnesses, Search Council has established that, prior to murdering six Croatian Defense Council (HVO) soldiers in the Gaj settlement, there was an incident of wounding two members of the Special Unit for Special Needs of the Army of Bosnia and Herzegovina “Zulfikar”, those two being the protected witness “U” and Semsovic Samir (Samko), who died later on from the wounds inflicted. These circumstances were testified on by many witnesses of the persecution, those being the protected witness “U”, witness Beciri Ramiz, Handanovic Hasema, protected witness “C”, “E”, “X”, “J4”, “M”, witness Karovic Atif and Sahinovic Salko. Also, the same circumstances were testified on by witnesses of the defense Poturovic Redzo and witness Hakalovic Mustafa.

186. Protected witness “U” testified that the wounding happened near one of the shops, after which incident Beciri Ramiz ran to help them, by taking them out of “under the fire” and in front of one house, where they were given first aid. The aforementioned witness also stated that the defendant Dzeko came driving a white car to take them towards the village to receive medical assistance. While driving, the car “slipped off the road” and they had to be “dragged” out of the car. In a small building in the Gostovic village they received first aid, and after that he and Samko were transferred to the hospital of the town of Suhodol. He remembers that during their transfer to the hospital they were carried on stretches for a while, and then they were taken to the Suhodol hospital, Suhodol Samko by one car, and him by another car.

187. To the additional question, in which instances he saw the defendant, starting from the moment of his wounding, the witness clearly stated that he saw the defendant when he came to take them by car and when the car “slipped off the road”.

188. Witness Beciri Ramiz stated that after Samko and witness “U” got wounded, they were “dragged out” to a protected spot. The witness further described that he took the witness “U” up to a hill and carried him about 10 minutes, and then he received first aid by a man who was carrying first aid kit. Then they reached a car, in which Samko was placed, too. The witness does not remember seeing the defendant at that moment, but he thinks the defendant was there at the moment of wounding at the crossroads. The witness clearly stated that at the beginning of the operation he was with the defendant.

189. Witness Handanovic Rasema stated at the hearing that on the day of the operation in the Trusina village Samko and the protected witness “U” were wounded, and that she was involved in “dragging” the wounded out, after which they received first aid, while the defendant Dzeko went to get the car and came back in a car of dark red color, dark red cherry, it was a Lada or a Skoda. They placed the wounded in this car in order to get them to the ambulance, and they were taken by the defendant Dzeko and the witness “C”, the driver being the defendant Dzeko. After the incident of wounding, they began to withdraw by the same route they came in to the village. When they came to the Gaj settlement, then found their fellow soldier called Struja, who was guarding women and children “under one upper wall”, and by the house six or seven men were lined up. Connected to the wounding of two members of the SOPN, the witness stated that the defendant told her after the operation in Parsovicci that he hit a plum tree while transporting the wounded and that wounded were taken to the ambulance.

190. Witness “C” also testified on the wounding of the two members of the SOP ARBiH “Zulfikar” and their transportation after the wounding, stating that after the incident a white car came, the defendant Dzeko driving it, and the witness approached the car at that moment to place Samir, i.e. Samko in, and that he, too entered the car, and that the protected witness “U” was placed in the front. The witness clearly confirmed that the defendant Dzeko was driving the car. Then the witness said that they approached the improvised ambulance, where two wounded soldiers received first aid by Karovic Atif. To the additional question if the witness saw the defendant at the moment of first aid given by Karovic Atif, the witness stated: “Now I can’t, I don’t know how to, he should’ve been there as we came together, I didn’t pay much attention

because I was helping them and so”. As the questioning went on, the witness was asked again about the same circumstance and he stated: “I think he is there, but honestly I didn’t pay much attention, I say now he is there and I don’t know how to...”<sup>77</sup> Then the witness “C” stated that after the first aid was given, he joined other soldiers to take part in further transportation of the wounded, by carrying them a part of the way on stretches, until they reached one village. When they reached that village, one of the locals offered his vehicle for their further transportation, and according to his statement, the vehicles was driven by the defendant Dzeko, while he himself returned to Parsovici.

191. Witness “E” also testified on the circumstances of the wounding incident of two fellow soldiers on that day, stating that one moment they were heading to crossroads, towards a road leading to the Gaj settlement and Gostovici, when the shooting began and Samir was wounded. Then he began shooting towards the woods, from where they estimated that fire came, and then the defendant Dzeko, Nedzad Hodzic and Popara ran to them, took Samko to the crossroads, and the defendant Dzeko appeared in a car, then he saw they put Samir on the hood and pulled two-three meters backwards, and from that moment on the witness saw nothing more of what was happening to them, as he continued to shoot to the woods and to withdraw towards Buturovic Polje and Gaj settlement.

192. Witness “X” also testified on the circumstances of the wounding incident of two members of their unit, stating that he didn’t see the moment of wounding, but he saw when Samko was carried away on stretches, and he remembers a car appearing, Samko being placed in the car and taken away in the direction of their unit’s withdrawal.

193. Witness “J4” stated that after Samko and protected witness “U” got wounded, they were taken away from the endangered place and he heard that the defendant Dzeko came with a car, a Skoda, taking them away, and that on the way he “slipped off the road hitting a plum tree”.

194. In the end, witness “M” also testified on the circumstances of the wounding incident, confirming that he saw Samko and the protected witness “U” got hit, and then other soldiers came out of a garage and fired towards holiday homes on a hill. The witness stated that Nedzad ran to Samko and someone else ran to the protected witness “U”, removing them both from places they got hit and taking them in front of a house to get help. Later he had heard that the defendant Dzeko came for the wounded by car.

195. Witnesses Karovic Atif and Sahinovic Salko testified on the circumstance of giving first aid for the two wounded members of the SOPN ARBiH “Zulfikar”. Witness Sahinovic Salko stated that he had known that there was an abandoned house belonging to Ilic family in Gostovici, and that an ambulance was placed in there, and that the first aid was given by a veterinarian, Karovic Atif, and that he is familiar with the fact that on the date of the incident, on the 16<sup>th</sup>, this ambulance was existing, and that he had heard that one of the wounded Bosnians was brought there, who was taken to Parsovici and then to Suhodol later on. In his testimony, witness Karovic Atif , a veterinarian who was giving first aid in an improvised ambulance in Gostovici, stated that he saw a white vehicle driving across the field and that it “slid off” the road in front of the house, it was a Skoda and there were two wounded people and two soldiers in it. One of the members who drove the car the witness knew, and he stated that he knew him by his nickname.<sup>78</sup> After putting bandages on the wounds, soldiers came to take these people further.

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<sup>77</sup> Witness “C”, main search transcript dated October 10, 2012, pages 17 and 18.

<sup>78</sup> The Council has concluded that it was the protected witness “C”.

196. Witness for the defense Poturovic Redzo stated that someone drove in with a white Skoda in which they put the wounded, he himself sat on the hood, that there were two wounded members and two not wounded in the car, and that they drove to the Gostovic village. The witness said that he was the only one who knew the way to Gostovici, and that when they needed to return in front of Ilic's house, the car slid off the road and stopped at one plum tree. More soldiers came to aid in taking the wounded out, then they were checked by a veterinarian. The witness stated that putting bandages lasted about fifteen minutes, and that Zuko's soldiers who brought the wounded were there, then they made stretches and continued to carry the wounded towards Buturovic Polje.

197. Witness for the defense Hakalovic Mustafa described that at the position "Kriz" at one moment he spotted a white car coming from the direction of Kresa, after which he ran towards Ilic's house, i.e. towards the ambulance. At that moment he saw the car "sliding off" the road and stopping after hitting a plum tree. The witness continues saying that he ran to offer help in taking the wounded out. Then he saw Redzo Poturovic sitting on the hood of the car and he also helped. The witness then states that there were two wounded, Samko and another one, and the reason he knows this is because he heard others mention those names, they also mentioned the name Dzeko. The witness confirmed that Dzeko, too came along with the wounded, that doctor Atif Karovic gave first aid to the wounded, and then they took them to houses of Padalovici and got them into a car, and then the defendant Dzeko and another person drove the wounded to Parsovici.

198. Based on witnesses' testimonies and their analysis, the Council has concluded, and in that sense accepted statements of the defendant as well, that after wounding of two members of the SOPN ARBiH "Zulfikar the defendant took the wounded by car to Gostovici, to an improvised ambulance for first aid. However, the Council did not accept the defense and defendant's statement claiming that after first aid was given, the defendant continued to be involved non-stop in transportation of wounded, carrying them and driving them to hospital, i.e. the Council did not accept the statement that from the moment of wounding of soldiers until their arrival to hospital the defendant was with them all the time, which will be explained in details further in the adjudication.

199. In establishing a connection between witnesses' testimonies, the Council confirmed separate time frames for each event, finding that the attack to the Trusina village happened during morning hours, at dawn, as per testimonies by witnesses for prosecution who have participated in the attack, and that from the moment of the attack on the village to the moment of wounding of two soldiers members of the SOPN ARBiH "Zulfikar" half an hour to forty minutes have passed. Witness Beciri Ramiz stated that half an hour to forty minutes have passed from the moment of the attack on the village to the moment of wounding of Samko and witness "U". This was confirmed also by the protected witness "J4", who stated that about up to an hour had passed from the moment they entered the village to to the moment of wounding of Samko and witness "U". Witness Karovic Atif also testified about this circumstance, stating that he had heard through a Motorola that the action was advancing as planned, until he received a call for two wounded, and that call he received an hour – hour and a half later. In addition to the aforementioned witnesses, the witness for defense Hakalovic Mustafa in his testimony stated that an hour or more had passed from the moment the operation started to the moment he spotted the vehicle in which wounded soldiers were transported.

200. In relation to the wounding circumstance, the Council has overviewed witnesses' testimonies with time frames, and has evaluated witnesses' testimonies on this circumstance within the context of a fact that a longer period of time has passed from then until now, and that the perception of each person on time flow usually differs and depends especially on what has been happening during that period of time for which they should testify on how long it lasted. In this case, witnesses were supposed to testify on their memory of how much time had passed in an extremely stressful situation within a combat context, their attention being drawn to the two wounded members, removing the danger, i.e. neutralizing the position of the enemy from where the fire was opened, then taking the wounded members out, taking care of them and moving further into action, all of which made the Council aware they should take all statements on time frame with great caution and as relative or approximately accurate. This way the Council accepts and appreciates witnesses' testimonies that from the moment of wounding to bringing the wounded to the ambulance in Gostovic village about fifteen minutes had passed, just as the witness "C" stated that from the moment of getting the wounded member Samko into the car to driving the wounded to the ambulance ten to fifteen minutes had passed. In the same manner, the Council appreciates the statement that from the moment of wounding of two members of the SOPN to the moment of execution of prisoners in Gaj around twenty minutes had passed, just as the witness "E" stated that from the moment Samko got wounded until his arrival to Gaj, where he witnessed the execution, around twenty minutes had passed. Protected witness "X" testified on this circumstance that from the moment Samko got wounded to the moment he saw an execution firing squad not more than half an hour had passed. Witness "J4" also testified that the time passed was fifteen to twenty minutes. Also, the protected witness "M" stated that from the moment of wounding to the moment of execution about half an hour had passed.

201. In relation to the execution of Croatian Defense Council (HVO) soldiers, witnesses testify it lasted about fifteen to twenty minutes, and that it happened around noon on that day. In her testimony, witness Cecilija Simunovic<sup>79</sup> stated that the execution happened "around noon". This was also confirmed by the protected witness "R"<sup>80</sup>, who testified that the execution "might have happened at noon". The protected witness "E" testified that they stopped in Gaj maybe for about fifteen to twenty minutes.

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<sup>79</sup> Witness Simonovic Cecilija, main search transcript dated November 20, 2012, page 40.

<sup>80</sup> Protected witness "R", main search transcript dated January 29, 2013. page 20.

202. Testifying on the circumstances of distance of certain locations in the Trusina village, witness “M” testified that the distance between the place of wounding at the crossroads to the ambulance was about 950 meters.<sup>81</sup> Witness “C”, who was wounded himself in that incident, testified that the distance between the place they first got help to the place where the car slid off the road was about one kilometer.<sup>82</sup>

203. Defense witness Poturovic Redzo testified that the distance between Gaj and the ambulance in Gotovici was “about half an hour walk”. Witness Dragan Drljo testified that from the house belonging to Ilic family, which was in Gostovici (ambulance) one can reach his house in Gaj in about ten minutes, but that there’s another way which takes fifteen minutes. Witnesses plaintiffs, who were present in Gaj also testified on the circumstances of distance and the time needed to cover a certain distance, so Anica Blazevic stated that the house of Ilic family was twenty or fifteen minutes away from Gaj. She also added that her family house was near the house where the prisoners were executed.

#### **iv. Killings in the settlement of Gaj**

204. Regarding the incrimination from the count 1 of the indictment, the Council has undoubtedly found proof for the charges from the indictment stating that six men were killed on April 16, 1993 in the Gaj settlement, Trusina village, based on testimonies of witnesses and fellow soldiers of the defendant, witness Handanovic Rasema and protected witnesses “R”, “E” and “J4”, as well as protected witness “X”, and witnesses Sahinovic Salka, Blazevic Anica, Delinac Mara, Drljo Dragan, Drljo Milka, Simunovic Cecilija, Drljo Mara and Drljo Nikola. The aforementioned witnesses have all testified that the execution of 6 men happened the way it was described in the count 1 of the indictment and that this event happened after two members of the SOPN ARBiH “Zulfikar” were wounded.

205. Witness Handanovic Rasema, who also took part in execution of those men, testified that she took part in the operation in the Trusina village together with the defendant Dzeko Edin, and that the execution happened in the Gaj settlement, where, upon arriving, she found her fellow soldier nicknamed Struja to have gathered women and children from those houses and placed them under one upper wall. She testified that above, near a house she saw six or seven men lined up and that those men were imprisoned Croats, and that those prisoners were standing in front of a house or a barn. Then she testified that at one moment Nedzad came out of the house and called Nihad Bojadzic, asking him what to do with the prisoners, and Nihad told him to kill them all. The witness testifies hearing the aforementioned conversation herself, as it was through a Motorola. The witness further testifies that Nedzad then called “the execution fire squad” and all of the fellow soldiers who were there lined up, them being herself, Menta, Orhan, Nedzad, Dzeko, Popara, and then at one moment one of the youngsters lined up started to run away and they all started shooting. The witness testifies at the end that all men who were lined up were killed.

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<sup>81</sup> Protected witness “M”, main search transcript dated January 15, 2013. pages 48 & 49.

<sup>82</sup> Protected witness “U”, main search transcript dated February 19, 2013. page 16.

206. Describing the act of execution, the witness testified that the defendant Dzeko was standing to her right at the moment the shooting started towards the lined-up men, and to her right there were also Nedzad, Popara and Orhan. The witness testified that they were all standing near each other and that the distance was small. The act of execution happened, as the witness testified, in a very short time.

207. The incident in question was also confirmed by the protected witness “E”, who was also a member of the SOPN ARBiH “Zulfikar”, and who took part in the attack operation on the Trusina village on April 16, 1993, testifying that after the incident of wounding of two members of the SOPN ARBiH “Zulfikar”, he and one other member went to the Gaj settlement and saw there prisoners lined up a wall, their hands turned towards the wall. The witness testified that he took cover behind one house or a barn and that he was looking directly at the house, seeing prisoners lined up the wall, some of them in uniforms, some civilians. The witness testified that he was standing behind their back, and that he saw members of his unit, and he states: *“When I arrived there, Emir Popara approached prisoners to the left. Nedzad Hodzic was in the middle. From his or my right side, half a meter or one meter away there was this Edin Dzeko. About half a meter behind him Zolja was standing. Above there were two or three other soldiers as far as I remember, and I was most surprised by this Hakalovic in the corner.”* Then the witness testified that, while he was looking at the prisoners, he noticed a man in uniform, he believed him to be a young man, had longer hair and kept looking around left to right, and that in those moments Nedzad was talking to someone through a Motorola, and then suddenly he called for “the execution fire squad”. Then he saw this younger man, who kept looking around left to right, jumping out of the line-up and moving towards Popara to the left. At that moment he saw Popara firing shots at him, i.e. that he fired shots first, and the rest of them followed in firing shots, stating that *“... and Nedzad and Dzeko and Zolja”* were shooting. The witness testified that he saw all of them shooting towards prisoners lined up the wall and that the shooting lasted for a few seconds. The witness added that after the shooting Nedzad and Zolja approached prisoners to “check them out”. After that, they all started withdrawing towards Gostovic.

208. Protected witness “J4”, who was also a member of the SOPN ARBiH “Zulfikar”, testified on the circumstances of the incident in question, stating that after the two members of his unit got wounded, he went to the Gaj settlement, where he found a few soldiers of his unit. The witness testified that there he found the soldier nicknamed Struja, Zolja and he saw soldiers and civilians lined up, backs turned, i.e. their faces were turned towards the wall of the house. The witness also testified that at one moment Nedzad Hodzic said *“kill them”* and that one young man moved from the line-up and ran towards the village and that they started shooting after him and hit him. The witness testified that these people were Dzeko, Zolja and Nedzad, and that they were shooting at the prisoners and “killed them”.

209. Protected witness “R”, also a member of the SOPN ARBiH “Zulfikar” and a witness to the incident of execution of men, testifying on the circumstances of this incident stated that he refused to be a part of the execution fire squad and to shoot at the prisoners. The witness testified that at one moment one of the lined-up men used a chance to move away from the soldiers and started running, but shooting started immediately. He stated that Zolja, Menta, Dzeko, Djoni and Struja stated shooting at that man. At the end he testified that he was watching the incident from close by (*... five, six, ten meters away the most*), and that the shooting lasted for a short time, stating: *“People were executed, it was a burst fire, and people were erased. It wasn’t like there were a hundred people to shoot at them non-stop, it was just a hand-full of people, it happened quickly.”*<sup>83</sup>

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<sup>83</sup> Witness “R” testimony transcript dated January 29, 2013, page 19.

210. At cross-examination the witness stated that men were lined up, but it is his thinking that if Samko wasn't wounded so badly, those men would've been alive now, i.e. that the execution is related to the news of wounding their fellow soldier Samko.

211. Although witness "X" didn't testify seeing the defendant at the place of execution, he did describe reaching the place where civilians and Croatian Defense Council (HVO) members were gathered, stating that there somewhere he saw Hodzic Nedzad organizing the execution fire squad. After he heard it, he didn't see the execution, as he stated he went away somewhere when the shooting started, he got out of the way, and sat to have a smoke, his back turned. The witness testified that he heard burst fire lasting for a few seconds, and after that the HVO members were dead. This witness stated that he can't tell for certain who was present there, except for Hodzic Nedzad and Zolja, and even though he saw two or three more members of his unit, he can't remember their identities.

212. Protected witness "M" testified that he himself didn't see the execution, but seeing that something's about to happen, he entered one house and didn't go out until he was called to move on, and in the meantime he'd heard the burst fire opening. The witness testified that after leaving the house, he saw dead bodies, four or five of them lined by the house wall and one below the lower wall, which lead him to presume that this person started running and someone opened fire at him. The witness testified that after this incident he returned with women, children and other members of his unit to the house from which the operation began that morning. Additionally asked, he answered: *„Well, it was obvious that something bad was about to happen, some kind of revenge, something, I simply moved away from there, entered the house to be out of sight, to avoid a situation of someone telling me, stop and shoot.”*<sup>84</sup>

213. Testimonies by witnesses Blazevic Anica, Delinac Mara, Drljo Dragan, Drljo Milka i Simunovic Cecilija were matching in description of incidents before and after execution of six men. Namely, all witnesses were present when women and children were separated from men, women and children taken behind a barn from where they couldn't see lined-up men, but at one moment they heard burst fire opening. Then women and children were taken to the house of Marko Drljo and at that moment they saw bodies of men who were previously lined up.

214. Through evidence hearing, identities of men who were lined up got confirmed: Drljo Franjo, Drljo Ivan, Kreso Pero, Kreso Nedjeljko, Drljo Zdravko i Blazevic Zeljko. The witness plaintiff Blazevic Anica, wife of the executed Blazevic Zeljko, testified that along the old house belonging to Vjekoslav Drljo she saw lined-up soldiers, them being Drljo Franjo, Kreso Nedjo, Kreso Pero, Kreso Ivan and her late husband, Blazevic Zeljko, and that not long ago after burst fire she saw bodies of executed men, among them there was her husband's dead body.<sup>85</sup>

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<sup>84</sup> Protected witness "M", main search transcript dated January 15, 2013, page. 49.

<sup>85</sup> Trial transcript – hearing of witness Blazevic Anica dated October 30, 2012, pages. 9 & 10.

215. Witness Delinac Mara testified that she saw several soldiers and civilians lined up against the old house of Drljo Vjekoslav, stating she saw Blazevic Zeljko, Kreso Pero, Kreso Nedeljko, Drljo Ivan, Drljo Franjo and Drljo Zdravko. She testified that women were taken behind the barn and from there they couldn't see the prisoners any more, then they heard burst fire opening and lasting for a short time. The witness testified that after the burst fire soldiers came for them and took them to the bodies of executed men.<sup>86</sup>

216. Witness Drljo Milka also testified that she saw Drljo Franjo, Drljo Ivan, Drljo Zdravko, Kreso Pero, Kreso Nedeljko and Blazevic Zeljko lined up, and she was separated from them with other women and Drljo Dragan and taken behind the barn. Then they heard burst fire opening, and after that they were taken to the house belonging to Drljo Marko, at which instance she saw bodies of executed men who were previously lined up, bodies identified as Drljo Ivan, Blazevic Zeljko, Kreso Pero and Kreso Nedeljko.<sup>87</sup>

217. Similar to previous witnesses' testimonies, witness Simunovic Cecilija was also a part of the group of women separated and placed behind the barn, at the house belonging to Drljo Vjekoslav, and she too saw men lined up, identifying them as Drljo Franjo, Kreso Nedeljko Kreso Pero, Blazevic Zeljko and Drljo Zdravko. The witness testified that she didn't see anything happening, but she heard burst fire opening, and later on they were taken to the house belonging to Drljo Marko, and then to the bodies of executed men. The witness testified that it was burst fire lasting "a minute or so", and that several weapons were firing, not just one.<sup>88</sup>

218. Witness Drljo Dragan testified that he was separated and grouped with women and children, because he was thirteen at the time. The next day he came and covered all the bodies. He testified that at separation he saw that Drljo Franjo, Drljo Ivan, Kreso Nedeljko, Kreso Pero, and Drljo Kreso were left lined up, and the next day he went to Gaj, where he saw bodies of those men, body of his brother Ivan, bodies of Kreso nedeljko, Kreso Pero and his uncle Franjo, and he covered those bodies. Under one wall he also saw the body of Drljo Zdravko, nicknamed Bosanac, as well as body of his father Ljubic Stipe, which he saw after he entered the house.<sup>89</sup>

219. Along with circumstances of their death, death certificates have been filed for Ivan Drljo<sup>90</sup>, Nedeljko Kreso<sup>91</sup>, Pero Kreso<sup>92</sup>, Zdravlji Drljo<sup>93</sup>, Zeljko Blazevic<sup>94</sup> and Franjo Drljo<sup>95</sup>. These death certificates prove beyond doubt that the aforementioned people died on April 16, 1993 in the Trusina village, Konjic municipality.

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<sup>86</sup> Trial transcript – hearing of witness Delinac Mara dated October 30, 2012, pages 28 & 30.

<sup>87</sup> Trial transcript – hearing of witness Drljo Milka dated November 13, 2012, page 39.

<sup>88</sup> Trial transcript – hearing of witness Simunovic Cecilija dated November 20, 2012, pages 28 & 29

<sup>89</sup> Trial transcript – hearing of witness Drljo Dragan dated November 13, 2012, pages 10 & 12.

<sup>90</sup> Persecution of Bosnia and Herzegovina exhibit number T-39;

<sup>91</sup> Persecution of Bosnia and Herzegovina exhibit number T-38;

<sup>92</sup> Persecution of Bosnia and Herzegovina exhibit number T-37;

<sup>93</sup> Persecution of Bosnia and Herzegovina exhibit number T-36;

<sup>94</sup> Persecution of Bosnia and Herzegovina exhibit number T-40;

<sup>95</sup> Persecution of Bosnia and Herzegovina exhibit number T-41;

220. In the end, witness Sahinovic Salko<sup>96</sup> testified that on the third day he received an order to bury the bodies of the killed, stating that it could've been April 19, and that his commander Padalovic Seid ordered him to bury those bodies in Gaj. The witness testified that he was with Poturovic Ibro, Memic Emin and Sehovic Husnija, and that he buried bodies of Drljo Tomo, Drljo Franjo, nicknamed "Crni", Kreso Nedeljko, Kreso Pero and the man nicknamed "Bosanac". Witness testified that those bodies were buried between the house belonging to Drljo Tomo and the barn.

#### **v. Facts and findings on the alibi of the defendant**

221. The Defense claimed that the defendant Dzeko Edin couldn't have done what was described in count 1 of the indictment, because at the time of the execution of soldiers in the Gaj settlement the defendant was involved in transportation of wounded soldiers to Suhodol hospital, which would mean that he couldn't have been present at the place of execution.

222. Namely, defense witness Poturovic Redzo (who wasn't a member of the same unit as the defendant), testifying on this circumstance stated that after first aid was given to the wounded soldiers in Gostovic, he took the wounded together with others and carried them to Buturovic Polje. The witness described the path through which he carried the wounded, stating that they carried them below Ilic houses through plum orchards, then they stopped near one Serbian house to rest for a bit and then they moved on, other soldiers reaching them to help carrying. The witness testified that "Zuko's soldiers" were there, too and that two soldiers helped him carry and joined him in reaching Gostovic with a vehicle, but that he didn't know any of those soldiers.

223. Witness Hakalovic Mustafa testified that he was carrying the wounded soldiers on stretches, and two soldiers who brought the wounded by car joined them in carrying them, i.e. that he was carrying the first wounded Samko with his brother and with the defendant Dzeko, while Poturovic Redzo and Padalovic Suad were carrying the second wounded soldier.

224. Witness Hakalovic Muharem, brother of the witness Hakalovic Mustafa, described transportation and carrying of the wounded in the same manner, stating that he took part in taking the wounded out of the car in Gostovic, as well as in carrying them towards houses belonging to Padalovic family, and that he heard Samko saying to Dzeko "Help me", and after the judge asked him at what moment he heard that, the witness replied that it happened when they were taking them out of the car, but Samko continued mentioning him when they were carrying them towards houses belonging to Padalovic family, saying "Dzeko, don't leave me, help."

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<sup>96</sup> Trial transcript – hearing of witness Sahinovic Salko, dated October 2, 2012, pages. 11 to 15.

225. Witness “U” testified on this circumstance that, when the car “slid off” the road, they took them out, and that Dzeko was there, other people from the road joined in helping them get out of the car. He stated: *“As far as I can remember, yes, they carried me for a while.”* To the question posed by the council member, if he can remember who was carrying him on stretches on that occasion, the witness said: *“I can’t remember because I was half-dead.”*

226. Even though testimonies of witnesses Hakalovic Mustafa and Hakalovic Muharem matched, leading to a conclusion that the defendant Dzeko was with the wounded soldiers from the moment the car slid off to giving first aid and further transportation, the Council didn’t find enough credibility in their statements. Namely, during describing transportation of the wounded, witnesses Hakalovic Mustafa and Muharem kept highlighting the name of the defendant Dzeko, not seeing or recognizing anybody else but him, and to additional questions on who else was there during carrying the wounded soldier Samko they kept mentioning their names and the name of the defendant, while they couldn’t remember any other names, even though they did mention that there were about ten soldiers around who were helping and carrying wounded soldiers on stretches. Additionally, they didn’t know the defendant Dzeko from earlier times, and they found out his name when one of the wounded called him for help, i.e. saying “Dzeko, help me.” Additionally, in the situation when the central incident and all the attention is occupied by the wounded, in giving first aid at the ambulance as well as later on during carrying the wounded, it is difficult to believe that they could’ve remembered and clearly stated that the defendant was with them all the time, especially because the group following the wounded soldiers wasn’t a “stable” one, i.e. soldiers carrying the wounded would switch positions, and at one moment units with women and children from the Gaj settlement joined them, after the six men were executed. Supporting this conclusion, the Council appreciated statements made by the protected witness “C”, who couldn’t tell for sure if the defendant Dzeko was there at transportation of wounded all the time, because his attention was drawn by circumstances and taking care of wounded soldiers.

227. Witness “J4” testified that, after men in the Gaj settlement were killed, he took women and children away along with other members of the unit, and he stated: *“...It happened, those women and children were returned back there. We continued down a road, I don’t know exactly which road we took, but it wasn’t the same one we first came by. As far as I can remember, down the road somewhere we met, we reached those who were carrying Samko and protected witness “U”, they were wounded. Samko got hit in his abdomen and the protected witness “U” was severely wounded, I thought that the protected witness “U” will die and that Samko will pull through... Then I remember some Jeeps coming, taking Samko and the protected witness “U”, we returned back to Parsovinci.”*<sup>97</sup>

228. Protected witness “M” also testified that after the execution of prisoners, he was going back with women and children to the house from where the operation started. Then he saw Samko and witness “U” being taken out of the car in front of that house. Witness “M” couldn’t remember that the two wounded soldiers were already on stretches, the only thing he knew was that they have been given first aid, stating: *“I already said, I can’t remember if they were on stretches already, I know they were given first aid down there, that they have been bandaged down there, which makes it logical that they have been taken there, bandages changed again, since they had time for that, they came before we did, I can’t, I suppose 5, 10, 15 minutes by car, but whether on stretches or on something improvised from a tent, I know we carried them from there.”*<sup>98</sup>

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<sup>97</sup> Protected witness “J4”, main search transcript dated February 26, 2013, pages 17 & 18.

<sup>98</sup> Protected witness “M”, testimony transcript dated October 15, 2013, page 20.

229. Considering all stated, especially the fact that, after those men were executed, both witnesses “M” and “J4” along with other members of the unit joined the soldiers who were carrying the wounded, the taking part in transportation of wounded soldiers, without any firm and clear proof to place the defendant near the wounded for the whole time, statements from witnesses Hakalovic Mustafa and Hakalovic Muharem definitely not counting as such, is not a fact enough to raise doubt on statements of witnesses saying they have seen the defendant on the place of execution.

230. Additionally, the Council didn’t especially appreciate statements by defense witnesses<sup>99</sup> who testified on transportation circumstances from Gostovic to Suhodol, as well as on circumstance of arriving of the wounded to Suhodol, because it has been undoubtedly found that execution of six men happened before wounded soldiers reached Suhodol, and taking into consideration aforementioned statements by witnesses clearly stating that they have joined the transportation of wounded soldiers after those men were killed, the Council finds statements of these witnesses to lack information which can help establish any facts relevant to make a decision in this case.

231. On the other hand, the Council gives benefit of a doubt to witnesses who were fellow soldiers of the defendant who knew him personally, and who were there during incidents connected with wounding the two soldiers, and with the execution of Croatian Defense Council (HVO) lined-up members, and who have confirmed that during all that has happened the defendant was present in the Trusina village, but that he was also present in the Gaj settlement at the time of execution of men and that he participated in the act of execution.

232. Witness Handanovic Rasema confirmed when testifying that the defendant was present at the time when the operation on the Trusina village began and that he was present when the two fellow soldiers got wounded, then he took the wounded soldiers to find medical help for them. The witness testified that she didn’t see the defendant when she arrived in Gaj at first, i.e. when she entered one of the houses, but she saw him when she got out of that house. His presence at the place of execution is confirmed also by other witnesses members of the same unit, who took part in the attack on the Trusina village, as previously described.

233. The Defense opposed statements made by the witness Handanovic Rasema, finding that she has deep motivation and personal interest in accusing the defendant, because she was the one who did criminal acts for which the defendant is being accused of. The Defense stated that she was the one who killed civilians during operation in Trusina, acting with cruelty, and that she participated in killing Italian humanitarian workers in Gornji Vakuf, therefore they find her to be a very biased and hostile witness, testifying in order to avoid criminal proceedings against herself.

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<sup>99</sup> Witnesses for the defense testifying on the circumstance of transportation of the wounded soldiers from Gostovic to Suhodol hospital: Defendant Dzeko as a witness, witnesses Poturovic Redzo, Hakalovic Muharem, Ibrahimovic Elvedin, Merdzanic Alma and Djelilovic Nusret.

234. Contrary to statements by the Defense that the witness Handanovic Rasema can't be trusted and that it is not possible to convict the defendant based on her statements, because she is a witness who has made an agreement with the prosecution to plead guilty, the Council finds no reason to question credibility of her testimony because of the fact that this is a witness who pleaded guilty and made an agreement with the prosecution obligating her to testify in procedures related to the criminal act in question. These questions were addressed by the Court of Bosnia and Herzegovina in several cases, such as the Court of Appeals Council in the case of *Vukovic Radomir et al*, and Council in the case of *Zecevic Sasa et al*.

235. Constitutional Tribunal has, in several cases, considered the question of evidence power of testimonies given by witnesses who have pleaded guilty. In the case of appeal of M.S.<sup>100</sup>, the Constitutional Tribunal has considered an appeal in which the appellant was trying to show that rights to fair trial have been violated based on the Article 6, paragraph 1 of the European Convention of Human Rights (EKLJP), because the decision on finding defendant guilty was mostly based on the testimony by a person who was also under criminal proceedings for the same criminal act as the appellant, and who made an agreement with the Prosecution to plead guilty. In the same case, the Constitutional Tribunal has concluded: *“Regarding testimony of the aforementioned witness (who testified after reaching an agreement and pleading guilty), although such witnesses may often be unreliable, that alone does not represent a reason for distrust such a witness.”*<sup>101</sup>

236. Constitutional Tribunal continues in stating a standard that an explanation must meet the requirement of a caring and conscious evaluation of evidence, and that there must exist a real authenticity explained and based on objective facts for the court to reach a conclusion.

237. The same question was considered in the case of the appellant Nihad Vlahovljak, who claimed that the Supreme Court of Federation of Bosnia and Herzegovina has based a convicting decision against the appellant mostly on the testimony given by a witness who agreed to plead guilty. The decision concluded<sup>102</sup>: *“According to the Constitutional Tribunal’s findings, basing a decision on testimony given by a witness who agreed to plead guilty should be considered per each case individually and there can be no rule, except that in such a case the defendant must be given an opportunity to challenge such a testimony, and a convincing explanation must be given.*

238. In regards to quality of information this witness has provided, i.e. if they can be considered reliable, the Council found the testimony by Handanovic Rasema to be very detailed and comprehensive, and supported by other evidence and testimonies by other witnesses. Therefore, the Council had no doubt if her testimony was convincing and gave her benefit of the doubt.

239. In its closing word, the Defense also questioned credibility of the witness Beciri Ramiz, stating that for the first time during his testimony in front of the Council he claimed that he was with the wounded soldiers and that on the way from the place of wounding to the improvised ambulance in the Gostovic village there was an alleged vehicle malfunction, and that he was involved in transportation of protected witness “U”. The Defense considers such a testimony to be contrary to this witness’ earlier testimonies, calling for exhibit 0-155 and exhibit 0-151.

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<sup>100</sup> AP 661/04 dated April 22, 2005.

<sup>101</sup> M.Š, AP-661/04, Constitutional Tribunal of Bosnia and Herzegovina (Ustavni sud BiH), “Decision on acceptability and meritum”, dated April 22, 1005, paragraph 37 (additionally stressed).

<sup>102</sup> Nihad Vlahovljak, AP 3896/08, paragraph 17.

240. It is correct that this witness' testimony wasn't completely logical, possible reason for which the Council finds in the fact that he himself was involved in the attack on the village, and that most probably he couldn't have described certain situations in a reliable way, because that would put him in a situation to incriminate himself, however the unquestionable part of his testimony which the Council could lean on were the facts related to the beginning of operation on the Trusina village and to the appearance of the defendant on that day, especially taking into consideration that this part of testimony was confirmed by matching testimonies of other witnesses, and that there were no differences detected in this part described in statements<sup>103</sup> this witness gave earlier. Therefore, the Council has considered this testimony only in relation to facts of indirect nature, which the Council found to be clear and consistent. In relation to other facts connected with important parts for description of facts of the indictment, i.e. the incident of wounding of soldiers members of their unit, their transportation and the incident of execution of prisoners, considering that descriptions of these incidents differ in all testimonies, the Council did not take them as relevant while evaluating evidence.

241. The Defense also questioned credibility of the protected witness "R", saying that his testimony was contrary to absolutely credible evidence, stating that "R" testified being forced to give statements to the Prosecution of Bosnia and Herzegovina in several cases and that he is confusing incidents, and that at testifying for this case this witness said he "had to give a statement". Also, the Defense claims this witness finds it in personal interest to incriminate their defendant, in order to avoid incriminating himself. The Defense also stated that this witness was disciplinary sanctioned in his unit several times because of drinking and running away, and that an objective fact reviewer can't give benefit of a doubt to this witness.

242. However, the Council gave benefit of a doubt to this witness' testimony finding it consistent, clear and convincing. Also, in relation to claims of the Defense that this witnesses "had to give a statement", the Council is considering this to be a statement concerning witness' own feeling of giving statement after he was called by the Prosecution and was obliged by the Law to give a statement.

243. The Council doesn't find claims by the Defense to be relevant, which say that at considering statements given by the witness "R" it should've taken into account that this witness was disciplinary sanctioned in his unit several times because of drinking and running away, meaning that the stated circumstances don't bare any significance in deciding to trust the credibility of his testimony, because there is no proof that at the time of the incident in Trusina the witness was under the influence of alcohol or anything similar.

244. About the credibility of the protected witness "E", the Defense stated that at the main search he testified that the defendant Dzeko was a part of the execution fire squad, but that the same witness stated back in 1996 that the imprisoned members of the Croatian Defense Council (HVO) were killed in the Gaj settlement by Dzeni in a burst fire, as a revenge for wounding of Samko. Also, the Defense states that at testifying in the Prosecutor's office in 2009 this witness didn't mention the fact that Dzeko was present at the execution in Gaj.

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<sup>103</sup> 103 Exhibits O-151, O-152, O-153, O -154 and O-155

245. Reflecting on these claims, the Council finds that the Defense had indeed shown these documents to the witness at cross-examination, but they were never filed to the court as exhibits. Taking the aforementioned into account, and the impossibility of the Council to get an insight of the complete testimony of this witness in order to determine if indeed there are significant discrepancies when compared to the main search testimony, and reviewing the questionable part of an earlier statement quoted at the main search by the Defense, the Council concluded that the witness “E” did mention the defendant Dzeko as a person who imprisoned HVO soldiers, mentioning that Dzoni, too was shooting at the prisoners, which isn’t a contradiction, as Handanovic Rasema’s testimony confirms that Dzoni was shooting with them, and which doesn’t exclude his statement made later on that the defendant Dzeko was a part of this incident.

246. Reflecting on claims made by the Defense that during direct testifying this witness stated that he was in Gaj and saw the execution, and then at cross-examination he denied ever in his life having been in the Gaj settlement, after re-analyzing witness’ testimony on this circumstance, the Council noticed that the Defense failed to quote his statement in whole, citing only a part of it. Namely, to the defense attorney’s question if he was a part of the execution firing squad in Gaj, he answered “never in my life have I been in Gaj, nor, nor...”, and then the same witness stated: “*Until the moment of the execution.*” Taking all into consideration, the Council believes that the witness didn’t intend to confirm allegations of the Defense that he was never in Gaj, but responding to the defense attorney’s words he wished to deny his involvement in the execution fire squad.

247. The Defense stated that the protected witness “E” testified that the beginning of attack to the Trusina village was marked by a shot fired by Dzeko Edin. The Defense quoted one part of the main search testimony made by this witness<sup>104</sup>. However, after re-analyzing witness’ direct testimony<sup>105</sup> and the testimony at the cross-examination<sup>106</sup>, the Council concluded that witness’ testimony was misinterpreted by the Defense. Based on what the witness testified on the main search on that day, the Council has

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<sup>104</sup> Protected witness “M”, Main search transcript, dated October 23, 2012

<sup>105</sup> **105 Witness “M”:** Well, we started moving and then that Dzeko guy with his team entered Gaj first, which was to my surprise, we lay on the middle of our road when we moved down towards Trusina: I was the first one to see how soldiers rushed in around Gaj, I thought, well, that those were Croats and someone started shooting. Nedzad Hodzic started shouting, no, no, no, no that’s that guy Dzeko. I was surprised, I knew that above Gaj at Kriz there were trenches and lines held by Croats. I was surprised, I knew that he was supposed to attack above and then to enter Gaj. However, he was already in Gaj. And then this my side with Samir from above, we went down the hill and went in, because the operation had started, after first shoots the operation started. So we entered Trusina running.

<sup>106</sup> **Defense Attorney:** So, when, you testified that you started the operation when Edin Dzeko fired the shots, is this your testimony?”

**Witness “M”:** Yes, when I saw in Gaj.

**Defense Attorney:** In Gaj.

**Witness “M”:** We all started, I mean, we all started at the same moment. We were just about to arrive at our destination down in Trusina, where we just reached above a house on a hill...

**Defense Attorney:** Fine.

**Witness “M2”:** When Dzeko had already entered Gaj and shooting started.

**Defense Attorney:** Did anyone have an RPG then?

**Witness “M”:** Probably, I don’t know, someone must have.

**Defense Attorney:** Did the operation start by firing a grenade from an RPG?

**Witness “M”:** Possible, I don’t remember.

**Defense Attorney:** You said that this Beciri Ramiz like means something to you, can you remember if he was the one signaling the beginning of operation? I can’t.

concluded that his testimony on these circumstances was that the defendant Dzeko was present at the beginning of operation by “entering Gaj” with his group and then shooting started, but by no words has the witness clearly and decisively stated that the beginning of operation on the Trusina village was marked by a shot fired by Dzeko Edin. Also, the witness failed to clearly and decisively state at the cross-examination that it was Dzeko who marked the beginning of operation, but on the contrary he said that he had no knowledge of who had the RPG device at that moment, that it was possible the operation started by firing a shot from the RPG device and that he can’t say if Beciri Ramiz was the person who marked the beginning of operation. However, in comparison with facts which were decisive for the indictment, the Council finds these facts absolutely irrelevant.

248. The Defense also mentioned taking wounded soldiers from the place of wounding to the ambulance, quoting witness “E”, citing that this witness stated that the wounded soldier Samko was out on the hood of the car and they drove backwards to the ambulance. The Defense continues citing witness’ statements such as: “From there we leaned them against a wall, vertically on stretches, and they called the emergency, that ambulance...” The Defense finds this witness’ testimony to be disputable in relation with a fact that Samko was put on the hood of the vehicle and driven that way, and later when they put him on stretches they leaned him against the wall vertically. The Council analyzed these facts along with other evidence, finding that as far as decisive and important facts, this witness’ testimony was confirmed by testimonies of other witnesses. Of course, the Council considered the time passed and that each witness couldn’t have described their view of events in the identical manner. What was confirmed by all witnesses identically, and which this Council holds to be indisputable, is that the defendant Dzeko was involved in transportation of wounded soldiers from the moment of their wounding to the improvised ambulance in Gostovici. Therefore, the stressed facts couldn’t have had any significant impact on the decision the Council made.

249. Contrary to the stated, the Defense tried to prove that the witness “E” wasn’t present in the Gostovic village at all at the time the wounded soldiers arrived in the Gostovic village, but through witnesses’ testimonies<sup>107</sup> the Defense claimed that the witness “E” arrived to Gostovic village only after the wounded were taken to Buturovic Polje. However, the Council didn’t give benefit of the doubt to these witnesses, as it considered the testimony made by the witness “E” to be very convincing and logical, while the Council got the impression that those other witnesses testifying for the Defense tried to discredit this witness’ testimony, testifying in favor of the defendant.

250. In order to discredit witness “E”, the Defense stated that, unlike the defendant, witness “E” knew the area from Parsovici to Trusina very well, citing that the charges against the defendant were in fact committed by the witness “E”, mentioning statements that he personally took part in executing prisoners. The Defense recalled the testimony given by witness “R”, who said that “Haso’s soldier” was also in the execution fire squad. The Defense also stated that this wasn’t the only crime committed by witness “E”, because he committed a cold-blooded murder of an older man, a civilian, during the operation in Trusina village. This was brought up with a goal to prove that witness “E” had a personal interest in accusing the defendant Dzeko, in order to avoid incriminating himself. According to the Defense, evidence show that witness “E” was the one in the execution firing squad, not the defendant Dzeko Edin, and based on all stated

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<sup>107</sup> Witness Poturovic Redzo, transcript dated July 23, 2013, page 14 and Witness Hakalovic Mustafa, main search transcript dated July 23, 2013, page 40.

the Defense holds this to be a witness without credibility, whose testimony can't be considered in reaching a guilty verdict.

251. Despite the efforts by the Defense not to cast any doubt on credibility and testimony of the defendant, underlining many differences in testimonies and citing statements which deny any criminal responsibility of the defendant, claiming that witness "E" is the one who committed the crimes which the defendant Dzeko is being charged for, the Council believes those not to be of such nature to question facts finding nor credibility of testimonies, considering the testimony given by witness "E" at the main search to be clear, unambiguous, consistent and matching in critical parts with other witnesses' testimonies.

252. Therefore, taking into consideration that, according to the Council, there are no significant differences in testimonies, and accepting explanations for stated differences which were given by the witness and main search, the Council gave the benefit of a doubt to this witness' testimony, finding it reliable and accurate, and found the defendant to be guilty of committing criminal acts which he is being charged for by this count of the altered indictment.

253. The Defense also disputed credibility of protected witness "J4", stating differences in circumstances defining if the defendant Dzeko shot the prisoners and if he was in Gaj settlement at all at the moment of their execution, and calling for records on hearing of the witness "J4" on January 16, 2012, when the witness stated that *"he's not sure is Dzeko fired a shot and if he was in Hat at the moment of execution."* The Defense also quoted main search testimony, stating that there were some discrepancies. The Council valued both the earlier testimony and the main search testimony by this witness and found no significant discrepancies in them. In addition, the Defense claimed that this witness was personally involved in killings and harassing witnesses in the Trusina village, but the Council finds no proof for these claims nor does it consider them to be of any significance, as it remains unclear why would all witnesses, who have interest in falsely accusing others of crimes they committed themselves as per the Defense's say, accuse the defendant Dzeko and not any other member.

254. This conclusion is empowered by the fact that all witnesses were aware of the defendant driving wounded soldiers to the ambulance, so it would be illogical if, despite of this fact, they tried to "burden" him with responsibility for certain incidents if indeed they weren't sure, i.e. didn't see him being involved in them.

255. As far as the credibility of witness "J4" is concerned, his earlier convictions for burglary were brought up, as well as his escape from prison, him coming from a problematic family, having aggressive temper, causing problems in his unit during the war, and new findings of him having connections with the Al-Qaeda in Pakistan, facts all of which bore no significance for the Council, as it was a fact that all in general, or most of members of this unit, had a "problematic" behavior, which itself doesn't exclude the possibility of testifying truth.

256. In the end, the Defense disputed credibility of testimony given by the protected witness “X”, stating that none of the evidence shows that he moved with his unit from Igman to Bradina, that the witness’ description of line-up before starting the operation differs from descriptions of other witnesses. The Defense claimed that witness “X” wasn’t even present in Parsovici, nor in Trusina, and that to this witness no benefit of a doubt could be given, nor could any relevant facts be taken from his testimony. Furthermore, it was stated that none of those who participated in the incident mentioned the protected witness “X” as a part of one of groups during operation, and based of this all the Defense claims that the Prosecutor didn’t provide evidence beyond reasonable doubt that this witness did actually participate in the operation on the Trusina village. These claims made by the Defense are being regarded by the Council as thesis with no necessary severity, because it is unclear why would anyone be describing their involvement in an operation along with other members who are being accused of war crime, if they weren’t participating indeed.

257. Regarding the existing discrepancies in witness’ statements, after thorough analysis this Council finds them not to be inconsistencies which could bring the whole of his testimony to question. Namely, it is difficult to expect from a witness to remember every single detail or timing of the events, taking into account their exposure to circumstances, whose nature and intensity exceeds the limit of usual stress and fear. To this conclusion, the time lapse should also be added, as well as difference in perceptive abilities of witnesses, which definitely depend individually.

258. In disputing testimony given by the witness “X”, the Defense stated – calling for exhibit O-35, that in October 1993 this witness was in prison because of leaving the unit on his own free will, heavy drinking and causing fights. However, the Council finds no relevance of this evidence to the quality of his testimony, as it talks of October, 1993.

259. Even though throughout the proceedings, the Defense has disputed credibility of witnesses Handanovic Rasema and Beciri Ramiz, as well as protected witnesses “R”, “E”, “J4” and “X”, the Council states in their conclusion that it was aware of certain discrepancies between testimonies of certain witnesses to which it gives benefit of a doubt and refers, however, considering the time elapsed and dramatic circumstances in which the incidents occurred, the Council doesn’t find significance in those discrepancies severe enough for critical facts to influence credibility of their testimonies.

260. Finally, the Council has found all aforementioned testimonies of witnesses who have testified regarding the critical facts related to the presence of the defendant and actions the defendant took in this concrete case to be matching, i.e. clear and convincing, finding relevance in the Council’s belief that those witnesses had no reason to accuse the defendant without any basis, not is it obvious from their testimonies that they are incriminating him only, which would’ve been one indication for an opposite conclusion. On the contrary, from their testimonies the Council finds it obvious that they are testifying about an event that really took place, and that they, themselves, went through it, saw it, or heard about it from others, and, therefore, based on the testimonies of the above-mentioned witnesses, who are awarded full faith by the Council, arrived at the unequivocal conclusion that the accused Edin Dzeko, on March 16, 1993, in village Trusina, hamlet Gaj, committed acts of murder by executing six men in the manner described in point 1 of the criminal conviction.

**b. Section 2. of the guilty part of the verdict**

**i. Facts about the killing of two civilians in the village of Trusina**

261. In the confirmed and amended indictment, Edin Džeko was charged with the murder of three civilians in Trusina on March 16, 1993 (point 2. of the verdict), namely Ilija and Anđa Ivanković and Kata Drljo. The Council has found proven beyond any doubt the murder of two people, namely Ilija and Anđa Ivanković, while it finds that the State prosecutor of Bosnia and Herzegovina did not prove that the accused participated in the murder of Kata Drljo.

262. The fact that the Ivankovic couple were liquidated is based, beyond any doubt, on the testimony of Mara Delinac, Dragan Drljo, Milka Drljo, Cecilija Šimunović and Marija Miškić, who confirmed that they saw their dead bodies. The witness Mara Delinac testified that she saw their bodies right at the front entrance of their home. She further testified that the house was located in Šahići, and was near the road on the left side when traveling from Trusina towards Buturović Polje.<sup>108</sup> Witness Dragan Drljo also testified that the house of Ilija and Anđa Ivanković was located in Šahići, and that next to their house there was another, with a store on the ground floor, and confirmed seeing the dead bodies of the Ivanković couple next to their house.<sup>109</sup>

263. Milka Drljo testified to the same facts, stating that on that day, Marko Krešo said that Ilija and Anđa had been murdered, so she went towards Buturović Polje when she saw their bodies, namely that of Anđa Ivanković, in Šahići. Milka Drljo stated, “*Anđa, when we got closer to their house, and the late Anđa was lying, half was inside in that hallway and you couldn’t see it, the other half was turned this way, facing downward.*”<sup>110</sup> Witness Mara Drljo stated that she saw the dead bodies of the Ivankovićs at the entrance to their house.<sup>111</sup> Witness Cecilija Šimunović confirmed the placement of the bodies, stating they were located in front of the house.<sup>112</sup>

264. Witness Marija Miškić, the daughter of the murdered couple, stated that on the third day following the attack, on April 18, 1993, she, along with other women, went to move the bodies of her mother and father into the house. At that time, she saw the body of her mother on the corner of the house, in a half-sitting position, stating that “*half her head was missing, while her father’s body, riddled with bullets, was laid out on the back, and located in the walkway, so she carried them both into the bathroom and covered them. She stated that the bathroom was located in the added-on space in front of the house, with a pantry across the hallway, and that her father was lying in that hallway. She explained that these rooms were added onto the house “Added on later, on top was the wall plate, with the bathroom on one side and the pantry on the other, and only that hallway... outside the house, added on later, but no door...”*”<sup>113</sup>

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<sup>108</sup> Witness Mara Delinac, Transcript from the main hearing dated October 3, 2012. pp. 32 & 33;

<sup>109</sup> Witness Dragan Drljo, Transcript from the trial from the main hearing dated November 13, 2012. pp. 22 & 23;

<sup>110</sup> Witness Milka Drljo, Transcript from the main hearing dated November 13, 2012. p. 46;

<sup>111</sup> Witness Mara Drljo, Transcript from the main hearing dated November 20, 2012. p. 11;

<sup>112</sup> Witness Cecilija Šimunović, Transcript from the main hearing dated November 20, 2012. p. 31.

<sup>113</sup> Witness Marija Miškić, Transcript from the main hearing dated April 12, 2012. p. 44;

265. Defense pointed out that there were discrepancies as to where the murder of the couple actually occurred, pointing out as an example the testimony of Marija Miškić and Milka Drljo, supporting the fact that the bodies of the murdered couple were located inside their house. However, based on testimonies of precisely these witnesses, the Council concluded that their bodies were in front of the house. But considering the added-on rooms in front of the entrance of the house, the witnesses are using the term “in the hallway” while it is clear, based on testimony of Marija Miškić, that this is not a hallway inside the house, but a walkway, created by this additional structure.

266. That the victims Ilija and Anđa were murdered on April 16, 1993 is also evident from material evidence, namely from the proof of registration of the factual death <sup>114</sup> number 2657/94, dated November 9, 1994, Registry Office Konjic, in the name of Ilija Ivanković, as well as the proof <sup>115</sup> of registration of factual death number 2655/94 dated November 9, 1994, Registry Office Konjic, in the name of Anđa Ivanković.

267. In the case of person Kata Drljo, the judicial council did not find that the prosecution proved that the accused Edin Džeko committed the murder of Kata (Ivana) Drljo, born in 1932. On the facts of the death of Kata Drljo, the testimonies of the protected witness “S,” Milka Drljo, Mara Drljo, and protected witness “X” were heard.

268. Protected witness “S” was a witness to the murder of woman Kata Drljo, and she described that during the attack on the village Trusina, Ante Drljo, his mother, and wife were executed against a wall, and that both women, meaning both mother and wife of the murdered Ante Drljo, were named Kata. She stated that she stood with them for a little while when they were approached by a soldier who ordered them to follow him, which the witness “S,” the wife Kata Drljo (younger woman) and Ante Drljo did, while mother Kata Drljo (older woman) did not go with them. Describing what happened next, she stated that the couple walked holding hands, and that at one point a rapid fire was heard, and she saw both people fall down, and that Ante Drljo died instantaneously, while his wife Kata was still alive. The next day she went to her house, and along the way she saw their bodies, as well as the body of her husband, and the body of “grandmother Kata Drljo.” Witness Mara Drljo stated that she remembers that Kata Drljo was killed at her house, but that she did not see it. <sup>116</sup> Witness Milka Drljo stated that she heard that Kata Drljo, her husband, and her mother-in-law Kata Drljo were killed together.<sup>117</sup>

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<sup>114</sup> Evidence T-94;

<sup>115</sup> Evidence T-95

<sup>116</sup> Witness Mara Drljo, Transcript from the main hearing dated November 20, 2012. p. 13;

<sup>117</sup> **Witness Milka Drljo, Transcript from the main hearing dated November 13, 2012:** “Marko said they killed Draga over there, that Ivan, Ivan Kostankčinog -- that’s my nephew, since his mother is from Kostajnica, they called him Ivan -- that Konstankčin says his Draga is nowhere to be found, Veljko also, Krešo was killed, Marica, his wife is nowhere to be found, and he had a brother who couldn’t see well, he says Ante is gone too. And over here, he says, they killed Goranka, they killed Tunja, they killed Karamatuša, the way her maiden name was Karamatić, they were mother and son and daughter-in-law. Kata was born in 1918, and the other Kata Drljo, the daughter-in-law was born in 1932, and her son Tunjo in 1936. All three of them were killed.”

269. In addition to these witnesses, the State prosecutors of Bosnia and Herzegovina provided evidence in the form of a hearing of the protected witness “X”<sup>118</sup> who stated that, during the operation in the village Trusina, accused Džeko killed a woman by shooting at her genitals, stating that he watched everything along with the protected witness “R,” and that the event took place in the “clear space,” and that he was hidden by the brush, trees and thicket. Also, the witness could not state with certainty what age that woman was, and he further testified that he could not even see her face. In his testimony, the witness “R” did not mention any case of a woman being killed by the accused Džeko during the operation in the village Trusina, but only of women and men together.

270. Keeping in mind the submitted evidence as it relates to the death of person Kata Drljo, the Council could not deduce any reliable conclusions as to the manner in which she perished, and it could especially not conclude with certainty about the participation of the accused Edin Džeko in connection to her perishing in the village Trusina, as charged in the indictment. Namely, even though the testimony of the protected witness “X” describes a murder of a woman by the accused Edin Džeko, considering this testimony as it relates to other evidence, namely the testimony of the witness “S,” the Council could not determine that the alleged murder described by the witness “X” could be connected with the death of person Kata Drljo; therefore, her name is absent from the factual description of the verdict, finding that there was no need to render the verdict of release for those parts of the indictment that were absent from the verdict, which will be explained in the further parts of the verdict.

271. Further, the conclusion of the Council that the State prosecutors of Bosnia and Herzegovina have proven beyond reasonable doubt that the accused Edin Džeko, in a manner described in point 2. of the verdict, eliminated civilians Ilija and Andja Ivankovic on April 16, 1993 in the village Trusina, is based on the testimonies of witness Rasema Handanović, witness “S,” witness Ramiz Bećiri, witness “M,” witness “J4,” witness “X,” as well as the testimony of the defense-protected witness “U4.”

272. As previously stated, the Council unequivocally concluded the fact that, on April 16, 1993, the accused, as a member of Special Unit for Specific Tasks of the Army of Bosnia and Herzegovina (SOPN ARBiH) “Zulfikar” participated in the attack on the village Trusina. This fact was confirmed by the accused himself, in his defense, while, as it relates to the claim that he liquidated these civilians, he stated that this was “*pure lie, and that the never in his life heard of, or knows where these people lived.*” In its closing argument, the defense of the accused denied the claim by the prosecutors that Edin Dzeko participated in the murder of the civilians in any way, claiming that he was not near the location of the murder of the Ivankovic couple, that is to say, he was not near the store, nor the location of the murder in the Šahići area of the village Trusina.

273. First and foremost, considering the testimonies of witness Rasema Handanović, as well as protected witnesses “E,” “M” and “R,” the Council has concluded that on that day, during the attack on the village, the accused was present near the store, which was located in very close proximity to the house of the murdered couple Ivanković.

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<sup>118</sup> Witness “X.” Transcript from the main hearing dated May 21, 2013;

274. Protected witness “E” stated that he saw the accused Džeko standing next to an elderly man at the door of the house, and that the house was located down the street from the store. He further stated that the accused Džeko was armed on that occasion, and further added, “*Anyway, at one point he just grabbed him and threw him outside that door, maybe dead, I don’t know how long, threw him on the ground and shot at him, and the man stayed there lying dead.*”<sup>119</sup> The witness states further that, all of a sudden, a woman ran out, dressed in black, and started screaming. He further states, “*But that was a scream, I lived through all kinds of things in my life, but I never heard anything like that in my life. And she laid across that man, on her knees, over him. She started saying, ‘my Ilija, my Ilija, my Ilija.’*”<sup>120</sup> Then he describes that Džeko shot at the woman, stating, “*He just stood over her head and kept saying, ‘shut up, shut up, don’t yell,’ something along those lines, and he shot at her head.*”<sup>121</sup> The witness stated that he observed all this from a distance of two to three meters, and he stated that the accused shot rapid fire at the man, while, as it relates to the woman, he does not recall if it was one bullet or two.

275. That the accused used a firearm to liquidate a civilian man and woman was described by the witness Rasema Handanović in detail during a deposition before the judicial council, stating that, at the very edge of village Trusina, from the direction of entering the village, on the left side, there was some kind of store, and that one of the members forced an elderly couple from the house, and that she was the witness of the murder of the said couple on this occasion, stating, “*And Džeko shot at the elderly man first, and then the woman cried, wrapped herself around him, and then he shot her, too.*”<sup>122</sup> She states that the he shot rapid fire from a gun, and that there was a shorter rapid fire, and that there were “*maybe a couple of bullets*” fired, and that the man was shot in the abdomen and chest area, while, by her estimation, the woman was shot in the back, since she was crying and kneeling next to an elderly man. She states that, on that day, the accused Džeko was dressed in a black uniform, and that he had on his person the M-16 gun, and she further stated that she observed the said event from a distance of a couple of meters, and that it took place near the store.

276. Witness “M”<sup>123</sup> in his testimony confirmed that, during the event, at one point they arrived at the store that was at the end of the village, and that “*Bećiri, Gale, Nedžad, Džeko, Koke*” were present, and that he does not recall if they were inside or outside the store. On that occasion the witness stated that, when they arrived at the store, they shot at the lock of the store, in order to get inside, and when they were about to enter the store someone yelled, “*Get out,*” and that at moment, the witness says, an elderly woman and an elderly man, who was wounded in the legs, exited. He states that he stayed in the store while the said persons went outside, and afterward the shots were heard. After the shooting, he came out of the store, and to the left there was a garage, and he saw the bodies of a man and a woman, so he assumed they were dead.

277. Also, the witness “R” stated that at one point he arrived at the store where he found several members of his unit, and he stated that “*... Struja, Kokić, Gala, Mehmić, Hamdo Klisura, the late Samko, Zolja and Edin Džeko*” were present. The witness further states that he entered the store, and at that moment he heard some type of wailing, and states, “*They were saying, Struja was telling him, to come outside, and the man came outside, with that, with the elderly woman, and the man was elderly, and the man did not have an easy time coming out, he was wounded in the leg. When the man came outside, one of the soldiers, since the man was squatting, leaning on one leg, and he stretched one leg, the one that was wounded he stretched forward...The woman was next to the man.*” The witness stated that he observed this for two, three minutes, and then went, with another soldier (witness “X”) further to see who was out in front of the houses. Witness

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<sup>119</sup> Transcript from the trial of the witness “E” dated October 23, 2012. p. 18;

<sup>120</sup> Ibid.

<sup>121</sup> Ibid.

<sup>122</sup> Transcript from the trial of the witness Rasema Handanović dated September 11, 2012. p. 10

<sup>123</sup> Transcript from the trial of the protected witness “M” dated January 15, 2013;

“R” stated in the end that he does not know what happened to the said persons, meaning, he does not know if they were killed or if they remained alive. During the deposition by the judicial council, the witness also confirmed that the persons he came upon near the store during the said event stayed at that location, while he, with his back to them, went to one of the houses.

278. When asked by the judicial council if the witness later learned who killed the man and the woman, the witness stated that there were stories, and he stated that he heard that the accused Džeko and Ahmet Kokić fired the shots.

279. During the investigation by the defense, the protected witness “U4” testified, and with his testimony, he confirmed that he was present when Ilija and his wife were killed, and that he saw this murder, according to him, but that he was not able to see with a 100 percent certainty who shot at them. The witness testified on this occasion that there was a small group of soldiers present, among them one woman, and that he was at a distance of about 70 meters, where he stood by one house. The witness states, *“I only heard, that woman is yelling at him, starts wailing... you know how that is in the village... it’s hard for her, they killed her Ilija, kill me too...”* The witness claims they killed her too, but that he was not able to see who did that. Further, after the witness was shown that there were discrepancies in an earlier statement<sup>124</sup> in which the witness stated that Ilija Ivanković was killed by a female soldier, the witness stated that he may have said that, that he does not recall, and that he allows for the possibility of having said that. Also, the prosecutor, during the cross-examination of the witness, submitted a transcript of the deposition the witness gave before the prosecution, at which time the witness stated, *“At one point, I saw someone from this group, which included a female soldier, kill Ilija at the front steps of his house and after that I saw his wife, Anđa, who started wailing, “Kill me, too, now that you have killed Ilija...” and while she was saying this, Anđa wrapped herself above the body of her husband and was shot in the back. I can’t claim with 100 percent certainty that she killed Ilija and Anđa and Jure Anđelić; I leave the possibility that this was done by one of the soldiers who were in her proximity... I don’t know who did that, maybe this Zolja, and maybe someone who was near her.”*<sup>125</sup>

280. It is the judgment of this Council that the testimony of the witness “U4” confirms that the man and the woman were killed outside their house, at which time a small group of soldiers, among them a woman, was present, and this is in agreement with the testimony of Rasema Handanović, who herself confirms that she was located in close proximity at the moment when the accused Džeko fired the shots. Connecting the said evidence with the testimony of the witness “E,” who also confirms that he was in close proximity at the moment the accused fired the shots, and who also confirms that the house they were in front of is located close to the store, as well as testimonies of witnesses “M” and “R” who confirm that at one point during the attack, the accused was by the store, The Council, without any doubt, finds proven that, during the attack on the village Trusina, the accused Edin Džeko, along with members of the unit, was in proximity to the store, that is, close to the Ivankovic couple’s house.

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<sup>124</sup> Official report by SIPA dated February 19, 2010;

<sup>125</sup> Report on the hearing of witness “U4” dated June 14, 2012, given before the State prosecutor of Bosnia and Herzegovina number;

281. Further, and as stated earlier, it has been found beyond any doubt that on that day, during the attack on the village, the Ivanković couple was killed, and with the presented witness testimonies, the Council finds that the said persons were killed in exactly the event described by the witness Rasema Handanović and the witness “E,” as well as, partially, the witness “M,” who states that, upon exiting the store, he noticed the dead bodies of the couple in close proximity.

282. Even though Rasema Handanović and the witness “E” had a direct motive to blame someone else for the murder of the couple, for the reason that they themselves were potential suspects, in fact, the accused, the Council has given good faith consideration to their testimonies, and as it relates to the fact that it was exactly the accused Džeko who fired the shots, and, based on the said testimonies, finds proven the claim by the prosecution that the accused Edin Dzeko, while shooting a firearm at close proximity, liquidated Ilija and Anđa Ivanković.

283. During the cross-examination, the defense claimed that it was precisely Rasema Handanović and the witness “E” who fired the shots, and they presented said claim to the witness “E,” who nonetheless stayed true to his statement, stating that he was sure of what he saw, and that he will not forget it until his death. Appreciating the testimony of the witness “U4,” the Council did not find that he in any way shed doubt on the testimony of the witness “E,” considering that the witness “U4” also, and during the testimony given in the discovery process and the deposition, was certain that, in the group of soldiers who were near the couple, there was a woman as well; however, at no time was he certain that she also fired the shots. In fact, he said that it may have been her, and it may have been one of the soldiers in her proximity. Considering that she was the only female soldier among the group of male soldiers, it is logical that the witness also noticed her, and that he recollects her as being present, but it is precisely due to this fact certain that he would have noticed and remembered the fact that it was exactly the woman, and not one of the male soldiers present, who fired the shots at civilians. To the contrary, he was undecided regarding this fact. Further, the Council finds that, in regard to the deciding fact, the witness “E” testified in a detailed and reliable manner, and that, considering the other circumstances of his testimony, especially the fact that by testifying he incriminated himself when stating that he liquidated one man during the attack on the village Trusina, finds his testimony and that of Rasema Handanović mutually in agreement; therefore, the Council is awarding them good faith.

284. Further, even though the defense questioned their testimonies, claiming they were motivated to provide false testimonies, at the same time, they did not present any reason as to why these two witnesses would falsely accuse precisely the accused Džeko, and keeping in mind the fact that they could have, in the same fashion, accused other members who were present during the time the act was committed at the same place or in close proximity.

285. Defense called upon the testimony of the defense witness Redža Poturović, who, at the main hearing, stated that the witness “E” boasted that he *“killed a man, and then a woman came out, cussed him out, and then he spilled her brains, put a barrel in the mouth and spilled her brains.”* However, considering that this is the only testimony offered by the defense to support the claim that the witness “E” killed two civilians in the village Trusina, and not the accused Džeko, the Council did not extend good faith to the said witness, and especially keeping in mind that during the said attack on the village, multiple civilians were killed, and in at least one more case, these were a man and a woman (the Drljo couple).

286. The defense also disputed that the accused Dzeko possessed the “M16” gun, and further claimed that, in Trusina, the accused had the sniper he was assigned by the unit, which can only have ten bullets, and can only fire single shots. As it relates to this deciding factor, the Council already presented its conclusion earlier in the verdict, and it does not find this circumstance to have any bearing, for the reasons named earlier.

287. Therefore, based on the analysis, and the comprehensive consideration of evidence, the Council has reached an unequivocal conclusion that the State Prosecutor of the Bosnia and Herzegovina has proven the factual statements from the charge, that the accused Edin Džeko, on April 16, 1993, in village Trusina, acted with the intent and will to liquidate civilians Ilija and Anđa Ivanković, and did so by firing a firearm.

**c. AMENDMENTS WITH RESPECT TO THE FACTUAL DESCRIPTION OF THE INDICTMENT**

288. The Council, as it relates to the points 1. and 2. of the criminal conviction, made changes in the factual description, while making sure that it is still related to the same part, meaning the same event, with all the important characteristics that represent the characteristics of a criminal act, and in doing so, it ensured that the objective identity between the charge and the verdict remains preserved. The Council has intervened in terms of other circumstances that contribute to a more accurate establishment of the circumstances of committing a criminal act, while not degrading the integrity of the criminal act in this specific case.

289. Accordingly, the Council, as stated previously, omitted, in the introduction of the point 1. of the verdict, the name of the unit the accused belongs to, and therefore the factual description contains only the name Special Unit for Specific Tasks of the Army of Bosnia and Herzegovina (SOPN ARBiH) “Zulfikar,” and the name Supreme Command Staff (ŠVK) is omitted, for the reason that the Council did not take under serious consideration the question of whether the Special Unit for Specific Tasks of the Army of Bosnia and Herzegovina (SOPN ARBiH) “Zulfikar” operated within the Supreme Command Staff (ŠVK) during the incriminating time frame or not, considering that this point is irrelevant to the proceedings and as it relates to the accused. Further, in point 1. and point 2., the Council omitted the portion of a sentence in the factual description as follows: “*not paying attention to differentiate between the civilian and military targets,*” since it also considers the above part irrelevant for these proceedings.

290. The Council made a change, as it relates to the factual description (of point 2. of the indictment) by, as stated previously, removing the victim Kata (Ivan) Drljo from the factual description, for the reason that the prosecution did not, beyond reasonable doubt, prove that the actions of the accused could be connected with the damages to this victim. The Council called on the Constitution that allows for the interventions by the court in the factual description section, if those are directed at a more precise clarification of the act. In doing so, it took care that the charge was not overreaching, meaning that it was not putting the accused in a graver processing situation that brings about a more severe qualification for the accused. The factual description portion is aligned with the established factual circumstances, the legal qualification of the act is not more severe, and the omitted portions of the charge did not put the accused in a graver processing-material position.

291. According to the opinion of the appellate Court of Bosnia and Herzegovina<sup>126</sup>, in cases such as this one, the first level court is not obligated to reach a verdict of release; it is enough to, in the explanation, give the reasons as to why certain actions and consequences are omitted from the verdict. Only in cases where the indictment is charging the accused with multiple points of indictment for having committed other acts that are not connected by the same factual base would it be appropriate to reach a verdict by which the accused is being released of any or all specific points of the indictment.

#### **d. CRIMINAL LIABILITY**

292. The accused is convicted of committing the criminal act of War Crime Against Prisoners, from article 144. of the Criminal Code of the Socialist Federal Republic of Yugoslavia (KZ SFRJ), as it pertains to article 22. of the said law, as well as the criminal act of War Crime Against the Civilian Population, article 142. line 1. of the Criminal Code of the Socialist Federal Republic of Yugoslavia (KZ SFRJ), the law that was adopted on the basis of the law on implementation of Criminal Law of the Republic of Bosnia and Herzegovina and the Criminal Law of Socialist Federal Republic of Yugoslavia. The Council has found the elements that mark these criminal acts to be primarily based on the fact that the State prosecutor of Bosnia and Herzegovina has proven that the accused, in taking steps to execute these actions, acted against the bans of the joint article 3. of the Geneva Convention, meaning against the ban on murdering the protected individuals, as explained earlier.

293. The elements of “a murder,” according to international common law, are as follows: death of the victim, in which death is caused by an action or omission of an action on the part of the accused, that is, the person or persons for whose actions or omission of actions the accused carries the criminal responsibility. The action or the omission of action by the accused person or persons for whose action he carries the criminal responsibility is committed with the intent to “liquidate or inflict grave physical injury, or inflict grave physical injury with the reasonable possible awareness that this action or omission of action would probably cause death.”<sup>127</sup>

294. The International Criminal Court for former Yugoslavia and the International Criminal Court for Rwanda have systematically defined murder as the death of a victim that came about as a result of an action or the omission of an action that the accused committed with the intent to liquidate the victim, or inflict grave physical injuries which he reasonably ought to have known could cause death.<sup>128</sup>

295. The Court of Bosnia and Herzegovina has established the elements of the criminal act of murder:

- 1) liquidation;
- 2) direct intent to liquidate, because the person acting was aware of his act, and he wished for the act to be committed.<sup>129</sup>

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<sup>126</sup> Verdict of the Appellate court of Bosnia and Herzegovina dated July 1, 2013, case number S1 1 K 013165 13 Krz, pp. 11 & 12;

<sup>127</sup> The Prosecution v Mitar Vasiljević, verdict case IT 98-32 of the Trial chamber IT, November 29, 2002., para. 205

<sup>128</sup> The Prosecution v Radislav Krstić, Case. IT-98-33 (Trial chamber), August 2, 2001. Para. 485

<sup>129</sup> See Trbic, X-KR-07/386 (Court of Bosnia and Herzegovina), Court of first instance verdict dated October 16, 2009, point 177.

296. As explained earlier in the verdict, the Council has found proven the death of the victims – six men, prisoners of war, as well as the death of civilians, the Ivanković couple. Additionally, as explained earlier, the Council has found that the death of these persons came about as a consequence of the action undertaken by the accused Edin Džeko, that is, as a consequence of the shooting at the victims from the firearm at close range.

297. In relation to point 1. of the criminal conviction, the council has found that he is responsible as a co-executor of the act. Article 22. of the Criminal Code of the Socialist Federal Republic of Yugoslavia (KZ SFRJ) states, “*If more persons, participating in the execution of an act, or in some other manner, jointly commit a criminal act, each of them will be punished with the sentence assigned for that act.*” Co-execution of an act, according to the Article 22. of KZ SFRJ assumes multiple persons, deciding contribution, and common intent.

298. The Council has found proven beyond any doubt that the accused, together with other members of Special Unit for Specific Tasks of the Army of Bosnia and Herzegovina (SOPN ARBiH) “Zulfikir,” among them Rasema Handanović, called Zolja, after the members of his unit separated women and children from the men and took them behind the house, and after six men were executed while facing the house wall, and after an order was issued, using the two-way radio, to form a firing squad, while one of the men stepped out of the formation with the intent to escape, shot the firearm in the direction of the lined-up men. As stated previously in the verdict, in accordance with the judicial practice in war crimes cases, in those cases where there were multiple perpetrators of a murder, it is sufficient to prove that they acted jointly, and that they are responsible as immediate acting party to the murder of multiple victims. Keeping in mind all the circumstances that led to the liquidation of the men, it was possible to conclude, based on the evidence presented, that the accused Džeko also took part in the material elements of the criminal act of murder, and that he is responsible for the death of all the victims, regardless of whether, in the case of each victim, he himself fired the death-causing bullet.<sup>130</sup> Additionally, keeping in mind the same circumstances, the Council finds that he was aware that his actions violated the rules of international law, and that these actions would cause the death of prisoners of war, and that it this was exactly the result he wanted to achieve.

299. Such a conclusion regarding the accused’s intent is unequivocally evident from all circumstances under which the attack on Trusina was carried out, as well as the military positions of HVO above the village, that is, the circumstances under which, during the attack itself, multiple civilians were liquidated (at other locations in the village, and as part of the said attack), and in the events preceding the act of murder of the lined-up soldiers, during which, the accused, as established under point 2. of the criminal conviction, liquidated two civilians.

300. As it relates to point 2. of the criminal conviction, the Council has found that the accused acted as a direct executor of the act when he shot the firearm at close range in the direction of the victim Ilija Ivankovic, and subsequently in the direction of the victim Anđa Ivanković, who, at the moment of death, was in a bent-over position above the body of her already-murdered husband, Ilija, when the accused shot at her, while instructing her to shut up; while it is irrelevant whether he shot he the victim in rapid fire or by firing individual bullets, considering that the consequence of death happened immediately, and as a result of an actions of the accused. Considering all the circumstances under which the accused acted, the Council finds that there is no doubt that the accused knew that these persons were civilians, and older in

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<sup>130</sup> Verdict of the court of second instance in the case Limaj and others, paragraph 47-50. See also the verdict of the court of second instance in case Limaj and others, paragraph 664, 670, 741., Verdict of the court of second instance in case Lukić and others. Paragraph 162 number IT-98-32/1-A dated December 4, 2012

age, and there was no doubt that by shooting in the direction of the victims the said victims would be liquidated, and that this was exactly the consequence he wished to achieve.

301. Keeping in mind all that has been stated, the Council has found that the accused Edin Džeko, acting in the said manner, established all the elements of the criminal act of War Crime Against Prisoners of War, according to article 144. of the KZ SFRJ as it related to article 22. of the KZ SFRJ, as well as the elements of the criminal act of War Crime Against the Civilian Population according to article 142. line 1. of the KZ SFRJ, and the Council pronounces him guilty, and convicts him of these actions.

**e. DETERMINING THE SENTENCE**

302. The purpose of the sentencing is prescribed by the article 33. of the KZ SFRJ and is as follows: (1) prevention of the one who committed the act to commit criminal acts, (2) educational effect on others not to commit criminal acts, and (3) strengthening of the societal morals, and the effect on development of the social responsibility and the discipline of the citizens.

303. In the process of deciding on the type and severity of the criminal sanction determined by use of articles 33., 38. and 41. of the Criminal Code of the Socialist Federal Republic of Yugoslavia (KZ SFRJ), the Council assessed the accused Edin Džeko, for the criminal act war crimes against the prisoners of war, as described by article 144. of the Criminal Code of the Socialist Federal Republic of Yugoslavia (KZ SFRJ), and related to article 22. of the Criminal Code of the Socialist Federal Republic of Yugoslavia (KZ SFRJ), the sentence of imprisonment lasting ten (10) years, and for the criminal act war crime against the civilian population as described by article 142. line 1. of the same law, assessed the sentence of imprisonment lasting seven (7) years, and, applying the provision in article 48. of the Criminal Code of the Socialist Federal Republic of Yugoslavia (KZ SFRJ), sentenced the accused to a singular sentence of imprisonment for a period of twelve (12) years.

304. Further, when determining the sentence, the Council kept in mind the general rules on choosing the type and length of the sentence, and with the purpose of punishment, and especially the degree of criminal responsibility of the accused, the circumstance under which the act was committed, the severity of the crime, meaning the injury to the protected entity, as well as the prior life of the accused, his individual circumstances, and actions after the act was committed, and the motivation for committing the said act.

305. Related to that, and in following with the legal practice of International Criminal Tribunal for the former Yugoslavia (MKSJ), this Council, when considering the mitigating and aggravating circumstances, kept in mind that the prosecution must establish the aggravating circumstances beyond reasonable doubt, while the defense must establish the mitigating circumstances based on the assessment of the probability, meaning that it has to be more likely that the circumstances were present, then the opposite.

306. As it relates to the accused Džeko, the Council primarily considered that the accused acted as a co-executor, and the direct executor of the acts, consciously and knowingly, and in doing so, contributed to the execution of the criminal acts, described in points 1. and 2. of the criminal conviction.

307. As a mitigating circumstance, the Council has established that the accused is a father of two minor children, meaning he is a family man, and that he has no prior convictions, as well as that the said accused acted respectfully before the court during the entire proceedings. Additionally, the Council was mindful that, at the time the committed the criminal acts he is found guilty of in this verdict, the accused was a very young person, barely older than 21 years of age.

308. As far as the aggravating circumstances, the Council has considered the manner in which the acts were committed, as described in the criminal conviction, the severity of the injury to the protected entity, and related to that, the consequences of the act committed, that are evident in the number of victims named in point 1. and 2. of the verdict to release.

309. Appreciating the above said, as well as the degree of participation of the accused in committing the criminal acts for which he was found guilty, the Council holds that the assigned individual sentences for committing the criminal acts, as well as the joint prison sentence rendered, are adequate given all the named circumstances and the personality of the accused as the person committing the acts, and that, the said sentence will in totality fulfill the purpose of punishment, and not only the specific, but the general prevention as well.

310. The Council additionally finds that this sentence reflects the social condemnation of the act, and the purpose of punishment will, therefore be fulfilled in entirety.

## **H. COURT DECISIONS – NOT GUILTY PART OF THE VERDICT**

311. The Council did not find proven the criminal legal actions described under the point 3. a), b) and c), points 4., 5., 6., 7. and 8. of the indictment, and has, therefore, released the accused of the guilt for the material incrimination, as it relates to points 1. through 4. of the verdict to release, based on article 284. Line 1. point a) of the law on criminal procedure of Bosnia and Herzegovina (ZKP BiH), and in relation to points 5. and 6. of the verdict to release based on article 284. line 1. point c) of the law on criminal procedure of Bosnia and Herzegovina (ZKP BiH).

### **1. Sections 4. and 5. of the indictment (Sections 1. and 2. of the “not guilty” charges)**

312. According to the contents of the legal definition of the criminal act war crime against the civilian population, the said criminal act has a blanket character. Therefore, as the case is with all the criminal acts with the blanket desposition, in order to establish whether the specific acts meet the important characteristics of the criminal act, it is necessary to consult the blanket order, meaning the ordinance that the blanket disposition refers to. Blanket ordinances related to criminal acts described in ordinance article 173. of the law on criminal procedure of Bosnia and Herzegovina (ZKP BiH) are the rules of the international law.

313. Therefore, in order to be able to speak of the criminal act described in the article 173. of the law on criminal procedure of Bosnia and Herzegovina (ZKP BiH), it is, first and foremost, necessary to prove that the actions of committing the criminal act constitute violation of the international law, more precisely, it is necessary to establish that the actions of the accused were taken contrary to the basic principles whose following is mandated by the international law.

314. Under the points 4. and 5. of the indictment, the accused is charged with theft, in the following manner:

(4) On an unidentified date in September 1993, he took an imprisoned civilian of Croatian nationality Mirko Zelenika out of the underground trap located in the complex Rogić house in Donja Jablanica, at the time serving as a base of SOPN SVK ARBIH “Zulfikar,” and took him to Jablanica, where he forced the said person, under the threat of murder, while pointing a gun at him, to take 3,500 marks from acquaintances and relatives as a ransom for him life and turn it over to him, which Mirko Zelenika did;

(5) On an unidentified date in September 1993, he ordered a imprisoned civilian of Croatian nationality “J3” to leave the stable located in complex Rogić house in Donja Jablanica, used at the time as a base by Special unit for specific tasks of the Supreme Command Staff of the Army of Bosnia and Herzegovina (SOPN SVK ARBiH) “Zulfikar,” and then, following the order of commandant Zulfikar Ališpaga, called Zuka, drove to his house and following this order, took from the said civilian 3,500 marks, as well as a bottle of whiskey, leaving him in the house, and ordering him not to go anywhere, as he is now under their control;

315. The Council has considered if these actions, and if they are proven by evidence, would be taken contrary the order from article 3. line 1. point a) of the Geneva Convention on the protection of civilians in war times, dated August 12, 1949, and article 3. line 1. point a) of the Geneva Convention on treatment of the prisoners of war, dated August 12, 1949 (joint article 3. of the conventions), as charged in the indictment.

316. It is evident that the acts of theft cannot be considered as injuries of endangerment of life or physical integrity, the infliction of which is banned under the article 3. line 1., point a) of the Conventions, for the breach of which the accused is being charged in the material indictment. Therefore, the Council has analyzed if the general obligation of humane treatment ascribed in the joint article 3. of the Conventions, whose relevant portion states the following:

-... the persons not directly participating in enemy activities, including in this group members of the armed forces who laid down their weapons, and persons incapable of partaking in the battle due to illness, injuries, being in captivity, or any other reason, shall be treated, on every occasion, humane, with no negative distinctions made on the basis of race, skin color, religion or belief, gender, birth, material status, or any similar characteristic.

also obligates protection from theft, and through analysis of up to date practice of international and domestic courts, as well as common humanitarian law found that there is no basis to “stretch” the obligation and the requirement of humane treatment of civilians and hors de combat persons in the joint article 3. of the Geneva Convention to the theft of the said persons, nor do the past practices leave room for a different conclusion, especially keeping in mind that this law gives basic guarantees to the protected persons.

317. The founding council in the Čelebići case, therefore determined that the charge of theft and illegal imprisonment of the civilians does not constitute violation of the laws and customs of war that are materially banned by the common article 3. of the Conventions (article 2. of the International Criminal Tribunal for the former Yugoslavia statute), and has therefore considered the charge of theft in the context of ban on the grave violation of the international humanitarian law, namely article 3. of the International Criminal Tribunal for the former Yugoslavia (MKSJ) statute under which the grave violations of the Geneva Convention (articles 147. of the Geneva Convention IV and 130. of the Geneva Convention III) are incriminated. Subsequent verdicts by the International Criminal Tribunal for the former Yugoslavia (MKSJ)

on the question of charges of theft followed the same approach, and there was no departure from the named approach in the Čelebići case.

318. The Council also analyzed the approach of the appeal council of Bosnia and Herzegovina taken in Ante Kovač case, according to which the act of theft, due to the circumstances under which it was committed, was qualified as brute attack on the human dignity, that had deep psychological suffering of the victims as a consequence, and is therefore, banned under the joint article 3. of the Conventions as inhumane behavior.

319. Appreciating the position of this Council to significantly “enlarge” the protections under the joint article 3., and in a manner that was laid out in the verdict of the case, and keeping in mind the manner in which the violation has been explained, it follows, that in order to reach the same conclusion, and following this approach, it is necessary that the indictment and the factual description charge the accused in the exact same manner, meaning that the prosecution claimed in the indictment and proven during the trial, not only the fact that the act of theft of the victim occurred, but also the fact that this act represented a brute attack on the human dignity, that had deep psychological suffering of a victim as a consequence.

320. However, the material indictment, or rather the factual description in points 4. and 5. of the indictment, and in the legal description of the act from which the legal criteria are derived, and which states:

during the times of war and armed conflict violating the rules of the international law, participating in murder, torture, inhumane behavior, illegal opening and theft of material possessions of civilians and prisoners of war, as well as the legal classification of acts from article 173, line 1. point f) (theft),

the accused is clearly not being charged that by engaging in the theft of the victims he caused them deep psychological suffering nor violated human dignity, nor were such consequences being proven at the main hearing by the prosecution. In such a case, when the indictment charges, and the main hearing is proving exclusively theft (in a sense of taking possession of the material goods) against the victim, the Council finds there are no basis in humanitarian common law or practice to invoke the joint article 3. of the Conventions.

321. International common law contains a general ban on theft (rule 52) and ban on theft of personal possessions of prisoners (rule 122), where it is stated that these common law rules apply to international and internal armed conflicts, however, neither of the rules refer to the joint article 3. of the Conventions, but rather exclusively to the norms of the fourth Geneva convention (article 33. of the Geneva Convention IV) when they protect the civilians in an international armed conflict, while in cases of internal armed conflicts they relate exclusively to article 4 (2) II Addendum protocol of the Geneva Convention, under which they exclusively protect from theft the imprisoned persons.

322. Keeping in mind the fact that the indictment does not charge the accused for violation of these rules of the Geneva Convention, but rather, exclusively for violating the joint article 3. of the Conventions, and also keeping in mind the earlier analysis and findings of the court in regards to use of this article in this specific case, the Council finds that the factual description does not contain the indicative norm that amends the blanket disposition of a criminal act, and therefore the act the accused is being charged with in the indictment is not a criminal act. Meaning that, considering that the prosecution in the indictment wrongly calls upon the violation of the joint article 3. of the Conventions, that in this specific case has no legal bearings, and in practical terms means that the descriptive part of indictment the blanket rule, that amends the blanket norm, is missing and constructs one element of the criminal act that the accused was charged with.

323. The court is not authorized to change or amend the assigned rule, because doing so would lead to overstepping of the material indictment, at the accused's detriment, and therefore, keeping all of the above in mind, the Council released the accused on the points 4. and 5. of the indictment, and based on the provision article 284. Point a) of law on criminal procedures of the Republic of Bosnia and Herzegovina (ZKP BiH), for the reason that the act with which he is being charged, as it is described in the indictment, is not a criminal act.

## **2. Sections 6 and 7 of the indictment (Sections 3 and 4 of the "not guilty" charges)**

324. Point 7. of the material indictment (point 4. of the verdict to release), the accused is also being charged with acting against the order of the joint article 3. line 1. point a) of the Convention, in the following way: "...on unidentified dates in September and October 1993, on multiple occasions, on the Jablanica-Mostar highway, near Prenj restaurant, where the imprisoned civilians of Croatian nationality from the Rogic houses in Donja Jablanica, that served as a base of the Special unit for specific tasks of the Supreme Command Staff of the Army of Bosnia and Herzegovina (SOPN SVK ARBiH) "Zulfikar," were receiving their daily meals, along with other members of the Special unit for specific tasks of the Supreme Command Staff of the Army of Bosnia and Herzegovina (SOPN SVK ARBiH) "Zulfikar" that he knew, beaten, using hands and legs, on various body parts, the imprisoned civilians Miroslav Soko and Mirko Zelenika, while they were going or coming back from their meals at restaurant Prenj;

325. Keeping in mind that this regulation bans inflicting injury to life or physical integrity of the protected persons, and keeping in mind that in the factual description of this point of the indictment, the accused is not being charged with inflicting any type of injury to the victims, while engaging in these acts, the court was not able to establish that the accused, in doing so, committed an act against the international humanitarian law as it relates to the said provision of the Geneva Convention.

326. It is evident that the joint article 3. of the Convention does not sanction every, or any illegal act against life and physical integrity, but rather only that act which results in a banned consequence, which, in this specific case, is the injury being inflicted to the life or physical integrity of a person being protected by the Convention, and in regard the consequence, it is not named in the factual substrate of the indictment.

327. Additionally, the general ban of the inhumane behavior from the joint article 3. purports proof of the said consequences. Therefore, the term "inhumane behavior" is defined in the elements of the crime for the International criminal court as inflicting "grave physical or psychological pain or suffering," while the International Criminal Tribunal for the former Yugoslavia (MKSJ) used a broader definition, which states that the "inhumane actions are those that cause serious psychological or physical suffering, or represent a grave attack on human dignity."

328. Keeping the above in mind, when reaching the decision on the indictment, the court is obligated to assess if the actions of the accused, in the situation that the accused had committed the described actions, in doing so violate rules of international law, the violation the court, in fact, has not been able to establish, considering that he was not charged with it under the articles of the indictment.

329. Unlike the factual description in point 8., 3. b) and 3. c) of the indictment, where the accused is charged with acting in a manner factually described in the said points, caused grave suffering and injury to the physical integrity and health, in point 3. those claims are absent. Even though it could be concluded, from the description of the acts the accused was charged with, that some of the consequences did occur in the victims, the court could not, from the said description of acts conclude what would degree of severity of some of the consequences for the victims be, meaning if they would be severe to the extent that is necessary to establish, in order to cause suffering or injury to the physical integrity that are caused toward the victim by a certain executor of the act, and could be deemed grave or serious, or that they would represent a serious attack on the human dignity, and their infliction characterized as committing a war crime against civilian population.

330. Finally, even if such conclusion would be reached in the explanation of the verdict (and based on the conducted evidence), in situation when those are not specifically included in the factual description of the verdict, the court would significantly breach the process laid out in article 297. line 1. Point k) of the law on criminal procedures of the Republic of Bosnia and Herzegovina (ZKP BiH), while, on the other hand, through the intervention of the court into the description of the criminal act the court would step outside the bounds of the factual circumstances laid out in the indictment, through addition of an important element to the body of criminal act, to the detriment of the accused, and in doing so it would be in breach of the procedural rules from the article 297. line 1. point j) of the law on criminal procedures of the Republic of Bosnia and Herzegovina (ZKP BiH), meaning it would overstep the verdict.

331. The court would be within its authority to replace one factual term with another, if that would not put the accused in a more severe situation. However, in this specific case, such factual term is missing in entirety, and the said missing term practically means that the factual description of indictment is missing the element of the act with which the accused is being charged, so it follows, and keeping in mind the above stated, in applying the rule from article 284. point a) of the law on criminal procedures of the Republic of Bosnia and Herzegovina (ZKP BiH) releasing the accused for the act he is being charged under point 7. of the indictment, finding that the act for which the accused is charged under this point of indictment is not legally prescribed as criminal act with which he was charged.

332. For the same reasons given in the explanation as it relates to point 7., the Council, considering the lack of factual description in point 6. of the indictment (point 3. of the verdict to release), could not, from the described actions, conclude on existence of any consequences to the victims, nor did it constitute banned consequence, as it relates to the norms of the international humanitarian law, as the accused was charged. This point of indictment the accused is charged as follows:

On an unidentified date in the second half of 1993, on the Jablanica-Mostar highway, near "Prenj" restaurant where the civilians and the prisoners of war of Croatian nationality from the Rogic house in Donja Jablanica were being imprisoned, that served as a base for the Special unit for specific tasks of the Supreme Command Staff of the Army of Bosnia and Herzegovina (SOPN SVK ARBIH) "Zulfikar" received their daily meals, along with the deputy commander of the Special unit for specific tasks of the Supreme Command Staff of the Army of Bosnia and Herzegovina (SOPN SVK ABIH) "Zulfikar," Nihad Bojadžić, ordered the prisoners, among them Mirko Zelenika, Miroslav Soko, Marinko Ljoljo, to stand in formation along the highway, while at the

same time, around them, nearby, there were mortars landing, from the Croatian Defense Council (HVO) locations, yelling “ if you move, we will kill you, and if you don’t, let the HVO kill you;”

from which factual description clearly stems which actions the accused would take under these critical circumstances, but not the consequence that would have followed from engaging in such action on part of the accused, and which would give it the illegal character, as a violation of the joint article 3. of the Conventions, therefore, keeping in mind the above statement, by applying the statute article 284. point a) of the law on criminal procedures of the Republic of Bosnia and Herzegovina (ZKP BiH), the accused is released from charges for actions he was charged with under this point of indictment, finding that the act he is charged with is not characterized as criminal act for which he is being charged.

### **3. Section 3.a. of the indictment (Section 5.a. the “not guilty” charges)**

333. As it relates to point 3. a) of the indictment, meaning point 5. a) of the verdict to release, the Council, based on the evidence presented did not determine that the accused Edin Džeko, along with members of the Special unit for specific tasks of the Army of Bosnia and Herzegovina (SOPN ARBiH) ‘Zulfikar,’ in the territory of Jablanica municipality, is responsible for engaging in illegal imprisonment of the civilians of Croatian nationality from Jablanica, namely, Mirko Zelenika, Marko Zelenika, Miroslav Soko, Marinko Ljoljo, Ivo Jurić, Jure Jurić, Vinko Ljubas, Vlado Čurić and Mate Biloš, and their illegal imprisonment in an underground trap, that was located in the complex Rogić house in Donja Jablanica.

334. On the circumstances of this charge, the testimonies were heard from the prosecution witnesses, Marinko Ljoljo, protected witness “J3,” Mirko Zelenika, Vinko Ljubas, Miroslav Soko, as well as the accused Edin Džeko, in a witness capacity.

335. During his testimony, the accused Edin Džeko, as it relates to the circumstances regarding imprisonment pointed out that the 44. Mountain brigade (Bbr.) received an order to gather the members of Croatian Defense Council (HVO) in the town of Jablanica, and that the Special unit for specific tasks (SOPN) “Zulfikar” as well as other units received an order to gather members of the Croatian Defense Council (HVO) who lived in the town of Jablanica. He further testified that he, following an order of his commander Zulfikar Ališpaga, as a military person, following his military orders, participated in the imprisonment of the Croatian Defense Council (HVO) members, and only persons Vlado Čurić, Vinko Ljubas and one more person with the last name of Juric. The said accused, during the testimony, pointed out that these activities were being carried out by the military police of the 44. Mountain brigade (Bbr.), and that the accused carried out this order along with Enis Popara, driving the pickup Toyota vehicle, during which time Enis Popara was in possession of the document containing the names of persons that were to be imprisoned.

336. The prosecution witness Mirko Zelenika described his imprisonment in the manner that the said person was imprisoned on September 8, 1993, in the afternoon at the address of his father’s apartment, during which time a group of people suddenly knocked on the door, having some type of list in their possession. At this occasion, the witness and his brother were told to quickly get ready, bring personal documentation, and that they are being taken to an information meeting. Of the soldiers present, he only knew one, by the name of Fadil, who, he said was a member of military police of the Army of Bosnia and Herzegovina (ARBiH), while the others, there were four of them, he did not know. Two were dressed in black uniforms, one in fatigue uniform, and one was wearing civilian clothing. As it relates to the persons the witness did not know, the said witness stated that during the journey toward Donja Jablanica, he already found out the

last name of one of them, and that he learned this was “Džeko,” and he found this out in the manner that his brother whispered to him that this could be Džeko. During the departure, according to the witness, the accused Džeko addressed the witness, while they were waiting for Vlado Čurić and Vinko Ljubas to be brought, and at that time he asked him if he had ever been arrested in the past. The witness also stated that, during the time he was imprisoned in the trap, one of the imprisoned persons, namely Vlado Čurić said that he knows him to be Džeko. The witness further testified that after the nine of them were arrested, they were driven to Donja Jablanica.

337. In his testimony, witness Marinko Ljoljo stated that he was arrested on September 8, 1993 in the afternoon after he had returned from his work obligation, and saw a soldier in a black uniform, for whom he later learned was Popara, and a member of unit “Zulfikar.” The said the soldier took his identification card, and told him to come with him to an information meeting, and that he showed him a list containing ten names, among them his name. He further describes that, upon coming out, he saw a truck that had a cabin and flat bed, a Toyota, and at that occasion he saw people he knew sitting in the back of the vehicle with two more soldiers wearing fatigue and black uniforms. After they had located other persons from the list, the witness saw that, by the house of Miroslav Soko, the accused Džeko appeared as well,<sup>131</sup> who, according to the testimony by the witness, participated in the arrest, and after they were all gathered, they set out toward Donja Jablanica in the pickup truck.

338. Witness “J3” was also arrested that day, and he testified that in the early September 1993, four soldiers in a Toyota vehicle came for him, at which occasion the witness only recognized Popara who had a list, and at that time he was told he was going to an information meeting in Donja Jablnica. Following this, he was put in the back of the pickup vehicle, and they continued driving in order to find other persons from the list. This witness clearly stated, during his testimony that Džeko was driving the said Toyota vehicle. Later on, at the camp, he learned that one of the soldiers was Džeko, and next to him were Nećko and Žuti.

339. In addition to the named witnesses, witness Miroslav Soko was also arrested on that day, in the manner that in the afternoon hours, members of the Army of Bosnia and Herzegovina (ARBiH) came for him, namely members of the Special unit for specific tasks “Zulfikar” arrived to his apartment, and took him in for questioning, and that the witness never returned again. The witness testified that at this occasion Edin Džeko<sup>132</sup> and Nedžad came for him, escorted by soldiers of the Army of Bosnia and Herzegovina (ARBiH) from Donja Jablanica, and one of them was named Faruk. Following this, the witness was taken outside and put into a white vehicle, a Toyota, and was told he was going to an information meeting in Donja Jablanica. When they departed, Džeko came along as well, boarding the enclosed cabin of the vehicle.

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<sup>131</sup> To the separate question as to how the witness had the knowledge that it was specifically the accused Džeko, the witness replied that Džeko, Popara, Nedžad and Nihad were the names from Zuka’s unit, and that he was familiar with those names because they traveled by truck every day on the Jablanica-Donja Jablanica-Glogovo-Prenj road, and that the base of these soldiers was precisely located at Rogić house in Donja Jablanica, and that the soldiers who were on these trucks mentioned the said names.

<sup>132</sup> During his testimony, the witness stated that he knew of Edin Džeko by his name, from being in town, because he used to go out in Jablanica, up to the moment of the arrest, and that he used to see the said accused, because he was dating a girl there, that he ended up marrying later on.

340. Witness Vinko Ljubas concurrently states that he was arrested on September 8, 1993, in the afternoon, whereas Popara, a member of “Zuka’s army” came for him, dressed in black uniform and armed. After he departed, in the back of the vehicle, which was white, there were more civilians and soldiers, after which all the arrested persons were brought to Donja Jablanica.

341. Drawing connection based on conducted evidence, the Council establishes that the men of Croatian nationality, in the afternoon of the September 8, 1993, were brought to Donja Jablanica, into the complex named Rogić house, after which they were imprisoned into an underground trap. The fact that all the men were arrested and taken to Donja Jablanica, and imprisoned into an underground trap was also confirmed by the witnesses Miroslav Soko<sup>133</sup>, Vinko Ljubas<sup>134</sup>, Marinko Ljoljo<sup>135</sup>, Mirko Zelenika<sup>136</sup> and witness “J3.”<sup>137</sup>

342. Additionally, the Council has established, beyond any doubt that the accused Edin Džeko participated in their arrest, the fact unambiguously stated by the prosecution witnesses. Finally, this fact is not denied by the accused himself, although he confirms he took part in the arrest of only three persons, the statement which, however, was not accepted by the Council (as it relates to the arrest of the remaining persons).

343. The defense, in questioning the credibility of the witnesses of the State prosecutor of Bosnia and Herzegovina questioned on the circumstances of the said event, pointed to incompatibility as it relates to the chronology of the arrests of persons, as well as the presence of other persons at the location of the event, and the incompatibilities in terms of presence and physical appearance of the accused, as well as his participation in the arrest.

344. The Council finds it correct that, while testifying about this event, the witnesses, each in his own manner, describe the events related to the arrest, and that there were also negligible differences in the testimonies, that concerned the appearance of the uniform of the accused on that day, meaning there were witnesses who claimed the said accused was dressed in civilian clothing.

345. These differences in testimonies the Council does not find significant, and that, given differences and instabilities of human perception, determined by the knowledge and personal experiences unique to each person, finds them acceptable. When this is related to the time elapsed since the transpired event, certain differences are completely understandable, which does not shed doubt on the conclusion on the deciding facts. In that respect, the said differences the Council finds peripheral, considering that the testimonies in regards to the deciding facts of the said event, are mutually agreeable and complementary, based upon which, the Council accepts them as authoritative.

346. However, regardless of the conclusion that there exists enough evidence that the accused participated in the said arrests in jablanica on September 9, 2014, the Council could not, as it relates to the violation of the statutes of the Geneva Convention establish that the accused illegally arrested the said persons, nor that he illegally imprisoned the said persons in the underground trap in Donja Jablanica.

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<sup>133</sup> Witness Miroslav Soko: “In the afternoon, late afternoon, it wasn’t dark yet, so late afternoon, when we were taken to Rogic house, and put in that trap.”

<sup>134</sup> Witness Vinko Ljubas, Transcript from the main hearing, dated April 9, 2014, p. 8;

<sup>135</sup> Witness Marinko Ljoljo, Transcript from the main hearing, dated April 2, 2014, p. 19;

<sup>136</sup> Witness Mirko Zelenika, Transcript from the main hearing dated March 3, 2014, p. 12;

<sup>137</sup> Witness “J3,” Transcript from the main hearing dated March 12, 2014, p. 42;

347. The Council has concluded that the accused, in the action of arrest, participated as a regular soldier, and in that capacity he fulfilled the orders of his superiors. More precisely, he assisted a member of the military police, the fact stated by a number of witnesses during the hearing. The matter of imprisonment of the named persons was evidently being decided by those superior to the accused, therefore the accused did not have to be aware of possible illegality of the act of arrest of these persons, considering that the said action is taken in relations to members of units of, at that time, already opposing side in the conflict, which is specifically evident by the fact that, during the arrests, the actions were not taken arbitrarily and randomly, but rather there was a list of persons that needed to be arrested, in possession of a military policeman.

348. All the witnesses who testified to this circumstance stated that, at the occasion of their arrest there was a military policeman present, and he was holding the said list with names of people of Croatian nationality. The existence of the list was confirmed by the witnesses Mirko Zelenika, Marinko Ljoljo, Miroslav Soko and the protected witness "J3." Witness Vinko Ljubas states that he, after all these events, on one occasion spoke with the accused Džeko about the arrests that took place, and he further stated that the accused told him that his unit asked for the list from Enes Kovačević. The witness stated that it was not his impression that it was specifically Džeko himself who asked for the list.<sup>138</sup>

349. It is obvious that the accused in the previous order that was issued in a written manner, in form of a list of persons who were to be detained and brought to the complex Rogića house" acted on official task that he was obligated to complete, while he was not in position to order anyone arrested, meaning that in this case, there were no arbitrary circumstances on the part of the accused, and following such conclusion, the Council was not able to establish that he was the one who placed them in the above named complex, especially considering the fact that the evidence leads to a conclusion that, at the moment when the accused, along with other members of his unit drove the arrested persons to the complex "Rogića house," there were persons at the base who were members of the commanding cadre of the Army of Bosnia and Herzegovina, meaning that the superiors of the accused were present.

350. The above was confirmed by witnesses Mirko Zelenika, Miroslav Soro, Marinko Ljoljo, and the protected witness "J3," therefore the Council deemed relevant and agreeable the named testimonies, related to the part where the witnesses stated that the persons from the commanding cadre, meaning the superiors of the accused were present at the complex Rogića house, while the witnesses did not mention the accused as having taken any actions during the imprisonment of the victims, not that the said accused was in position to decide the conditions under which these persons were to be kept.

351. During his testimony, the accused himself stated that he personally did not imprison anyone underground, nor that he had such authority.<sup>139</sup> On the circumstances of the act of imprisonment in the underground trap, testimony was given by the witness Vinko Ljubas, who, during his testimony, stated that he is not able to recall the role the accused had in his imprisonment in the trap, and a similar conclusion was presented by the witness "J3" during his testimony, during which he stated that he cannot recall if the accused Džeko took them into the trap. Other witnesses who testified to these circumstances stated only that someone from the commanding cadre, or someone from the group of soldiers who brought them to Donja Jablanica said "that they need to be put in the hole." However, none of the said witnesses named the accused Edin Džeko as the person who ordered that the arrested persons from Jablanica be placed in the complex Rogić house, namely into the trap.

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<sup>138</sup> Witness Vinko Ljubas, Transcript from the main hearing dated April 9, 2014. p. 18 & p. 28;

<sup>139</sup> The accused Edin Džeko, acting in a witness capacity, Transcript from the main hearing dated December 17, 2013. p. 40;

352. Therefore, keeping in mind the character of the acts taken by the accused, meaning the lack of illegality of the said actions, especially as it pertains to the fact that the said acts are taken against the members of the opposing side in a conflict, and also considering that he acted on an order that is not obviously illegal, the Council finds that in this specific case, the State prosecutor of Bosnia and Herzegovina did not prove that the accused fulfilled the elements of the act he is being charged with in the indictment, and is therefore being issued a verdict of release, based on Provision 284. point c) of the law on criminal procedure of Bosnia and Herzegovina (ZKP BiH), as it is finding that it was not proven that he committed a criminal act as it relates to this point of the indictment either.

#### **4. Section 3.b. of the indictment (Section 5.b. of the “not guilty” charges)**

353. The Council also did not determine the responsibility on part of the accused under the point 3. b) of the indictment (point 5. b) of the verdict of release). The above-named point charges that the accused, during the illegal arrest of Miroslav Soko, he, along with Nedžad Hodžić, violently hit him with his fists and legs on the head and body, as a result of which Miroslav Soro suffered great pain, and in doing so inflicted grave suffering and injury to the physical integrity and health.

354. During the discovery phase of the case, at the suggestion of the State prosecutor of Bosnia and Herzegovina, as it relates to point 3. b), Miroslav Soko testified, as well as witnesses “J3,” Mirko Zelenika and Marinko Ljoljo. The defense provided evidence through testimonies of Edin Džeko, testifying as a witness, and witness Nezir Vilo. In the accused’s testimony as well as the closing argument, the defense disputed that the accused Edin Džeko was present at the time of imprisonment of Miroslav Soko, and therefore could not have committed the criminal act for which he is being charged in this point of indictment.

355. At the defense’s question if he personally ever hit Miroslav Soko, the accused pointed out da he “was never in a fight in his life,” nor that the said ever hit anyone, and that Miroslav Soko mistook him for someone else. The above said person stated that he never even heard that anyone hit Miroslav Soko.

356. As previously stated, the Council established that the accused was present at the arrest of men of Croatian nationality, including Miroslav Soko. In fact, the witnesses confirmed that Miroslav Soko was indeed located in the open back of the vehicle on that day, and so the witness “J3” stated that, among others, Miroslav Soko was present, and that, at first, there were nine of them, and that on that occasion the accused Dzeko drove the Toyota vehicle. Witness Mirko Zelenika stated that he was one of the first to be placed in the open part of the vehicle, along with his brother, and that, following this, they went to get Miroslav Soko and Marinko Ljoljo, while the accused, himself, was present at their arrest. The witness found out, from one of the men on the open part of the vehicle, that this was Džeko. According to the testimony of the witness Marinko Ljoljo, Edin Džeko showed up after Miroslav Soko was brought and placed in the back of the vehicle. Witness Ljoljo pointed out that, when they arrived at the apartment of Miroslav Soko, and brought the said man from somewhere, the accused Džeko appeared from that house, as well as that the said accused participated in the arrest, after which they all set out towards Donja Jablanica and Zuka’s base.

357. In the addition to the above, based on the testimonies of the witnesses, the Council, during the proceedings, determined that the said witnesses described the accused in a similar way, and that all the witnesses learned, in a similar way, that the person who participated in the arrests was indeed Edin Džeko. Witness "J3" stated during his testimony that, while they were boarding the Toyota vehicle, Marko told him this is Džeko and this is Popara. As it related to the physical appearance of the accused, witness "J3" stated, at that time, the accused Džeko had black hair, was tall and relatively skinny, and was not more than 25 to 27 years old. Witness Mirko Zelenika stated that the person for whom he was told was the accused Džeko was young, slim, tall, with black hair, a bit longer, and in one area it covered him ears, and that the said was dressed in a jacket the color of deer skin, and that the said had one leg "wrapped" and was not wearing a shoe, but a slipper.

358. Witness Marinko Ljoljo also described a manner in which he learned this was Edin Dzeko, stating that Džeko, Popara, Nedžad were names "from Zuka's unit," and that during the time Miroslav Soko was brought, Džeko came out of some room carrying some type of machine, and on which occasion he started cursing the Croats, and their Ustaša mother, and that this was the way this man was identified for him. As it relates to the physical appearance of the accused Džeko, the witness stated that the said was a young man, of only 20 years of age, tall in height, youthful looking, and with malice behavior. Also, at the time of the arrest of Miroslav Soko, the witness stated that the accused Džeko was dressed in civilian clothing, wearing some type of slipper, his foot was wrapped and he was carrying some type of photo camera.

359. However, regardless of the fact that the State prosecutor of Bosnia and Herzegovina has proven the accused's presence during the arrest of the witness Miroslav Soko, they did not prove, beyond reasonable doubt, the claim that, on that occasion, he took illegal actions against the said Miroslav Soko, that is, that he hit him hard on the head and body. Since the testimony of the victim is the only one that this point of indictment is based on, the said testimony must be carefully considered and regarded, starting with the first information gathering about the event itself and the executor, all the way to the testimony at the main fact-finding hearing, while the testimony has to be such that it leaves not a shred of doubt in its correctness and truthfulness, as well as credibility and integrity of the witness.

360. Witness Miroslav Soko stated that Nedžad and the accused Džeko came for him in the afternoon hours, and that they were accompanied by two soldiers of the Army of Bosnia and Herzegovina from Donja Jablanica, that he actually knew, and when he opened his apartment door, the insults started immediately by the accused Edin Džeko, who yelled at him;... *"that where was I at, mother fucking Ustasa, why am I not at home when they are looking for me. He hit me immediately as he came into the apartment."* He further stated that Nedžad was in the escort of the accused Edin Džeko, and that he did not interfere. Further, the witness stated that Edin Džeko hit him, and told it in the following manner: *"He hit me in the face with a fist. Once, twice, I mean, while threatening, fuck your Ustaša mother, where was I, why was I not in the apartment."* On a separate question, he answered that the these were strong punches.

361. He also stated that a family of refugees lived in his apartment, Nezir Vila, his wife and their four children, and that they were all present when the accused came to the apartment to get him. Describing in detail, the witness added that Nedžad and the accused entered the apartment asking, while in the hallway, who Miroslav Soko was, while another soldier stayed at the door with a list, and the said soldier did not enter the apartment, but the door remained open.

362. Describing the events upon entering the apartment, he states that, when the yelling and fighting started, the children ran away into the bedroom, while Nezir Vila stood up to the accused when he started hitting him, saying that Miroslav Soko did not do anything wrong, considering they had good relations, and that they had been living in his apartment for several months already, to which Nedžad and the accused told the said person not to interfere. The witness then stated, *“They even tried to hit him; they told him to move away, and that the has nothing to do with this, I mean.”* Following this, he was told to gather only his personal belongings, and that he was going for questioning at the police station, and that he would be released afterwards. While entering the bedroom used by the said witness and his family, Nedžad and Džeko -- in fact, the witness could not recall exactly which one -- someone took a camera and a Walkman, and then, while cursing at him, they took him outside the house, where he was told to board the back of the vehicle. In the white Toyota, according to the testimony of the witness Miroslav Soko, in the open back, there were brothers Mirko and Mirko Zelenika, and the witness Soko could not recall who else was in the vehicle, while in the enclosed cabin there was a driver, and the said witness cannot claim that anyone else was with him. Then they set out to look for the other people from the list, saying that the accused Džeko was also present, and they went for Ivo and Jure Jurić, and then Vlado Čurić.

363. During the evidential stage of the proceedings, at the suggestion of the defense, the Council also heard the defense witness Nezir Vila, who stated that on the day Miroslav Soko was arrested, he was not present in the apartment, and that he was out in town, and that he thinks his family was present in the apartment. After that, when the said witness returned to the apartment, he found his wife and four children, and his wife told him that some men in uniforms came and took Miroslav Soko, and that she does not know where they took him. On that occasion, the witness stated: *“To be honest, when I asked her if there were any problems, she said there weren’t, that they simply came, knocked on the door where we live... my wife opened the door, asked them who they’re looking for... and I can really tell you what my wife told me. She said he simply came out, they told him to come with them, which he did normally...”*

364. Witness Miroslav Soko also gave testimonies in the past regarding his arrest in Jablanica, after which the defense, during the testimonies before the judicial Council in this case, submitted two statements given in the investigative process in another case, during which the witness spoke about the event of being arrested by members of Zuka’s unit, but in the said statements, witness Miroslav Soko did not mention that the said witness was mistreated by the accused, nor did he mention the said event. The witness confirmed that the signatures on both testimonies are those of the said witness, and this was confirmed at the fact-finding hearing on April 16, 2014. After the defense pointed to the differences in the testimonies, the witness explained that, at that time, the accused Džeko was not the subject of the trial, and that he was not even asked about him. The defense also submitted the said discrepancy through the testimony given by the witness Miroslav Soko at the main hearing in the case against the accused Zijad Kurtović, meaning that the said witness did not individually name members of Army of Bosnia and Herzegovina (ARBiH) that were under the command of Zuka, to which the witness Miroslav Soko again replied and explained that the said witness was not asked directly about the accused Zeko, and that, in that case, the indictment was against Zijad Kurtović, and that the said witness answered in that sense as well. The witness pointed out that, considering that he is currently testifying in case against the accused Džeko, the said witness stated all he knew about the Defendant.

365. Furthermore, the Panel inspected the evidence presented by the Defense, the transcript from the trial in the matter against Kurtović Zijad where Soko Miroslav also was a witness, and where the injured party also talked about the circumstances of the arrest in Jablanica. In analyzing the said evidence, the Panel determined that in this case the witness didn't state either that he received any blows on the body during the arrest. More precisely, the witness stated only that he had in his apartment the refugees of a Muslim nationality who were protesting his arrest, and that one of the soldiers who came with some boy from Jablanica said that the witness was being taken for interrogation to the Ministry of Interior of Jablanica.

366. The Panel finds that the explanations given by the witness are logical in the part where he states that he did not mention the Defendant by name because he was focused on other individuals in the cases where the Indictments had no factual relation to this incident, however, the fact remains that in all the cases he did state that he was taken out of the apartment, he even stated in one case that the refugees who were in the apartment protested his arrest, yet he never mentioned that someone hit him which is by its very nature a type of fact that witnesses mention on their own, without prompting, and all the more so if the witness received multiple hard blows as alleged in the Indictment.

367. Further, the witness testimony about being kicked and punched hard on the head, was also brought into question by the fact that none of the other individuals taken into custody who were sitting on the body of the vehicle, or entered the Toyota vehicle afterward, noticed any injuries on the body of the injured party, and also by the fact that no one, not even the injured party, made any comments about the incident that befell the injured party just several minutes before being brought into the car. Namely, when the witness Ljoljo Marinko was specifically asked whether he noticed that Soko Miroslav was beaten while he was being taken into custody i.e. immediately upon climbing on the body of the vehicle, the witness answered that he didn't remember it.

368. Based on the evidence presented by the Prosecution during the main hearing i.e. based on the medical records, it follows that Soko Miroslav was in captivity in Jablanica in the period from 1 March 1993 to 1 March 1994, and that during this period of captivity he was often physically and psychologically abused, even received hard blows on his body and head on multiple occasions, but not a single finding or document submitted as evidence mentions any injuries that he might have sustained during his arrest on 8 September 1993.

369. Finding that the Defense brought into question the injured party testimony by the testimony of the witness Vila Nezir, and that other indirect evidence provided no confirmation for the injuries allegedly sustained by the injured party, in relation to these Indictment allegations the Panel was unable conclude beyond reasonable doubt that the Defendant committed the acts prohibited by the International Humanitarian Law. In view of the foregoing, pursuant to the principle *in dubio pro reo*, and pursuant to Provision 284. Count c) of the Criminal Procedure Code of Bosnia and Herzegovina, the Panel acquitted the Defendant.

### 5. Section 3.c. of the indictment (Section 5.c. of the “not guilty” charges)

370. Also, in reference to Count 3. c) of the Indictment i.e. Section 5.c) of the acquitting part of the Verdict, the Panel finds that it is unproved that the Defendant Džeko Edin committed the acts of which he is accused i.e. that during the arrest of Zelenika Mirko, Zelenika Marko, Soko Miroslav, Ljoljo Marinko, Jurić Ivo, Jurić Juro, Vinko Ljubas, Čurić Vlado and Biloš Mato, the Defendant drove them through the streets of the town of Jablanica, shouting “look at the Ustashas”, what caused certain citizens to react with vulgar words that made the arrested men feel deeply uncomfortable, fearful and ashamed.

371. In reference to this Count of the Indictment, the Panel finds that it has not been proved because there is no evidence to show that the Defendant established any contact whatsoever with the citizens as alleged in the statement of facts, and also none of the witnesses mentioned in their testimonies that the Defendant did such a thing. The witnesses did not confirm either the Indictment allegations that the Defendant was shouting “look at the Ustashas”. Namely, the witness Soko Miroslav stated that he felt unpleasant on that occasion because the citizens were shouting “Ustashas, look at you know”, emphasizing that most people in Jablanica knew him. Further, when asked about the reactions of the individuals who were in the cabin of the vehicle, the witness answered: “*That I couldn’t, I had no... I don’t know, I couldn’t grasp, I didn’t see them, I don’t know how they reacted to that.*”<sup>140</sup> The witness Zelenika Mirko stated that “*two circles around the town at almost breakneck speed were made*” and that they were then driven toward Donja Jablanica. The witness described that he felt “*a strange shame in front of people*” during that drive since he lived in Jablanica. When specifically asked if he had noticed any communication among the people who were sitting in the closed body of the vehicle, the group that was on the open part of the body of the vehicle and people who were watching this ride from the outside, the witness stated: “*I don’t remember...*”<sup>141</sup>

372. Witness J3 described that at this point, after being placed on the body of the Toyota vehicle, they were driven through the town of Jablanica, while the four soldiers who were in the closed body of the vehicle were shouting “*Look at the Ustashas*”, and that the women and children who were on the streets started to beat them, and throw rocks and wood at them.” The witness learned later on in the prison camp from Zoranić Marko that one of the four soldiers from the cabin was the Defendant Džeko Edin. When asked specially if the Defendant Džeko was one of those four who were shouting i.e. if he knows who out of the four soldiers from the cabin was shouting, the witness answered “*I don’t know*”. He was later asked again about this incident and said “*I, someone shouts, someone makes noise, look at the Ustashas, I...*” However, during his entire testimony, this witness did not name the Defendant Džeko Edin as the individual who shouted and yelled “look at the Ustashas”.

373. In describing the incident, the witness Ljoljo Marinko also stated that after they had all been placed on the body of the vehicle, they were driven through the town of Jablanica. He said: “*They saw, I mean, the citizens of Jablanica, they knew us all, their reactions differed. There were reactions of surprise, of fear, especially by the Croats and the Serbs as well as some Muslims, Bosniaks. Some reacted, they are taking the Ustashas away, some cursed at us, some I knew personally, my colleagues, even neighbors...*”<sup>142</sup> This witness described the ride through the town of Jablanica by saying that they went to the center of the town from the Sokolović house and took the road toward the Museum, from where they continued along the highway and arrived in Donja Jablanica at Rogića houses. This witness couldn’t confirm either that the

<sup>140</sup>Witness Soko Miroslav, the transcript of the main hearing of 16 April 2013, page 9;

<sup>141</sup> Witness Zelenika Mirko, the transcript of the main hearing of 26 March 2014, page 24

<sup>142</sup> Witness Ljoljo Marinko, the transcript of the main hearing of 2 April 2013, page 17

Defendant Džeko was present during the entire ride, although the witness was certain that he saw the Defendant during the arrest of Soko Miroslav and that the Defendant was in the group that headed toward Donja Jablanica.

374. The witness Ljubas Vinko described the ride through the town of Jablanica by saying that the members of that army paraded through the town which was very unpleasant for the arrested people. This witness also said that the local citizens did call them names and shout vulgar words at them. The witness said: “*Well, we then went through the entire, they drove us through the entire Jablanica on that jeep, and they picked us up along the way, and the locals were toward us, I mean, all sorts of vulgar words (..), these were curses, then Ustashes, then slaughter, kill, all sorts of things, I mean I can’t remember now, anyway it wasn’t pleasant, there you have it.*”<sup>143</sup> Further, the witness stated that he couldn’t remember how the soldiers behaved while they were taking them through Jablanica and that he couldn’t notice if there were any communication between the soldiers and the citizens.

375. The witness J3 and the witness Soko Miroslav confirmed that while they were being driven through the town and the citizens on the streets reacted at them with vulgar words, the Defendant Džeko Edin was in the cabin i.e. the closed part of the vehicle, driving the said vehicle, and did not communicate with the citizens of Jablanica.

376. Based on all the produced evidence, the Panel finds that the Indictment allegations have not sufficiently been corroborated and has therefore acquitted the Defendant pursuant to Provision 284. Count c) of the Criminal Procedure Code of Bosnia and Herzegovina, finding that it has not been proven that the Defendant committed the criminal offense with which he has been charged.

## **6. Section 8 of the indictment (Section 6 of the “not guilty” charges)**

377. In reference to Section 6 of the acquitting part of the Verdict, the Panel has not established beyond reasonable doubt the Defendant’s culpability under this Count of the Indictment which charges him with ordering three members of the Zulfikar Special Purposes Squad to beat the prisoner of Croatian nationality J2 with planks, concrete blocks, and submerge his head in the barrel full of water, while telling them from the close proximity “*kill him, kill him*”, all that causing the prisoner J2 severe physical pain.

378. About the foregoing incident the Panel took the testimonies from the protected witness J2 and the witnesses Rozić Marko and Zelenika Mirko, while the testimonies about the looks of the Defendant in the incriminating period were taken from the defense witnesses Zijo Čaušević, Vahidin Pozder, Manjušak Nehru, Arnautović Erdin and Murvat Ervin as well as from the witnesses for the Prosecution J3 and Ljiljo Marinko. By bringing the witness testimonies in connection, the Panel has established that there is no doubt that the injured part J2 was exposed to the inhumane treatment in the aforementioned way, which is the fact also uncontested by the Defense, however the participation of the Defendant in the said incident is at issue.

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<sup>143</sup> Witness Ljubas Vinko, the transcript of the main hearing of 9 April 2013, page 29

379. The witness J2 described their transfer from the Museum to Donja Jablanica by saying that a soldier came for them in the morning and said that they needed to climb Prenj in order to bring down some wounded persons. They were taken in a van to Donja Jablanica and then to Prenj, and after that, the witness, his father and another man were returned to Donja Jablanica by a helicopter. The witness also said that they were then placed in an underground silo next to Rogića houses. They remained in the silo until the evening when they were lined up.

380. In reference to the these circumstances, the witness Rozić Marko stated that one morning around 10 o'clock Džeko and Deba came for them, and the witness didn't know them at that time but learned their identity later from the other prisoners who were in Donja Jablanica. The witness said then that, beside him the witnesses J2, Hrvoje Kolobarić, Niko Rozić, Mario Jozić, Čokac and Džona were also singled out. After that, all of them were taken by a van to Donja Jablanica to Rogića houses, where they were lined up on the road. The witness then said that some more people who had already been in the silo joined them at that moment, naming Ljoljo Marinko and Zelenika Mirko. Next, they all went together to Glogovo, up the hill in order to bring down the dead. Dark caught them there and that's where they spent the night next to the tents, and then in the morning, they went to Donja Jablanica to Rogića houses, where they were all lined up again and the soldiers started to beat and punch them.

381. Hence, in reference to these two testimonies the Panel has found the inconsistencies in terms of the temporal and spatial situating of the transfer from the Museum to Donja Jablanica, noting that the witness Rozić Marko confirmed that the witness J2 was taken with him from the Museum. On the other hand, the witness Rozić clearly and decisively described that the Defendant Džeko together with a certain Deba singled him out from the Museum and drove to Donja Jablanica, whereas the witness J2 doesn't at all mention the Defendant in his testimony. Also, the discrepancy in the testimonies is obvious from the fact that these two witnesses do not agree on the beginning of the line-up before the beating received by the soldiers in Zuka's base and submerging of the witness J2 into the barrel. The witness J2 described that the said line-up occurred in the evening while the witness Rozić claimed that the line-up happened in the morning.

382. Concerning the act of drowning i.e. the abuse, the witness J2 gave his testimony in the course of the proceedings in which he described that on that day he was in the silo while some prisoners were lined up in two files and that someone was shouting that the people, him as well, should be brought out. The witness stated that the soldiers then walked over those prisoners until a soldier showed up and took him over to the barrel. The witness stated that he "recognized Špago" at that moment. Explaining who Špago was, the witness said that he was from Konjic, that they knew each other from before, and that he did logistics for Zuka. Further, the witness described that Špago took him to see someone and told that person: "Džeko, this is J2". After that, the witness described how he talked to that man who took some photographs out of his pocket and questioned him about the whereabouts of certain individuals.

383. After the questioning, the witness was taken to drowning and the incident was described by the witness as follows: "*Two man took me from behind, bent my arms, the third man pushed my head down into that barrel and I would then twitch, twitch, but they would hit me with some sticks on my back, this one is for this individual, or for that individual who was killed, this one was killed, that one was killed, what do I know, my God, they were saying some names, I cannot remember half of what they were saying...*"<sup>144</sup> The witness further stated that he heard the person for whom he claims that it was the Defendant Džeko, saying: "*Drown him, kill him, keep at it, drown him, kill him.*"<sup>145</sup> The witness also stated that on that occasion he

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<sup>144</sup> Witness J2, the transcript of the main hearing of 12 March 2013, page 11

<sup>145</sup> Ibid., page 11

was abused in such a way that he received beating on his back, and he further stated that he was even beaten with a concrete block. According to this witness testimony the abuse lasted about an hour until Ališpago Zulfikar showed up when, according to the witness, everyone ran away except for Džeko. The witness was later taken back to Jablanica to the Museum.

384. Contrary to the testimony of the witness J2, the witness Rozić Marko, in his testimony given about the said incident, described that he was present when the head of witness J2 was submerged in the barrel, and stated: *“Among those soldiers I recognized Deba and another one who beat me a lot and was called Zenica... The others were being beaten I, we didn’t dare to watch, we couldn’t watch, we just squinted and as much as I could see in such a way, I saw them pulling this J2 for his hair and Deba was pulling him for his hair and submerging his head in some barrel, what was in that barrel I don’t know.”*<sup>146</sup> The witness Rozić further described that Deba held the witness J2 for his hair while the others were beating him. The witness Rozić Marko also confirmed that the said abuse lasted about an hour and that afterwards they were put in a van and taken to the camp in the Museum, in Jablanica.

385. Namely, analyzing these testimonies given at the main hearing by the witness J2 and the witness Rozić Marko, the Panel has found that the said testimonies are for the most part contradictory, and especially so when it comes to the factual description of the abuse of the witness J2. Namely, the Panel reviewed the testimony of Rozić Marko who confirmed before the Court that he was present when the witness J2 was “submerged into the barrel“ and when he was beaten, but the witness did not confirm the allegations of the injured party that the Defendant Džeko was present on this occasion or that the Defendant himself ordered the abuse of the injured party J2 in a way that was described in the factual description in the Indictment according to the allegations of the injured party J2.

386. The Panel has also reviewed the testimony of the witness J2 that was previously given to the Ministry of Defense, Security and Intelligence Agency, the Croatian Republic Herzeg-Bosnia<sup>147</sup>, and has established that it is correct that the witness J2 in his previous testimonies never mentioned Džeko Edin as the individual who ordered his abuse. On the other hand, the witness Rozić Marko who was also present during the incriminating incident claims that the witness J2 was abused by a certain Deba and that he didn’t see the Defendant there at that time.

387. The witness Zelenika Mirko also testified in the proceedings and stated that during his time in the silo an individual closely related to the witness J2 was with him, and said that considering that he and his brother couldn’t have been sent to Glogovo and Prenj to carry the wounded because they had blisters on their feet, Zuka’s soldiers went to the Museum and brought back a group of prisoners. The witness stated that on that occasion among the present were Džeko Edin, Popara Enis, Hodžić Nedžad as well as other soldiers. Further, in his testimony the witness stated that after the prisoners returned from Glogovo, the beating was heard, then moaning and that at some point an individual who was close to the witness J2 and who was at that moment in the silo with the witness Zelenika Mirko, started to cry because she recognized the cries and the screams.

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<sup>146</sup> Witness Rozić Marko, the transcript of the main hearing of 7 May 2013, page 13

<sup>147</sup> Statement dated 9 March 1994 given to the Security and Information Service (SIS) Center in Mostar No. 02-11-2-374/94 – evidence O-160

388. After carefully reviewing the testimonies of the witness J2 and the witnesses Rozić Marko and Zelenika Mirko, the Panel has not been able to, excluding any reasonable doubt, come to a conclusion that the Defendant Džeko took part in the incident in question.

389. Apart from the foregoing, the witnesses also gave different statements concerning the looks of the Defendant, so the witness J2 described that the individual who ordered the abuse: “*was a little shorter than me and black-haired, wore a hat, that’s it*”.<sup>148</sup>

390. The Defendant stated in his testimony given before the Trial Panel that in the year 1993 he was extremely slim, had long black hair, a bob-cut, and that he always wore a headband but never a hat because he loved his hair.<sup>149</sup>

391. However, the Panel also heard the other witnesses’ testimonies about this fact and found that no one except for the witness J2 claimed that the Defendant Džeko really wore a hat at that time. When specifically asked during his testimony, the witness Rozić Marko answered that in this period at Rogića houses he didn’t see anyone who wore a hat, stating: “*No, I didn’t, there, to wear a hat, I didn’t see anyone.*”<sup>150</sup> Also, when asked if in the given period in the Rogića houses complex they saw anyone wearing a hat, the witness J3 and the witness Ljoljo Marinko stated that they didn’t.

392. During the proceedings the Defense examined the witnesses who testified about the issue of the Defendant’s appearance in the given time period, among them the witnesses Čaušević Zijo, Pozder Vahidin, Manjušak Nehru, Arganutović Erdin, Murvat Ervi and Ibrahimović Elvedin, who all described the Defendant Džeko as having longer hair, wearing a headband, being fond of his hair and also confirmed that they didn’t see the Defendant wearing a hat in that period.

393. Further, the Defense presented a thesis that in this case a switch of identities could have occurred with an individual who looked like Džeko Edin, and that this other individual is the unit commander Handžar called Džeki who was wearing a black hat. The witnesses who gave their testimonies about the issue of the Defendant’s appearance were saying in their testimonies that there was another person who wore a hat at that time.

394. In reference to this, the Panel took all facts in consideration and analyzed the testimonies of the witnesses who talked about the appearance of the Defendant in the incriminating period as well as the fact that except for the injured-party witness J2, none of the other witnesses who gave their testimonies about this issue said that the Defendant wore a black hat. Furthermore, none of the witnesses confirmed the presence of the Defendant Džeko at the place where the incident in question happened.

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<sup>148</sup> Witness J2 the transcript of 12 March 2013, page 10

<sup>149</sup> The Defendant Džeko Edin as a witness, the transcript of the main hearing of 17 December 2013, pages 47 and 48

<sup>150</sup> Witness Rozić Marko, the transcript of the main hearing of 15 July 2013, page 30

395. After the Panel has thoroughly considered all the foregoing testimonies, it was unable to reach the conclusion beyond any reasonable doubt that it is exactly the Defendant Džeko Edin who participated in the said incident and that the Defendant ordered the inhumane treatment of the witness J2. Based on the testimonies given about this incident, the Panel could especially not establish beyond reasonable doubt that the Defendant was saying from close proximity “*kill him, kill him*”, thus in reference to all the foregoing, the Panel hasn’t found the Defendant guilty thereof.

396. In conclusion, the Panel has found that the testimonies of the witness J2 and the witness Rozić Marko are entirely contradictory both in the important segments that refer to the commission of the criminal offense as well as the other circumstances. Therefore, considering that the Prosecution of Bosnia and Herzegovina did not offer evidence, which would by its quality and contents point to the guilt of the Defendant beyond reasonable doubt, the Panel has acquitted the Defendant for the acts alleged in this Count of the Indictment pursuant to the principle in *dubio pro reo*<sup>151</sup> and pursuant to Provision 284. Count c) of the Criminal Procedure Act of BiH finding that it hasn’t been proved that the Defendant committed the criminal offense with which he has been charged.

### **I. DECISION ON DETENTION**

397. In accordance with Article 50. Section 1 of the Penal Code of the Socialist Federal Republic of Yugoslavia the pronounced sentence of imprisonment for the Defendant includes the time he spent in custody pursuant to the Decisions of the Court of Bosnia and Herzegovina, beginning from 20 December 2011 until 3 June 2013.

### **J. DECISION ON COURT COSTS**

398. Pursuant to Article 188 Section 1 of the Penal Code of Bosnia and Herzegovina the Panel has obliged the Defendant to reimburse the costs of the criminal proceedings, the amount of which will be determined by a separate Decision of the Court after the necessary details have been obtained.

399. Namely, according to the Defendant’s personal data he is of the intermediate financial standing and therefore the Panel finds that there are no circumstances under Article 188. Section 4 of the Criminal Procedure Code of BiH and that the Defense didn’t raise any either, that would cause this Court to relieve the Defendant of the obligation of reimbursing the costs of the Criminal Proceedings.

400. In relation to the acquitting part of the Verdict, pursuant to Article 189 Section 4 of the Criminal Procedure Code of BiH, the costs of the criminal proceedings shall be paid from within the budget appropriations.

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<sup>151</sup> The principle *in dubio pro reo* i.e. the Court can based on the review of the evidence consider a certain fact to be established when it has been assured of its existence in the course of the main hearing and when there is no remaining doubt about it, thus the facts that are to the disadvantage of the Defendant have to be established with certainty i.e. proved, and if that has not been accomplished they are not to be taken in consideration just as if they were nonexistant, while all the facts to the benefit of the Defendant are taken as existing even when they have been established on probability (not certainty).

**K. DECISION ON PROPERTY CLAIMS**

401. Pursuant to Article 198 Section 2 and 3 of the Criminal Procedure Code of Bosnia and Herzegovina, the Court has instructed the injured parties (Blažević Anica, Delinac Mara and the protected witness S) that they may take civil action to pursue their claims under property law, given that the data obtained during the criminal proceedings do not provide a reliable basis for either a complete or partial award. Thus, determining the amount of claim under property law would unnecessarily delay the proceedings in question.

**COURT REPORTER**  
**Legal Advisor-Assistant**  
**Radivojević Stanislava**

**PRESIDENT OF THE PANEL**  
**JUDGE**  
**Maksumić Šaban**

**LEGAL REMEDY:** An appeal against this Verdict shall be allowed with the Appellate Division, Section I of the Court of Bosnia and Herzegovina, within 15 (fifteen) days upon receipt of a written copy thereof.

\*The appeal shall be submitted to this Court in a sufficient number of copies.

## II. APPENDIX (MATERIAL EVIDENCE LIST)

## A. MATERIAL EVIDENCE PRESENTED BY THE OFFICE OF THE PROSECUTOR OF BOSNIA AND HERZEGOVINA

T-1	Witness Examination Record for Lončar Marija of 31 May 2012 and Death Certificate for the witness issued by the Office of Vital Records in Imotski No. 2181-06/02-13-2 of 19 April 2013	Dated 14 May 2013
T-2	Letter from the Ministry for Issues of the Veterans and Disabled Veterans of the Defensive-Liberation War with certified copies of forms VOB-8, VOB-3 and pers.7 of 26 January 2012	Dated 28 May 2013
T-3	A copy of the Decision by the Presidency of the Republic of Bosnia and Herzegovina Declaring a State of War ("Official Gazette of the R BiH" No. 7/92)	Dated 28 May 2013
T-4	A copy of the Decision by the Presidency of the Republic of Bosnia and Herzegovina Abolishing the State of War ("Official Gazette of the R BiH" No. 50/95)	Dated 28 May 2013
T-5	A copy of the Legislative Decree on the Republic of Bosnia and Herzegovina Armed Forces No. 1163/92 of 20 May 1992 ("Official Gazette of the R BiH" No. 4/92)	Dated 28 May 2013
T-6	A copy of the Decision on Formation of the Croatian Defense Council No. 2/92 dated 8 April 1992 ("Official Gazette of the Croatian Community of Herzeg-Bosnia" No. 1/92); ERN No. 01328793	Dated 28 May 2013
T-7	A Copy of the Order by the Supreme Command of the Armed Forces of the Republic of Bosnia and Herzegovina No. 02/607-1 dated 10 June 1993 to cease all military actions against the Croatian Defense Council Formations in the Republic of Bosnia and Herzegovina; ERN No. 0090-0239	Dated 28 May 2013
T-8	A copy of the Letter by the Chief of Staff of the 4 <sup>th</sup> Corps No. 02/1-966-	Dated 28 May 2013

	92/93 dated 27 March 1993 containing the warning that Zuka's Unit is holding a Croatian village close to Konjic under siege; ERN No. 0129-8532	
T-9	A copy of the Combat Report by the commander of the Igman operative group (OG Igman) No. 03-592/8 dated 19 April 1993 on escalation of conflict between the Croatian Defense Council and the Army of the Republic of Bosnia and Herzegovina in Jablanica – Konjic area; ERN No. 0183-2916	Dated 28 May 2013
T-10	A copy of the Daily Combat Report by the commander of the Igman operative group No. 1-20/8 dated 22 April 1993 about the conflicts with the Croatian Defense Council in the area of Konjic and the river of Neretva; ERN No. 0183-2920-0183-2921	Dated 28 May 2013
T-11	A copy of the Attack Order by the command outpost (IZM) for the operative zone (OZ) Northwest (SZ) Herzegovina No. 01-459 dated 11 May 1993 stating that Kostajnica and the valley of Neretvica are in a terrible situation and that about 10 000 Croats are in the area; ERN No. 0364-1778-0364-1780	Dated 28 May 2013
T-12	A copy of the Order by the Chief of Staff of the Supreme Command of the Armed Forces of the Republic of Bosnia and Herzegovina No. 14/75-24 dated 13 March 1993 restructuring the Neretvica Brigade into the 45 <sup>th</sup> Mountain Brigade with the military unit No. VJ 5096; ERN No. 0185-0113	Dated 28 May 2013
T-13	A copy of the Daily Combat Report by the Commander of the Igman operative group No. 03-592/4 dated 16 April 1993 on the conflict with the Croatian Defense Council around Konjic and the engagement of Zulfikar Unit therein; ERN No. 0183-2910	Dated 28 May 2013

T-14	A copy of the Compound Report for day 16 April 1993 by the General Staff of the Croatian Defense Council dated 17 April 1993 about the occurrence of the attack on the Trusina village; ERN No. 0617-2036-0617-2039	Dated 28 May 2013
T-15	A copy of the Daily Intelligence Report by the General Staff of the Croatian Defense Council No. 03-442/93 dated 20 May 1993 stating that the conflicts between the Army of Bosnia and Herzegovina and the Croatian Defense Council still last in the territory of the Municipality of Konjic; ERN No. 0420-0883-0420-0885	Dated 28 May 2013
T-16	A copy of the Daily Events Bulletin by the Administration of Military Police of the Croatian Defense Council No. 02-4/3-02-971/93 dated 19 April 1993 stating that the conflicts between the Army of Bosnia and Herzegovina and the Croatian Defense Council still last in the Neretvica area and that there is intelligence about the massacre in Trusina; ERN No. 0154-4499-0154-4501	Dated 28 May 2013
T-17	A copy of the Report by the commander of the Herceg Stjepan Konjic brigade dated 16 April 1993 about the heavy conflict between the Croatian Defense Council and the Army of Bosnia and Herzegovina in the village of Trusina and the massacre of the civilians in the village of Trusina; ERN No. 0151-6484	Dated 28 May 2013
T-18	A copy of the Report by the commander of the Mijat Tomić battalion dated 15 April 1993 on battles between the Croatian Defense Council and the Army of Bosnia and Herzegovina in Sovići and Doljani in the municipality of Jablanica; ERN No. 0151-5609	Dated 28 May 2013

T-19	A copy of the Report by the Information and Research Department of the General Medical Corps Staff of the Croatian Defense Council No. 02-5/1-42/93 dated 4 May 1993 stating the chronology of events in the Konjic area concerning the dead and the wounded soldiers of the Croatian Defense Council and the civilians of the Croatian nationality; ERN No. 0150-4401-0150-4402	Dated 28 May 2013
T-20	A copy of the Order by the Commander of the 4 <sup>th</sup> Corps No. 02-3145-1/93 dated 16 April 1993 to continue the combat operations against the Croatian Defense Council in the Neretvica area among others; ERN No. 0129-8485	Dated 28 May 2013
T-21	A copy of the Report by the Herceg Stjepan Konjic brigade dated 20 May 1993 about resuming conflicts between the Croatian Defense Council and the Army of Bosnia and Herzegovina and the crimes committed by the units of the Army of Bosnia and Herzegovina against the civilians in the territory of the municipality of Konjic; ERN No. 0102-7336	Dated 28 May 2013
T-22	A copy of the Order by the Commander of the operative group Igman No. 01/15 dated 24 April 1993 directed to the Commander of the Special Squad Zulfikar to transfer a portion of his forces to Jablanica because the conflict with the Croatian Defense Council is going on; ERN No. 0185-3999	Dated 28 May 2013
T-23	Igman No. 08-21-20/93 dated 27 April 1993 that states, inter alia, that the squad Zulfikar played the crucial role in the defense of Konjic; ERN No. 0403-5004 – 0403-5005	Dated 28 May 2013
T-24	A copy of the Report by the Herceg Stjepan Konjic brigade dated 24 March 1993 about the continuance of conflicts between the Croatian	Dated 28 May 2013

	Defense Council and the Army of Bosnia and Herzegovina in territory of the municipality of Konjic; ERN No. 0150-7024 – 0150-7025	
T-25	A copy of the Report by Konjic Municipal Council of the Croatian Defense Council No. 01-251/95 dated 13 March 1995 that states and describes, inter alia, the crime in Trusina; ERN No. 0157-5145 – 0157-5152	Dated 28 May 2013
T-26	A copy of the Discovery on the committed war crimes in the territory of the municipalities of Jablanica and Konjic Security and Information Service (SIS) Center Mostar No. 02-08-2-282/96 dated 5 February 1996 that, inter alia, states and describes the crime in Trusina; ERN No. 0157-1162 – 0157-1173	Dated 28 May 2013
T-27	A copy of the Weekly Report by the Croatian Information Center Zagreb No. 1 dated 9 August 1993 that, inter alia, states and describes the crime in Trusina; ERN No. 0020-1542 – 0020-1548	Dated 28 May 2013
T-28	A copy of the Report on the Genocide against the Croatian population in the territory of the municipality of Konjic composed in the Herceg Stjepan Konjic brigade and filed on 24 April 1993 with the General Staff of the Croatian Defense Council that, inter alia, states and describes the crime in Trusina; ERN No. 0103-2198 – 0103-2199	Dated 28 May 2013
T-29	A copy of the Short Chronology and Overview of the war crimes committed by the members of the Army of Bosnia and Herzegovina in the territory of the municipalities of Mostar, Konjic, Jablanica and Prozor composed by the War-Crimes Commission of the Croatian Republic of Herzeg-Bosnia No. 27/95 dated 30 March 1995 that, inter alia, states and describes the	Dated 28 May 2013

	crime in the village of Trusina; ERN No. 0030-2925 – 0030-2946	
T-30	A copy of the Letter by the Office for the Exchange of Prisoners and Other Persons of the Croatian Republic of Herzeg-Bosnia No. 01/IP-551/94 dated 16 August 1994 that, inter alia, mentions the massacre in the village of Trusina (ERN No. 0157-0654) ERN No. 0157-0649 – 0157-0656	Dated 28 May 2013
T-31	A copy of the Letter by the Office for the Exchange of Prisoners and Other Persons of the Croatian Republic of Herzeg-Bosnia No. 01-IP-446/04 dated 9 June 1994 concerning the Report by the military assistant of the commander of UNPROFOR for the South-West Division that, among other things, mentions the Request of the Office for the delivery of 23 dead bodies from the village of Trusina, municipality of Konjic; ERN No. 0129-8931 – 0129-8932	Dated 28 May 2013
T-32	A copy of the Letter by the Office of Social Affairs of the Municipality of Konjic No. 17-X.76/94 dated 21 October 1994 containing the data on the murdered civilians and soldiers in the village of Trusina on 16 April 1993; ERN No. 0030-2911 – 0030-2912	Dated 28 May 2013
T-33	A copy of the Public Announcement by the Information Office of the Command of the Operative Zone Srednja Bosna, Command Outpost in Vitez No. 08-5-191/93 dated 8 May 1993 that, inter alia, mentions the attack on the village of Trusina; ERN No. 0102-0689 – 0102-0690	Dated 28 May 2013
T-34	A copy of the Letter by the Commander of Herceg Stjepan Konjic Brigade dated 13 April 1993 informing the Chief of the General Staff of the Croatian Defense Council about the attack on the village of Trusina and the murdered	Dated 28 May 2013

	civilians and soldiers; ERN No. 0150-7120	
T-35	A copy of the Public Announcement by the Rama Brigade Ideological and Political Activity (IPD) of the Croatian Defense Council of the Croatian Community of Herzeg-Bosnia dated 2 May 1993 stating and describing the crime in Trusina; ERN No. 0151-5812 – 0151-5813	Dated 28 May 2013
T-36	A copy of Death Certificate, Herzegovina-Neretva Canton – Municipality of Konjic, for Drljo Zdravko, No. 09-15-3-4307/08 dated 26 December 2008; a copy of the Decision on Establishing the Death Circumstances for Drljo Zdravko issued by the Municipal Curt of Konjic No. R 171/05 dated 22 December 2005	Dated 28 May 2013
T-37	A copy of Death Certificate, Herzegovina-Neretva Canton – Municipality of Konjic, for Krešo Pero, No. 09-15-3-4311/08 dated 26 December 2008; a copy of the Decision on Establishing the Death Circumstances for Krešo Pero issued by the Municipal Curt of Konjic No. R 545/99 dated 26 January 2000	Dated 28 May 2013
T-38	A copy of Death Certificate, Herzegovina-Neretva Canton – Municipality of Konjic, for Krešo Nedjeljko, No. 09-15-3-4316/08 dated 26 December 2008; a copy of the Decision on Establishing the Death Circumstances for Krešo Nedjeljko issued by the Municipal Curt of Konjic No. R 68/00 dated 17 April 2000	Dated 28 May 2013
T-39	A copy of Death Certificate, Herzegovina-Neretva Canton – Municipality of Konjic, for Drljo Ivan, No. 09-15-3-4312/08 dated 26 December 2008; a copy of the Decision on Establishing the Death Circumstances for Drljo Ivan issued	Dated 28 May 2013

	by the Municipal Curt of Konjic No. R 530/99 dated 10 January 2000	
T-40	A copy of Death Certificate, Herzegovina-Neretva Canton – Municipality of Konjic, for Blažević Željko, No. 09-15-3-4313/08 dated 26 December 2008; a copy of the Decision on Establishing the Death Circumstances for Blažević Željko issued by the Municipal Curt of Konjic No. R 8/2000 dated 23 February 2000	Dated 28 May 2013
T-41	A copy of Death Certificate, Herzegovina-Neretva Canton – Municipality of Konjic, for Drljo Franjo, No. 09-15-3-4310/08 dated 26 December 2008; a copy of the Decision on Establishing the Death Circumstances for Drljo Franjo issued by the Municipal Curt of Konjic No. R 529/99 dated 10 January 2000	Dated 28 May 2013
T-42	A copy of Death Certificate, Herzegovina-Neretva Canton – Municipality of Konjic, for Ivanković Anđa, No. 09-15-3-4318/08 dated 26 December 2008; a copy of the Decision on Establishing the Death Circumstances for Ivanković Anđa issued by the Municipal Curt of Konjic No. R 140/02 dated 27 April 2004	Dated 28 May 2013
T-43	A copy of Death Certificate, Herzegovina-Neretva Canton – Municipality of Konjic, for Ivanković Ilija, No. 09-15-3-4317/08 dated 26 December 2008; a copy of the Decision on Establishing the Death Circumstances for Ivanković Ilija issued by the Municipal Curt of Konjic No. R 139/02 dated 27 April 2004	Dated 28 May 2013
T-44	A copy of the Order by the Chief of Staff of the Supreme Command of the Armed Forces of the Republic of Bosnia and Herzegovina No. 86-1	Dated 28 May 2013

	dated 22 January 1993 to form the Special Purposes Squad and the Addendum to the Order No. 86-2 dated 5 February 1993 stating that 5683 is the Military Unit number for the Special Purposes Squad; ERN No. 0185-0039 – 0185-0041	
T-45	A copy of the Order by the Chief of Staff of the Supreme Command of the Armed Forces of the Republic of Bosnia and Herzegovina No. 13/37-39 dated 4 March 1993 naming Ališpago Zulfikar the commander of the Special Purposes Squad and Bojadžić Nihad the deputy commander; ERN No. 0180-5165	Dated 28 May 2013
T-46	A copy of the Proposition by the Commander of the Special Purpose Squad No. 1-10-901/94 dated 11 April 1994 on awarding special stimuli showing, inter alia, that Šemsović Samir who died in the village of Trusina on 16 April 1993, was a suggested recipient of the state's highest medal of honor Fleur-De-Lis	Dated 28 May 2013
T-47	A copy of the Letter by the 4 <sup>th</sup> Corps Command No. 02/1-966-122/93 dated 13 April 1993 informing the Security Administration of the Supreme Command of the Armed Forces of the Republic of Bosnia and Herzegovina about the inappropriate and brazen behavior by the members of the Special Unit of the Supreme Command Zuka from Igman and Handžar Division that complicates the work of the Military Police Battalion of the 4 <sup>th</sup> Corps of the Army of Bosnia and Herzegovina	Dated 28 May 2013
T-48	A copy of the Form VOB 8 Book 2 Military Unit 5683-4. IDB to the names of Ališpago Zulfikar, Bojadžić Nihad and Šemsović Samir.	Dated 28 May 2013

T-49	A copy of the Form VOB 8 Book 4 Military Unit 5683-4. IDB to the name of Kokić Ahmet	Dated 28 May 2013
T-50	A copy of the Official Note by the State Investigation and Protection Agency No. 17-04/2-04-2-1140/09 dated 23 September 2009 together with a certified copy of the supporting Documents of the Community Health Center Hadžići No. 07-1-330-1/09 dated 27 July 2009 providing the Extract from the Medical Records for Ahmet Kokić with a 4-page supplement and Documents of the Community Health Center Hadžići No. 07-1-330-1/09 dated 7 September 2009 providing the Extract from the Medical Records for Samir Šemsović with a 4-page supplement	Dated 28 May 2013
T-51	A copy of the document Genocide against the Croats of the Municipality of Jablanica No. 1053/96 dated 4 June 1996, ERN No. 0156-1568-0156-1576	Dated 28 May 2013
T-52	Official Note No. T 20 0 KTRZ 0002653 12 dated 5 April 2012 with eight documents relating to the medical records for Goran Livaja	Dated 28 May 2013
T-53	Information by CZB Mostar, Jablanica Office of Public Security (SJB Jablanica) No. 16-7/1-80-50/93 dated 23 September 1993	Dated 28 May 2013
T-54	The list of the prisoners from Buturović Polje Collecting Point dated 2 September 1993	Dated 28 May 2013
T-55	The list of the war prisoners from Buturović Polje Collecting Point who were handed over to the Military Police Battalion of the 6 <sup>th</sup> Corps No. 07-132/93 dated 14 September 1993	Dated 28 May 2013
T-56	Certificate by the International Committee of the Red Cross NO. BAZ-373787 dated 6 May 1994 to the name of Marinko Drežnjak with the detainee record	Dated 28 May 2013

T-57	Three findings and opinions by a specialist of the University Clinic Hospital Mostar to the name of Drežnjak Marinko	Dated 28 May 2013
T-58	Certificate by the International Committee of the Red Cross No. BAZ-373774 dated 21 March 1994 to the name of Mirko Zelenika	Dated 28 May 2013
T-59	Decision by the Municipal Assembly of Jablanica No. 02-87-46/73 dated 18 January 1974 determining that Mirko Zelenika has limited ability to serve in the army supported by the assessment and opinion by the military-medical board.	Dated 28 May 2013
T-60	A Call for General Mobilization by the Municipality of Jablanica No. 02-842-62/93 dated 25 June 1993 and a Call for Mobilization dated 31 March 1993 to the name of Mirko Zelenika	Dated 28 May 2013
T61	Physician Findings and Opinion concerning the injuries sustained by Mirko Zelenika, 13 pages in total.	Dated 28 May 2013
T-62	Physician Findings and Opinion concerning the injuries sustained by Miroslav Soko, 12 pages in total.	Dated 28 May 2013
T-63	Psychological Assessment Report by the University Hospital Center in Zagreb dated 20 January 1998 for Miroslav Soko	Dated 28 May 2013
T-64	Findings by a psychologist at the Community Health Center in Mostar No. 715/05 dated 22 November 2005	Dated 28 May 2013
T-65	Certificate by Mostar Defense Administration, Department of Defense in Jablanica No. 22-09-49-1-90/04-69 dated 6 December 2004 to the name of Miroslav Soko	Dated 28 May 2013
T-66	Findings and Opinion by the Medical Board for Examining Individuals under the Law on Rights of Defenders and Members of Their Families in the first-instance proceedings 95/06 dated 16 January 2006 for Miroslav Soko	Dated 28 May 2013

T-67	Findings and Opinion by the Disability Evaluation Military Medical Board No. 02-18-05/97-11117 dated 3 December 1997 for Miroslav Soko with the Decision by the Office of Defense No. 02-36/05-97-02 dated 29 December 1997 to the name of Miroslav Soko	Dated 28 May 2013
T-68	Certificate by the International Committee of the Red Cross No. BAZ-373777 dated 21 March 1994 to the name of Marniko Ljoljo	Dated 28 May 2013
T-69	A set of findings and opinions by a medical specialist for Marinko Ljoljo, 15 pages in total.	Dated 28 May 2013
T-70	A hospital referral to a specialist at the Rudnik Mostar Polyclinic to the name of Marinko Ljoljo	Dated 28 May 2013
T-71	Findings by a psychologist at the Community Health Center in Mostar No. 243 dated 14 May 2005 to the name of Marinko Ljoljo, findings and opinion by a psychologist at the Community Health Center in Tomislavgrad dated 6 March 1998 to the name of Marinko Ljoljo, and findings and opinion by a neuropsychiatric outpatient clinic "Anima" No. 378/05 dated 17 August 2005 to the name of Marinko Ljoljo	Dated 28 May 2013
T-72	Findings and Opinion by a medical board No. R-14-43-182/06-1 dated 27 January 2006 to the name of Marinko Ljoljo	Dated 28 May 2013
T-73	Decision by the Mostar Administration of the Issues of Defenders No. 14-43-1-115/06 dated 21 February 2006 to the name of Marinko Ljoljo	Dated 28 May 2013
T-74	Detainee Records No. 373768 to the name of Pavlović Ivan	Dated 28 May 2013
T-75	The Peace Agreement concluded in February 1994 between General Delić and General Rose on the cease-fire and the Annex to the Peace Agreement	Dated 28 May 2013
T-76	Form VOB 8 for Edin Džeko	Dated 28 May 2013

T-77	Order by the Judge of the Western District of Washington dated 15 November 2011 granting the Waiver of the right to a hearing by Edin Džeko concerning his extradition, B/C/S version	Dated 28 May 2013
T-78	Order by the Judge of the Western District of Washington dated 15 November 2011 granting the Waiver of the right to a hearing by Edin Džeko concerning his extradition, English version	Dated 28 May 2013
T-79	Statement by Edin Džeko dated 15 November 2011 before the Court of the Western District of Washington on the waiver of the right to a hearing concerning his extradition, B/C/S version	Dated 28 May 2013
T-80	Statement by Edin Džeko dated 15 November 2011 before the Court of the Western District of Washington on the waiver of the right to a hearing concerning his extradition, English version	Dated 28 May 2013
T-81	Response by the U.S. Department of Justice dated 4 April 2012 No. 95-100-20097 stating that there are no obstacles to prosecute Edin Džeko for criminal offenses allegedly committed in Donja Jablanica in September 1993, B/C/S version	Dated 28 May 2013
T-82	Response by the U.S. Department of Justice dated 4 April 2012 No. 95-100-20097 stating that there are no obstacles to prosecute Edin Džeko for criminal offenses allegedly committed in Donja Jablanica in September 1993, B/C/S version, with the accompanying letter by the Program of Overseas Prosecutorial Development, Assistance and Training, Bosnia and Herzegovina Office, by the U.S. Department of Justice	Dated 28 May 2013
T-83	Examination Records for Edin Džeko No. KT-RZ 24/10 dated 21 December 2011	Dated 28 May 2013

T-84	Examination Records for Edin Džeko No. T 20 0 KTRZ 0002954 12 dated 4 May 2012	Dated 28 May 2013
T-85	The Court of Bosnia and Herzegovina Notice No. S1 K OO336910 Krl dated 24 May 2013	Dated 28 May 2013
T-86	The Court of Bosnia and Herzegovina Notice No. X-KR-06/299 dated 23 May 2013	Dated 28 May 2013
T-87	A copy of the Report on the situation in Jablanica by the 4 <sup>th</sup> Corps and Commander of 44 <sup>th</sup> Mountain Brigade No. 02/389-1/93 dated 15 April 1993 stating that according the available data military operations have been underway for two day in Konjica-Pasovići and Here-Kuti-Šćipe areas	Dated 4 June 2013
T-88	A copy of the report by the Municipal Defense Staff of the 44 <sup>th</sup> Mountain Brigade No. 07/379-35/93 dated 21 May 1993 stating that, together with UNPROFOR, the representatives of the Army of Bosnia and Herzegovina and the Croatian Defense Council visited the municipality of Konjic as well as the valley of Neretvica	Dated 4 June 2013
T-89	A copy of data on the situation in the zone of responsibility of the 4 <sup>th</sup> Corps of the Command of the 4 <sup>th</sup> Corps No. 02/1-3200-1/93 dated 17 April 1993 where is shown, inter alia, that the 43 <sup>rd</sup> brigade in the area of Konjic, on 14 April 1993 received support on 16 April 1993 by Zuka and that the battles continue in all the areas of the municipality of Konjic	Dated 4 June 2013
T-90	A copy of the Letter by the commander of the Military Police Battalion of the 4 <sup>th</sup> Corps dated 13/14 April 1993 giving the 4 <sup>th</sup> Corps information pointing to the escalation of the armed conflict between the Army of Bosnia and Herzegovina and the Croatian	Dated 4 June 2013

	Defense Council in the territory of the municipality of Konjic	
T-91	The copy of the 4th Corps Command Report on the state of the security in the region of Konjic number: 07-2245/93 of March 24, 1993 where, among other statements, the formation of the mixed commission of HVO and ARBiH was stated, which had the assignment to organize the termination of combat operations in Konjic, to unblock the road Mostar-Jablanica-Konjic, exchange war prisoners and undertake all other measures aimed at calming the resulting state;	Introduced on June 4, 2013
T-92	Original review created by the Center for Collection of Documentation and Data Processing with Regard the Homeland War, Zagreb, titled Konjic – Some of the War Crimes and Severe Violations of the Law of War and Geneva Conventions Committed during 1992, 1993 and 1994, dated on June 1, 1994;	Introduced on June 4, 2013
T-93	The copy of the short report on war events in the municipality of Konjic dated on April 17, 1994 which mentions among other things a massacre in the village of Trusina, and request the foundation of the commission for the purpose of the filed inspection and establishing the facts;	Introduced on June 4, 2013
T-94	A copy of the registration of death issued by the Registry Office Konjic number: 2657/94 of November 9, 1994, for Ilija Ivanković T177; A copy of the minutes of the section number: 377/94 of Department of Pathology of the Clinical Hospital Center Split dated November 9, 1994 for Ilija Ivanković T 178; A copy of the burial permit of the deceased person Ilija Ivanković, with the transit permit T 179	Introduced on June 4, 2013

T-95	A copy of the registration of death issued by the Registry Office Konjic number: 2655/94 of November 9, 1994, for Anđa Ivanković T-180; A copy of the minutes of the section number: 376/94 Department of Pathology of the Clinical Hospital Center Split of November 9, 1994 for Anđa Ivanković T -181; A copy of the burial permit of the deceased person issued by the Clinical Hospital Center Split of November 9, 1994, for Anđa Ivanković, with the transit permit T-182;	Introduced on June 4, 2013
T-96	A copy of the registration of death issued by the Registry Office Konjic number: 2656/94 of November 9, 1994, for Pero Krešo T-183; A copy of the minutes of section number: 395/94 of Department of Pathology of the Clinical Hospital Center Split dated November 9, 1994 for Pero Krešo T -184; A copy of the burial permit of the deceased person issued by the Clinical Hospital Center Split of November 9, 1994, for Pero Krešo, with the transit permit T-185;	Introduced on June 4, 2013
T-97	A copy of the registration of death issued by the Registry Office Konjic number: 2665/94 of November 9, 1994, for Ivan Drljo (born in 1971) T-188; A copy of the minutes of the section number: 392/94 of Department of Pathology of the Clinical Hospital Center Split for Ivan Drljo (born in 1971) T-199; A copy of the burial permit of the deceased person issued by the Clinical Hospital Center Split for Ivan Drljo, with the transit permit T-200;	Introduced on June 4, 2013

T-98	A copy of the registration of death issued by the Registry Office Konjic number: 2660/94 of November 9, 1994, for Željko Blažević T-201; A copy of the minutes of the section number: 393/94 of Department of Pathology of the Clinical Hospital Center Split dated November 9, 1994 for the name of Željko Blažević T -202; A copy of the burial permit of the deceased person issued by the Clinical Hospital Center Split dated November 9, 1994, for Željko Blažević, with the transit permit T-203;	Introduced on June 4, 2013
T-99	A copy of the registration of death issued by the Registry Office Konjic number: 2668/94 of November 9, 1994, for Nedeljko Krešo T-204; A copy of the minutes of the section number: 396/94 of Department of Pathology of the Clinical Hospital Center Split dated November 9, 1994 for Nedeljko Krešo T -205; A copy of the burial permit of the deceased person issued by the Clinical Hospital Center Split of November 9, 1994, for Nedeljko Krešo, with the transit permit T-206;	Introduced on June 4, 2013
T-100	A copy of the registration of death issued by the Registry Office Konjic number: 2664/94 of November 9, 1994, for Zdravko (Ivan) Drljo T-213; A copy of the minutes of the section number: 387/94 of Department of Pathology of the Clinical Hospital Center Split dated November 9, 1994 for Zdravko (Ivan) Drljo T -214; A copy of the burial permit of the deceased person issued by the Clinical Hospital Center Split of November 9, 1994, for Zdravko (Ivan) Drljo, with the transit permit T-215;	Introduced on June 4, 2013

T-101	A copy of the registration of death issued by the Registry Office Konjic number: 2666/94 of November 9, 1994, for Franjo Drljo T-228; A copy of the minutes of the section number: 394/94 of Department of Pathology of the Clinical Hospital Center Split dated November 9, 1994 for Franjo Drljo T -229; A copy of the burial permit of the deceased person issued by the Clinical Hospital Center Split of November 9, 1994, for Franjo Drljo, with the transit permit T-230;	Introduced on June 4, 2013
T-102	A copy of the registration of death issued by the Registry Office Konjic number: 2670/94 of November 9, 1994, for Kata Drljo (born in 1932) T-234; A copy of the minutes of the section number: 385/94 of Department of Pathology of the Clinical Hospital Center Split dated November 9, 1994 for Kata Drljo (born in 1932) T -235; A copy of the burial permit of the deceased person issued by the Clinical Hospital Center Split of November 9, 1994, for Kata Drljo (born in 1932), with the transit permit T-236;	Introduced on June 4, 2013
T-103	A Letter of the Federal Ministry for Issues of Veterans and Disabled Veterans of the Defensive–Liberation War number: 01/2-41-32/09 of November 12, 2009 submitting the copies of military records for Mensur Memić, Dževad Salčin, Nedžad Hodžić and Senad Hakalović	Introduced on June 4, 2013
T-104	Copy of the order of the Commander of the Special Actions Unit number: 1-10-878/94 date April 16, 1994	Introduced on June 4, 2013

T-105	A copy of data on formation of the unit made by the commander SOPN number: 04-10-2303/94 dated August 19, 1994 stating that the unit SOPN was formed on June 10, 1991 ERN number: 0414-9193;	Introduced on June 4, 2013
T-106	The Notice S1 1 K 009162 12 KrO of May 30, 2013	Introduced on June 4, 2013
T-107	The minutes on hearing the witness Irfan Masleša of April 7, 2010, number: KT-RZ-107/05 (the annex, Act on the Appointment, number 1-10/110-93 of October 29, 1993) I Report, Jablanica of January 5, 1994)	Introduced on October 22, 2013
T-108	The minutes on hearing of the witness "U4" of June 14, 2012	Introduced on January 21, 2014
T-109	The minutes on hearing of the witness "U4" of June 4, 2013	Introduced on January 21, 2014
T-110	The Order of the Chief of Headquarters of Supreme Command of Armed Forces of Republic of Bosnia and Herzegovina (OS RBiH), str. conf. no. 14/75-22 of March 11, 1993	Introduced on March 4, 2014
T-111	A document on appointment, number 1-10/110-93 of October 29, 1993, Jablanica, Republic of Bosnia and Herzegovina, the Army of Republic of Bosnia and Herzegovina, SOPMŠVK with the annex, a Letter by the BiH Court of February 17, 2014, no: S1 1K 003369 10 KrI	Introduced on March 4, 2014
T-112	The Order of the Chief of Headquarters of Supreme Command of Armed Forces of Republic of Bosnia and Herzegovina (OS RBiH) of April 17, 1993	Introduced on March 4, 2014
T-113	The Order of the Chief of Headquarters of Supreme Command of Armed Forces, str. conf. no: 14/75-100 of September 1, 1993 Sarajevo, Republic of Bosnia and Herzegovina, the Headquarters of the Supreme Command of the Armed Forces Sarajevo	Introduced on March 4, 2014

T-114	The Order of the Chief of GSS VK, str. conf. number: 01/563-1-3/93 of September 2, 1993, Jablanica, Republic of Bosnia and Herzegovina, the Army of Republic of Bosnia and Herzegovina 44/6 Corps	Introduced on March 4, 2014
T-115	The Act of Republic of Bosnia and Herzegovina Armed Forces R. BiH the 4th Corps Command, str. conf. no:737-06 of September 3, 1993, Mostar	Introduced on March 4, 2014
T-116	The Order of the Chief of Headquarters of OS R BiH, str. conf. no: 14/75-52 of June 10, 1993, Republic of Bosnia and Herzegovina, the Main Headquarters of the Armed Forces Sarajevo	Introduced on March 4, 2014
T-117	Entering into the composition and resubordination; no: 1/297-380 of October 5, 1993, Republic of Bosnia and Herzegovina, the Headquarters of the Supreme Command of Armed Forces	Introduced on March 4, 2014
T-118	Strictly confidential act no: 14/75-140 of November 15, 1993 Sarajevo, Republic of Bosnia and Herzegovina the Headquarters of the Supreme Command of Armed Forces, Sarajevo, Administration for Organizational and Mobilization Affairs and the act number: 01-5377 Konjic of November 11, 1993 Republic of Bosnia and Herzegovina, the Army of Republic of Bosnia and Herzegovina the Command of the 6th Corps	Introduced on March 4, 2014

## B. MATERIAL EVIDENCE PRESENTED BY THE DEFENSE

O-1	Muster roll SOPN ŠVK (11 pages) ERN 02098414	Introduced on November 12, 2013
O-2	The Letter by the Ministry of Foreign Affairs SBK for the Cantonal Prosecution Travnik, number 04-02/3-2-4895/99 of November 22, 1999 (scanned photos and the personal identity card record attached)	Introduced on November 12, 2013

O-3	The Information by SFOR for the Chief Prosecutor of the Court in Travnik, Marinko Jurčević, dated October 14, 1999	Introduced on November 12, 2013
O-4	The Letter by TBiH no. KT-RZ 107/05 of April 6, 2012 with the accompanied DVD	Introduced on November 12, 2013
O-5	The Plea Agreement concluded between TBiH and Rasema Handarević, number: T 20 0 KTRZ 0002955 12 of March 2, 2012 and the Judgment of the Court of BiH number: S1 1K 009162 12 Kro of April 30, 2012	Introduced on November 12, 2013
O-6	The map of settlements and roads around Trusina of July 16, 2013	Introduced on November 12, 2013
O-7	The official record of TBiH number: T 20 0 KTRZ 0002955 12 of March 2, 2012 and the Letter of the Court of BiH of October 2, 2013, number: S1 1K 009162 12 Kro	Introduced on November 12, 2013
O-8	4 photographs of the village of Gostovići with the signature of the witness Atif Karović	Introduced on November 12, 2013
O-9	Video of the village of Gostovići in duration of 1 minute and 8 seconds	Introduced on November 12, 2013
O-10	The excerpt from the protocol of the War hospital "Suhodol" stationary Tarčin and the admission clinic, dated October 17, 2012, number: 01-14-01-619/12	Introduced on November 12, 2013
O-11	The excerpt from the operational protocol of the Health Clinic (Dom zdravlja) Jablanica for November 9, 1993	Introduced on November 12, 2013
O-12	The official record number: T20 0 KTRZ 0002653 12 of April 5, 2013 with the annex Findings and the Opinion of the Specialist of Mostar Clinical Hospital, number: 4474/94 of December 10, 1994, the Conclusion issued by the Mostar Clinical Hospital, number 1332 and the Findings and Opinion of the Specialist of Mostar Clinical Hospital of May 8, 1997, and all of that with regard the protected witness "J2"	Introduced on November 12, 2013
O-13	Distribution of employees for the jobs in PS Jablanica no: 03-8/63/93 of February 18, 1993	Introduced on November 12, 2013

O-14	The charge HZHB Department of Internal Affairs, PS Jablanica no. 03-013/93 of January 4, 1993	Introduced on November 12, 2013
O-15	The Decision on dismissal of Mirko Zelenika from Jablanica from the position of the President of Executive Committee (IO) of the Municipality of Jablanica and his temporary work engagement no. 620/92 of October 29, 1992	Introduced on November 12, 2013
O-16	Decision on the election of Mirko Zelenika for the president of the Executive Committee of the Municipality Jablanica no: 130/92 of May 11, 1992	Introduced on November 12, 2013
O-17	The Information number 02-08-9-1032/96 of June 10, 1996, Department for SIS with GS HVO	Introduced on November 12, 2013
O-18	The finding of the psychologist for Marinko Ljolja, number 243 of July 14, 2005	Introduced on November 12, 2013
O-19	Two photographs – Edin Džeko and Vinko Ljubas with the signature of the witnesses Branislav Manigoda and Nehru Manjušak of October 1, 2013	Introduced on November 12, 2013
O-20	Pre-war health record of Miroslav (Nikola) Soko from the Health Center (Dom zdravlja) Jablanica and the request of defense sent to the Health Center Jablanica of April 1, 2013	Introduced on November 12, 2013
O-21	The Act of the Institute for Missing Persons number 2/1-40-1- 148/13 of February 28, 2013	Introduced on November 12, 2013
O-22	The findings and the opinion of the Military–Disability Commission of HR HB, no. 02-18-05/97-1117 of December 3, 1997 (T-67 and 252 with the indictment)	Introduced on November 12, 2013
O-23	Psychologist Findings for Miroslav Soko, no: 715/05 of November 22, 2005 (T-64 and 249 with the indictment)	Introduced on November 12, 2013
O-24	The findings of the psychiatric examination for Miroslav Soko, Clinical Health Center Zagreb of January 20, 1998 (T-63 and 248 with the indictment)	Introduced on November 12, 2013
O-25	History of disease of Miroslav Soko (12 pages) (T-62 and 247 with the indictment)	Introduced on November 12, 2013

O-26	The protocol of the Health Center Jablanica for June 8, 1993	Introduced on November 12, 2013
O-27	The protocol of the Health Center Jablanica for May 17, 1993	Introduced on November 12, 2013
O-28	The protocol of the Health Center Jablanica for July 6, 1993	Introduced on November 12, 2013
O-29	The protocol of the Health Center Jablanica for December 14, 1993	Introduced on November 12, 2013
O-30	The confirmation number: 04-10-418-3/93 of December 21, 1993 signed by Zulfikar Ališpago, the commander	Introduced on November 12, 2013
O-31	Municipality of Jablanica, Municipal Council, Decision on the names of parts of inhabited places and streets and their marking, no. 02-02-845-7/05- VIII, Jablanica of June 9, 2005, the map of the town of Jablanica attached with marked street names	Introduced on November 12, 2013
O-32	RBiH, ŠVK OS, The Notice on the situation in the region of Neretvica, str. conf. no. 02/503-1 of April 16, 1993	Introduced on November 12, 2013
O-33	Rule of Procedure of the Military Security Service of the Armed Forces of RBiH, number: 02-011-714/92 of September 11, 1992 SIGNED BY the President of the RBiH Presidency Alija Izetbegović	Introduced on November 12, 2013
O-34	Croatian Association of Homeland War prisoners in BiH, a Letter sent to the Prosecutor's Office of BiH, office number: 01-17-2 / 11 dated December 21, 2011 and the Letter addressed to the Prosecutor's Office of BiH, office number 01-17- 1/11 of May 4, 2011 with the attachment A Notice of the Prosecutor's Office of BiH number: T 20 0 KTRZ 0002954 12 of July 17, 2012	Introduced on November 12, 2013
O-35	Parts of the SOPN war diary for September and October 1993 and the Letter of the BiH Court number: S1 1K 003369 10 Kri of November 8, 2013	Introduced on November 12, 2013

O-36	The Archive list of the Directorate for mobilization and structure ZK VF (dating from 1993) number cv-471-07/93 of July 30, 1993	Introduced on November 12, 2013
O-37	Daily Fighting Command Report OGI No: 1- 20/8 of 22 April 1993	Introduced on November 12, 2013
O-38	The Order for b/d K-de OGI number 01-775 of May 4, 1993	Introduced on November 12, 2013
O-39	The Order for Active Operations in the region Budišina ravna – Lesovina and cutting of the communication Jablanica – Prozor OGI IKM BRADINA number 01/30 of April 27, 1993	Introduced on November 12, 2013
O-40	The map of national structure of Trusina and its surrounding	Introduced on November 12, 2013
O-41	4 photographs of the village of Gostovići with the signature of the defense witness Senad Mikić of July 16, 2013	Introduced on November 12, 2013
O-42	4 photographs of the village of Gostovići with the signature of the defense witness Redžo Poturović of July 23, 2013	Introduced on November 12, 2013
O-43	4 photographs of the village of Gostovići with the signature of the defense witness Mustafa Halaković of July 23, 2013	Introduced on November 12, 2013
O-44	Video of the village of Trusina in duration of 13 minute and 13 seconds	Introduced on November 12, 2013
O-45	Video of the interview carried out with Karlo Marić of September 6, 1993 in duration of 9 minutes.	Introduced on November 12, 2013
O-46	The map of the town of Jablanica with the signature of the defense witness Nehru Manjušak of October 1, 2013	Introduced on November 12, 2013
O-47	The map of the town of Jablanica with the signature of the defense witness Nazif Keskin of August 27, 2013	Introduced on November 12, 2013
O-48	The map of the town of Jablanica with the signature of the protected witness “N” of September 3, 2013	Introduced on November 12, 2013

O-49	The Order of ŠVK OS RBiH, str. conf. no. 14/75-22 of March 11, 1993	Introduced on November 12, 2013
O-50	The Order of the Commander of the 4th Corps, number: 838-06 of September 7, 1993	Introduced on November 12, 2013
O-51	The Order of OGI IKM Bradina, number 01/15 of April 24, 1993	Introduced on November 12, 2013
O-52	THE ACT of the Command of the 4th BVP Corps of April 12, 1993	Introduced on November 19, 2013
O-53	The Directive number 5 for the execution of combat activities, strictly conf. number: 02/497-1, Sarajevo of April 14, 1993	Introduced on November 19, 2013
O-54	RBiH, AF BiH, the Command of the 4th Corps, Report ref. no: 02-2560-14-1/93 of April 14, 1993	Introduced on November 19, 2013
O-55	The Act of the Command 44, number 02/392-2/93 of April 15, 1993 sent to OG Igman	Introduced on November 19, 2013
O-56	The Act of April 15, 1993 - the Center of the connection ŠVK -Crypto Protection Department, signed by the Commander of the Brigade Neretva, Enes Kovačević, Assistant Commander of the Brigade Neretvica Špiljak Šaban	Introduced on November 19, 2013
O-57	The Act of April 15, 1993 – the Center of the connection ŠVK – Crypto Protection Department, signed by Esad Ramić, docent PhD Safet Ćibo, Zuka and Nihad	Introduced on November 19, 2013
O-58	The ŠVK Announcement on special operations of HVO in the region of Jablanica number 02/502-1 of April 16, 1993	Introduced on November 19, 2013
O-59	Amendment to the Combat Report of the Command of the 1st Corps, str. conf. no: 05/06-215 of April 17, 1993	Introduced on November 19, 2013
O-60	Approval for the engagement of units in the Jablanica area, OGI, number 01-592-7-4 dated April 19, 1993, sent to the Command of the 1st Corps, signed by the commander Salko Gušić	Introduced on November 19, 2013

O-61	The Information on the course of combat activities in the area of responsibility of the 1st Corps on April 19, 1993, by the Commander of the 1st Corps, number 05/5-225 of April 20, 1993 sent to IB OG Goražde	Introduced on November 19, 2013
O-62	The Command for active operation tasks no. 1, Section 1: 25,000 Konjic 1, 2, 3 and 4: OGI IKM Bradina, str. conf. number: 01/ of April 22, 1993	Introduced on November 19, 2013
O-63	The Act to the Headquarters of the Supreme Command of Armed Forces of RBiH, str. conf. number: 02/533-1 of April 24, 1993	Introduced on November 19, 2013
O-64	The Combat Report OGI IKM Bradina, number 01/11-3 of April 25, 1993	Introduced on November 19, 2013
O-65	Regular Combat Report of the Command 44 BB Jablanica, number: 02/70-1-104/93 of April 26, 1993	Introduced on November 19, 2013
O-66	The Order for appointment number 1-10-878/94 of April 16, 1994	Introduced on November 19, 2013
O-67	The record of wounded-missing-disappeared of the protected witness J1	Introduced on November 19, 2013
O-68	The record of wounded-missing-disappeared of the protected witness M	Introduced on November 19, 2013
O-69	The record of wounded-missing-disappeared for Izet Berberištanin	Introduced on November 19, 2013
O-70	The record of wounded-missing-disappeared for Adnan Hosić	Introduced on November 19, 2013
O-71	The record of wounded-missing-disappeared for Samir Šemsović	Introduced on November 19, 2013
O-72	The statement on wounding of the witness "N", str. conf. no. 05/4- 10-2325-1/95 of December 8, 1995	Introduced on November 19, 2013
O-73	VOB-1 for the protected witness E	Introduced on November 19, 2013
O-74	Certificate of salaries for the protected witness E	Introduced on November 19, 2013

O-75	Register of military obligations and VOB-1 for the protected witness U	Introduced on November 19, 2013
O-76	Certificate of salaries of members of OS RBiH of June 1, 1996 for the protected witness U	Introduced on November 19, 2013
O-77	VOB- 8 for the letter K-VJ 5683-4 of the Reconnaissance-Commando Battalion from A to Ž, 1992-1996 – ordinal number of the book 3	Introduced on November 19, 2013
O-78	The record of the unit for the protected witness J1	Introduced on November 19, 2013
O-79	VOB-1 for the protected witness J1	Introduced on November 19, 2013
O-80	Certificate of salaries of members of OS RBiH for the protected witness J1	Introduced on November 19, 2013
O-81	Personal record for the protected witness J1	Introduced on November 19, 2013
O-82	VOB-1 for the protected witness X	Introduced on November 19, 2013
O-83	Certificate of salaries of members of OS RBiH as of June 3, 1996 for the protected witness X	Introduced on November 19, 2013
O-84	VOB- 8 for the letter L-VJ 5683-4 of the Reconnaissance-Commando Battalion from A to Ž, 1992-1996 – ordinal number of the book 3	Introduced on November 19, 2013
O-85	VOB-8 for the letter A-VJ 5683-4 of the Reconnaissance-Commando Battalion from A to Ž, 1992-1996 – ordinal number of the book 2	Introduced on November 19, 2013
O-86	VOB-8 for the letter Š-VJ 5683-4 of the Reconnaissance-Commando Battalion from A to Ž, 1992-1996 – ordinal number of the book 2	Introduced on November 19, 2013
O-87	VOB-8 for the letter DŽ-VJ 5683-4 of the Reconnaissance-Commando Battalion from A to Ž, 1992-1996 – ordinal number of the book 2	Introduced on November 19, 2013
O-88	VOB-8 VJ 5683-4 .IDB, ordinal number of the book 3 for the letter H	Introduced on November 19, 2013
O-89	VOB-8 VJ 5683-4 .IDB, Handžar divizija ordinal number of the book 3 for the letter H	Introduced on November 19, 2013

O-90	Review of persons proposed for the promotion into the reserve commanding officer of the SOPN Unit of 08.07.4-25.08.94	Introduced on November 19, 2013
O-91	VOB-8 Suada Rogo – VJ 5683-4 of the Reconnaissance-Commando Battalion from A to Ž, 1992-1995 – ordinal number of the book 2	Introduced on November 19, 2013
O-92	Decision on the promotion into the ranks of the ARBiH of January 12, 1996	Introduced on November 19, 2013
O-93	Acquiring new members for the Special operations unit ŠVK, the Order str. conf. no. 14/75-36 of April 1, 1993 sent to the Command of the 1st Corps, ERN 00577861	Introduced on November 19, 2013
O-94	Ministry of Internal Affairs of Canton Zenica-Doboj, Zenica, Police Administration, PUI no. 08-03/7-4-04-2-267/12/ME of September 4, 2012 the excerpt from the criminal record for the protected witness is attached, J4 of September 4, 2012	Introduced on November 19, 2013
O-95	The Letter by the Federal Ministry for Issues of Veterans and Disabled Veterans of the Homeland War, str. conf. no. 07-03-122/10 of February 28, 2011 sent to the Registry Office of the Court of BiH – Department of Criminal Defense, accompanied with the list of documentation from the Sector for Issues related to Military Obligations Sarajevo through the Department for Military Obligation Records Mostar, str. conf. no. 07/33-03/1-167/10-01 of December 17, 2010	Introduced on November 19, 2013
O-96	The certificate on circumstance of the death of Zdravko (Ivan) Drljo, the HVO unit VP 1719 56 Home guard regiment “Herceg Stjepan” Konjic, conf. 035-01/96-02/01 1719-07-96-1080, Ljubuški, May 6, 1996	Introduced on November 19, 2013
O-97	The Certificate for Željko Blažević, Defense Bureau Mostar, Defence Department Konjic, no. 22-07-49-884/04-01 of December 14, 2004	Introduced on November 19, 2013

O-98	The Certificate for Franjo (Ilija) Drljo, Defense Bureau Mostar, Defence Department Konjic, no. 22-07-49-899/04-01 of December 14, 2004	Introduced on November 19, 2013
O-99	VOB-1, VOB-2 and VOB-3 for Maksim Kujundžić	Introduced on November 19, 2013
O-100	VOB-1, VOB-2 and VOB-3 for Ivan Pavlović	Introduced on November 19, 2013
O-101	Newspaper article: “Results Better than Work Conditions”, published in “Naš list”: page 15, no. 4	Introduced on November 19, 2013
O-102	Internet article: “Mirko Zelenika: The conditions in BiH Army camps were similar to those of Nazi’s” of December 29, 2011	Introduced on November 19, 2013
O-103	Internet article “Zelenika for “Used to be”: The political leadership in Sarajevo knew about the camps of December 14, 2012	Introduced on November 19, 2013
O-104	Internet article by BBS titled “Bosnian Croat veterans against Hague war crimes tribunal sentences” of January 21, 200 with the translation into Bosnian	Introduced on November 19, 2013
O-105	Internet article from the web page Dnevnik.ba “Zelenika: Džeko and others drove us to the camp in front of Halilović and Zuko” of December 22, 2011	Introduced on November 19, 2013
O-106	Newspaper article from Dnevni avaz “Destroyed houses and 22 names as witnesses of the crime” of September 18, 2009 – the source additional TBiH material	Introduced on November 19, 2013
O-107	Newspaper article from Večernji list of December 15, 2011 Army camps: Members of MUP HNZ arrested for the war crimes”	Introduced on November 19, 2013
O-108	The Order of the Chief of the Main Headquarters of Supreme Command, Sefer Halilović, the 6th Corps ARBiH, strictly confidential number: 01/563-1-3/93, of September 2, 1993, Jablanica	Introduced on November 19, 2013
O-109	The act of the Command of 4th Corps, Merging of forces of the 4th Army BiH Corps, str. conf. no. 837/06 of September 7, 1993 sent to the commander of the Special unit Zulfikar	Introduced on November 19, 2013

O-110	The command for the attack "Defense of National Rights - Vrđi 93" ARBiH, SO for PN ŠVK of September 17, 1993	Introduced on November 19, 2013
O-111	The Order of the SOPN commander of October 21, 1993, signed by Zulfikar Ališpago, the commander, with the annex, a letter by the BiH Court S1 1K 003369 10 KriI of November 13, 2013	Introduced on November 19, 2013
O-112	An appointment, AR BiH, SOPN ŠVK, no. 1- 10/110-93 of October 29, 1993 with an annex a Letter by the BiH Court of November 13, 2013 S1 1K 003369 10 Kri	Introduced on November 19, 2013
O-113	Death certificate for Mujesira (maiden Komatina) Bojadžić, municipality Savski Venac, Republic of Serbia of November 24, 2009 (a certified copy from the Registry of Deceased, no. 203-00-17/2013-31/12882 of November 13, 2013 submitted on February 11, 2014)	Introduced on November 19, 2013
O-114	Daily report of the press service of the Command 44.bbr Jablanica for the period from September 6, 1993 to September 17, 1993 and September 19, 1993 to September 30, 2013	Introduced on November 19, 2013
O-115	The official report of the police station Jablanica for days September 1, 1993, September 14, 1993, September 25, 1993, September 27, 1993 and September 28, 1993	Introduced on November 19, 2013
O-116	The photograph of the rifle FALOVKA	Introduced on November 19, 2013
O-117	The photograph of the rifle M-48	Introduced on November 19, 2013
O-118	The photograph of the rifle M-16	Introduced on November 19, 2013
O-119	The photograph of an assault Heckler&Koch	Introduced on November 19, 2013
O-120	The photograph of the rifle - half-shot sniper rifle CRVENA ZASTAVA, PASP M 76	Introduced on February 11, 2014
O-121	The photograph of the rifle M-84	Introduced on February 11, 2014

O-122	Video of the village of Trusina in duration of 6 minute and 50 seconds	Introduced on February 11, 2014
O-123	Video of the village of Trusina in duration of 4 minute and 32 seconds	Introduced on February 11, 2014
O-124	The record of wounded-missing-disappeared for Jusuf Hasanbegović	Introduced on February 11, 2014
O-125	The power of attorney for the lawyer Zlatko Knežević	Introduced on February 11, 2014
O-126	The submission of the BiH Prosecution number KT-RT-107/05 of 10 January, English and Bosnian version	Introduced on February 11, 2014
O-127	Proposal of the Prosecutor's Office of BiH for determining the detention against the suspect Edin Džeko no. KT-RZ24/10 of December 21, 2011	Introduced on February 11, 2014
O-128	The Minutes of BiH Prosecutor's Office on hearing the suspect Edin Džeko number KT-RZ 24/10 of December 21, 2011	Introduced on February 11, 2014
O-129	The Minutes of BiH Prosecutor's Office on examining the suspect Edin Džeko number T 20 0 KTARZ 0002954 12 of May 4, 2012	Introduced on February 11, 2014
O-130	The photograph with Vinko Ljubas signed by Edin Džeko	Introduced on February 11, 2014
O-131	The Act of the Command of OG Igman of April 26, 1993 sent to Nihad Bojadžić	Introduced on February 11, 2014
O-132	The USA Embassy Letter sent to BiH Ministry of Justice on April 6, 2012, accompanied with the Act of the USA Ministry of Justice, Criminal Division, the Bureau for International Affairs sent by an e-mail to the Chief Prosecutor Jadranko Lokmić-Misirača on April 4, 2012 (in English; accompanied by the certified translation in Bosnian)	Introduced on February 11, 2014
O-133	The Act of SJB Centar Sarajevo number 17-1/06 -7-288/93 of August 1, 1993	Introduced on February 11, 2014

O-134	The photograph of the rifle falovka – defense evidence 116 – signed by Edin Džeko	Introduced on February 11, 2014
O-135	Parts of the transcript of the trial in the case of Jadranko Prlić and Others before the International Tribunal for the Former Yugoslavia in The Hague of October 13, 2008, pages 32974, 33009, 33010, 33083 with the certified translation into Bosnian	Introduced on February 11, 2014
O-136	Parts of the transcript of the trial in the case of Jadranko Prlić and Others before the International Tribunal for the Former Yugoslavia in The Hague of October 14, 2008 pages 33084, 33129, 33142 I 33143, 33163, 33181 with the certified translation into Bosnian.	Introduced on February 11, 2014
O-137	Parts of the transcript of the trial in the case of Jadranko Prlić and Others before the International Tribunal for the Former Yugoslavia in The Hague of October 15, 2008 pages 33182, 33252-33253, 33284 with the certified translation into Bosnian.	Introduced on February 11, 2014
O-138	Parts of the transcript of the trial in the case of Jadranko Prlić and Others before the International Tribunal for the Former Yugoslavia in The Hague of October 16, 2008 pages 33285, 33290- 33291, 33302, 33349, 33369, 33371, 33373 with the certified translation into Bosnian.	Introduced on February 11, 2014
O-139	Decision of the Court of BiH no. Su-5/2214 of December 20, 2012	Introduced on February 11, 2014
O-140	The transcript from the main hearing in the case of Zijad Kurtović, number X-KR-06/299 of August 30, 2007 – the testimony of Marinko Ljoljo	Introduced on February 11, 2014
O-141	The transcript from the main hearing in the case of Zijad Kurtović, number X-KR-06/299 of September 20, 2007 – the testimony of Miroslav Soko	Introduced on February 11, 2014
O-142	The transcript from the main hearing in the case of Zijad Kurtović, number X-KR-06/299 of October 4, 2007 – the testimony of Ivan Pavlović	Introduced on February 11, 2014

O-143	The minutes of the hearing of the witness Ivan Pavlović in TBiH of November 16, 2006, no. KT-RZ- 115/06	Introduced on February 11, 2014
O-144	The minutes of the hearing of the witness Ivan Pavlović in TBiH of May 10, 2012 no. T20 0 KTRZ 0002653 12	Introduced on February 11, 2014
O-145	The minutes of the hearing of the witness Ivan Pavlović in TBiH of May 10, 2012 no. T20 0 KTRZ 0002954 12	Introduced on February 11, 2014
O-146	The minutes of the hearing of the witness Maksim Kujundžić in TBiH of May 17, 2012 no. T20 0 KTRZ 0002653 12	Introduced on February 11, 2014
O-147	The minutes of the hearing of the witness Maksim Kujundžić in TBiH of May 17, 2012 no. T20 0 KTRZ 0002954 12	Introduced on February 11, 2014
O-148	The statement of Atif Karovic of November 9, 2009 given to the lawyer Edina Rešidović as a defense counselor of Sefer Halilović	Introduced on February 11, 2014
O-149	The minutes of the hearing of the witness Atif Karović number 17-04/2-04-2-1140/08 of November 7, 2008 given to the State Agency for Investigation and Protection BiH	Introduced on February 11, 2014
O-150	The minutes of the hearing of the witness Nikola Drljo number KT-RZ-107/05 of February 2, 2009	Introduced on February 11, 2014
O-151	The minutes of the hearing of Ramiz Bećiri KT-RZ-107/05 of October 26, 2009	Introduced on February 11, 2014
O-152	The minutes of the hearing of Ramiz Bećiri KT-RZ-24/10 of January 10, 2012 in TBiH	Introduced on February 11, 2014
O-153	The minutes of the hearing of Ramiz Bećiri KT-RZ-107/05 of December 1, 2009 in TBiH	Introduced on February 11, 2014
O-154	The official record of the State agency for investigation and protection number 17-04/02-04-2-1432/09 of November 16, 2009	Introduced on February 11, 2014

O-155	The official record of the State agency for investigation and protection number 17-04/02-04-2-1523/09 of November 23, 2009	Introduced on February 11, 2014
O-156	The statement of the witness Marinko Ljoljo of September 22, 1995 given to the investigators of MKSJ introduced as an evidence D1/427 in the case Tuzilac v. Naletelić zv. Tuta in English, accompanied with s certified copy in English	Introduced on February 11, 2014
O-157	The act of the Intelligent Security Agency of BiH "Reply to the request" of March 25, 2013 number 04/7-6940/13 of March 28, 2013 sent to the lawyer Edina Rešidović	Introduced on February 11, 2014
O-158	The statement of Marinko Drežnjak the son of Živko, given to the representative of the War Crimes Commission on the territory of the HR HB Mostar, Mirko Zelenika, of November 15, 1994	Introduced on February 11, 2014
O-159	The statement of Marinko (Živko) Drežnjak of 8 March 1994 given to the Center for Human Rights Međugorje; ERN 01564570-01564571	Introduced on February 11, 2014
O-160	The Minutes of the hearing of the witness J2 given to the Center of SIS Mostar, ref. no. 02-11-2-374/94 of March 8, 1994; ERN 01566709-01566713	Introduced on February 11, 2014
O-161	Unredacted minutes of the hearing of the witness J4 KT-RZ-24/10 of January 16, 2012 given to TBiH	Introduced on February 11, 2014
O-162	Unredacted minutes of the hearing of the witness R number KT-RZ-107/05 of March 8, 2010 given to TBiH	Introduced on February 11, 2014
O-163	The minutes of the hearing of the witness Salko Šahinović number 17-04/2-04-2-1059/08 of October 17, 2008 given to the State Agency for Investigation and Protection	Introduced on February 11, 2014
O-164	The minutes of the hearing of the witness Marinko Ljoljo given to TBiH number KT-RZ-115/06 against Zijad Kurtović of August 23, 2006	Introduced on February 11, 2014

O-165	The statement of Marinko Ljolja given to the representative of the War Crimes Commission on the territory of the HR HB Mostar, Mirko Zelenika, of November 10, 1994	Introduced on February 11, 2014
O-166	The act of the Intelligence and Security Agency of BiH number 04/7-12535/12 of September 11, 2012 submitted to the defense attorney Edina Rešidović; Request of defense of Nihad Bojadžić of September 7, 2012 sent to OSA and the list of documents submitted to the defense by OSA BiH;	Introduced on February 11, 2014
O-167	The statement of Mirko Zelenika of June 5, 2003 given to the Intelligence and Security Agency of BiH	Introduced on February 11, 2014
O-168	The letter by the lawyers Vasvija Vidović and Edina Rešidović sent to the BiH Presidency on January 10, 2012; The answer of the BiH Presidency number 05-13-1-69-2/12 of January 11, 2012; the letter from the Prosecutor's Office of BiH number KT-RZ 107/05 of May 21, 2007 sent to the liaison officer for ICTY; the Letter by the Office of the Croatian liaison officer for ICTY, number 45/07 of 23 May 2007; the Decision of the Office of Croatian liaison officer for ICTY number 05/03 čv of January 6, 2003; the Act of the Direction of SIS MO HR HB number 02-08-14-5318/96 of April 4, 1996	Introduced on February 11, 2014
O-169	The Act of the 44th brdska brigada (mountain brigade) Jablanica number 07/1637- 1/93 of December 12, 1993	Introduced on February 11, 2014
O-170	The official record of the State Agency for Investigation and Protection number 17-04/2-04-2-240/10 of February 19, 2010;	Introduced on February 11, 2014
O-171	The Order of ŠVK OS, str. conf. no. 14/75-40 of April 12, 1993	Introduced on February 11, 2014

O-172	Request for the exemption of the Deputy Prosecutor General of the Prosecutor's Office of BiH, Vesna Budimir, from criminal ceases pending before the court against Nihad Bojadžić and Senad Halaković, and the investigation cases pending before the Prosecutor's Office of BiH against Džeko  402. Edin of January 16, 2012	Introduced on February 11, 2014
O-173	The Decision of the Prosecutor's Office of BiH number A-35/12 of January 19, 2012	Introduced on February 11, 2014
O-174	The act OG Igman OS RBiH of 21 January 1993, ERN 01833795-01833798	Introduced on March 4, 2014
O-175	The Act of the Command of the 1st Corps, strictly confidential file no: 05/9-53 of March 12, 1993, signed by the commander Mustafa Hajrulahović-Talijana	Introduced on March 4, 2014
O-176	The Act of the Headquarters of the Supreme Command of Armed Forces, str. conf. no: 02/397-1 of March 15, 1993	Introduced on March 4, 2014
O-177	The proposition of the Command of the 1st Corps, str. conf. file no: 05/7-203 of April 6, 1993 sent to ŠVK OS RBiH	Introduced on March 4, 2014
O-178	The Act of the Command of OG Igman, str. conf. no. 03-592/4 of April 16, 1993	Introduced on March 4, 2014
O-179	Regular combat report. The Command of OG Igman, str. conf. no. 03-592/6 of April 17, 1993	Introduced on March 4, 2014
O-180	The Information on the course of combat activities in the area of responsibility of the 1st Corps on April 16, 1993, the Command of the 1st Corps, str. conf. no. 05/6-214 of April 17, 1993	Introduced on March 4, 2014
O-181	The combat report of the 4th Corps of April 17, 1993 with an annex, a Letter by the BiH Court number: S1 1K 003369 10 KrI of February 25, 2014	Introduced on 4 March 2014

O-182	Amendment to the Combat Report Of the Command of the 1st Corps, str. conf. file no: 05/6-217 of April 18, 1883	Introduced on March 4, 2014
O-183	The Authorization of ŠVK OS RBiH, number 001/167-148 of April 18, 1993 ERN 01858881	Introduced on March 4, 2014
O-184	OG Igman, str. conf. no. 01/03 of April 22, 1993	Introduced on March 4, 2014
O-185	The formation of the 6th Corps - the Order from the Main Headquarters of the Armed Forces, str. conf. no. 14/75-51 of June 9, 1993	Introduced on March 4, 2014
O-186	The order of GŠ OS str. conf. No. 14/75-52 of 10 June 1993	Introduced on March 4, 2014
O-187	The organizational changes, proposal of the Command of the 1st Corps, str. conf. file no: 06/13-223 of June 12, 1993	Introduced on March 4, 2014
O-188	Organizational changes in the organic composition of the corps Order ŠVK OS, str. conf. no. 14/75—63 of July 5, 1993	Introduced on March 4, 2014
O-189	The Order of ŠVK str. conf. no. 14/75-100 of September 1, 1993 “Organizational changes in the responsibility areas of the 1st, 4th, and 6th corps troops”	Introduced on March 4, 2014
O-190	The Order of the Command of the 4th Corps, str. conf. no: 791-06 of September 4, 1993, ERN 01298667-01298669	Introduced on March 4, 2014
O-191	The Act of the commander of the 4th Corps, number 837-06 of September 7, 1993 ERN 02122414	Introduced on March 4, 2014

O-192	The Act of the commander of SOPN ŠVK and OG SJEVER Zulfikar Ališpaga of October 15, 1993 of the 4th Corps, ERN 01298681	Introduced on March 4, 2014
O-193	The Act of the commander SOPN ŠVK and OG SJEVER Zulfikar Ališpaga NUMBER 1-10-188/93 of November 24, 1993 sent to the President of the RBiH Presidency, Alija Izetbegović, and the reply of the President of the RBiH Presidency, Alija Izetbegović, str. conf. no. 03/25-229 of November 28, 1993 sent to Zulfikar Ališpaga, the commander of SOPN and OG SJEVER 2	Introduced on March 4, 2014
O-194	Order to attack, Jablanica Septembar 11, 1993, RBiH Army, ŠVK PN SO	Introduced on March 4, 2014

# **EXHIBIT**

# **C**

Department of Justice  
Naturalization Service

OMB No. 1115-0057

Registration for Classification as Refugee

Provide the following information.

A File No.: A [REDACTED] 441

(First) EDIN (Middle) UZEIR (Last) DZEKO

2. Present address:

C/O MARKOTA, NERETVANSKA 6 ROGOTIN, PLOCE HR

3. Date of birth: [REDACTED]-72 Place of birth: GACKO (Country) BK Present nationality: BK

4. Country from which I fled or was displaced: BK On or about (month/day/year): 12 12 98

5. Reasons (State in detail):  
SEE ATTACHED CASE SUMMARY

6. My present immigration status in CROATIA is REFUGEE  
(country in which residing)

Evidence of my immigration status is:  
BIRTH & MARR. CERT., BK PASS.  
(Describe)

7. Name of spouse: [REDACTED] 8. Present address of spouse (if different): SEE 2 9. Nationality of spouse: BK

10. My spouse  will  will not accompany me to the United States:

11. Name of child (ren)	Date of birth	Place of birth	Present address (if different):
<input checked="" type="checkbox"/> [REDACTED]	[REDACTED]	JABLANICA	SEE 2
<input checked="" type="checkbox"/> [REDACTED]	[REDACTED]	MUNCHEN, GM	SEE 2
<input type="checkbox"/>			
<input type="checkbox"/>			
<input type="checkbox"/>			

Place a mark (x) in front of name of each child who will accompany you to the United States.

12. Schooling and education

Name and location of school	Type	Dates attended	Title of degree or diploma
OS GACKO	P	1979/88	
SS SARAJEVO	S	1988/91	

13. Military service

Country	Branch and organization	Dates	Serial No.	Rank attained
YUGO	JNA	1991/92		

SEP 21 01 7 AM 2018

14. Political, professional or social organizations of which I am now or have been a member or with which I am now or have been affiliated since my 16th birthday (If you have never been a member of any organization, state "None".)

None

15. I  have  have not been charged with a violation of law. (If you have ever been charged with a violation of law, give date, place and nature of each charge and the final result.)

16. I  have  have not been in the United States. (If you have ever been in the United States, show the dates of entry and departure and the purpose of your entry (visitor, permanent resident, student, seaman, etc.).

File or Alien Registration Number: A

17. I have the following close relatives in the United States:

Name	Relationship	Present address
[REDACTED]	[REDACTED]	[REDACTED]

18. I am being sponsored by (Name and address of United States sponsor):

Date 10-May-00

Signature of registrant: X Dzecko Edin

**DO NOT WRITE BELOW THIS LINE**

I, EDIN DZEKO do swear (affirm) that I know the contents of this registration subscribed by me including the attached documents, that the same are true to the best of my knowledge, and that corrections numbered ( ) to ( ) were made by me or at my request, and that registration was signed by me with my full, true name:

Dzecko Edin  
(Complete and true signature of registrant)

Subscribed and sworn to before me by the above-named registrant at SPLIT, HR on JAN 17 2001  
(month/date/year)

[Signature] A. O.  
(Signature and title of officer)

INTERVIEW OK

DATE JAN 17 2001

AT Split, Hr

[Signature]  
Immigration Officer

**APPROVED**  
INSPECTOR DIRECTOR

DATE JAN 17 2001

Recommended by: [Signature]

RIT 1 9648

Officer in Charge

**ADMITTED AS A REFUGEE PURSUANT TO SECTION 207 OF THE INA FOR AN INDEFINITE PERIOD OF TIME. IF YOU DEPART THE U.S. YOU WILL NEED PRIOR PERMISSION FROM INS TO RETURN. EMPLOYMENT AUTHORIZED.**

**NYC 2225 MAR 17 2001**

**INSTRUCTIONS**

This form should be executed, signed and submitted to the Officer in Charge of the nearest overseas office of the United States Immigration and Naturalization Service. When your name has been reached as a registrant you will be furnished additional instructions.

Registration - A separate Registration Form must be executed by each registrant and submitted in one copy. A Registration Form in behalf of a child under 14 years of age shall be executed by the parent of guardian.

Public reporting burden for this collection of information is estimated to average 35 minutes per response. If you have comments regarding the accuracy of this estimate or suggestions for simplifying this form, you can write to both the U.S. Department of Justice, Immigration and Naturalization Service Policy Directives and Instructions Branch (HQPDIB), Washington, D.C. 20536 and to the Office of Management and Budget, Paperwork Reduction project: OMB No. 1115-0057, Washington, D.C. 20503.

ADMITTED AS A REWARD  
TO THE POLICE AT THE  
THE POLICE FOR AN INVESTIGATION  
PERIOD OF TIME IN THE  
THE POLICE WILL BE  
PROVIDING FROM THE  
POLICE  
POLICE

APR 3 2018  
MAR 31 5 00 AM  
APR 3 2018

**DZEKO, EDIN**  
**HR-402089**

**P-2/VV**

**CASE SUMMARY**

**I am a twenty-eight year old Muslim man from Gacko. My wife and two children accompany me. I have a [REDACTED] who has resettled to the United States as a refugee.**

**In April 1992, Serb forces took control in Gacko. On April 10<sup>th</sup> 1992, Serb soldiers came to our apartment and stole our money and gold. They took my brother and me and detained us in prison in Gacko. I was beaten four times with rifle butts and verbally abused. On April 18<sup>th</sup> 1992, my brother and I were transferred to detention camp Bileca. In Bileca I was forced to perform hard labor and I was beaten very often. On two occasions I saw that Serb soldiers killed other detainees. Serb guards threatened to kill me and verbally abused me during my detention. On June 18<sup>th</sup> 1992, my brother and I were released and transferred to Croatia.**

**We lived in a refugee camp in Orebic until June 1993, when we moved back to Bosnia. We found accommodation in a refugee camp in Jablanica where I met my present wife. In September 1995, my wife and I fled to Germany. In December 1998, our refugee status was revoked and we were forced to leave Germany. We returned to Sarajevo and after few days we came to Croatia and have lived here ever since.**

**I cannot return because Serbs still control Gacko and if forced to return I would live in fear for my life.**

PI  
May 10, 2000

*Dzeco Edin*

# **EXHIBIT**

# **D**

EDIN DZEKO

A [REDACTED]

APPLICANTS MUST ESTABLISH THAT THEY ARE ADMISSIBLE TO THE UNITED STATES, EXCEPT AS OTHERWISE PROVIDED BY LAW, ALIENS WITHIN ANY OF FOLLOWING CLASSES ARE NOT ADMISSIBLE TO THE UNITED STATES

1. Aliens who have committed or who have been convicted of a crime involving moral turpitude (does not include minor traffic violations);
2. Aliens who have been engaged in or who intend to engage in any commercialized sexual activity;
3. Aliens who are or at any time have been, anarchists, or members of or affiliated with any communist or other totalitarian party, including any subdivision or affiliate thereof;
4. Aliens who have advocated or taught, either by personal utterance, or by means of any written or printed matter, or through affiliation with an organization, (i) opposition to organized government, (ii) the overthrow of government by force or violence, (iii) the assaulting or killing of government officials because of their official character, (iv) the unlawful destruction of property, (v) sabotage, or (vi) the doctrines of world communism, or the establishment of a totalitarian dictatorship in the United States; Aliens who intend to engage in prejudicial activities or unlawful activities of a subversive nature;
5. Aliens who have been convicted of violation of any law or regulation relating to narcotic drugs or marijuana, or who have been illicit traffickers in narcotic drugs or marijuana;
7. Aliens who have been involved in assisting any other aliens to enter the United States in violation of law;
8. Aliens who have applied for exemption or discharge from training or service in the Armed Forces of the United States on the ground of alienage and who have been relieved or discharged from such training or service.
9. Aliens who are mentally retarded, insane, or have suffered one or more attacks of insanity;
10. Aliens afflicted with psychopathic personality, sexual deviation, mental defect, narcotic drug addiction, chronic alcoholism or any dangerous contagious disease;
11. Aliens who have a physical defect, disease or disability affecting their ability to earn a living;
12. Aliens who are paupers, professional beggars or vagrants;
13. Aliens who are polygamists or advocate polygamy;
14. Aliens who have been excluded from the United States within the past year, or who at any time have been deported from the United States, or who at any time have been removed from the United States at Government expense; Aliens who have procured or attempted to procure a visa by fraud or misrepresentation;
15. Aliens who have departed from or remained outside the United States to avoid military service in time of war or national emergency.

Do any of the foregoing classes apply to you?

Yes  No

(If answer is Yes, explain on reverse)

Further, I have never ordered, assisted or otherwise participated in the persecution of any person because of race, religion or political opinion.

I understand all the foregoing statements, having asked for and obtained a translation or explanation of every point which was not understood or clear to me.

*Edin Dzeko*

(COMPLETE AND TRUE SIGNATURE OF APPLICANT)

Signature of Interpreter

*IVCET PIPROVIC*  
Name of Interpreter (Print)

Signature of Interpreter

Name of Interpreter (Print)

Subscribed and sworn to (Affirmed) by the above named applicant before me this

2004, at Split, Croatia

17<sup>th</sup> day of JANUARY

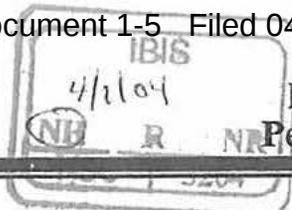
Signature of Officer

Title

# **EXHIBIT**

# **E**

U.S. Department of Justice  
Immigration and Naturalization Service



**Form I-485, Application to Register  
Permanent Resident or Adjust Status**

**START HERE - Please Type or Print**

**Part 1. Information About You.**

Family Name <b>DZEKO</b>	Given Name <b>EDIN</b>	Middle Initial
Address - C/O		
Street Number and Name		Apt. #
City <b>EVERETT</b>		
State <b>WA</b>	Zip Code <b>98204</b>	
Date of Birth (month/day/year) [redacted] <b>1972</b>	Country of Birth <b>Bosnia</b>	
Social Security # [redacted]	A # (if any) [redacted]	
Date of Last Arrival (month/day/year) <b>3/21/01</b>	I-9 # <b>35579425908</b>	
Current INS Status <b>REFUGEE</b>	Expires on (month/day/year)	

**Part 2. Application Type. (check one)**

I am applying for an adjustment to permanent resident status because:

- a.  an immigrant petition giving me an immediately available immigrant visa number has been approved. (Attach a copy of the approval notice-- or a relative, special immigrant juvenile or special immigrant military visa petition filed with this application that will give you an immediately available visa number, if approved.)
- b.  my spouse or parent applied for adjustment of status or was granted lawful permanent residence in an immigrant visa category that allows derivative status for spouses and children.
- c.  I entered as a K-1 fiance(e) of a U.S. citizen whom I married within 90 days of entry, or I am the K-2 child of such a fiance(e). [Attach a copy of the fiance(e) petition approval notice and the marriage certificate.]
- d.  I was granted asylum or derivative asylum status as the spouse or child of a person granted asylum and am eligible for adjustment.
- e.  I am a native or citizen of Cuba admitted or paroled into the U.S. after January 1, 1959, and thereafter have been physically present in the U.S. for at least one year.
- f.  I am the husband, wife or minor unmarried child of a Cuban described in (e) and am residing with that person, and was admitted or paroled into the U.S. after January 1, 1959, and thereafter have been physically present in the U.S. for at least one year.
- g.  I have continuously resided in the U.S. since before January 1, 1972.
- h.  Other basis of eligibility. Explain. (If additional space is needed, use a separate piece of paper.)  
I am refugee and I apply for GREEN CARD

I am already a permanent resident and am applying to have the date I was granted permanent residence adjusted to the date I originally arrived in the U.S. as a nonimmigrant or parolee, or as of May 2, 1964, whichever date is later, and: (Check one)

- i.  I am a native or citizen of Cuba and meet the description in (e), above.
- j.  I am the husband, wife or minor unmarried child of a Cuban, and meet the description in (f), above.

FOR INS USE ONLY

Returned	Receipt
Resubmitted	
Reloc Sent	
Reloc Rec'd	
Applicant Interviewed	

**Section of Law**

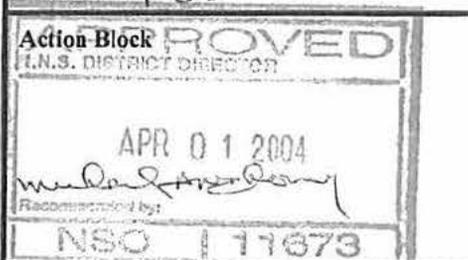
- Sec. 209(b), INA
- Sec. 13, Act of 9/11/57
- Sec. 245, INA
- Sec. 249, INA
- Sec. 2 Act of 11/2/66
- Sec. 2 Act of 11/2/66
- Other

**Country Chargeable**

**Eligibility Under Sec. 245**

- Approved Visa Petition
- Dependent of Principal Alien
- Special Immigrant
- Other

**Preference REG**



To be Completed by  
**Attorney or Representative, if any**

Fill in box if G-28 is attached to represent the applicant.

VOLAG #

ATTY State License #

APR 15 2004 - 8 30 AM 2135

**Part 3. Processing Information.**

A. City/Town/Village of Birth <b>GACKO, BOSNIA</b>		Current Occupation <b>STUDENT</b>	
Your Mother's First Name [REDACTED]		Your Father's First Name [REDACTED]	
Give your name exactly how it appears on your Arrival /Departure Record (Form I-94) <b>DZEKO EDIN</b>			
Place of Last Entry into the U.S. (City/State) <b>Seattle, WA</b>		In what status did you last enter? (Visitor, student, exchange alien, crewman, temporary worker, without inspection, etc.) <b>Refugee</b>	
Were you inspected by a U.S. Immigration Officer? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No			
Nonimmigrant Visa Number <b>355794259</b>		Consulate Where Visa Was Issued	
Date Visa Was Issued (month/day/year) <b>3/21/01</b>	Sex: <input checked="" type="checkbox"/> Male <input type="checkbox"/> Female	Marital Status <input type="checkbox"/> Married <input type="checkbox"/> Single <input type="checkbox"/> Divorced <input type="checkbox"/> Widowed	
Have you ever before applied for permanent resident status in the U.S.? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes If you checked "Yes," give date and place of filing and final disposition.			

B. List your present husband/wife and all your sons and daughters. (If you have none, write "none." If additional space is needed, use a separate piece of paper.)

Family Name	Given Name	Middle Initial	Date of Birth (month/day/year)
<b>DZEKO</b>	[REDACTED]		[REDACTED]
Country of Birth <b>BOSNIA</b>	Relationship <b>WIFE</b>	A # [REDACTED]	Applying with You? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
<b>DZEKO</b>	[REDACTED]		[REDACTED]
Country of Birth <b>BOSNIA</b>	Relationship <b>DAUGHTER</b>	A # [REDACTED]	Applying with You? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
<b>DZEKO</b>	[REDACTED]		[REDACTED]
Country of Birth <b>GERMANY</b>	Relationship <b>SON</b>	A # [REDACTED]	Applying with You? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Family Name	Given Name	Middle Initial	Date of Birth (month/day/year)
Country of Birth	Relationship	A #	Applying with You? <input type="checkbox"/> Yes <input type="checkbox"/> No
Family Name	Given Name	Middle Initial	Date of Birth (month/day/year)
Country of Birth	Relationship	A #	Applying with You? <input type="checkbox"/> Yes <input type="checkbox"/> No

C. List your present and past membership in or affiliation with every political organization, association, fund, foundation, party, club, society or similar group in the United States or in other places since your 16th birthday. Include any foreign military service in this part. If none, write "none." Include the name(s) of the organization(s), location(s), dates of membership from and to, and the nature of the organization (s). If additional space is needed, use a separate piece of paper.

**Part 3. Processing Information. (Continued)**

Please answer the following questions. (If your answer is "Yes" to any one of these questions, explain on a separate piece of paper. Answering "Yes" does not necessarily mean that you are not entitled to adjust your status or register for permanent residence.)

1. Have you ever, in or outside the U. S.:
  - a. knowingly committed any crime of moral turpitude or a drug-related offense for which you have not been arrested?  Yes  No
  - b. been arrested, cited, charged, indicted, fined or imprisoned for breaking or violating any law or ordinance, excluding traffic violations?  Yes  No
  - c. been the beneficiary of a pardon, amnesty, rehabilitation decree, other act of clemency or similar action?  Yes  No
  - d. exercised diplomatic immunity to avoid prosecution for a criminal offense in the U. S.?  Yes  No
2. Have you received public assistance in the U.S. from any source, including the U.S. government or any state, county, city or municipality (other than emergency medical treatment), or are you likely to receive public assistance in the future?  Yes  No
3. Have you ever:
  - a. within the past ten years been a prostitute or procured anyone for prostitution, or intend to engage in such activities in the future?  Yes  No
  - b. engaged in any unlawful commercialized vice, including, but not limited to, illegal gambling?  Yes  No
  - c. knowingly encouraged, induced, assisted, abetted or aided any alien to try to enter the U.S. illegally?  Yes  No
  - d. illicitly trafficked in any controlled substance, or knowingly assisted, abetted or colluded in the illicit trafficking of any controlled substance?  Yes  No
4. Have you ever engaged in, conspired to engage in, or do you intend to engage in, or have you ever solicited membership or funds for, or have you through any means ever assisted or provided any type of material support to, any person or organization that has ever engaged or conspired to engage, in sabotage, kidnapping, political assassination, hijacking or any other form of terrorist activity?  Yes  No
5. Do you intend to engage in the U.S. in:
  - a. espionage?  Yes  No
  - b. any activity a purpose of which is opposition to, or the control or overthrow of, the government of the United States, by force, violence or other unlawful means?  Yes  No
  - c. any activity to violate or evade any law prohibiting the export from the United States of goods, technology or sensitive information?  Yes  No
6. Have you ever been a member of, or in any way affiliated with, the Communist Party or any other totalitarian party?  Yes  No
7. Did you, during the period from March 23, 1933 to May 8, 1945, in association with either the Nazi Government of Germany or any organization or government associated or allied with the Nazi Government of Germany, ever order, incite, assist or otherwise participate in the persecution of any person because of race, religion, national origin or political opinion?  Yes  No
8. Have you ever engaged in genocide, or otherwise ordered, incited, assisted or otherwise participated in the killing of any person because of race, religion, nationality, ethnic origin or political opinion?  Yes  No
9. Have you ever been deported from the U.S., or removed from the U.S. at government expense, excluded within the past year, or are you now in exclusion or deportation proceedings?  Yes  No
0. Are you under a final order of civil penalty for violating section 274C of the Immigration and Nationality Act for use of fraudulent documents or have you, by fraud or willful misrepresentation of a material fact, ever sought to procure, or procured, a visa, other documentation, entry into the U.S. or any immigration benefit?  Yes  No
1. Have you ever left the U.S. to avoid being drafted into the U.S. Armed Forces?  Yes  No
2. Have you ever been a J nonimmigrant exchange visitor who was subject to the two-year foreign residence requirement and not yet complied with that requirement or obtained a waiver?  Yes  No
3. Are you now withholding custody of a U.S. citizen child outside the U.S. from a person granted custody of the child?  Yes  No
4. Do you plan to practice polygamy in the U.S.?  Yes  No

**Part 4. Signature.** *(Read the information on penalties in the instructions before completing this section. You must file this application while in the United States.)*

I certify, under penalty of perjury under the laws of the United States of America, that this application and the evidence submitted with it is all true and correct. I authorize the release of any information from my records which the INS needs to determine eligibility for the benefit I am seeking.

**Selective Service Registration.** The following applies to you if you are a man at least 18 years old, but not yet 26 years old, who is required to register with the Selective Service System: I understand that my filing this adjustment of status application with the Immigration and Naturalization Service authorizes the INS to provide certain registration information to the Selective Service System in accordance with the Military Selective Service Act. Upon INS acceptance of my application, I authorize INS to transmit to the Selective Service System my name, current address, Social Security number, date of birth and the date I filed the application for the purpose of recording my Selective Service registration as of the filing date. If, however, the INS does not accept my application, I further understand that, if so required, I am responsible for registering with the Selective Service by other means, provided I have not yet reached age 26.

<i>Signature</i>	<i>Print Your Name</i>	<i>Date</i>	<i>Daytime Phone Number</i>
<i>Edin Dzeko</i>	DZEKO EDIN	4/10/02	[REDACTED]

**Please Note:** *If you do not completely fill out this form or fail to submit required documents listed in the instructions, you may not be found eligible for the requested benefit and this application may be denied.*

**Part 5. Signature of Person Preparing Form, If Other Than Above. (Sign Below)**

I declare that I prepared this application at the request of the above person and it is based on all information of which I have knowledge.

<i>Signature</i>	<i>Print Your Name</i>	<i>Date</i>	<i>Daytime Phone Number</i>
<i>Valida Palovina</i>	VAHIDA POLOVINA	4/10/02	(425) 673-3313

**Firm Name and Address** *Refugee Forum 2000 Tower St Everett, WA 98208*

# **EXHIBIT**

# **F**

U.S. Department of Justice  
Immigration and Naturalization Service

OMB No. 1115-0009

### Application for Naturalization

Print clearly or type your answers using CAPITAL letters. Failure to print clearly may delay your application. Use black or blue ink.

#### Part 1. Your Name (The Person Applying for Naturalization)

Write your INS "A"- number here:  
A [REDACTED]

A. Your current legal name.

Family Name (Last Name)

DZEKO

Given Name (First Name)

EDIN

Full Middle Name (If applicable)

B. Your name exactly as it appears on your Permanent Resident Card.

Family Name (Last Name)

DZEKO

Given Name (First Name)

EDIN

Full Middle Name (If applicable)

C. If you have ever used other names, provide them below.

Family Name (Last Name)

Given Name (First Name)

Middle Name


D. Name change (optional)

Please read the Instructions before you decide whether to change your name.

1. Would you like to legally change your name?  Yes  No

2. If "Yes," print the new name you would like to use. Do not use initials or abbreviations when writing your new name.

Family Name (Last Name)

Given Name (First Name)

Full Middle Name

#### Part 2. Information About Your Eligibility (Check Only One)

I am at least 18 years old AND

- A.  I have been a Lawful Permanent Resident of the United States for at least 5 years.
- B.  I have been a Lawful Permanent Resident of the United States for at least 3 years, AND I have been married to and living with the same U.S. citizen for the last 3 years, AND my spouse has been a U.S. citizen for the last 3 years.
- C.  I am applying on the basis of qualifying military service.
- D.  Other (Please explain) \_\_\_\_\_

#### FOR INS USE ONLY

Bar Code

Date Stamp



Remarks



APR 10 2006 -7 15 AM 2282

U.S. Department of Justice  
Federal Bureau of Investigation

MEMORANDUM FOR THE DIRECTOR, FBI

DATE: 4/4/18

TO: SAC, [Redacted]

FROM: SA, [Redacted]

SUBJECT: [Redacted]

1. [Redacted]

2. [Redacted]

3. [Redacted]

4. [Redacted]

5. [Redacted]

6. [Redacted]

7. [Redacted]

8. [Redacted]

9. [Redacted]

10. [Redacted]

11. [Redacted]

12. [Redacted]

13. [Redacted]

14. [Redacted]

15. [Redacted]

16. [Redacted]

17. [Redacted]

18. [Redacted]

19. [Redacted]

20. [Redacted]

21. [Redacted]

22. [Redacted]

23. [Redacted]

24. [Redacted]

U.S. Department of Justice  
FEDERAL BUREAU OF INVESTIGATION  
APPROVED  
JUL 2 0 2008  
U.S. Citizenship and Immigration Services

**Part 3. Information About You**

Write your INS "A"- number here:

A [REDACTED]

A. Social Security Number

[REDACTED]

B. Date of Birth (Month/Day/Year)

[REDACTED] / 1 9 7 2

C. Date You Became a Permanent Resident (Month/Day/Year)

0 3 / 2 1 / 2 0 0 1

D. Country of Birth

BOSNIA AND HERZEGOVINA

E. Country of Nationality

BOSNIA AND HERZEGOVINA

F. Are either of your parents U.S. citizens? (if yes, see Instructions)

Yes  No

G. What is your current marital status?  Single, Never Married

Married  Divorced  Widowed

Marriage Annulled or Other (Explain) \_\_\_\_\_

H. Are you requesting a waiver of the English and/or U.S. History and Government requirements based on a disability or impairment and attaching a Form N-648 with your application?

Yes  No

I. Are you requesting an accommodation to the naturalization process because of a disability or impairment? (See Instructions for some examples of accommodations.)

Yes  No

If you answered "Yes", check the box below that applies:

I am deaf or hearing impaired and need a sign language interpreter who uses the following language: \_\_\_\_\_

I use a wheelchair.

I am blind or sight impaired.

I will need another type of accommodation. Please explain: \_\_\_\_\_

**Part 4. Addresses and Telephone Numbers**

A. Home Address - Street Number and Name (Do NOT write a P.O. Box in this space)

[REDACTED]

Apartment Number

City	County	State	ZIP Code	Country
EVERETT	SNOHOMISH	WA	98203	USA

B. Care of

[REDACTED]

Mailing Address - Street Number and Name (If different from home address)

SAME

Apartment Number

City	State	ZIP Code	Country

C. Daytime Phone Number (If any)

[REDACTED]

Evening Phone Number (If any)

[REDACTED]

E-mail Address (If any)

[REDACTED]

**Part 5. Information for Criminal Records Search**

Write your INS "A"- number here:

A. [REDACTED]

Note: The categories below are those required by the FBI. See Instructions for more information.

A. Gender

Male  Female

B. Height

6 Feet 4.0 Inches

C. Weight

225.0 Pounds

D. Are you Hispanic or Latino?

Yes  No

E. Race (Select one or more.)

White  Asian  Black or African American  American Indian or Alaskan Native  Native Hawaiian or Other Pacific Islander

F. Hair color

Black  Brown  Blonde  Gray  White  Red  Sandy  Bald (No Hair)

G. Eye color

Brown  Blue  Green  Hazel  Gray  Black  Pink  Maroon  Other

**Part 6. Information About Your Residence and Employment**

A. Where have you lived during the last 5 years? Begin with where you live now and then list every place you lived for the last 5 years. If you need more space, use a separate sheet of paper.

Street Number and Name, Apartment Number, City, State, Zip Code and Country	Dates (Month/Year)	
	From	To
Current Home Address - Same as Part 4.A	0 8 / 2 0 0 5	Present
[REDACTED] EVERETT, WA 98204	0 3 / 2 0 0 1	0 8 / 2 0 0 5
	___ / ___	___ / ___
	___ / ___	___ / ___
	___ / ___	___ / ___

B. Where have you worked (or, if you were a student, what schools did you attend) during the last 5 years? Include military service. Begin with your current or latest employer and then list every place you have worked or studied for the last 5 years. If you need more space, use a separate sheet of paper.

Employer or School Name	Employer or School Address (Street, City and State)	Dates (Month/Year)		Your Occupation
		From	To	
NW CENTER	PO Box 80827, Seattle, 98108	0 3 / 2 0 0 3	1 0 / 2 0 0 5	LANDS CEEPER
		___ / ___	___ / ___	
		___ / ___	___ / ___	
		___ / ___	___ / ___	
		___ / ___	___ / ___	

**Part 7. Time Outside the United States**  
*(Including Trips to Canada, Mexico, and the Caribbean Islands)*

Write your INS "A"- number here:

A [REDACTED]

- A. How many total days did you spend outside of the United States during the past 5 years?  days
- B. How many trips of 24 hours or more have you taken outside of the United States during the past 5 years?  trips
- C. List below all the trips of 24 hours or more that you have taken outside of the United States since becoming a Lawful Permanent Resident. Begin with your most recent trip. If you need more space, use a separate sheet of paper.

Date You Left the United States (Month/Day/Year)	Date You Returned to the United States (Month/Day/Year)	Did Trip Last 6 Months or More?		Countries to Which You Traveled	Total Days Out of the United States
		<input type="checkbox"/> Yes	<input type="checkbox"/> No		
___/___/___	___/___/___	<input type="checkbox"/> Yes	<input type="checkbox"/> No	CLAIMS NONE	
___/___/___	___/___/___	<input type="checkbox"/> Yes	<input type="checkbox"/> No		
___/___/___	___/___/___	<input type="checkbox"/> Yes	<input type="checkbox"/> No		
___/___/___	___/___/___	<input type="checkbox"/> Yes	<input type="checkbox"/> No		
___/___/___	___/___/___	<input type="checkbox"/> Yes	<input type="checkbox"/> No		
___/___/___	___/___/___	<input type="checkbox"/> Yes	<input type="checkbox"/> No		
___/___/___	___/___/___	<input type="checkbox"/> Yes	<input type="checkbox"/> No		
___/___/___	___/___/___	<input type="checkbox"/> Yes	<input type="checkbox"/> No		
___/___/___	___/___/___	<input type="checkbox"/> Yes	<input type="checkbox"/> No		
___/___/___	___/___/___	<input type="checkbox"/> Yes	<input type="checkbox"/> No		

**Part 8. Information About Your Marital History**

A. How many times have you been married (including annulled marriages)?  If you have NEVER been married, go to Part 9.

B. If you are now married, give the following information about your spouse:

1. Spouse's Family Name (Last Name)

DZEKO

Given Name (First Name)

[REDACTED]

Full Middle Name (If applicable)

2. Date of Birth (Month/Day/Year)

[REDACTED] / 1 9 7 5

3. Date of Marriage (Month/Day/Year)

[REDACTED]

4. Spouse's Social Security Number

[REDACTED]

5. Home Address - Street Number and Name

[REDACTED]

Apartment Number

City

EVERETT

State

WA

ZIP Code

98203

**Part 8. Information About Your Marital History (Continued)**

Write your INS "A"- number here:

A [REDACTED]

C. Is your spouse a U.S. citizen?  Yes  No

D. If your spouse is a U.S. citizen, give the following information:

1. When did your spouse become a U.S. citizen?

At Birth  Other

If "Other," give the following information:

2. Date your spouse became a U.S. citizen

\_\_\_/\_\_\_/\_\_\_

3. Place your spouse became a U.S. citizen (Please see Instructions)

\_\_\_\_\_

City and State

E. If your spouse is NOT a U.S. citizen, give the following information :

1. Spouse's Country of Citizenship

BOSNIA AND HERZEGOVINIA

2. Spouse's INS "A"- Number (If applicable)

A [REDACTED]

3. Spouse's Immigration Status

Lawful Permanent Resident  Other \_\_\_\_\_

F. If you were married before, provide the following information about your prior spouse. If you have more than one previous marriage, use a separate sheet of paper to provide the information requested in questions 1-5 below.

1. Prior Spouse's Family Name (Last Name)

\_\_\_\_\_

Given Name (First Name)

\_\_\_\_\_

Full Middle Name (If applicable)

\_\_\_\_\_

2. Prior Spouse's Immigration Status

U.S. Citizen  
 Lawful Permanent Resident  
 Other \_\_\_\_\_

3. Date of Marriage (Month/Day/Year)

\_\_\_/\_\_\_/\_\_\_

4. Date Marriage Ended (Month/Day/Year)

\_\_\_/\_\_\_/\_\_\_

5. How Marriage Ended

Divorce  Spouse Died  Other \_\_\_\_\_

G. How many times has your current spouse been married (including annulled marriages)?

If your spouse has EVER been married before, give the following information about **your spouse's** prior marriage.

If your spouse has more than one previous marriage, use a separate sheet of paper to provide the information requested in questions 1 - 5 below.

1. Prior Spouse's Family Name (Last Name)

\_\_\_\_\_

Given Name (First Name)

\_\_\_\_\_

Full Middle Name (If applicable)

\_\_\_\_\_

2. Prior Spouse's Immigration Status

U.S. Citizen  
 Lawful Permanent Resident  
 Other \_\_\_\_\_

3. Date of Marriage (Month/Day/Year)

\_\_\_/\_\_\_/\_\_\_

4. Date Marriage Ended (Month/Day/Year)

\_\_\_/\_\_\_/\_\_\_

5. How Marriage Ended

Divorce  Spouse Died  Other \_\_\_\_\_

**Part 9. Information About Your Children**

Write your INS "A"- number here:  
A [REDACTED]

A. How many sons and daughters have you had? For more information on which sons and daughters you should include and how to complete this section, see the Instructions.

2

B. Provide the following information about all of your sons and daughters. If you need more space, use a separate sheet of paper.

Full Name of Son or Daughter	Date of Birth (Month/Day/Year)	INS "A"- number (if child has one)	Country of Birth	Current Address (Street, City, State & Country)
[REDACTED] DZEKO	[REDACTED]	A [REDACTED]	BOSNIA	WHIT ME
[REDACTED] DZEKO	[REDACTED]	A [REDACTED]	GERMANY	WHIT ME
	__ / __ / __	A _____		
	__ / __ / __	A _____		
	__ / __ / __	A _____		
	__ / __ / __	A _____		
	__ / __ / __	A _____		
	__ / __ / __	A _____		

**Part 10. Additional Questions**

Please answer questions 1 through 14. If you answer "Yes" to any of these questions, include a written explanation with this form. Your written explanation should (1) explain why your answer was "Yes," and (2) provide any additional information that helps to explain your answer.

**A. General Questions**

- Have you **EVER** claimed to be a U.S. citizen (in writing or any other way)?  Yes  No
- Have you **EVER** registered to vote in any Federal, state, or local election in the United States?  Yes  No
- Have you **EVER** voted in any Federal, state, or local election in the United States?  Yes  No
- Since becoming a Lawful Permanent Resident, have you **EVER** failed to file a required Federal, state, or local tax return?  Yes  No
- Do you owe any Federal, state, or local taxes that are overdue?  Yes  No
- Do you have any title of nobility in any foreign country?  Yes  No
- Have you ever been declared legally incompetent or been confined to a mental institution within the last 5 years?  Yes  No

**Part 10. Additional Questions (Continued)**

Write your INS "A"- number here:

A. [REDACTED]

**B. Affiliations**

8. a. Have you **EVER** been a member of or associated with any organization, association, fund, foundation, party, club, society, or similar group in the United States or in any other place?  Yes  No
- b. If you answered "Yes," list the name of each group below. If you need more space, attach the names of the other group(s) on a separate sheet of paper.

Name of Group	Name of Group
1.	6.
2.	7.
3.	8.
4.	9.
5.	10.

9. Have you **EVER** been a member of or in any way associated (*either directly or indirectly*) with:
- a. The Communist Party?  Yes  No
- b. Any other totalitarian party?  Yes  No
- c. A terrorist organization?  Yes  No
10. Have you **EVER** advocated (*either directly or indirectly*) the overthrow of any government by force or violence?  Yes  No
11. Have you **EVER** persecuted (*either directly or indirectly*) any person because of race, religion, national origin, membership in a particular social group, or political opinion?  Yes  No
12. Between March 23, 1933, and May 8, 1945, did you work for or associate in any way (*either directly or indirectly*) with:
- a. The Nazi government of Germany?  Yes  No
- b. Any government in any area (1) occupied by, (2) allied with, or (3) established with the help of the Nazi government of Germany?  Yes  No
- c. Any German, Nazi, or S.S. military unit, paramilitary unit, self-defense unit, vigilante unit, citizen unit, police unit, government agency or office, extermination camp, concentration camp, prisoner of war camp, prison, labor camp, or transit camp?  Yes  No

**C. Continuous Residence**

Since becoming a Lawful Permanent Resident of the United States:

13. Have you **EVER** called yourself a "nonresident" on a Federal, state, or local tax return?  Yes  No
14. Have you **EVER** failed to file a Federal, state, or local tax return because you considered yourself to be a "nonresident"?  Yes  No

**Part 10. Additional Questions (Continued)**

Write your INS "A"- number here:

A [REDACTED]

**D. Good Moral Character**

For the purposes of this application, you must answer "Yes" to the following questions, if applicable, even if your records were sealed or otherwise cleared or if anyone, including a judge, law enforcement officer, or attorney, told you that you no longer have a record.

- 15. Have you **EVER** committed a crime or offense for which you were NOT arrested?  Yes  No
- 16. Have you **EVER** been arrested, cited, or detained by any law enforcement officer (including INS and military officers) for any reason?  Yes  No
- 17. Have you **EVER** been charged with committing any crime or offense?  Yes  No
- 18. Have you **EVER** been convicted of a crime or offense?  Yes  No
- 19. Have you **EVER** been placed in an alternative sentencing or a rehabilitative program (for example: diversion, deferred prosecution, withheld adjudication, deferred adjudication)?  Yes  No
- 20. Have you **EVER** received a suspended sentence, been placed on probation, or been paroled?  Yes  No
- 21. Have you **EVER** been in jail or prison?  Yes  No

If you answered "Yes" to any of questions 15 through 21, complete the following table. If you need more space, use a separate sheet of paper to give the same information.

Why were you arrested, cited, detained, or charged?	Date arrested, cited, detained, or charged (Month/Day/Year)	Where were you arrested, cited, detained or charged? (City, State, Country)	Outcome or disposition of the arrest, citation, detention or charge (No charges filed, charges dismissed, jail, probation, etc.)
CLAIMS NONE			

(2)

Answer questions 22 through 33. If you answer "Yes" to any of these questions, attach (1) your written explanation why your answer was "Yes," and (2) any additional information or documentation that helps explain your answer.

- 22. Have you **EVER**:
  - a. been a habitual drunkard?  Yes  No
  - b. been a prostitute, or procured anyone for prostitution?  Yes  No
  - c. sold or smuggled controlled substances, illegal drugs or narcotics?  Yes  No
  - d. been married to more than one person at the same time?  Yes  No
  - e. helped anyone enter or try to enter the United States illegally?  Yes  No
  - f. gambled illegally or received income from illegal gambling?  Yes  No
  - g. failed to support your dependents or to pay alimony?  Yes  No
- 23. Have you **EVER** given false or misleading information to any U.S. government official while applying for any immigration benefit or to prevent deportation, exclusion, or removal?  Yes  No
- 24. Have you **EVER** lied to any U.S. government official to gain entry or admission into the United States?  Yes  No

**Part 10. Additional Questions (Continued)**

Write your INS "A"- number here:

A XXXXXXXXXX

**E. Removal, Exclusion, and Deportation Proceedings**

- 25. Are removal, exclusion, rescission or deportation proceedings pending against you?  Yes  No
- 26. Have you **EVER** been removed, excluded, or deported from the United States?  Yes  No
- 27. Have you **EVER** been ordered to be removed, excluded, or deported from the United States?  Yes  No
- 28. Have you **EVER** applied for any kind of relief from removal, exclusion, or deportation?  Yes  No

**F. Military Service**

- 29. Have you **EVER** served in the U.S. Armed Forces?  Yes  No
- 30. Have you **EVER** left the United States to avoid being drafted into the U.S. Armed Forces?  Yes  No
- 31. Have you **EVER** applied for any kind of exemption from military service in the U.S. Armed Forces?  Yes  No
- 32. Have you **EVER** deserted from the U.S. Armed Forces?  Yes  No

**G. Selective Service Registration**

- 33. Are you a male who lived in the United States at any time between your 18th and 26th birthdays in any status except as a lawful nonimmigrant?  Yes  No

If you answered "NO", go on to question 34.

If you answered "YES", provide the information below.

If you answered "YES", but you did NOT register with the Selective Service System and are still under 26 years of age, you must register before you apply for naturalization, so that you can complete the information below:

Date Registered (Month/Day/Year)  Selective Service Number

If you answered "YES", but you did NOT register with the Selective Service and you are now 26 years old or older, attach a statement explaining why you did not register.

**H. Oath Requirements (See Part 14 for the text of the oath)**

Answer questions 34 through 39. If you answer "No" to any of these questions, attach (1) your written explanation why the answer was "No" and (2) any additional information or documentation that helps to explain your answer.

- 34. Do you support the Constitution and form of government of the United States?  Yes  No
- 35. Do you understand the full Oath of Allegiance to the United States?  Yes  No
- 36. Are you willing to take the full Oath of Allegiance to the United States?  Yes  No
- 37. If the law requires it, are you willing to bear arms on behalf of the United States?  Yes  No
- 38. If the law requires it, are you willing to perform noncombatant services in the U.S. Armed Forces?  Yes  No
- 39. If the law requires it, are you willing to perform work of national importance under civilian direction?  Yes  No

**Part 11. Your Signature**

Write your INS "A"- number here:

A

I certify, under penalty of perjury under the laws of the United States of America, that this application, and the evidence submitted with it, are all true and correct. I authorize the release of any information which INS needs to determine my eligibility for naturalization.

Your Signature

Date (Month/Day/Year)

Edin Dzeko

04\_10\_06 12006

**Part 12. Signature of Person Who Prepared This Application for You (if applicable)**

I declare under penalty of perjury that I prepared this application at the request of the above person. The answers provided are based on information of which I have personal knowledge and/or were provided to me by the above named person in response to the exact questions contained on this form.

Preparer's Printed Name

Preparer's Signature

Date (Month/Day/Year)

Preparer's Firm or Organization Name (if applicable)

Preparer's Daytime Phone Number

\_\_/\_\_/\_\_

( )

Preparer's Address - Street Number and Name

City

State

ZIP Code

**Do Not Complete Parts 13 and 14 Until an INS Officer Instructs You To Do So**

**Part 13. Signature at Interview**

I swear (affirm) and certify under penalty of perjury under the laws of the United States of America that I know that the contents of this application for naturalization subscribed by me, including corrections numbered 1 through 2 and the evidence submitted by me numbered pages 1 through 0, are true and correct to the best of my knowledge and belief.

Subscribed to and sworn to (affirmed) before me

David Obedoza  
District Adjudications Officer  
Seattle, Washington

7-20-06  
Date (Month/Day/Year)

Complete Signature of Applicant

Officer's Signature

Edin Dzeko

David P. Obedoza

**Part 14. Oath of Allegiance**

If your application is approved, you will be scheduled for a public oath ceremony at which time you will be required to take the following oath of allegiance immediately prior to becoming a naturalized citizen. By signing, you acknowledge your willingness and ability to take this oath:

I hereby declare, on oath, that I absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, of whom or which I have heretofore been a subject or citizen;

that I will support and defend the Constitution and laws of the United States of America against all enemies, foreign and domestic;

that I will bear true faith and allegiance to the same;

that I will bear arms on behalf of the United States when required by the law;

that I will perform noncombatant service in the Armed Forces of the United States when required by the law;

that I will perform work of national importance under civilian direction when required by the law; and

that I take this obligation freely, without any mental reservation or purpose of evasion; so help me God.

Printed Name of Applicant

Complete Signature of Applicant

EDIN DZEKO

Edin Dzeko

# **EXHIBIT**

# **G**

THE UNITED STATES OF AMERICA



No. 29542887

OFFICE OF

NATURALIZATION

Personal description of holder as of date of naturalization:

US Registration No. [REDACTED]

Date of birth: [REDACTED] 1972

I certify that the description given is true, and that the photograph affixed hereto is a likeness of me.

Sex: MALE

Height: 6 feet 4 inches

(Complete and true signature of holder)

Marital status: MARRIED

Be it known that, pursuant to an application filed with the Secretary of Homeland Security

Country of former nationality: BOSNIA-HERZEGOVINA

at: SEATTLE, WASHINGTON

The Secretary having found that:



EDIN DZEKO

then residing in the United States, intends to reside in the United States when so required by the Naturalization Laws of the United States, and had in all other respects complied with the applicable provisions of such naturalization laws and was entitled to be admitted to citizenship, such person having taken the oath of allegiance in a ceremony conducted by the

U.S. CITIZENSHIP AND IMMIGRATION SERVICES

at: SEATTLE, WASHINGTON

on: JULY 27, 2006

that such person is admitted as a citizen of the United States of America.

IT IS PUNISHABLE BY U. S. LAW TO COPY, PRINT OR PHOTOGRAPH THIS CERTIFICATE, WITHOUT LAWFUL AUTHORITY.

[Handwritten signature]

Director, U. S. Citizenship and Immigration Services

DEPARTMENT OF HOMELAND SECURITY

# EXHIBIT H

FILED ENTERED  
LODGED RECEIVED

Magistrate Judge James P. Donohue

APR 11 2011

AT SEATTLE  
CLERK U.S. DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
DEPUTY

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 EDIN DZEKO, )  
 )  
 Defendant. )

CASE NO. **MJ 11-160**  
COMPLAINT for VIOLATION  
Title 18, U.S.C., Section 3184  
**(FILED UNDER SEAL)**

BEFORE, James P. Donohue, United States Magistrate Judge, U. S. Courthouse, Seattle, Washington.

I, the undersigned Special Assistant United States Attorney, being duly sworn, state on information and belief that the following is true and correct:

1. In this matter I act for and on behalf of the Government of the Republic of Bosnia and Herzegovina ("Bosnia");
2. An extradition treaty is currently in force between the United States and Bosnia, a successor state to Yugoslavia, which was in turn a successor state to the Kingdom of Serbia, namely the Treaty between the United States of America and Servia<sup>1</sup> for the Mutual Extradition of Fugitives from Justice, U.S.-Yugo., Oct. 25, 1901, 32 Stat. 1890

<sup>1</sup> As Serbia was then transliterated.

1 (“the Treaty”);

2 3. Pursuant to the Treaty, Bosnia, the requesting state, has submitted a formal request  
3 through diplomatic channels for the extradition of Edin Džeko (“Džeko”);<sup>2</sup>

4 4. Džeko is wanted in Bosnia to answer to the charge of War Crimes against  
5 Civilians, in violation of Article 173(1)(a) and (b) of the Criminal Code of Bosnia and  
6 Herzegovina (P90), in conjunction with Article 180(1) and Article 29 of the same code  
7 (P319), committed within the jurisdiction of Bosnia;

8 5. A warrant for his arrest was issued on September 21, 2009, by the Prosecutor’s Office of  
9 Bosnia and Herzegovina (PP326-327);

10 6. The warrant was issued on the basis of, *inter alia*, a number of witness statements,  
11 including from individuals who served in the same unit of the Bosnian army as Džeko,  
12 and Bosniak and Croat residents of the village of Trusina; a form establishing that Džeko  
13 was a member of the Zulfikar Special Purposes Detachment of the Supreme Command  
14 Staff of the Army of the Republic of Bosnia and Herzegovina when the attack on Trusina  
15 occurred; copies of daily combat and situation reports summarizing actions taken by the  
16 Zulfikar and other army units in Konjic in the period between April 14, 1993, and April  
17 17, 1993; and death certificates, autopsy reports, and permits for burial for various  
18 individuals (PP26-30). The formal request includes the redacted statements of five  
19 witnesses, who gave their statements under pseudonyms pursuant to a decision from the  
20 Court of Bosnia and Herzegovina granting them protection measures (P26).<sup>3</sup> These  
21 statements, together with the other evidence summarized in the request, establish the  
22 following: In the morning hours of April 16, 1993, Džeko, a member of the unit  
23 command for the Zulfikar Special Purposes Detachment of the Supreme Command Staff

24 \_\_\_\_\_  
25 <sup>2</sup> The formal beribboned request, with supporting documentation, is marked collectively  
26 as Government’s Exhibit #1 and filed with this Complaint. An additional working copy of the  
27 formal request and documents, tabbed and paginated, is provided for the Court’s convenience.  
28 Page references herein refer to the corresponding pages in the Court’s working copy.

<sup>3</sup> The English translations of the witness statements can be found on the following pages:  
Witness A (PP127-142), Witness B (PP171-178; 331-341), Witness D (PP198-208), Witness E  
(PP231-242), and Witness O (PP262-272).

1 of the Army of the Republic of Bosnia and Herzegovina, participated in the attack on the  
2 village of Trusina, Konjic Municipality, Bosnia (e.g., PP26, 132, 201-202, 239, 265). In  
3 addition to enjoying certain privileges as a member of the unit command (e.g., travel by  
4 jeep, separate sleeping quarters from ordinary soldiers) (P201, 265), Džeko arranged the  
5 rank and file in advance of the attack on Trusina, and also marched at the front of the  
6 column with other command members at the start of the attack (P133). At the time,  
7 Trusina's population consisted of both Bosniak (Muslim) and Croat civilians (e.g., PP27,  
8 28, 135). Džeko and the members of his unit specifically targeted for attack Croat  
9 civilians and soldiers of the Croatian Defense Council ("HVO") (e.g., PP27, 135-136,  
10 176, 204, 239, 266). As a result of this attack on Trusina, sixteen civilians were killed,  
11 and four were seriously injured, including two infants (e.g., P26). During the attack on  
12 Trusina, Džeko forced an injured man out of a house at gunpoint, whereupon another  
13 member of Džeko's unit shot and killed the man with an automatic rifle (P236). Džeko  
14 threw another man into the yard of a house and then shot and killed him (P236). When  
15 the man's wife would not stop grieving over her husband's dead body, Džeko shot at the  
16 woman's head with his automatic rifle and killed her as well (P236). In addition, Džeko  
17 was a member of the execution squad that killed a number of civilians and unarmed  
18 soldiers who were lined up against a stable (PP268-269);

19 7. Džeko, a citizen of Bosnia and the United States, was born in Gacko, Bosnia, on  
20 [REDACTED] 1972. His father's name is [REDACTED]. He is believed to be residing within the  
21 jurisdiction of this Court at [REDACTED] Everett, Washington 98203.

22 Džeko's photograph and partial fingerprints are included in the request (PP295-302).

23 Džeko was positively identified from photographic arrays by Witness E (PP225, 242) and  
24 Witness O (PP256, 271);

25 8. Patricia E. McDonough, an attorney in the Office of the Legal Adviser of the U.S.  
26 Department of State, has provided the Department of Justice with a declaration  
27 authenticating a copy of the diplomatic note by which the request for extradition was  
28 made and a copy of the extradition treaty between the United States and Bosnia, stating

1 that the offense for which extradition is demanded is covered by Article II of the Treaty,  
2 and confirming that the documents supporting the request for extradition are properly  
3 certified by the principal American diplomatic or consular officer in Bosnia, in  
4 accordance with Title 18, United States Code, Section 3190, so as to enable them to be  
5 received in evidence (PP1-10); and

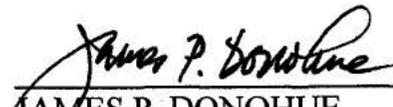
6 9. Džeko would be likely to flee if he learned of the existence of a warrant for his  
7 arrest due to the seriousness of the offense, which is subject to a mandatory minimum of  
8 ten (10) years' imprisonment under Bosnia's laws.

9 WHEREFORE, the undersigned requests that a warrant for the arrest of Džeko be  
10 issued in accordance with the extradition treaty between the United States and Bosnia,  
11 and Title 18, United States Code, Section 3184, so that he may be arrested and brought  
12 before this court, "to the end that the evidence of criminality may be heard and  
13 considered"; and furthermore requests that this Complaint and the warrant be placed  
14 under the seal of the court until such time as the warrant is executed.

15  
16  
17 

MARCIL L. ELLSWORTH  
SPECIAL ASSISTANT UNITED STATES ATTORNEY

18  
19  
20  
21 Sworn to before me and subscribed in my presence this 11<sup>th</sup> day of April, 2011, at  
22 Seattle, Washington.

23  
24 

JAMES P. DONOHUE  
United States Magistrate Judge

# **EXHIBIT**

# **I**

Judge James P. Donohue

FILED ENTERED  
LODGED RECEIVED

NOV 15 2011

AT SEATTLE  
CLERK U.S. DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

IN THE MATTER OF  
THE EXTRADITION  
OF EDIN DŽEKO

NO. MJ11-160

AFFIDAVIT WAIVING  
EXTRADITION HEARING

**AFFIDAVIT WAIVING EXTRADITION HEARING**

I, EDIN DŽEKO, having been fully informed by my attorney, David Gehrke, of my rights under the extradition treaty in force between the United States and the Republic of Bosnia and Herzegovina, and Title 18, United States Code, § 3184 et seq., do hereby waive any and all such rights and ask the Court to expedite my return, in custody, to the Republic of Bosnia and Herzegovina.

My attorney, with whose services I am satisfied, has explained to me the terms of the extradition treaty in force between the United States and the Republic of Bosnia and Herzegovina, the applicable sections of Title 18, United States Code, and the complaint filed by the United States Attorney on behalf of the Government of the Republic of Bosnia and Herzegovina. I understand that, pursuant to Title 18, United States Code, Section 3184, I am entitled to a hearing at which certain facts would need to be established, including:

1. That currently there is an extradition treaty in force between the United States and the Republic of Bosnia and Herzegovina;

2. That the treaty covers the offenses for which my extradition was requested;

3. That I am the person whose extradition is sought by the Republic of Bosnia and Herzegovina; and

4. That probable cause exists to believe that I committed the offenses for which extradition was requested.

I concede that I am the individual against whom charges are pending in the Republic of Bosnia and Herzegovina and for whom process is outstanding there. I fully understand that in the absence of a waiver of my rights, I cannot be compelled to return to the Republic of Bosnia and Herzegovina unless and until a court in the United States issues a ruling certifying my extraditability and the Secretary of State of the United States orders my extradition by issuing a warrant of surrender.

I have reviewed the complaint and I fully understand my right to a hearing at which my counsel and I could challenge the extradition request presented by the Government of the Republic of Bosnia and Herzegovina.

I hereby waive my rights under the extradition treaty and the applicable sections of Title 18, United States Code, and agree to be transported in custody, as soon as possible, to the Republic of Bosnia and Herzegovina, and to remain in custody pending the arrival of agents from the Republic of Bosnia and Herzegovina. No representative, official, or officer of the United States or of the Government of the Republic of Bosnia and Herzegovina, nor any person

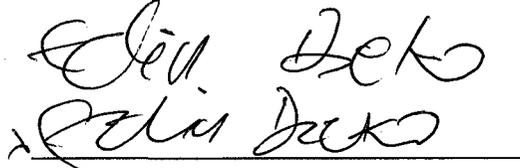
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1 whomsoever, has made any promise or offered any other form of inducement nor made any threat  
2 or exercised any form of intimidation against me. I execute this waiver of rights knowingly,  
3 voluntarily and entirely of my own free will and accord.

4  
5 Dated this 5 day of November, 2011.

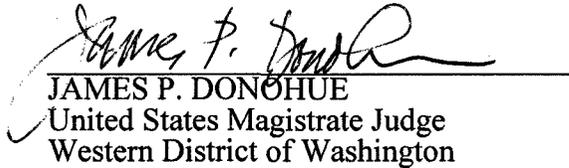


6  
7 EDIN DŽEKO



8  
9 DAVID GEHRKE  
10 Attorney for EDIN DŽEKO

11  
12 I hereby certify that on this 15<sup>th</sup> day of November, 2011, EDIN DŽEKO personally  
13 appeared before me and made his oath in due form of law that the statements herein are true.  
14

15  
16   
17 JAMES P. DONOHUE  
18 United States Magistrate Judge  
19 Western District of Washington  
20  
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# **EXHIBIT**

# **J**

Judge James P. Donohue

FILED ENTERED  
LODGED RECEIVED

NOV 15 2011

AT SEATTLE  
CLERK U.S. DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

IN THE MATTER OF  
THE EXTRADITION  
OF EDIN DŽEKO

NO. MJ11-160

**ORDER GRANTING WAIVER OF  
EXTRADITION HEARING**

**ORDER**

The Court having received the Complaint filed on April 11, 2011, by Marci L. Ellsworth, Special Assistant United States Attorney for the Western District of Washington, for and on behalf of the Government of the Republic of Bosnia and Herzegovina, pursuant to the request of the Government of the Republic of Bosnia and Herzegovina, for the extradition of EDIN DŽEKO, and an Affidavit Waiving Extradition Hearing executed by EDIN DŽEKO and witnessed by his attorney, David Gehrke;

And, further, the Court having been advised in open session that EDIN DŽEKO is a fugitive sought by the Government of the Republic of Bosnia and Herzegovina; that he is aware that the Government of the Republic of Bosnia and Herzegovina has filed charges against him and has obtained a warrant for his arrest; that he has reviewed the Complaint filed by the United States Attorney for this judicial district; that he has been fully advised of his rights in this country pursuant to the extradition treaty in force between the Government of the United States and the Government of the Republic of Bosnia and Herzegovina and Title 18, United States Code,

1 § 3184 et seq., and that he has knowingly and voluntarily waived those rights;

2 IT IS THEREFORE ORDERED that EDIN DŽEKO be committed to the custody of the  
3 United States Marshal for the Western District of Washington pending arrival of the duly  
4 authorized representatives of the Government of the Republic of Bosnia and Herzegovina, at  
5 which time the United States Marshal shall deliver him to the custody of such authorized  
6 representatives to be transported to the Republic of Bosnia and Herzegovina to be held for trial or  
7 other disposition; and

8 IT IS FURTHER ORDERED that the transfer of physical custody of EDIN DŽEKO shall  
9 be at such time and place as mutually agreed upon by the United States Marshal for the Western  
10 District of Washington and the duly authorized representatives of the Government of the  
11 Republic of Bosnia and Herzegovina.

12 The Clerk of the Court is directed to forward copies of this Order and the executed  
13 Affidavit of Waiver to the Director, Office of International Affairs, Criminal Division,  
14 Department of Justice, in Washington, D.C., and the Special Assistant United States Attorney.

15 SO ORDERED, this 15<sup>th</sup> day of November, 2011.

16  
17   
18 \_\_\_\_\_  
19 JAMES P. DONOHUE  
20 United States Magistrate Judge  
21 Western District of Washington  
22  
23  
24  
25  
26  
27  
28

# EXHIBIT K

Bosna i Hercegovina

Босна и Херцеговина



Sud Bosne i Hercegovine  
Суд Босне и Херцеговине

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Case No.: S1 1 K 010294 14 Krž6

Delivered on: 4 December 2014

Written copy sent out: 12 February 2015

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Before the Appellate Panel composed of Judges:

Mirko Božović, Presiding  
Redžib Begić, reporting Judge  
Tihomir Lukes, member

PROSECUTOR'S OFFICE OF BOSNIA AND HERZEGOVINA

v.

EDIN DŽEKO

---

SECOND INSTANCE VERDICT

---

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

Vesna Ilić

**Counsel for the Accused Edin Džeko:**

Attorneys Edina Rešidović and Vasvija Vidović

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**Number: S1 1 K 010294 14 Krž6**

**Sarajevo, 4 December 2014**

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

The Court of Bosnia and Herzegovina, sitting in the Appellate Division Panel of Section I for War Crimes, comprised of Judges Mirko Božović, as the Presiding, and Redžib Begić and Tihomir Lukes, as members of the Panel, with the participation of Legal Advisor Nevena Aličehajić as the record-taker, in the criminal case against the accused Edin Džeko, for the criminal offenses of War Crimes against Civilians under Article 173(1)(c), (e) and (f) of the Criminal Code of Bosnia and Herzegovina and War Crimes against Prisoners of War under Article 175(1)(a) of the Criminal Code of Bosnia and Herzegovina, all as read with Article 180(1) and Article 29 of the Criminal Code of Bosnia and Herzegovina, deciding upon the appeals filed by the Prosecutor's Office of Bosnia and Herzegovina and Counsel for the accused Edin Džeko, Ms. Edina Rešidović and Ms. Vasvija Vidović, from the Verdict of the Court of Bosnia and Herzegovina No. S1 1 K 010294 12 Kri of 6 June 2014, after a public session of the Appellate Panel held in the presence of Ms. Vesna Ilić, Prosecutor of the BiH Prosecutor's Office, Accused Edin Džeko and his Attorneys, Ms. Edina Rešidović and Ms. Vasvija Vidović, on 4 December 2014, delivered the following:

**VERDICT**

The appeal filed by Counsel for the accused Edin Džeko is hereby **refused as ill-founded**, the appeal filed by the Prosecutor's Office of Bosnia and Herzegovina **granted, in part**, and the Verdict of the Court of Bosnia and Herzegovina No. S1 1 K 010294 12 Kri of 6 June 2014, **altered in the decision on compound sentence**, in the way that the accused Edin Džeko, for the criminal offenses of which the Trial Verdict found him guilty, namely War Crimes against Prisoners of War under Article 144 of the Criminal Code of the Socialistic Federative Republic of Yugoslavia, adopted pursuant to the Law on the Application of the Criminal Code of the Republic of Bosnia and Herzegovina and the

Criminal Code of the Socialistic Federative Republic of Yugoslavia, as read with Article 22 of the same Code, and for which he received a sentence of 10 (ten) years in prison, and the criminal offense of War Crimes against Civilians under Article 142(1) of the Criminal Code of the Socialistic Federative Republic of Yugoslavia, adopted pursuant to the Law on the Application of the Criminal Code of the Republic of Bosnia and Herzegovina and the Criminal Code of the Socialistic Federative Republic of Yugoslavia, for which he received a prison sentence of 7 (seven) years, pursuant to the foregoing legal provisions and Articles 33 and 48 of the same Code, imposes on the Accused a **compound sentence of imprisonment for a term of 13 (thirteen) years**. Pursuant to Article 50(1) of the Criminal Code of the Socialistic Federative Republic of Yugoslavia, adopted pursuant to the Law on the application of the Criminal Code of the Republic of Bosnia and Herzegovina and the Criminal Code of the Socialistic Federative Republic of Yugoslavia, the time the Accused spent in custody, during the period from 20 December 2011 through 3 June 2013, shall be credited towards the imposed prison sentence.

The Trial Verdict shall remain unaltered in the remaining part thereof.

### **Reasoning**

1. The Verdict of the Court of Bosnia and Herzegovina No. S1 1 K 010294 12 Kri of 6 June 2014 found the accused Edin Džeko guilty because by the actions described in the enacting clause of the convicting part of the contested Verdict, he committed, under Section 1, the criminal offense of War Crimes against Prisoners of War in violation of Article 144 of the Criminal Code of the SFRY, adopted pursuant to the Law on the application of the Criminal Code of the Republic of Bosnia and Herzegovina and the Criminal Code of the SFRY<sup>[1]</sup>, as read with Article 22 of the same Code, and under Section 2, the criminal offense of War Crimes against Civilians under Article 142(1) of the adopted

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<sup>[1]</sup> The Decree with the Force of Law on the Application of the Criminal Code of the Republic of Bosnia and Herzegovina and the Criminal Code of the Socialistic Federative Republic of Yugoslavia adopted as a Republic law during the imminent war danger or during the state of war (Official Gazette of the RBiH, No. 6/92) and the Law on Recognition of Decrees with the Force of Law (Official Gazette of the RBiH, No 13/94)- hereinafter: the Adopted CC SFRY.

CC SFRY, so the Trial Court, pursuant to Articles 33, 38 and 41 of the adopted CC SFRY, for the criminal offense of War Crimes against Prisoners of War under Article 144 of the adopted CC SFRY, imposed on him a sentence of imprisonment for a term of ten (10) years, and for the criminal offense of War Crimes against Civilians under Article 142(1) of the adopted CC SFRY a prison sentence of seven (7) years, and thus, applying Article 48 of the adopted CC SFRY, sentenced the accused to a compound sentence of imprisonment for a term of twelve (12) years. Pursuant to Article 50(1) of the adopted CC SFRY, it was decided that the time the accused Edin Džeko spent in custody, running from 20 December 2011 to 3 June 2013, shall be credited towards the imposed sentence. Pursuant to Article 188(1) of the Criminal Procedure Code of Bosnia and Herzegovina (CPC BiH), as read with Article 186(2) of the same Code, the Accused shall reimburse the costs of the criminal proceedings and a lump sum determined by the Court in a separate decision. Pursuant to Article 198(2) of the CPC of BiH, the injured parties were instructed to pursue their claims under property law in a civil action.

2. The same Verdict acquitted the accused Edin Džeko of the charges in relation to Sections 1-4 of the acquitting part of the enacting clause of the Verdict under Article 284(1)(a) of the CPC BiH, and in relation to Sections 5 and 6 of the acquitting part of the enacting clause under Article 284(1)(c) of the CPC of BiH, that by the actions covered by Sections 1 and 2 (acquittal), he would have committed the criminal offense of War Crimes against Civilians under Article 173(1)(f) of the Criminal Code of Bosnia and Herzegovina (CC BiH), that under Sections 3, 4, 5(b), 5(c) and 6 (acquittal) he would have committed the criminal offense of War Crimes against Civilians under Article 173(1)(c) of the CC BiH, and Section 5(a) (acquittal) the criminal offense of War Crimes against Civilians under Article 173(1)(e) of the CC BiH. In relation to the acquitting part of the Verdict, the Court decided, pursuant to Article 188(4) of the CPC of BiH, to relieve the Accused of the duty to reimburse the costs of the proceedings, which shall be paid from within the budget appropriations of the Court. Pursuant to Article 198(3) of the CPC BiH, the injured parties were instructed that they may pursue their claims under property law in a civil action.

3. The Prosecutor's Office of Bosnia and Herzegovina (the BiH Prosecutor's Office or the Prosecution) and Defense Attorneys for the Accused Edin Džeko, Ms. Edina Rešidović and Ms. Vasvija Vidović, timely filed their respective appeals from the referenced Verdict.

4. The Prosecution filed its appeal for violations of the criminal code under Article 298(1)(a) and (d) of the CPC of BiH, the erroneously and incompletely established

state of facts under Article 299 of the CPC of BiH and the decision on criminal sanction under Article 300(1) of the CPC BiH. The Prosecution moved the Appellate Panel of Section I for War Crimes of the Court of BiH to grant the appeal as fully well-founded, alter the contested Verdict in the acquitting part thereof, and imposed on the Accused a long-term prison sentence exceeding 12 (twelve) years for the crimes committed.

5. Defense Attorneys for the Accused Edin Džeko, Ms. Edina Rešidović and Ms. Vasvija Vidović, contested the Trial Verdict for essential violations of the criminal procedure provisions under Article 297 of the CPC BiH, the erroneously and incompletely established state of facts under Article 299 of the CPC BiH, and moved the Court to alter the impugned Verdict by acquitting the Accused of the charges, namely to revoke the Trial Verdict, order a hearing before the Appellate Panel and present the new evidence proposed pursuant to Article 295(4) of the CPC BiH.

6. The Prosecution submitted, within a statutory deadline, its response to the appeal filed by the Accused's Counsel, and moved the Court to refuse it as ill-founded in terms of both essential violations of the provisions of the criminal procedure and the erroneously and incompletely established state of facts.

7. Counsel for the accused Edin Džeko submitted their response to the Prosecution's appeal and moved the Court to refuse it as ill-founded, grant the appeal filed by the Defense and alter the contested Verdict by acquitting the Accused of the charges, that is, to revoke the Verdict and order a trial before the Appellate Panel.

8. On 4 December 2014, the Appellate Panel held a session pursuant to Article 304 of the CPC BiH, which was attended by Ms. Vesna Ilić, Prosecutor of the Prosecutor's Office of Bosnia and Herzegovina, the accused Edin Džeko and his Defense Attorneys, Ms. Edina Rešidović and Ms. Vasvija Vidović.

9. Before the presentation of their respective appeals and responses to the appeals, Defense Attorneys for the accused Edin Džeko, Ms. Edina Rešidović and Ms. Vasvija Vidović, proposed that the public session of the Appellate Panel be postponed because they had found a new piece of evidence. Specifically, an article, published on 4 December 2014 in the *Dani Weekly Magazine*, revealed that there was a new piece of evidence or a video-recording which, Counsel believed, could be exculpatory for the accused Edin Džeko. The Defense therefore moved the Court to order the Prosecution to submit to them the referenced material, and to postpone the session and thus provide the Defense with a

possibility to review and inspect the material at issue. Secondly, or alternatively, the Defense proposed the Court to hold a public session, but also to provide the Accused's Defense with an additional deadline to supplement its appeal upon reviewing the material at issue.

10. The Prosecutor objected to the Defense's proposal, arguing she neither possessed the evidence mentioned by the Defense nor did she have any information whatsoever that such evidence existed at all.

11. The Appellate Panel dismissed the Defense's proposal, first for the fact that the CPC BiH does not provide for a situation of presenting evidence once the appeals and responses to the appeals were filed. Specifically, Article 304 of the CPC BiH clearly defines that appeals and answers to the appeals shall be presented at the panel session, that reading of certain documents may be proposed, but all the explanations should be with regard to their points in the appeal. The Appellate Panel dismissed such a proposal by the Accused's Defense due to the lack of legal grounds and resumed the public session.

12. At the resumed public session, the Prosecutor briefly presented the contents of its appeal and stood entirely by the reasons and proposals provided therein.

13. The Accused's Counsel presented their appeal and also stood by the reasons and proposals forwarded therein. The Accused fully supported his Counsel's presentation. Both the Prosecution and the Accused's Counsel commented on their respective appeals, and fully stood by their responses to the appeals submitted in writing.

14. Pursuant to Article 306 of the CPC BiH, the Appellate Panel examined the contested Verdict within the boundaries of the complaints presented, reviewed the case file and decided as stated in the enacting clause of the Verdict for the reasons that follow:

## I. CONVICTION

### A. APPELLATE GROUND CONCERNING ESSENTIAL VIOLATIONS OF THE CRIMINAL PROCEDURE PROVISIONS

#### 1. Appeal filed by Counsel for the accused Edin Džeko

(a) Essential violation of the criminal procedure provisions under Article 297(1)(h) of the CPC of BiH - the Court's Verdict has not fully resolved the contents of the charges

15. According to the Accused's Counsel, in the contested Verdict the Trial Panel made an essential violation of the criminal procedure under Article 297(1)(h) of the CPC BiH for it has not fully resolved the contents of the charges. Specifically, Counsel argued that the content of the charges was not resolved in relation to the killing of Kata (daughter of Ivan) Drljo, born in 1932. This is so because, even though the confirmed Indictment charged the Accused with the referenced killing too, and even though the Accused pled not guilty of that action, for which evidence was adduced during the proceedings, the enacting clause of the Verdict neither found the Accused guilty nor acquitted him of the charges, and the charges for the action at issue were not dismissed either.

16. The Appellate Panel has concluded that the referenced complaint was ill-founded.

17. It is true that the Trial Panel indeed deleted from the enacting clause the name of Kata (daughter of Ivan) Drljo, born in 1932, because, as it ensues from the reasoning of the contested Verdict, it did not find proved that the Accused had indeed killed this old woman. Notwithstanding the foregoing, this Panel has concluded that no essential violation of the criminal procedure provisions was thereby made, as Counsel argued in this part of the appeal.

18. The Court's duty to fully resolve the contents of the charges implies its obligation to include in its verdict all the accused and all the acts contained in the filed indictment, or in the indictment amended during the main trial.

19. In the concrete case, the Prosecution's Indictment charged the accused Edin Džeko, and the impugned Verdict refers to him. This Panel has concluded that, from this aspect, the Trial Panel had acted properly. In addition, the Accused was charged under

Count 2 of the Indictment (which also forms Section 2 of the enacting clause of the convicting part of the Verdict), that by the acts described therein he committed the criminal offense of War Crimes against Civilians under Article 173(1)(c) of the CC BiH. The Trial Panel's impugned Verdict found that the Accused's acts satisfied the essential elements of the criminal offense of War Crimes against Civilians, but it qualified the referenced crime pursuant to the CC SFRY. Therefore, the Accused was charged with, and found guilty under the impugned Verdict of the criminal offense of War Crimes against Civilians committed by killing a large number of individuals.

20. There will be no essential violation of the criminal procedure provisions under Article 297(1)(h) of the CPC BiH if the Court deletes certain unproved facts from the factual description of the crime, provided that such facts do not bring into question the existence of the crime charged against the Accused. The contents of the charges include events from the real life, the nature of which has satisfied the underlying elements of the criminal offense.

21. Since the referenced Count of the Indictment incriminates an event that occurred on 16 April 1993, when three civilians, including Kata (daughter of Ivan) Drljo, born in 1932, had been shot dead by fire weapons, and since the criminal offense charged against the Accused under this Count of the Indictment still exists despite the fact that the act of killing of the referenced injured party was deleted from the enacting clause of the Verdict, there was no need, in this situation, to deliver an acquitting verdict for this particular act. Instead, it had to be done exactly in the way as the Trial Panel did in the impugned Verdict, that is, it treated it as an unproved act, whose omission did not bring into question the existence of the crime, and simply omitted it from the factual description, with an obligation to provide in the Verdict the reasons for doing so. The Trial Panel had indeed acted in this way.

22. For the foregoing reasons, in contrast with the objections forwarded by Counsel for the Accused, this Panel has concluded that the Trial Panel fully resolved the contents of the charges in relation to the acts described under Count 2 of the Indictment.

(b) Essential violation of the criminal procedure provisions under Article 297(1)(j) of the CPC of BiH - the charges exceeded by the Court's Verdict

23. According to the Accused's Counsel, the Trial Panel also made an essential violation of the criminal procedure provisions under Article 297(1)(j) of the CPC BiH by

exceeding the charge by deleting from the factual description of Count 1 of the Indictment the word "civilians" in front the names of victims Zdravko Drljo, Željko Blažević and Franjo Drljo, and at the same time marking them as "the HVO soldiers". In such a way, the referenced individuals, indicated in the Indictment as civilians, were given the status of war prisoners. Given the fact that the Trial Panel did not find these individuals to be civilians and that thereby the crime at issue was not the criminal offense of War Crimes against Civilians, Counsel argued that the Trial Panel should have rendered an acquitting verdict in relation to these victims. According to Counsel, the Court altered the decisive facts by intervening with the factual substratum of the Indictment, and thereby exceeded the charges, that is, it made an essential violation of the criminal procedure provisions under Article 297(1)(j) of the CPC BiH.

24. The Appellate Panel has concluded that the referenced complaint is ill-founded.

25. Counsel's appeal properly insisted on the fact that the identity between the contents of the charges and the verdict must exist. The identity between the indictment and the verdict shall be considered in relation to the factual basis, on the one hand, and the legal grounds, on the other. Therefore, the prosecutor's indictment determines the criminal offense both factually and legally. In terms of the facts, the indictment first identifies the person against whom the charges are being brought, and because of which ordering and holding the main trial is being requested (subjective identity). As to the referenced ground of charges, which is important for the objective identity of both the indictment and the verdict, the prosecutor provides in his indictment the factual description and legal qualification of the criminal offense charged against the accused.

26. Article 280(2) of the CPC BiH, however, strictly provides that the Court is not bound to accept the proposals of the Prosecutor regarding the legal evaluation of the act. This means that the Court may freely subsume the facts under the substantive criminal law. If the Court finds, on the basis of the charges, that a different legal qualification is needed, it will provide its reasons for legal evaluation in the reasoning of the verdict, particularly referring to the legal evaluation contained in the indictment. Contrary to the appellate complaint, if the Court finds that the Prosecutor failed to prove his evaluation of the civilian status of certain victims on the basis of the adduced evidence (as in the concrete case), and thereby does not accept the legal qualification of the act as War Crimes against Civilians (finding that the three referenced persons had the status of war prisoners and providing its reasons in the reasoning of the Verdict), the Court is not supposed to acquit

the accused of the referenced charges; instead, it is supposed to find him guilty, providing the qualification it deemed proper, and the reasons for doing so were provided in the reasoning of the impugned Verdict.

27. The Trial Panel acted exactly in the above referenced way. The Trial Panel found that all the executed persons, referred to in Section 1 of the enacting clause of the convicting part of the Verdict, had the status of war prisoners rather than that of civilians, and that the Accused took part in their execution exactly in the way the Indictment described. With the foregoing explanation in mind, and given the fact that the Trial Panel rendered no acquitting verdict for the criminal offense of War Crimes against Civilians, this Panel has concluded that no essential violation of the criminal procedure provisions was made by exceeding the charges, as this part of the appeal indicated.

(c) Essential violation of the criminal procedure provisions under Article 297(1)(d) of the CPC of BiH – violation of the right to defense

28. Counsel's appeal argued that the Trial Panel made multiple violations of the accused Edin Džeko's right to defense for the reasons that follow:

i. Vague and unreasoned finding that the Accused could have been present in the place of Gaj at the time when the critical incident occurred, namely that he could have reached Gaj from the Gostovići infirmary at the time when the incriminating incident occurred

29. Counsel argued that the Trial Panel had violated the Accused's right to defense by not accepting the Accused's alibi that, after providing first aid to the wounded in Gostovići, the Accused stayed with them continually, and took part in their transportation. Counsel further argued that the Indictment did not allege that the Accused had come from the medical station to Gaj before the onset of summary execution, but only that he participated in the critical incident. Also, the Prosecution even made no effort to prove that the Accused could have crossed the distance between Gostovići and Gaj to arrive right on time to participate in the summary execution. The Trial Verdict found that the Accused had started off from Gostovići towards Gaj and reached it, and, in this way, shifted the burden of proof onto the Accused. In the appellate proceedings, the Accused was obligated to prove that

the sequence of events, as found in the Trial Verdict, was absolutely impossible. In this way, the Accused's right to defense and the principle of *in dubio pro reo* were violated, which affected rendering a proper and lawful Verdict. Therefore, an essential violation of the criminal procedure provisions under Article 297(2) of the CPC BiH was made. At the same time, the Trial Panel also violated the Accused's right to defense for not taking into account the Defense's evidence, that is, the evidence of the witnesses who testified about the transportation of the wounded from the place of Gostovići to the place of Suhodol. The Trial Panel found that the summary execution, described under Section 1 of the enacting clause of the Verdict, had occurred before the wounded reached Suhodol. The accurate time of the critical incident's occurrence, however, was never specified.

30. In the Appellate Panel's view, the foregoing complaints are ill-founded.

31. Truly, the factual description of the Indictment contains no theory that the Accused either went from, or returned to the place of Gaj after leaving the wounded in the Gostovići medical station. This is understandable because the Accused was charged with and found guilty of the summary execution of six captured HVO soldiers in the place of Gaj. The Trial Panel analyzed the acts taken prior to the critical incident [the wounding of members of the *Zulfikar* Special Purposes Detachment within the Army R BiH (SPD *Zulfikar*), the transportation of the wounded to the medical station, etc..] only in the part important for the evaluation of the Accused's alibi presented by the Defense. The Trial Panel found, on the basis of the presented evidence, that the accused Džeko was present at the site where the captured individuals were summarily executed. Also, the Trial Panel provided the reasons for not giving credence to the Defense's witnesses who had testified that the Accused was present during further transportation of the wounded members of the SPD *Zulfikar*, as well as during and after they received first aid in the Gostovići medical station. This Panel will examine the correctness of such Trial Panel's finding in terms of the complaint relating to the incorrectly and incompletely established state of facts. From the aspect of essential violations of the criminal procedure provisions, however, this Panel considers that Counsel's complaints that the Accused's right to defense was violated because the burden of proof was shifted onto him (that he could not reach Gostovići from Gaj to participate in the summary execution), are ill-founded. Specifically, the Prosecution proved the Accused's presence at the execution site, and the Trial Panel found it proved, contrary to the Defense's assertion that he was not present there, namely that it was realistically impossible for the Accused to reach the execution site. Ultimately, this Panel has

concluded that the Defense contradicted itself when arguing that the Trial Panel had never accurately determined the time the summary execution occurred, but nevertheless indicated, in its complaint, the time frame required for crossing the distance between the Gostovići medical station and the place of Gaj.

(ii) Rejection of the Accused's alibi that he was continually present with the wounded by violating the principle of *in dubio pro reo*

32. The Defense argued that the Trial Panel violated the principle of *in dubio pro reo* to the detriment of the Accused by rejecting the Accused's alibi and requesting a solid and clear evidence that would "with certainty" prove that the Accused was continually present with the wounded, and thereby violated the Accused's right to defense too. The referenced Counsel's complaint pointed to the importance of alibi as means of proof. Counsel argued that the alibi evidence brought into suspicion the Prosecution's evidence that the Accused committed the crime described in Count 1 of the Indictment. Considering that exactly such evidence was offered to the Court by the Defense, the Prosecution was required not only to contest the validity of alibi, but also to prove, beyond a reasonable doubt, the Accused's guilt in the way as the Indictment indicated.

33. The Appellate Panel has concluded that the referenced complaints are ill-founded.

34. In this Panel's view, the essence of Counsel's complaint is mirrored in the fact that the rejection of the Accused's alibi shifted the burden of proof onto the Defense, which is in violation of both the principle of *in dubio pro reo* and the right to defense. The Appeals Chambers in *Zigiranyirazo* and *Čelebići* have found that, even though the alibi was considered as means of proof, it is not genuinely a defense, and that by referring to his alibi, the accused only denies that he was in a situation to commit the crime charged against him. With an alibi correctly presented, the prosecution must prove beyond a reasonable doubt that, despite the alibi, the facts contained in the Indictment were true. This certainly does not mean that, in a situation when the Accused's Defense refers to the alibi, as Counsel tried to present through their appeal, the Prosecution needs to present new evidence to contest the defense through alibi. This rather means that the Panel is not obligated to accept the Accused's alibi if it finds, on the basis of the other adduced evidence, that the prosecution's allegations were proved.

35. In the concrete case, the Panel did not accept the Accused's alibi that he was

present with the wounded persons during the whole period from the moment of their wounding until their accommodation in the Suhodol medical station, or after they had received first aid in the Gostovići infirmary. Even though the Trial Panel discussed, to a significant extent, the time the Accused would need to cross the distance from point A to point B, from the place where the persons were wounded to the infirmary in Gostovići, and thereupon to the place of Gaj, where the summary execution took place, it did not determine the accurate time when the referenced incident occurred. Decisive for the Panel's conclusion that the Accused's alibi was unacceptable was exactly the fact that several eye-witnesses to the incriminating incident at the execution site identified the Accused as a person who had directly partaken in the referenced execution.

36. For the foregoing reason, the Trial Panel did not consider in detail, as stated in the Verdict, the evidence of the witnesses who testified that the Accused was continually present during the transportation of the wounded to the Suhodol infirmary, which is directly opposite to the testimonies of the witnesses who connected the Accused with the site where the incriminating incident occurred, and identified him as one of its perpetrators. The Panel will further discuss the foregoing in the part addressing the complaint of incorrectly and incompletely established state of facts. For the above reasons, the Panel has concluded that the Trial Panel made no violation of the Accused's right to defense by non-acceptance of his alibi, nor did it shift the burden of proof onto the Accused and thereby violated his right to defense, as Counsel's appeal indicated.

(iii) Conclusion that the Accused was present near the store where the Ivanković spouses were killed

37. The appeal stated that the Trial Panel's conclusion, that the accused was present near the store where the Ivanković spouses had been killed, was based on the testimonies of witnesses Rasema Handanović, E, M and R, and that these witnesses were motivated to put the blame for the killings they committed on the Accused. According to Counsel, the Trial Panel did not take into account the testimonies of witnesses Ramiz Bećiri, U and J-4. These witnesses confirmed that the Accused had not been present near the store, and thereby brought into suspicion the testimonies of the Prosecution's witnesses. Counsel argued that, having acted in the referenced way, the Trial Panel violated the principle of *in dubio pro reo*, as well as the Accused's right to defense. Considering that the evaluation of evidence was made in violation of Article 281(2) of the CPC BiH, that is, considering

that the Trial Panel failed to evaluate all pieces of presented evidence, individually and in combination with the other evidence, Counsel believes that an essential violation of the criminal procedure provisions under Article 297(2) of the CPC BiH was also made.

38. Contrary to this complaint, the Appellate Panel has concluded that the Trial Panel fully met the obligations provided for in Article 281(2) of the CPC BiH. Also, in drawing its conclusions on all legally relevant facts, including the killing of the Ivanković spouses, the Trial Panel took into account all relevant and adduced evidence, individually and in combination. Listed in para. 271 of the impugned Verdict was all the evidence the Trial Panel considered in relation to the charges of which the Accused was found guilty under Section 2 of the enacting clause of the convicting part of the Verdict, including the testimony of witnesses Ramiz Bećiri and J-4. Witness U, however, gave no evidence whatsoever regarding the circumstances described in this Count of the Indictment. Further in the reasoning, the Trial Panel examined the contents of the evidence important for determining the decisive facts. It ensues from the reasoning that the Trial Panel found that the evidence of witnesses Rasema Handanović, E, M and R given about the circumstances described in this count were mutually consistent, harmonized in relation to the decisive facts, reliable as such, and that its conclusion on the Accused's guilt was based on these very facts. This Panel will examine, within the complaints contesting the proper determination of the state of facts, whether such a conclusion was proper. For now, the Panel considers as ill-founded Counsel's appellate complaints regarding a violation of the right to defense and of other essential violations of the criminal procedure provisions.

(iv) The Court did not consider the testimonies of witnesses Rasema Handanović and witness E in relation to the testimonies of witnesses Marija Miškić and Milka Drljo, concerning the position of the bodies of the killed spouses Ivanković

39. According to Counsel, witnesses Marija Miškić and Milka Drljo testified contrary to the testimonies of witnesses Handanović and E regarding the position of bodies of the killed couple Ivanković and thereby also brought into suspicion their testimonies regarding the way in which the referenced killings were committed, and that the perpetrator of these acts was the accused Edin Džeko. Counsel argued that, in this way, the Trial Panel violated the principle of *in dubio pro reo* and the Accused's right to defense. Since the violation of Article 3(2) of the CPC BiH affected proper nature and lawfulness of the contested Verdict, an essential violation of the criminal procedure provisions under

Article 297(2) of the CPC BiH was also made.

40. The Appellate Panel considered this complaint as ill-founded too.

41. The appeal unreasonably stated that the Trial Panel did not consider the testimonies of witnesses Marija Miškić and Milka Drijo in relation to the testimonies of witnesses Rasema Handanović and E. Instead, having considered the referenced evidence, the Trial Panel drew the conclusions on the decisive facts other than those that should have been drawn, in Counsel's opinion. The foregoing, however, falls within the domain of proper determination of the state of facts, which is another appellate ground for reviewing the contested Verdict. Considering that the referenced testimonies were examined, the appellate complaint concerning essential violation of the criminal procedure provisions is deemed ill-founded.

(v) Conclusion on the decisive fact – who shot Ilija Ivanković and Anđa Ivanković

42. Counsel for the Accused argued that the Trial Panel's finding on the decisive fact, that the accused Edin Džeko fired at the married couple Ivanković, was based on the unreliable testimonies of witnesses Rasema Handanović and witness E, which are contrary to, and bring into suspicion the testimonies of the "absolutely credible" Defense's witnesses. Having acted in this way, that is, in violation of Article 3(2) of the CPC BiH and the principle of *in dubio pro reo*, the Trial Panel violated the Accused's right to defense and, as Counsel believes, also made an essential violation of the criminal procedure provisions under Article 297(2) of the CPC BiH. In addition, Counsel argued that the Verdict lacked a careful and diligent evaluation of evidence, namely that the Trial Panel's conclusion on the referenced decisive fact was drawn with no evaluation of the pieces of evidence, individually or in combination, and that an essential violation of the criminal procedure provisions under Article 297(2) of the CPC BiH, in addition to the violation of the right to defense, was also made. By contrast, the Appellate Panel has concluded that the appellate complaints unreasonably pointed to the violations of the principle of *in dubio pro reo* and the Accused's right to defense, because the evidence was considered exactly pursuant to Article 281(2) of the CPC BiH. In reviewing the appellate complaints under Article 299 of the CPC BiH, the Appellate Panel will address the issue of whether the state of facts regarding the decisive fact of who killed the Ivanković spouses was properly

determined on the basis of such evaluation of evidence.

(vi) Violation of the right to defense through non-submission of documents to the Defense

43. The Defense argued that the Trial Panel violated the Accused's right to defense by failing to order the Prosecution to submit to it all the evidence (documents, the witnesses' statements and official notes made during the examination of witnesses), of which the Defense became aware during the first instance proceedings, and because of which it filed repeated requests for such evidence submission. In particular, Counsel pointed to the statements of witness Rasema Handanović aka Zolja, which were not delivered to the Defense, although the witness confirmed, during the examination, that she had been interviewed by the Prosecution on several occasions. Counsel also pointed to the statements of witnesses E, J-2 and X, from which it ensues that they had given other statements as well, but these were also not submitted to the Accused's Defense.

44. The Appellate Panel has concluded, contrary to this complaint, that the Defense was given an opportunity to review the Prosecution's case record in *Edin Džeko*, which they confirmed in their appeal, and that all evidence currently available to the Prosecutor in the concrete case was also submitted to it. The Prosecutor in the case confirmed the foregoing at the Appellate Panel's public session and offered Counsel to review again all the evidence in her possession. Counsel, however, confirmed that the statements given in the concrete case were not at issue, but rather the statements given in some other Prosecution's cases, about which they had some indirect information. The Defense, however, did not specify which cases were in question.

45. Even if the above referenced statements existed, the acting Prosecutor did not possess them, they do not form part of the case against the accused Edin Džeko, and it cannot be determined with certainty if they existed at all. The Appellate Panel has therefore concluded that there was no option for the Trial Panel to order the Prosecution to submit such statements to the Defense, so that the Accused's right to defense could be possibly violated by its failure to do so. In the Panel's view, the equality of parties to the proceedings was not violated either, because the statements at issue were not part of the Prosecution's case record in the concrete case. Therefore, the Defense was not brought in a less favorable position due to non-delivery of these statements to it, which could, by its

nature, be a violation of the Accused's right of defense.

(vii) Violation of the right to defense by violating the Defense's right to examine the witnesses

46. The Defense Attorneys argued that the Accused's right to defense was also violated because they were deprived of a possibility to pose certain questions to the Prosecution's witnesses, particularly witnesses Rasema Handanović and witness E (whose testimonies severely incriminated the Accused), or the witnesses were forbidden to answer certain questions posed by the Accused's Defense. In this way, the Defense was prevented from discrediting these witnesses, which was the purpose of the referenced examination. The appeal further indicated the questions to which the witnesses could not answer, namely which were as such forbidden by the President of the Trial Panel.

47. In examining the grounds for the referenced complaint, the Appellate Panel took account of Article 263 of the CPC BiH. This Article provides that the judge or the presiding judge shall forbid the inadmissible, or the repetition of irrelevant questions as well as answers to such questions. In addition, the Panel also took into account the contents of Article 84(1) of the CPC BiH, providing that the witness shall be entitled to refuse to answer such questions with respect to which a truthful reply would result in the danger of bringing prosecution upon him. Bearing in mind the contents of questions posed to the referenced witnesses by the accused Edin Džeko's Counsel, the Appellate Panel has concluded that the nature of these questions, primarily those posed to witness Rasema Handanović, were such that they would result in bringing prosecution upon her, wherefore she was not obligated to give her response. Therefore, President of the Trial Panel acted properly by forbidding such questions or answers. In the opinion of the Trial Panel's President, the second group of questions posed to the referenced witness concerned the events not covered by the Prosecution's Indictment. Therefore, this Panel's view is that the Trial Panel's President acted properly pursuant to Article 263 of the CPC BiH, and forbade posing the referenced questions, or giving answers to such questions, if posed.

(d) Essential violation of the criminal procedure provisions under Article 297(1)(k) of the CPC BiH

48. Counsel for the Accused argued that the Trial Panel made an essential violation

of the criminal procedure provisions for a failure to provide reasons for a number of decisive facts in the Verdict. The appeal stated that a) the Verdict contains no explanation as to the Defense's complaints relating the legality of the Accused's extradition procedure from the USA; b) the Court made no reference to the Defense's arguments related to the misuse of the official notes in this case, namely the statements of witness U-4 given in the various stages of the proceedings<sup>1</sup>; c) the Court provided no explanation as to why the Defense was not allowed to pose questions to the witnesses that severely incriminate the Accused, or forbade the witnesses to answer the questions concerning their credibility; d) the Court gave no reasons on the decisive facts of importance for the Accused's alibi; e) the Court gave no explanation regarding the period of time needed to cross the distance between the places of Gostovići and Gaj, taking into account the conditions in the field; f) the Court did not explain why the Defense's witnesses Redžo Poturović and Mustafa Hakalović were not given credence, but rather only arbitrarily explained that the referenced statements were given in order to support the Accused and undermine the evidence of witness E, indicating no motives these witnesses could have had; g) the Court did not take into account the evidence of witnesses Ramiz Bećiri, U and J-4 given in relation to the acts described in Section 2 of the enacting clause of the Verdict, provided no reasons for considering these witnesses possibly unreliable, and i) the Court provided no reasons for not giving credence to the evidence the Accused gave at the main trial.

49. An essential violation of the criminal procedure provisions under Article 297(1)(k) of the CPC BiH exists where the verdict contains no reasons at all, or does not provide the reasons on decisive facts. In the concrete case, Counsel's complaint concerns the lack of reasons on the decisive facts, but does not explain why would the facts, for which they believed the Verdict contained no reasons, be considered decisive. Thus, this Panel considers the advanced complaint too arbitrary to evaluate it. In addition, the concept itself of Counsel's complaint, in fact, suggests that the Verdict is being contested on the other appellate ground – that of erroneously and incompletely established state of facts. This is so because the Attorneys themselves referred to the parts of the appeal contesting the proper establishment of the state of facts, to which they related certain complaints advanced in this part of the appeal. Therefore, optional reasonability of these complaints will also be addressed by the Panel within the scope of the complaint of the erroneously

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<sup>1</sup> Official Note of the State Investigation and Protection Agency (SIPA) No. 17-04/2-04-2-04-2-240/10 of 19 February 2010, Witness Examination Records, Prosecutor's Office of 14 June 2012 and 4 June 2013.

and incompletely established state of facts, where they were concretized to a significant extent. From the aspect of alleged essential violation of the criminal procedure provisions, however, the Appellate Panel has concluded that the referenced complaint is ill-founded.

(e) Essential violation of the criminal procedure provisions under Article 297(2) of the CPC BiH

50. Counsel argued that the Trial Panel made an essential violation of the criminal procedure provisions under Article 297(2) of the CPC BiH, on the grounds that it failed to apply provisions set forth in Article 261(2)(e) of the CPC BiH and Article 269(1) of the CPC BiH. In their view, the Trial Panel should have applied the referenced Articles in order to correctly and completely establish the state of facts and render a proper and lawful verdict. The Trial Panel failed to explain the fact of time the Accused needed to cross the distance between the place of Gaj and the Gostovići medical station, and adduced no additional evidence along this line. In addition, no evidence was adduced to clarify the witness E's earlier given statements regarding the execution in Gaj. The Defense argued that all the foregoing amounted to violations of the referenced legal provisions, and that rendering a proper and lawful verdict was thereby affected and Article 297(2) of the CPC of BiH violated. The other option, which was at the Trial Panel's disposal in the concrete case, according to Counsel, was to apply the principle of *in dubio pro reo* under Article 3(2) CPC BiH, or Article 15 of the CPC BiH, on the basis of which it could have rendered an acquitting verdict. Considering that the referenced provisions were not applied, the foregoing is, by its nature, an essential violation of the criminal procedure provisions under Article 297(2) of the CPC BiH.

51. In the Appellate Panel's view, the foregoing complaints are ill-founded.

52. Pursuant to the provisions of the applicable CPC BiH, the basic rule of criminal procedure is that the parties and defense attorneys in criminal proceedings are entitled to summon witnesses and adduce evidence, and that the court proposes the presentation of evidence only if it deems, during the proceedings, that this is necessary in order to establish and explain the decisive facts. The burden of proof lies on the prosecutor. The defense can summon its witnesses and present evidence to contest the prosecution's allegations, or to prove its own submissions. The court may present its own evidence, but is not obligated to do so. The parties' complaint of essential violation of the criminal

procedure provisions cannot be based on the fact that the court did not adduce or propose adducing certain pieces of evidence. The law does not prescribe for such an obligation, but rather leaves at the trial panel's discretion to render its decision. Thus, in the concrete case, it is the matter of the Trial Panel's free evaluation and belief whether it is necessary that evidence be presented pursuant to the court's proposal so as to clarify certain decisive facts.

53. The Defense had an option to propose an expert evaluation of the time needed for crossing the distance between Gostovići and Gaj if it considered this was a decisive fact. The fact that the Trial Panel ordered no presentation of such evidence does not amount to an essential violation of the criminal procedure provisions. It may have possible importance in evaluating the complaints related to the proper establishment of the state of facts.

54. In addition, the Defense examined witness E. His testimony from the main trial was fully a piece of evidence, and it was as such evaluated both individually and in combination with the other pieces of evidence. If the Defense believed the referenced witness's earlier statements contained certain relevant facts, differently presented in relation to what the witness stated at the main trial, it could have and should have proposed that such record be adduced as evidence in the case record. Considering the failure of the Defense to do so, the Trial Panel properly noted, in this Panel's view, that such a statement could not be considered in rendering the verdict. The fact that the Court did not order adducing the referenced evidence cannot be considered as an essential violation of the criminal procedure provisions, as Counsel suggested, because there is no provision in the CPC BiH under which the Court is bound to adduce any pieces of evidence.

55. In view of the foregoing, the Appellate Panel concluded that the Trial Panel was not bound to apply the provisions Counsel's appeal referred to so as to be able to examine whether rendering a proper and lawful verdict was thereby affected, and whether an essential violation of the criminal procedure provisions under Article 297(2) of the CPC BiH was made. It also ensues from the reasoning of the contested Verdict that the Trial Panel established beyond a doubt that the Accused was present and participated in the incriminating acts of which he was found guilty. Whether this finding is proper may be examined only on the grounds of the erroneously and incompletely established state of facts. Therefore, Counsel's appeal unreasonably pointed to a violation of Article 3(2) of the CPC BiH, because the Trial Panel's Verdict did not find even a slightest extent of

suspicion concerning the Accused's role in the incriminating acts at issue.

56. Counsel's appeal further stated that these criminal proceedings were conducted in an unlawful manner, that is, in violation of Article 2 of the CPC BiH, and thereby in violation of Article 123(2) of CPC BiH too, which Counsel further viewed as an essential violation of the provisions of criminal procedure under Article 297(2) of the CPC BiH. The appeal stated that the accused Edin Džeko was extradited from the United States of America (USA), that he voluntarily waived all his rights, and accepted to be unconditionally extradited from the USA as soon as possible. However, the request filed by the acting Prosecutor did not specify the counts of Indictment pursuant to which the Accused's extradition was requested, and particularly, did not submit evidence for each count individually. Therefore, the extradition procedure was unlawful, which renders the proceedings conducted against the Accused also unlawful. Despite the fact that the Accused's consented to extradition, the Prosecution requested that the Accused be placed into custody, the Court upheld this request and the Accused remained in custody during the period between 21 December 2011 and 29 May 2013. The appeal stated that, in the foregoing way, the Trial Panel acted in violation of Articles 2 and 123(2) of the CPC BiH, as a result of which an essential violation of the criminal procedure provisions under Article 297(2) of the CPC BiH was made.

57. According to the Appellate Panel, the foregoing complaints are ill-founded.

58. First to be examined at this point is what is being considered an essential violation of the criminal procedure provisions under Article 297(2) of the CPC BiH, as Counsel's appeal suggested. Specifically, the referenced provision provides as follows:

"There is also a substantial violation of the principles of criminal procedure if the Court has not applied or has improperly applied some provisions of this Code or during the main trial, or in rendering the verdict, and this affected or could have affected the rendering of a lawful and proper verdict."

59. Considering the referenced provision and Counsel's complaint, the Appellate Panel has concluded that the Defense argued that the Trial Panel acted in violation of, that is, it did not apply, or improperly applied Article 2 and Article 123(2) of the CPC BiH, and that such act affected or could have affected rendering a lawful and proper verdict.

60. Counsel considered the Accused's extradition from the States was unlawful, which is where they saw a violation of Article 2 CPC BiH. Counsel argued that the Trial Panel did not at all consider their complaints related to the lawfulness of the Accused's extradition,

but rather simply accepted the reasons provided in the Decision of the Preliminary Hearing Judge, who had decided on the preliminary motions concerning the Indictment. It ensues from the first instance Verdict, however, that the Trial Panel did consider the referenced appellate grievances, but found that the reasons of the contested Decision were proper, accepted them as such, and presented them in its Verdict.

61. By advancing such appellate complaint, the Defense Counsel themselves accepted (as it ensues from the case record), that the Accused had consented to extradition and thereby waived all his rights and guarantees he would have been entitled to had he not exercised his right to request unconditional extradition. It ensues from the Prosecution's evidence<sup>2</sup> that after the Accused had been instructed about his rights pursuant to the Convention on Extradition applicable between the USA and the Republic of Bosnia and Herzegovina, in the presence of his Attorney who also informed him about his rights and with whose services he was satisfied, he *waived any and all such rights, and asked the Court to expedite his return to the Republic of Bosnia and Herzegovina under escort.* Exhibits T-79 and T-80 showed that the accused Džeko waived his right to extradition-related hearing, in the course of which the following facts should have been established: *“(1) that the Convention on Extradition between the USA and the Republic of BiH is presently in force; (2) that the Convention includes the acts for which [my] extradition was requested; (3) that I am the person whose extradition is requested by the Republic of Bosnia and Herzegovina; (4) that there is a probable cause to believe that I committed the offenses due to which the extradition is being requested”.* Thereupon, the Accused personally confirmed that he was the person against whom an indictment was brought in the Republic of Bosnia and Herzegovina, and against whom the proceedings are pending there. The Accused also stated he understood that, if he did not wave his rights he could not be forced to return to BiH, unless and until the US court rendered a decision confirming his extradition was possible, and ordered extradition by issuing an extradition warrant. The Accused further stated he had examined the indictment proposal, and fully understood the right to a hearing, where he and his attorney could contest the extradition request submitted by the BiH Government. At the same time, the Accused stated the following: *“I waive all my rights under the Convention on Extradition and under the applicable sections of Title 18 of the US Code. I agree to be extradited under escort, as soon as possible, to the Republic of Bosnia and Herzegovina, and to remain under custody until the arrival of*

the agents from the Republic of Bosnia and Herzegovina...". The US District Court thereupon issued an order approving the waiver of the right to extradition-related hearing.<sup>3</sup> Prior to this, the same document also noted that the accused Edin Džeko "...has been fully instructed about his rights *in this country in accordance with the Convention on Extradition, which is in force between the US Government and the BiH Government, and in accordance with the US Code, Section 3184 onwards, and that he waived these rights consciously and voluntarily...*". In the view of both this Panel and the Trial Panel, all the foregoing confirms that, despite being repeatedly cautioned of the consequences of his rights' waiver in the extradition procedure, pursuant to the applicable provisions of the Convention on Extradition between the USA and BiH, the accused Džeko strictly refused to exercise these rights. Therefore, the Convention itself is not applicable to the Accused's extradition procedure, namely at this stage, when the Accused waived all the rights he would be entitled to under the Convention, there are also no grounds to refer to the Convention provisions which would have been undoubtedly applicable without the Accused's statement waiving his rights.

62. The foregoing is also supported with Exhibits T-81 and T-82, or the diplomatic note in response to the inquiry of the BiH's Chief Prosecutor sent to the US Ministry of Justice regarding the extradition of the accused Edin Džeko to Bosnia and Herzegovina. As it ensues from the referenced response, the inquiry was sent with the view to determining the options, or possible obstacles for prosecuting the Accused for the crimes he had allegedly committed in Donja Jablanica in September 1993, which obviously were not covered by the request for his extradition. The referenced document stated the following:

"Considering that Mr. Džeko has waived all his rights, he was not transferred in custody of Bosnia and Herzegovina pursuant to the Extradition Agreement, but rather pursuant to his consent. We have consulted the US Foreign Ministry and agreed that, in such a situation, the principle of specificity, provided for in Article VIII of the Extradition Agreement, would not apply. We believe that, in this case, the Extradition Agreement does not prevent Bosnia and Herzegovina from prosecuting Mr. Džeko for the criminal offenses allegedly committed in Donja Jablanica in September 1993."

63. In view of the foregoing, the Appellate Panel has concluded that Counsel's objection concerning the unlawfulness of both the Accused's extradition from the USA and the entire proceedings conducted and pending against him before the BiH judiciary is ill-founded.

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<sup>2</sup> See Exhibits T-77 through T-82.

<sup>3</sup> Exhibits T-77 and T-78.

64. Counsel further pointed to a violation of Article 123(2) of the CPC BiH. The Appellate Panel has concluded that, during the proceedings and during the period the Accused spent in custody, the justifiability of custody, as the most stringent measure, was reviewed within the statutory deadlines, and the Accused was kept in custody as long as both general and particular custody grounds existed. The fact itself that the Accused consented to extradition does not preclude a possibility of ordering him into custody. In such cases, if the Prosecution filed a custody motion, as it was done in the concrete case, the justifiability of the motion is being evaluated in relation to all the circumstances of the concrete case.

65. Ultimately, the Appellate Panel has concluded, in relation to the complaint of essential violation of the criminal procedure principle, that not only that Counsel's appeal unreasonably indicated that the Trial Panel had violated the referenced CPC provisions, but particularly that it did not explain how would such optional violations, had they been made by the Trial Panel, affect or could have affected rendering a proper and lawful verdict that is being contested.

66. Counsel's appeal saw a violation of Article 2 of the CPC BiH, resulting in a violation of the criminal procedure provisions under Article 297(2) of the CPC BiH, also in the fact that Mato Zeko, BiH Presidency's employee, was involved in the investigation. According to Counsel, the principles of independence and impartiality in performing the prosecutorial duty (Article 2 of the Law on the BiH Prosecutor's Office and Article 5 of the Rules on Internal Organization of the BiH Prosecutor's Office), as well as the principle of lawfulness provided for in Article 2 of the CPC BiH and Article 6 of the ECHR, were violated by including Mato Zeko in the Prosecution's investigation. Therefore, the evidence obtained with the participation of Mato Zeko is unlawful evidence.

67. The Defense correlated the referenced objection with the violation of Article 297(1)(i) of the CPC BiH, that is, it argued that the Verdict was based on the unlawful evidence. However, the Appellate Panel has first noted that this form of absolutely essential violation of the criminal procedure provisions in relation to the complaint reasoned in the above referenced way cannot be discussed at all because Counsel suggested no concrete piece of evidence whatsoever that was unlawfully obtained and on which no verdict could be based pursuant to the provisions of the CPC BiH.

68. This Panel has also considered the complaint advanced in the context of relatively essential violation of the criminal procedure provisions under Article 297(2) of the CPC

BiH, as suggested by the appeal, and concluded it is ill-founded in that context too. Even if it were accepted as proved that one Mato Zeko, employee of the BiH Presidency, was involved in the Prosecution's investigation, about which the Defense tendered evidence in the case record, that thereby the principles of independence and impartiality of the prosecutorial function were violated, and that such an act was in violation of Article 2 of the CPC BiH because only the prosecutor is authorized to conduct the investigation, and authorized official persons may be authorized to conduct certain investigative actions, and that Mato Zeko cannot be considered as an authorized official person. In considering the justifiability of the referenced complaint, this Panel has taken into account that, not only that the Defense did not specify the evidence allegedly obtained with the participation of Mato Zeko, but they particularly did not explain that the Verdict is based on this evidence, and that the foregoing affected the rendering of a proper and lawful verdict, as properly noted by the Trial Panel in the contested Verdict. In this regard, the Defense unreasonably argued that, having so concluded, the Trial Panel unjustifiably shifted the burden of proof onto the Defense, because each party to the proceedings, should it have reasons to consider any piece of evidence unlawful, must specify such averment primarily by presenting such piece of evidence and explaining the reasons for considering such evidence unlawful. The Defense in the concrete case failed to do so.

69. Therefore, this Panel has concluded that the appellate complaint, pointing to an essential violation of the criminal procedure provisions, is ill-founded too.

**B. APPELLATE COMPLAINT UNDER ARTICLE 299 OF THE CPC BIH-  
INCORRECTLY OR INCOMPLETELY ESTABLISHED FACTS**

**1. Appellate complaints of the Prosecution**

70. The Prosecution's appeal, filed on the grounds of incorrectly or incompletely established facts, contests the Trial Verdict both in its convicting and acquitting parts. However, for the purpose of taking a systematic approach, this part will only address the Prosecution's complaints relating to the convicting part of the Trial Verdict, while the Prosecution's complaints relating to the acquittal will be dealt with in a separate section of this Verdict.

(a) Section 1 of the Enacting Clause of the Convicting Part of the Trial Verdict

71. The Prosecution's appeal argued that the state of facts in the contested Verdict was incompletely established because the Trial Panel deleted from the factual description of Section 1 of the enacting clause of the Verdict a part of the factual description contained in the Prosecution's Indictment, namely the words "*within the Headquarters of the Supreme Command of the ARBiH*", and thereby failed to establish that the accused Edin Džeko was a member of the *Zulfikar* Special Purposes Detachment within the Headquarters of the Supreme Command (SPD HSC). The Trial Panel found that the referenced fact was irrelevant, and that it was established beyond a doubt that the referenced unit, whose member was the accused Džeko, was active within the forces of one party to the proceedings, specifically the ARBiH. Unlike the Trial Panel, the Prosecution argued it was important to establish, from the managing and commanding aspect, that the accused Džeko was a member of the unit that performed its activities as the *Zulfikar* SPD HSC until 5 October 1993, namely which formed no part of the IV Corps, but existed independently.

72. In relation to this count of the Indictment, the Prosecution further argued that the state of facts was still incompletely established also because the Trial Panel deleted from the factual description the words "in a well prepared" and "taking no account of the difference between the civilian and military targets", all because it found that the referenced parts of the factual description were irrelevant considering it was established that the Accused's status was that of an ordinary soldier.

73. The Appellate Panel's view is that the grounds for the Prosecution's conclusion, that the referenced facts are decisive by nature, remain unclear even after advancing the referenced complaints. This is so particularly bearing in mind that the accused Edin Džeko was not even charged with having any managerial or commanding function, but rather with directly participating in the summary execution of the persons identified in Section 1 of the enacting clause of the Verdict. With this in mind, and considering the charges against the accused Edin Džeko under this Count of the Indictment, the Trial Panel properly concluded that the facts of whether the unit of which the accused Džeko was a member was subordinated to any, or to which specific unit of the Army BiH, whether the attack in which he participated was prepared, or whether civilian targets were discerned from military ones in this attack, are irrelevant for the existence of the criminal offense and the Accused's criminal liability. For the foregoing reasons, the Appellate Panel has concluded that these

complaints are ill-founded

(b) Section 2 of the Enacting Clause of the Convicting Part of the Trial Verdict

74. The Prosecution argues that the Trial Panel's finding of the state of facts relating to Section 2 of the convicting part of the Verdict was also incorrect because the name of Kata (daughter of Ivan) Drljo, born in 1932, was omitted from the factual description. The Prosecution argued that Witness X testified he had eye-witnessed the murder of Kata (daughter of Ivan) Drljo, born in 1932. In this regard, the Trial Panel properly found, contrary to the Defense's averment that he was not present in Trusina on 16 April 1993, that *"it would be unclear why would anyone describe his own participation in an action together with soldiers suspected of the commission of war crimes, unless he himself indeed participated in that very action"*. The referenced witness described the murder of the old lady Drljo, and Witness S also testified about it. The Prosecution therefore argued it was proved beyond a doubt that the accused Edin Džeko committed this murder too, which is why the state of facts in the contested Verdict, in Section 2 of the convicting part thereof, was incorrectly established.

75. Contrary to the foregoing Prosecution's complaint, the Appellate Panel has concluded that the state of facts in the Verdict in relation to Section 2 of the enacting clause, and in the part contested by the referenced complaint, was properly established. Specifically, after analyzing the testimonies of the heard witnesses, who had provided information about the killings in the village of Trusina, described in this Section of the convicting part of the Verdict, including the testimonies of Witness X and Witness S, particularly indicated in the appeal, the Appellate Panel has also concluded, like the Trial Panel, that there still exists a significant degree of suspicion regarding the fact that the accused Edin Džeko also killed the old lady Kata Drljo too. Truly, Witness X indeed described the killing of the old woman and identified the accused Džeko as a perpetrator of this murder. His testimony in this part, however, is not corroborated with any other pieces of evidence, not even with the testimony of Witness R, with whom he had stood together and watched the referenced killing. Describing the events in Trusina, Witness R did not mention that the accused Džeko had killed a woman, but only that he killed a woman and a man together (of which the Accused was found guilty). Since the other witnesses heard regarding the killings described in this Section of the enacting clause could only confirm that old woman Kata Drljo was killed on the referenced day, which was uncontested by

the Accused's Defense itself, this Panel has concluded, like the Trial Panel, contrary to the Prosecution's submission, that it cannot be established beyond a doubt, on the grounds of the quantum of evidence available to the Trial Panel and its quality, that the Accused indeed committed the referenced killing. Therefore, the Trial Panel properly omitted the name of the injured party Kata Drljo, born in 1932, from the factual description of Section 2 of the enacting clause of the Verdict.

## **2. Appeal by Counsel for the accused Edin Džeko**

### **(a) Section 1 of the Enacting Clause of the Convicting Part of the Verdict**

76. According to Counsel's appeal, the state of facts relating to Section 1 of the convicting part of the Verdict was incorrectly established because of: a) an absolute impossibility that the Accused was present in the hamlet of Gaj at the time when the critical incident occurred; b) the Accused was continually present with the wounded co-combatants from the moment they sustained injuries until their arrival in Suhodol (non-acceptance of the Accused's alibi); c) the other circumstances undetermined by the Court, which would further indicate that the Accused could not have been present in Gaj during the summary execution, and 4) other examples of systematic incorrect or incomplete establishment of facts. In relation to this section of the enacting clause of the convicting part of the Verdict, the Defense's appellate complaint essentially aims at contesting the Trial Panel's conclusion that, participating in the transportation of his wounded co-combatants during a part of the transportation, or until they reached the Gostovići medical station, the Accused arrived in the hamlet of Gaj in time to participate in the execution. In other words, the Defense's complaint was aimed at proving that the Trial Panel's conclusion not to accept the Accused's alibi was improper (through which the Defense was proving that the Accused accompanied the wounded members of his unit all the time, from the moment they were wounded until they reached the Suhodol infirmary).

77. The Defense's appeal stated that, according to the contested Verdict, the Trial Panel accepted the Defense's submissions that, immediately after his two co-combatants had been wounded, the Accused transported them to the medical station in Gostovići, where they received first aid, and did not accept that the Accused further participated in the transportation of the wounded, but concluded that the Accused went to the hamlet of Gaj

and took part in the critical incident. Counsel argued that, in order to construct such a sequence of events in this way, the Trial Panel had to determine that such a sequence was possible in terms of time. This appears to be a decisive fact the Trial Panel failed to determine. Counsel explained such a theory examining in detail the testimonies of the witnesses who testified about the period of time required to cross certain distances (from the site where soldiers were wounded to the Gostovići infirmary, and from Gostovići to the hamlet of Gaj), as well as to carry out certain actions (dressing the wounds of the wounded soldiers). Counsel also examined the evidence of the witnesses who testified about the time-frames when certain events occurred, the wounding and execution of the HVO soldiers. As a result, Counsel concluded it was impossible that the Accused could have reached the hamlet of Gaj in time to take part in the execution if he only drove the wounded to the Gostovići infirmary where their wounds were dressed.

78. The Appellate Panel has analyzed the referenced appellate complaints and the reasons of the contested Verdict in this context, and concluded that, in establishing the decisive facts relating to the charges described in Section 1 of the enacting clause of the convicting part of the Verdict of which the accused Džeko was found guilty, the Trial Panel analyzed in detail all the circumstances important for the incident at issue, namely the ones that preceded the execution itself, those relating to the attack on the village of Trusina, the wounding of two members of the *Zulfikar* SPD HSC and their transportation to the infirmary for providing them with first aid, and thereupon to a farther medical station for a full medical treatment, the fact of the execution itself based on the testimonies of eye-witnesses to this incident, and ultimately, the circumstances relating to the Accused's alibi. On the basis of such a detailed analysis of evidence on the foregoing circumstances, the Trial Panel concluded that the Accused's alibi, pursuant to which he could not have taken part in the execution of the captured HVO soldiers, could not be given credence, and that on the basis of the adduced evidence, the Prosecution proved beyond a doubt that the Accused indeed committed the acts charged against him under this Count of the Indictment.

79. The appeal filed by the Accused's Counsel mostly addresses the periods of time the Accused needed to transport the wounded to the Gostovići infirmary, particularly considering the fact that, during this transport, the vehicle driven by the Accused and by which the wounded were transported "skidded" off the road. This was determined beyond a doubt on the basis of the witnesses' testimonies. According to Counsel, the time needed

to return the vehicle back on the road, the time needed to dress the wounds of the wounded, and the time the Accused needed to return to the hamlet of Gaj, point that it was, in fact, impossible for the Accused to reach the hamlet of Gaj so as to participate in the execution described in Section 1 of the enacting clause of the Verdict.

80. It ensues from the reasoning of the contested Verdict that, analyzing the testimonies of witnesses U, Ramiz Bećiri, Rasema Handanović, E, J-4 and M, the Trial Panel found beyond a doubt that, after two members of the *Zulfikar* SPD HSC ARBiH, witnesses U and Samir (Samko) Šemsović had been wounded, and after Ramiz Bećiri had dragged them out of the site, away “from the fire”, the accused Džeko drove a vehicle, by which he and witness C transported these wounded soldiers to an improvised medical station, where veterinarian Atif Karović provided the wounded with first aid.

81. It was established beyond a doubt, on the basis of the evidence given by witnesses Ramiz Bećiri, Redžo Poturović and Mustafa Hakalović, the testimony of the accused Edin Džeko, and the testimony of witness Rasema Handanović, whom the accused Džeko had told about the incident at issue, that at one point, prior to arriving at the improvised medical station in Gostovići, the vehicle transporting the wounded skidded off the road, and that because of this incident they had to take the wounded out of the vehicle.

82. The Trial Panel, however, did not find proved that, after the wounded had received first aid, the Accused further participated in their transportation, and drove them to the Suhodol hospital, or that he carried them at certain stages along the way. The Trial Panel did not accept the Accused’s alibi in this part, and this issue will be dealt with separately, considering that this specific complaint of the Defense points to the incorrectly and incompletely established state of facts. This Panel will now analyze Counsel’s objections pointing that it was impossible, in fact, that the Accused returned to the hamlet of Gaj to take part in the execution of 6 captured HVO soldiers, even if it was accepted that he took no part in further transportation of the wounded to the Suhodol medical station, once their wounds had been dressed by veterinarian Atif Karović.

83. In this regard, Counsel pointed to the testimonies of the witnesses who testified about the period of time elapsed since the moment when two members of the *Zulfikar* SPD were wounded until their transportation to the improvised medical station in Gostovići, which most of the heard witnesses limited to around 15 minutes. This Panel has concluded, however, that the Trial Panel’s finding was erroneously interpreted by the

Defense when it argued this was undisputable, namely that the Court's conclusions showed that the Accused was in Gostovići when the wounded received first aid, which lasted for around 15-20 minutes. In this Panel's view, para. 198 of the Verdict, which is incorrectly interpreted by Counsel above, showed it was found beyond a doubt that the Accused drove the two wounded soldiers of the *Zulfikar* SPD HSC ARBiH by a vehicle to the improvised medical station in Gostovići, where they received first aid, but it certainly did not conclude that the Accused was present during the period when his wounded co-combatants were receiving this aid.

84. Upon evaluating and examining the evidence of the witnesses who testified about the fact that, even after he had brought them to the medical station, the Accused was present during the time when the wounded received first aid, this Panel too could not draw such a conclusion beyond a doubt. Witness C, who had together with the Accused brought the wounded members of the unit to the improvised medical station, could not confirm beyond a doubt that the accused Džeko was present while veterinarian Atif Karović dressed the wounds of his injured co-combatants. On the contrary, Witness C stated that "he (the Accused) was supposed to be there...*he thought he was there, but he did not look carefully....*". Atif Karović himself could not confirm the foregoing. He stated that "*after he had dressed the wounds, soldiers came in to carry the wounded further away*". Thus, he did not confirm that anyone was present while he provided the wounded with first aid, and in particular, he could not confirm that the accused Džeko was present there. As to the eye-witnesses and actors in the incident at issue, this Panel has concluded, like the Trial Panel, that their testimonies are objective and relevant, and can be given credence in their referenced parts, unlike the testimonies of the Defense's witnesses Redžo Poturović, Mustafa Hakalović and Muharem Hakalović, who had obviously testified exclusively with the aim to confirm the Accused's alibi, which were thus properly evaluated as unconvincing and biased. The foregoing will be further explained in detail in the reasoning itself.

85. In the context of time-frames, the Defense's appeal further suggested, in terms of time, it was allegedly impossible for the Accused, even if after the wounded received first aid he indeed headed off towards the hamlet of Gaj where the execution took place, to arrive there in time to take part in the critical incident. In this regard, the Defense pointed to the evidence of witnesses E, X and M given with regard to the time elapsed between the moment when the members of the Army RBiH were wounded and the moment when

members of the HVO were executed. These witnesses testified that this was a period of between 15 minutes and a half an hour. The Accused's Defense argued that this just confirmed their assertion that the Accused drove the wounded persons to the medical station after they had been wounded, as established beyond a doubt, that his vehicle skidded off the road and thereupon participated in dragging the wounded out from the vehicle, and that he did not have sufficient time to return from the improvised medical station to the hamlet of Gaj within this half an hour maximum, which according to the referenced witnesses' testimony elapsed between the moment of wounding and the acts of execution itself.

86. The Panel has held that, by the foregoing complaint, the Defense disregarded a decisive fact. The Prosecution's Indictment set up the time-frame for this count by stating that the referenced incident occurred "*in the morning hours of 16 April 1993*". The Trial Panel's Verdict accepted this time-frame as proved, accurate and sufficiently definable. Counsel's appeal stated that the Trial Panel examined the evidence of the witnesses who testified about the duration of time elapsed between the moment when members of their unit had been wounded and the moment the captured HVO members were executed. Despite the foregoing, the Trial Panel found, nowhere in the Verdict, that the execution took place no sooner than a half an hour after members of the *Zulfikar* SPD ARBiH were wounded, as Counsel's appeal erroneously interpreted. The Trial Panel's Verdict even mentioned the evidence of witness Cecilija Šimunović and Witness R, who testified that the captured members of the HVO had been executed some time "around noon". Therefore, with such a definition of time-frame within which the acts charged against the Accused were committed, any emphasis of the accurate time the Accused needed to reach the execution site suggests that such an approach to setting-up the Accused's alibi is ill-founded.

87. Contrary to Counsel's complaint, this Panel has concluded that the proper establishment of the state of facts in the contested Verdict was not brought into question by the fact that the Trial Panel did not accurately determine the time when the referenced incident took place. This is so because the Trial Panel found proved that the incident had occurred in the morning hours of the critical day, as the Prosecution's Indictment indicated. Having evaluated mutually consistent and corroborative evidence of a number of witnesses, eye-witnesses to, or actors in the incident at issue, including those who were together with the Accused present both during the incident related to the wounding of their

two co-combatants and the incident when the lined-up members of the HVO were executed (witnesses Rasema Handanović, R, E, and J-4), the Trial Panel found proved, beyond a reasonable doubt, that the Accused stood in the firing squad and participated in the act of execution itself. Therefore, all other circumstances analyzed in the Defense's appeal, relating to the time-frames needed for crossing certain distances, were properly not found to be decisive facts.

88. In this regard, the appellate complaints related to the need to determine the accurate distance (between the execution site in Gaj and the improvised medical station in Gostovići), and the time needed to cross this distance during a state of war are irrelevant from the aspect of properly established state of facts under Section 1 of the enacting clause of the convicting part of the Verdict. The Defense made efforts to prove the foregoing circumstances on the basis of the Finding and Opinion of expert witness Almir Šahinović, land survey technician, on which basis Damir Gogić, Major in the BiH Armed Forces, evaluated the time needed to cross the relevant distance. The Appellate Panel has first held that, by its character, the referenced evidence attached to the appeal is not *novum*, or new evidence which could not be presented at the main trial despite due diligence and caution. In presenting the alibi-based defense, Counsel could have proposed such expert evaluation and presented this evidence in the first instance proceedings, but they failed to do so. Considering the formalities of the criminal proceedings, it is too late for taking such an action at this stage. Also, the referenced evidence would be irrelevant for determining the decisive facts, considering the earlier explanation provided in paras. 86-88 of the Verdict. Therefore, the Appellate Panel has concluded that Counsel's complaints, that the state of facts was incorrectly and incompletely established due to the failure to determine, in an expert analysis, the time needed to cross the distance between the Ilić's house in Gostovići (improvised medical station) and Gaj (the execution site) in a combat situation, are ill-founded, and therefore dismissed them as such.

89. The Accused's Counsel further argued that the facts were incorrectly established also because the Trial Panel did not accept the Accused's alibi that during the whole period of time (from the moment when the wounded members of the *Zulfikar* SPD ARBiH were put in the car brought there by the Accused for their transportation until the moment when they reached the medical station in Suhodol, which means even after they received first aid from veterinarian Atif Karović at the improvised medical station in the village of

Gostovići), the Accused participated in the transportation of the wounded and escorted them along the whole way. The Defense made efforts to prove such Accused's alibi through the testimonies of witnesses Mustafa Hakalović and Muharem Hakalović. These witnesses testified with regard to the transportation of the wounded, and remembered the accused Edin Džeko as one of the two soldiers who had, together with them, participated in the transportation of wounded from the improvised medical station in Gostovići to the medical station in Suhodol. Also, witness Redžo Poturović, who despite being unable to identify the soldiers-participants in the transportation of the wounded towards Buturović Polje, testified that "Zuka's soldiers" too participated in this action.

90. Like the Trial Panel, the Appellate Panel does not hold that such Accused's alibi is sufficiently convincing to the extent to which it could be given credence, and which would in any way bring into suspicion such a proper factual finding, contrary to the testimonies of the witnesses who consistently, convincingly and in a mutually harmonized way positioned the Accused in the firing squad in the place of Gaj, and identified him as one of members of Zuka's unit who took part in the execution of the captured members of the HVO.

91. The Appellate Panel has evaluated the referenced appellate complaints, and upheld the Trial Panel's finding that witnesses Mustafa Hakalović and Muharem Hakalović were unconvincing and arbitrary when they confirmed that, all the time along the way, the accused Džeko accompanied the wounded members of this unit, more specifically, that he participated in their transportation together with them. In support of this evaluation goes the fact that these witnesses had not known the accused Džeko from before, but rather, as they themselves testified, remembered him because Samko, one of the wounded men who subsequently died, had called the Accused by his name begging him not to leave him there.

92. Samko was severely wounded in his abdomen, as a result of which he subsequently died. The Panel has noted it was very likely and certain that Samko, talking deliriously, also called out the name of his good friend, who was at his side during the first stage of transportation, just after he had been wounded, as determined beyond a doubt. This Panel finds particularly illogical the testimony of Witness C. This witness testified that the accused Džeko accompanied the wounded and that he remembered him because he had allegedly "avoided" carrying the wounded. Such testimony of his is contrary to the testimonies of the witnesses Mustafa Hakalović and Muharem Hakalović. These witnesses allegedly remembered the accused Džeko as a person who had been continuously

present during the transportation of the wounded. The relationship between the accused Džeko and wounded Samko (good friends) suggests the conclusion that the Accused would not “avoid” carrying his severely wounded, good friend. Contrary to Counsel’s objection, witness C could not confirm with certainty that the accused Džeko participated in the further transportation of the wounded, just as he could not confirm that he was present during the wounds dressing. Instead, witness C at one point stated with regard to the foregoing that the Accused was present there. However, responding to the subsequently posed questions, witness C brought this fact into suspicion suggesting it was possible that the Accused was present there, or that he was supposed to be present there.

93. Therefore, considering the time elapsed since the referenced incident, the instability of human perception and the traumatic nature of the event itself, there is a real possibility that the persons, participants in the transportation of the wounded who had to pay full attention to the wounded, got confused about certain stages of the transportation, and thought that the Accused also participated in the transportation of the wounded at the stage where, in fact, he was not present at all, with no direct intention to testify falsely. This fact was, in the Panel’s view, also properly evaluated by the Trial Panel. Specifically, contrary to such uncertain and unconvincing evidence of the referenced witnesses, there are reliable and convincing testimonies of the witnesses who have positioned the Accused at another location – the execution site in the hamlet of Gaj.

94. Having so concluded, this Panel also reviewed Counsel’s complaints indicating that credence was given to the unreliable witnesses (Rasema Handanović, R, E, J-4 and X) regarding the fact that the Accused committed the criminal acts of which he was found guilty under Section 1 of the enacting clause of the Verdict, contrary to the above analyzed alibi evidence. Therefore, the state of facts in the contested Verdict was incorrectly established. This appellate complaint of the Defense pointed to a motive the referenced witnesses could have, that is, to incriminate the Accused with the criminal offenses they had committed themselves, which generally suggested these witnesses were unreliable.

95. Counsel’s appeal stated that witness X testified that he did not see the Accused in the hamlet of Gaj when the critical incident, described in Section 1 of the enacting clause, occurred. Therefore, in proving the referenced charges, the Trial Panel could not refer to the evidence of witness X.

96. Counsel’s appeal stated that the evidence witness J-4 gave at the main trial was

unreliable because, contrary to the Trial Panel's finding, it directly contradicts the statement he had given during the investigation, namely that he was not certain if the accused Džeko had fired, or even that he had been at all present in the hamlet of Gaj during the critical incident described in this section. In addition, Counsel contested witness J-4's credibility and argued that, during the attack on the village of Trusina, he had committed a number of criminal acts, and therefore had a motive to falsely testify against the accused Džeko.

97. The Trial Panel's finding, that the charges described in this section of the enacting clause were proved, was also based on the testimony of witness E. Contrary to this, Counsel argued that this witness's testimony was not consistent, convincing and harmonized with the other witnesses' testimonies because, unlike all the other witnesses, witness E testified differently about the decisive facts concerning the wounding itself, the transportation of the wounded members of the unit, and the act of execution itself. Specifically, Counsel argued that witness E stated that the wounded person Samko was placed on the vehicle engine cover, that they drove the car in reverse, that in Gostovići Samko was leaned straight against the wall in his stretcher, that the Accused transported the wounded from Gostovići by a medical corps vehicle. Ultimately, regarding the act of execution itself of the captured members of the HVO in the hamlet of Gaj, this witness testified at the main trial that the Accused was present in the firing squad. In his statement given during the investigation, witness E stated that the captured members of the HVO were in the hamlet of Gaj "*killed by Džoni who fired in rounds to retaliate for Samko's wounds...*". The Trial Panel arbitrarily interpreted this witness's statement and incorrectly quoted it by stating that the captured soldiers were shot "*...also by Džoni*", implying that Džoni had not done it alone.

98. The Defense also argued that, contrary to the Trial Panel's finding, witness R was also motivated to falsely testify against the accused Džeko, for he had himself participated in the commission of the crimes at issue. In addition, this person had alcohol-related problems, and he stated that he had mixed up the events from Trusina with some other events. According to the Defense, all the foregoing suggests that witness R's testimony was unreliable.

99. Ultimately, the Defense argued that witness Rasema Handanović was an insincere and unreliable witness, who had had a key role in the execution of the captured HVO members in Gaj, and who herself participated in the commission of a number

of the committed crimes, about which she had already provided false information (to the relevant US bodies), in order to ensure benefits for herself. Specifically, the appeal stated that the Trial Panel erroneously interpreted the Defense's arguments, because the Defense had never argued that witness Handanović was unreliable only because of the fact that she had entered a Plea Agreement with the Prosecution. As opposed to such Trial Panel's view (which "remained blind" when it comes to all the circumstances and the facts indicated by the Defense in contesting the referenced witness's credibility, and solely analyzed whether the verdict could be based on her testimony considering the existing Plea Agreement), Counsel pointed to all other issues which render her testimony unreliable. The appeal stated that, even though the fact that witness Handanović entered the Plea Agreement poses no obstacle to base the verdict on her testimony, and even though it is not a single testimony on which the convicting Verdict was based, which would also be in violation of the right to a fair trial pursuant to the view of the Constitutional Court of BiH, the Trial Panel should have considered that the witnesses, whose testimonies corroborated the witness Handanović's testimony, also participated in the critical incident, and that, as such, they were motivated to give false evidence. In addition to witness Handanović's personal characteristics and her involvement in the incriminating acts, all the foregoing suggests that her testimony lacks credibility and reliability, as opposed to the clear, consistent, logical and convincing testimonies of the Defense's witnesses proving that, at the time when the critical incident occurred, the Accused was far away from Gaj accompanying the wounded. Therefore, all the foregoing suggests that, in relation to section 1 of the enacting clause of the Verdict, the state of facts in the contested Verdict was incorrectly established.

100. Contrary to the complaints of the Accused's Counsel, the Appellate Panel has also concluded, like the Trial Panel, that the testimonies of witnesses Rasema Handanović, E, M, J-4 and X are mutually consistent regarding the decisive facts, and that, when analyzed individually and in combination, the conclusion on which the Accused's Defense insists, namely that these witnesses had deliberately shifted the blame for the incriminating events onto the Accused, cannot be drawn. Among the witnesses heard with regard to this fact, witness Rasema Handanović entered the Plea Agreement exactly in relation to the referenced charges and thereby admitted her participation in the execution of the captured men. Witness Handanović testified about this fact, described the referenced incident, and identified other members of the unit who had, along with her, stood in the firing squad. Thus she identified the accused Džeko, Nedžad Hodžić, one Popara and Orhan as the

persons who had participated in the execution along with her. Even though they were not actors in the incident at issue but rather its indirect observers, the other witnesses, namely witnesses E, J-4 and R, watched the act of execution from the immediate vicinity, and thus identically described the execution of the captured men in relation to the decisive facts. From among 5-6 members of the *Zulfikar* SPD ARBiH, all these witnesses, with no exception, identified Rasema Handanović, Nedžad Hodžić and the accused Džeko as the perpetrators of this act. All these witnesses further testified that the incident itself occurred very fast, that the men were lined up against an underpinned wall, and that after Nedžad had shouted “firing squad” (according to witness Handanović), or “kill them” (as witness J-4 testified), one of the captives started running, and the persons lined up in the firing squad started shooting and killed all the 6 men.

101. According to the Appellate Panel, the foregoing testimonies are mutually consistent regarding the decisive facts, and all the heard witnesses, with no exception, identified the accused Džeko as a person who stood in the firing squad and carried out the execution. Like the Trial Panel, this Panel too concluded that the foregoing testimonies are reliable, sincere, and can be fully credited. According to this Panel, Counsel’s appellate complaints did not bring into doubt the reliability of the referenced testimonies. This Panel considers unconvincing the Defense’s objection that all the referenced witnesses had intentionally shifted the blame for the incident at issue onto the accused Džeko. Witness Handanović, who had pled guilty by entering the Plea Agreement, could hardly have any motive to falsely charge anyone because she has been already serving her prison sentence. This Panel further holds that an issue arises as to why would other three eye-witnesses to the critical incident, in addition to witness Handanović, have any motive to put the blame for the referenced crime exactly on the accused Džeko, rather than on some other members of their unit or some other units that had also taken part in the attack on the village of Trusina on the critical day. Specifically, Counsel’s appeal did not state why witness Handanović, or any other heard witnesses, would be motivated to put the blame exactly on the accused Džeko for the execution of the captured men if he had not carried it out.

102. This Panel has held that the credibility of witness Rasema Handanović’s evidence was not brought into question by the testimony of witness Fata Kozić either. With regard to this fact, the Defense enclosed with the appeal a part of the transcript of the referenced witness’s evidence given in the case of *Mensur Memić*. Witness Kozić testified about the subsequent events, after the unit’s return to Parsovići following the action in Trusina, about

the moment when the wounded members of the unit had arrived, and were subsequently transported further away. This Panel has concluded that witness Kozić's testimony had in no way whatsoever affected the properly established state of facts relating to the incident in the hamlet of Gaj, of which the accused Džeko was found guilty.

103. This Panel has concluded that the Trial Panel did not draw the conclusion on the Accused's guilt based on witness X's testimony, as the Defense objected, because this witness was neither an eye-witness to the act of execution, nor did he mention at all that he had in any way learned that the Accused was an actor in the incident at issue. The Trial Panel found that the Defense's argument, that witness X was not generally present in the place of Gaj, was ill-founded, and provided convincing reasons with regard to this fact. This Panel has upheld the foregoing finding since, as noted in the contested Verdict, it would be illogical that any witness described his/her participation in an action together with persons suspected of war crimes commission if he/she had taken no part in the action at all. However, even such circumstances were not of decisive importance for the contested decision because the witness could not confirm that the accused Džeko participated in the attack on Trusina and in the execution of 6 captured members of the HVO. Therefore, his testimony is important, in fact, only for the purpose of determining the general context of the incident at issue.

104. In relation to each witness individually, the Defense addressed all other facts concerning their personality features, alcohol addictions, the lack of discipline in the unit, and the fact that they themselves committed various crimes. Like the Trial Panel, this Panel too has concluded that these facts relating to their personal characteristics in the concrete case, the existent several mutually consistent testimonies of the witnesses concerning the decisive fact that the accused Džeko stood in the firing squad and carried out the execution described in Section 1 of the enacting clause of the Verdict, and the objection of the possible motive of these witnesses to falsely put blame on the Accused were not found proved, and that, contrary to the appellate complaints, they do not bring into question the reliability of their evidence regarding the decisive facts pertaining to the charges at issue.

105. Counsel argued that the Trial Panel erroneously interpreted witness E's testimony, that the Trial Panel had adjusted the referenced witness's testimony to the needs of the convicting verdict, and arbitrarily added the conjunction "too" in front of Džoni's name, even though the witness stated that "*to retaliate for Samko's severe wounding*

...*Džoni killed those soldiers firing a burst of fire*”, and thereby presented it as if Džoni did not do this alone. The Appellate Panel concluded that witness E’s testimony did not show that Džoni did it alone. In this Panel’s view, the Defense took the referenced sentence out of the context of this witness’s testimony. If his testimony is analyzed in its entirety, including the cross-examination to which Counsel referred, witness E in fact confirmed his earlier testimonies where he stated that he had watched “*Džoni firing, Džeko, Zolja and others firing...*”. Such a testimony of his is consistent with and supported by the testimonies of all other witnesses. The testimony of witness Milka Drljo, who could not see the act of execution itself since she had stood behind a barn but could make her own assessment, confirmed the shooting came from a number of firearms. All the testimonies of the referenced witnesses also confirmed this fact, namely that several persons, lined up in a firing squad, carried out the execution.

106. Ultimately, the Appellate Panel deems ill-founded the Defense’s complaints pointing to “some other circumstances” the Trial Panel did not consider in rendering its verdict, which also point to the failures relating to the proper establishment of the decisive facts. According to the Defense, the Trial Panel did not explain how the Accused generally knew that members of his unit had gone to Gaj even if he had the intent to join them. The Defense disregarded the fact that many witnesses testified they had communicated via Motorolas (hand-held radios) carried by certain members of the unit, and that a number of witnesses identified exactly the Accused as a person who possessed such Motorola. Also groundless are Counsel’s complaints indicating that the act of execution occurred as a result of retaliation for Samko’s wounding, despite the Trial Panel’s finding that it was carried out spontaneously. Thus, an issue arises as to how the Accused, who had transported the wounded to the improvised medical station, knew that the execution would occur so that he wanted to participate in it, and why would he abandon his good friend and co-combatant and go to the hamlet of Gaj and participate in the execution which he could not have known would occur. In the Panel’s view, all the foregoing complaints in no way bring into doubt either the proper evaluation of the evidence by the Trial Panel, or the state of facts established in Section 1 of the enacting clause of the Verdict. For all the foregoing reasons, this Panel has concluded that the Defense’s complaints did not bring into suspicion the Trial Panel’s findings on the decisive facts related to Section 1 of the enacting clause of the Verdict. Therefore, such complaints were dismissed as ill-founded.

(b) Section 2 of the sentencing part of the Verdict

107. According to the accused Edin Džeko's Counsel, the Trial Panel also incorrectly or incompletely established the decisive facts with regard to the acts of which the accused Edin Džeko was found guilty under Section 2 of the enacting clause of the Verdict. Counsel argued that the Trial Panel erred in finding that the accused Džeko was present near the store in whose immediate vicinity the married couple Ivanković was killed, and that he killed them. The Defense argued that the finding, that the Accused was present near the store where the Ivankovičs were killed, was made on the basis of unreliable testimonies of witnesses Rasema Handanović, E, M and R (who had a motive to falsely testify against the accused Džeko), contrary to the testimony of witness Ramiz Bećiri (who stated on the record made during the investigation phase at the Prosecution, that at the critical time the accused Džeko was not present near the store, which was, according to the appeal, confirmed by the statements of witness U and J-4).

108. Regarding the Accused's presence near the store, Counsel argued that the Trial Panel improperly evaluated the statement witness Ramiz Bećiri gave during the investigation<sup>4</sup> (where he stated that he had seen the killing of an old man and old woman near the store, but that at that moment Edin Džeko was not present near the store, and thereby could not have committed the referenced murder). Contrary to the Trial Panel's erroneous finding that the accused Džeko killed the married couple Ivanković, Counsel's appeal stated that the murders were committed by witnesses Rasema Handanović and E, on whose testimonies the Trial Panel, in fact, based its finding on the accused Džeko's guilt, and who were motivated to falsely testify against the Accused as they were suspected of committing the same acts. In support of the foregoing, Counsel pointed to witness U-4's statement from the investigation where he identified witnesses Rasema Handanović as a perpetrator of the referenced killing, and also to the testimony of witness Redžo Poturović, who testified that, after the attack on the village of Trusina, witness E bragged that he had "*killed a man, that a woman came out and 'cursed his mother'*", whereupon he "*knocked out her brain...he put a barrel in her mouth and knocked out her brain*". The Defense correlated this witness's testimony with the testimony of witness Marija Miškić, daughter of the killed spouses Ivanković. This witness testified about the

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<sup>4</sup> D-O-152 Examination Record for witness Ramiz Bećiri, BiH Prosecutor's Office, No. KT-RZ-24/110 of 10 January 2012.

position in which she had found her parents after the murder. The Defense concluded that such a description of the bodies' position, as well as the injury on the head of witness's mother, confirmed they were killed by Rasema Handanović, that is, by her and witness E, as ensues from the testimony of witnesses U-4 and Redžo Poturović, rather than by the accused Džeko. The Defense explained the foregoing with the theory pursuant to which the bodies of the killed spouses should have been found in a different position, which does not match the position in which witness Marija Mikšić found them, had the murder of the Ivanković spouses been committed in the way as described by the witnesses Handanović and E. According to the Defense, this additionally suggests that the testimonies of witnesses Rasema Handanović and E are unreliable, and shows their intention to put on the accused Edin Džeko the blame for the killings they themselves committed.

109. In the Appellate Panel's view, the foregoing Defense's complaints are ill-founded.

110. The Appellate Panel has concluded that, on the basis of the consistent testimonies of the witnesses Rasema Handanović, E, M and R, the Trial Panel properly found that, at the critical time, the accused Džeko was present near the store in whose immediate vicinity the spouses Ivanković were killed. In addition to witnesses Rasema Handanović and E (who Counsel believed were directly motivated to shift the blame for the killings of the Ivanković spouses onto the accused Džeko), witnesses M and R (who had had no such motive according to the advanced appellate complaints) also testified that the Accused was present near the store at the time when the Ivanković spouses were killed. Witness M testified that, during the attack on the village of Trusina, "*Bećiri, Gale, Nedžad, Džeko, Koke*", reached together with him the store located at the far end of the village, and picked a lock (by shooting into the key-hole to open it), and that, at this moment, he heard someone shouting "*get out*", that an elderly man who was wounded in his legs, and a woman, came out, and that they heard shots. The witness subsequently saw that the man and woman had been killed. It further ensues from this witness's testimony that, at the time of killing, he was in the store and did not see who had fired the shots. However, contrary to Counsel's assertion, the witness undoubtedly identified the accused Džeko as one of the soldiers from his group, who had arrived there and who was present at the site where the killings occurred. Witness R testified that, after his arrival at the front of the store, just before the spouses Ivanković were killed, he saw there some members of his unit, including Edin Džeko. The witness further described how the Ivankovićs were killed, but since he was inside the store at the time, he could not see who actually did it. According to

this Panel, and the Trial Panel too, the testimonies of these two witnesses, independently from the testimonies of witnesses Rasema Handanović and E, confirmed beyond a doubt that the accused Džeko was present near the store at the time the critical incident occurred.

111. Contrary to the above testimonies stand the testimonies of witnesses Ramiz Bećiri, J-4 and U, to which the Defense's appeal referred, and stated they did not confirm that the accused Džeko was present near the store together with other members of the unit, at the site where the Ivanković spouses were killed. In response to the questions posed to him at the main trial about this fact, witness Bećiri stated he did not remember if the accused Džeko had been present with them near the store, that is, that he thought Džeko had not been there. Witness J-4 described their reaching the store, and stated that he had "found his soldiers" there. Truly, he did not mention that he had seen the accused Džeko at this site. This witness did not deny that Džeko was present there, but rather only stated that "*almost all (his soldiers) had gathered there*". It further ensues from witness J-4's testimony that he did not see who exactly, from among all the present, fired at the spouses who had been previously taken out of the house. Witness U did not testify about the killing of spouses Ivanković, even though the Defense referred to his testimony too. In this Panel's view, such testimonies of witnesses Bećiri and J-4 did not explicitly deny the accused Džeko's presence near the store, contrary to the Defense's complaints. Witness Bećiri stated that he "did not remember", or that "he thought" the accused Džeko was not present. Witness J-4 generally spoke about "almost all" members of the unit who had "gathered" there. The fact that the testimonies of these witnesses do not directly confirm the accused Džeko's presence near the store does not mean that they had denied this very fact. The Appellate Panel has concluded that all the foregoing does not bring into question the reliability of the mutually consistent testimonies of witnesses Rasema Handanović, E, M and R, who had confirmed, without any dilemma, the Accused's presence at the site where the spouses Ivanković had been killed.

112. The Appellate Panel has further concluded that, considering the testimonies of the heard witnesses on the whole, the Trial Panel properly found proved the Prosecution's allegation that the accused Edin Džeko killed the Ivanković spouses. Even though it is true, as the Defense's appeal stated, that the Accused was identified only by witnesses Rasema Handanović and E (whom the Defense indicated as the perpetrators of the referenced murders), the Panel has analyzed their testimonies, correlated them with the

other indirect evidence related to this fact, and concluded that they confirmed, beyond a doubt, the Prosecution's theory, namely that it was exactly the accused Edin Džeko who killed the Ivanković spouses.

113. The Appellate Panel has concluded that witnesses Rasema Handanović and E, as the eye-witnesses to the killing of Ilija and Anđa Ivanković, identically described the referenced murder. Witness Rasema Handanović stated that an older married couple had been forced out from the house by one of the members of the unit present at the site, and that the accused Džeko "*first fired at the older man, whereupon the women started crying, leaned over him, and then he shot her too*", and thereby killed them both. The woman witness testified that first "*the man*" was shot in his abdomen and chest, and assumed that the old woman was shot in her back because she had "*leaned over the man*".

114. Describing the referenced murder, witness E stated that the accused Džeko had forced the injured party Ilija Ivanković in front of the door, threw him on the ground and shot him. Thereupon a woman rushed out from the house, started screaming and "*lied down over the man, on her knees, over him...*", saying "*my Ilija, my Ilija...*". Thereupon the accused Džeko approached her, stood over her head, telling her "shut up, don't shout, etc." and shot her in her head".

115. Witnesses M and R, who were also present near the store, as found by the Trial Panel, did not see the act of murder itself. However, witness U-4, another eye-witness to the referenced murder, was heard at the trial. Even though he could not identify the perpetrator of the murder he had watched from the distance of around 70 meters, he described the course of the murder. Like the Trial Panel, this Panel has also concluded that witness U-4's testimony corroborates the testimonies of witnesses Handanović and E. The witness identically described the critical incident regarding the decisive facts. Witness U-4 stated that first Ilija Ivanković had been killed, and thereupon his wife, Anđa Ivanković. She had started "keening", and saying "*poor me, they killed my Ilija, kill me too*", and then she was killed too. The Defense's appeal, understandably, accentuated witness U-4's statement given at the State Investigation and Protection Agency (SIPA)<sup>5</sup>. The witness stated at the time that the murder at issue had been committed by a woman soldier, so the Defense implied that the referenced murder was committed by Rasema Handanović. However, considering witness U-4's testimonies in their entirety, in addition to the

statements he gave at the BiH Prosecutor's Office<sup>6</sup>, and his evidence at the main trial<sup>7</sup>, it can be concluded that, truly, he continually mentioned a woman-soldier who had been present there. The witness, however, kept saying he was not certain if she was exactly the person who had committed the murder, but rather that there was a possibility that she fired, and possibly someone else was with her.

116. The Appellate Panel has concluded, like the Trial Panel, that even though witness U-4, who had eye-witnessed the murder of Ilija and Anđa Ivanković, could not identify the perpetrator of the murder of spouses Ivanković, he confirmed the testimonies of witnesses Rasema Handanović and E regarding the decisive facts, which were proved as reliable testimonies. Therefore, the Defense's theory, that the witnesses Handanović and E possibly had a motive to falsely put the blame on the accused Džeko, because witness Handanović killed Ilija Ivanković and subsequently witness E killed Anđa Ivanković, had no grounds also in the testimony of witness E viewed in its entirety. The Panel concluded that no piece of adduced evidence whatsoever confirmed such a theory. None of the heard witnesses confirmed with certainty that witness Handanović had fired at the spouses, and particularly, no one identified witness E as a perpetrator of the referenced murder. Considering that there were several eye-witnesses to the incident, that some other person rather than the Accused fired, and particularly that a "woman soldier" committed the murder, that is, witness Handanović who was the only woman among around 10 men present at the referenced site, some of those present would have certainly noticed this important fact. The Panel has concluded, along this line, that the Trial Panel's arguments are proper because it found, after analyzing the differences between witness U-4's statements, that this witness would have surely and undoubtedly confirmed the fact that the murder he had watched was indeed committed by a woman, had it been actually true. Considering the witness's explanations regarding the existing inconsistencies in his testimonies, which are logical and convincing, according to both this Panel and the Trial Panel, the Defense's appellate complaints related to the Prosecution's unlawful actions and the abuse of Official Note containing the first statement this witness gave to the SIPA, are ill-founded. Even though it is true that, at the main trial, the witness testified he did not remember saying certain things to the Prosecution, as the appeal stated, he consistently stood by his statement that he was not certain about who exactly had fired at the Ivanković

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<sup>5</sup> SIPA, Official Note of 19 February 2010.

<sup>6</sup> Exhibit T-108 Witness U-4 Examination Record, No. T20 0 KTRZ 0002954 12 of 14 June 2012.

spouses, more specifically, that there was a possibility that this was done by someone from the group of soldiers among whom a woman-soldier had also been present, but that he could not confirm it was exactly her. The witness stood by his assertion that he did not see who exactly fired at the Ivanković spouses.

117. The Defense argued that witnesses Handanović and E were motivated to give false evidence. The appeal remained incomplete in relation to the reason why would a group of 10 present men, members of the unit present at the site, be motivated to shift the blame exactly onto the accused Edin Džeko. The mere fact that he is tall and corpulent is not sufficiently convincing for this Panel so as to bring into doubt the reliability of the mutually consistent testimonies of witnesses Handanović and E.

118. The Appellate Panel has considered if there was any need to accept Nedžad Šahić's statement, which was verified by a notary, and enclosed with the Defense's appeal. In other words, the Appellate Panel has evaluated whether this person's hearing in the capacity of a witness, as the appeal proposed given the contents of the statement, would result in drawing a different conclusion on the decisive facts. Considering the appellate reasoning, the Appellate Panel has not brought into question the proper view of the Defense that this person's evidence in the capacity of a witness could be a new piece of evidence by its character, which despite due diligence and caution could not be presented at the main trial because the Defense learned about this witness, or the eye-witness to the incident described in Section 2 of the enacting clause of the Verdict, no sooner than the completion of main trial. However, the Appellate Panel has concluded that the referenced statement's contents, even if the witness's hearing were accepted and presented as evidence in these criminal proceedings, considered individually and in combination with the other evidence, would not result in different findings regarding the decisive facts. Even though the witness stated he had eye-witnessed the murder of the Ivanković spouses, the Panel has concluded that his statement does not bring into question the reliability of the mutually consistent testimonies of the witnesses who identified the accused Džeko as a person who had committed the referenced murders. As it ensues from the statement at issue, in support of the foregoing stands the fact that the person who had given the statement does not know the Accused at all. Therefore, an issue arises as to how he can assert that the accused Edin Džeko was a person who committed the murder he watched

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<sup>7</sup> Record from the main trial in the case No. S1 1 K 010294 12 Krl of 26 November 2013.

if he does not know at all who the accused Edin Džeko is? Specifically, identifying an alleged perpetrator of the murder only based on the fact that this person spoke with a “Sandžak-origin accent”, and whose nickname the witness allegedly learned subsequently, cannot bring into doubt the reliability of the testimonies of the witnesses who identically described the act of murder itself, and who identified the accused Edin Džeko as a perpetrator thereof.

119. In the Appellate Panel’s view, the Defense’s appellate grievances analyzing the witnesses’ evidence about the position of the Ivanković spouses’ bodies, the type of weapons with which the murder was committed and which weapon was in the possession of the Accused, suggesting that the state of facts was incorrectly established with regard to Section 2 of the enacting clause of the convicting part of the Verdict, are ill-founded.

120. Contrary to the Defense’s appellate argument, the Appellate Panel has concluded that the Trial Panel’s contested Verdict analyzed the witnesses’ evidence related to the position of bodies of the Ivanković spouses. This analysis showed that this evidence did not bring into doubt the reliability of testimonies of the witnesses who had described the referenced murders, and identified the accused Edin Džeko as a perpetrator thereof. Specifically, in addition to the eye-witnesses to the murder (Rasema Handanović, E and U-4), who testified about the way in which it occurred and about the position in which the bodies of the Ivanković spouses were found, Milka Drljo, Mara Drljo, Cecilija Šimunović and Marija Miškić also gave their evidence. However, contrary to the Defense’s submission that their evidence, particularly the evidence of witness Marija Miškić, daughter of the killed spouses Ivanković, suggests the evidence of witnesses Rasema Handanović and E were unreliable, the Appellate Panel has concluded that the reliability of the evidence of witnesses Handanović and E was not brought into question by the testimony of witness Marija Miškić.

121. As to the position of bodies of the slain Ilija and Anđa Ivanković, the Defense concluded on the basis of Marija Miškić’s and Milka Drljo’s evidence that the body of Anđa Ivanković was leaned against a corner of the house, while Ilija Ivanković’s body was inside the house. This is not in compliance with the description of the way in which the murder was committed provided by witnesses Rasema Handanović and E in their evidence. The Appellate Panel has analyzed the referenced evidence, and concluded that the Trial Panel properly evaluated the evidence of witnesses Marija Miškić and Milka Drljo, and properly found that it does not follow from their testimonies too that the bodies were outside

the house. Witness Marija Miškić explained that, when she spoke about the body “in the hallway”, she did not imply a hallway inside the house, but a sort of subsequently built passage. In addition, none of the eye-witnesses to the referenced incident, not even the witnesses the Defense referred to when proving their submissions, stated that any of the Ivanković spouses had been killed inside the house. Witness Cecilija Šimunović testified that the bodies of those killed were (found) outside the house. In this Panel’s view, the type of injury on the head of killed Anđa Ivanković, that is, the fact that “a half of her head” was missing, according to her daughter who had seen the body after 3 days, also does not bring into question the evidence of witnesses Handanović and E. This is so because they stated that the accused Džeko had fired at Anđa Ivanković’s “back”, and witness U-4 confirmed that a shot came from “behind her back”. This does not mean that a round could not hit the victim in her head and cause the damage as described by witness Marija Miškić.

122. Like the Trial Panel, this Panel does not hold either that the type of rifle the Accused possessed during the attack on the village of Trusina is a decisive fact by its character when it comes to the proper establishment of the state of facts by the Trial Panel in the contested Verdict. Several witnesses confirmed that the Accused possessed a rifle “M-16”, with a feature to fire in rounds, and that certain eye-witnesses to the murder of the Ivanković spouses testified that they had heard a short burst of fire. However, notwithstanding the type of weapon with which the Accused was issued, this Panel considers that the type of weapon with which the murder was committed is irrelevant, as it was established beyond a doubt that the Accused had killed the Ivanković spouses, and that, at the same time, neither the Prosecution nor the Defense adduced any piece of evidence to determine the type of weapon by which the lethal injuries to the aggrieved parties were caused. Even a semi-automatic rifle, with no option for firing in rounds, may create with the eye-witnesses an impression of a short burst of fire if several bullets were fired in a row. Therefore, this Panel has concluded, like the Trial Panel, that in a situation where it was established beyond a doubt, on the basis of the other pieces of evidence, that the Accused was a perpetrator of the referenced criminal offense, the issue of the type of weapon with which he was issued is not a fact that could bring into doubt the proper establishment of the state of facts in relation to this section of the enacting clause of the Verdict.

**C. APPELLATE GROUND UNDER ARTICLE 298 OF THE CPC OF BIH - VIOLATIONS  
OF THE CRIMINAL CODE**

**1. Prosecution's Appeal**

123. The Prosecution argued that, in relation to the offense that is the subject of charges in the convicting part of the contested Verdict, the Trial Panel applied the law which should not have been applied, and that therefore an essential violation of the criminal procedure provisions under Article 298(1)(d) of the CPC BiH was made. The appeal stated that the Trial Panel's contested Verdict did address the issue of application of the substantive law, but it erred in noting in this respect that "the Constitutional Court has departed from the case law of the European Court, which has held that the application of the more lenient law to the perpetrator shall be reviewed on a case-to-case basis, that the Constitutional Court of BiH clearly found in its decisions that in all cases where both laws (CC BiH and CC SFRY) provide for the same criminal offense, the CC of SFRY shall apply to the perpetrator, and since the view of the Constitutional Court of BiH is binding on the Court of BiH too, the Trial Panel found the Accused guilty pursuant to the provisions of the CC SFRY." The Prosecution argued that the Trial Panel should have essentially addressed the issue of substantive law application in relation to the accused Edin Džeko, and should have provided reasons for its finding that a particular law (the adopted CC SFRY) is in the concrete case more lenient to the perpetrator. This is so because, contrary to the Trial Panel's finding that, pursuant to the Constitutional Court's view, the application of the adopted CC SFRY is mandatory in all cases of this kind, the Prosecution maintains that such an obligation to provide reasons related to the application of substantive law also ensues from the decisions of the Constitutional Court of BiH. Specifically, the Prosecution's appeal stated that the Constitutional Court of BiH rendered a separate decision in each concrete case where the issue of application of the more lenient law was raised. In the case that the foregoing Trial Panel's note in the contested Verdict were well-founded, the Constitutional Court of BiH did not do so, but rather rendered a decision on admissibility and merits binding the Court of BiH to apply the adopted CC SRY in all cases where decisions were made pursuant to Articles 173 and 175 of the CC BiH. In view of the foregoing, the Prosecution's appeal stated that mere mentioning the provisions of the CC BiH and the ECHR is not a sufficient ground to find the Accused guilty pursuant to the

provisions of the adopted CC SFRY. This is why the Prosecution argued that, in the contested Verdict, the criminal code under Article 298(1)(d) of the CPC of BiH was violated.

124. According to the Appellate Panel, the referenced complaint is ill-founded.

125. Contrary to the Prosecution's appellate complaints, the Trial Panel's contested Verdict considered the issue of substantive law application in relation to the accused Edin Džeko, primarily starting from the principle of legality provided for in Article 3 of the CC BiH and the principle of time constraints regarding the applicability of the criminal code provided for in Article 4 of the CC BiH, Article 7(1) of the ECHR and Article 15(1) of the ICCPR. One of the fundamental principles that ensues from the referenced provisions is that the law that was in force at the time when the offense was committed (*tempus regit actum*) shall apply to the perpetrator of the criminal offense. As the Trial Panel found, this principle may be departed from only in the interest of the Accused, that is, the subsequent law may apply only if it is more lenient to the perpetrator.

126. Considering which law is more lenient to the perpetrator in the concrete case, the Trial Panel referred to the position the Constitutional Court of BiH has held in a number of cases where the Accused were found guilty of the criminal offenses provided for in both the previous law (adopted CC SFRY), and the subsequently adopted law (CC BiH), more specifically, the criminal offenses of Genocide, War Crimes against Civilians and War Crimes against Prisoners of War, and where the Constitutional Court, contrary to the Court of BiH's view, found that the adopted CC SFRY was more lenient to the perpetrator. The Prosecution's appeal properly stated that the Constitutional Court of BiH rendered no decision on admissibility and merits binding the Court of BiH to apply the adopted CC SFRY to all cases concerning the referenced criminal offenses, and that the obligation to review on a case-to case basis which law is more lenient to the perpetrator remains. However, the Prosecution's appeal unreasonably stated that the Trial Panel did not abide by this obligation. It ensues from the reasoning of the contested Verdict that the Trial Panel found that, in the concrete case, the adopted CC SFRY was more lenient to the Accused because, after the death penalty was abolished, this law provides for a more lenient punishment for the referenced criminal offenses, both regarding a minimum sentence (prison sentence for a term of at least 10 years, in relation to a minimum 5-year prison sentence prescribed under the CC SFRY), and the statutorily prescribed maximum sentences (long term imprisonment of 45 years as opposed to 15 or 20 years in

prison). For the referenced reasons, this Panel has concluded that the Trial Panel's decision regarding the application of the criminal code is proper.

**D. APPELLATE GROUND UNDER ARTICLE 300 OF THE CPC BiH - DECISION ON THE CRIMINAL SANCTION**

**1. Prosecution's Appeal**

127. The Prosecution's appeal stated that, in meting out the sentence for the accused Edin Džeko, the Trial Panel did not sufficiently evaluate all the aggravating circumstances on the part of the Accused, while at the same time, too much significance was given to the mitigating circumstances. The Prosecution's appeal thus stated that the Trial Panel did not give appropriate significance to the facts such as the age of the killed individuals, and that some of the killed persons referred to in Section 1 of the enacting clause of the Verdict were only several years older than the accused Edin Džeko, while two killed persons were old enough to be the Accused's parents. The Prosecution further argued that, even though the Trial Panel explained in the part of the contested Verdict pertaining to the decision on sentence that the way in which the crime was committed and the gravity of violation of the protected value were considered as the aggravating circumstances, it obviously disregarded the fact that the Accused participated in the killing of six captured members of the HVO, in addition to two elderly civilians, and that those killings occurred in the immediate vicinity of members of their families and neighbors.

128. The Prosecution's appeal stated that the Trial Panel considered, as the mitigating circumstances in the concrete case, the facts that at the time when he committed the offense the Accused was young (age 21), and that he is a father of two minors, but that they are not as important as the Trial Panel found them to be. This is so because the fact of the Accused's age loses its importance considering that he had spent a significant period of time at frontlines already before committing the incriminating acts at issue. In addition, the fact that the Accused is a father of two minors should not be evaluated as a mitigating circumstance considering his participation in the execution of the HVO members described in Section 1 of the enacting clause of the Verdict, including that of Željko Blažević, whose wife had stood in the immediate vicinity of the site where the

referenced incident occurred, and held their minor child in her arms.

## **2. The appeal filed by the Defense for the Accused**

129. Even though the Defense's appeal did not contest the Verdict on this appellate ground, this Panel has reviewed it from this aspect too, considering the contents of Article 308 of the CPC BiH. This Article provides as follows: "*An appeal filed in favor of the accused due to the state of the facts being erroneously or incompletely established, or due to the violation of the Criminal Code shall also contain an appeal of the decision concerning the punishment and forfeiture of the property gain.*"

## **3. Conclusion of the Appellate Panel**

130. The Appellate Panel has concluded that, in meting out individual sentences for the offenses of which the Accused was found guilty under Section 1 of the enacting clause of the Verdict (War Crimes against Prisoners of War under Article 144 of the CC SFRY, as read with Article 22 of the CC SFRY), and Section 2 of the enacting clause of the Verdict (War Crimes against Civilians under Article 142 of the CC SFRY), the Trial Panel properly evaluated all the circumstances that may affect imposing a more or less lenient sentence, including all the mitigating and aggravating circumstances, and properly fashioned the punishment for each referenced criminal offense individually.

131. The Appellate Panel has concluded, however, that the imposed compound sentence of 12 (twelve) years, as reasonably indicated in the Prosecution's appeal, is too lenient, that as such it is appropriate neither to the gravity nor the consequences of the referenced criminal offenses, and that thus the purpose of punishment cannot be achieved. In this regard, the Appellate Panel has considered the legal provisions pertaining to the fashioning of sentence for the offenses committed in concurrence, or Article 48 of the CC SFRY. The Article provides as follows: "*If one offender by one deed or several deeds has committed several criminal acts, and if he is tried for all of the acts at the same time, the court shall first assess the punishment for each of the acts, and then proceed with the determination of the integrated punishment for all the acts taken together. The court shall impose the integrated punishment by the following rules: (1)....(3) if the court has decided upon punishments of imprisonment for the combined criminal acts, the integrated punishment shall consist of an aggravation of the most severe punishment assessed,*

*but the aggravated punishment may not be as high as the total of all incurred punishments, and may not exceed a period of 15 (fifteen) years' imprisonment...".* The Appellate Panel also took into account the provision relating to the purpose of punishment provided for in Article 33 of the CC SFRY, and concluded that the compound prison sentence for a term of 13 (thirteen) years is the only adequate criminal sanction for the criminal offenses of which the accused Edin Džeko was found guilty, and that from the aspect of both special and general deterrence, this sanction is justified and necessary for achieving the purpose thereof.

132. In view of the foregoing explanation, the Defense's appellate complaints on the ground of the appeal's extended effect are ill-founded.

133. For all the above presented reasons, the appeal filed by the Accused's Defense in relation to the convicting part of the Verdict was dismissed as ill-founded, the Prosecution's appeal honored in part, the Trial Verdict revised in the part concerning the decision on sanction pursuant to Article 314 of the CPC BiH, and the decision made as stated in the enacting clause of the Verdict.

## **II. APPELLATE GROUNDS RELATING TO THE ACQUITTAL**

### **A. APPELLATE GROUND UNDER ARTICLE 299 OF THE CPC BIH - INCORRECTLY OR INCOMPLETELY ESTABLISHED FACTS**

#### **1. Section 5 of the enacting clause of the acquitting part of the Verdict**

134. The Prosecution argued that the state of facts under this section of the enacting clause of the Verdict was incorrectly established because the Trial Panel erred in finding that the accused Edin Džeko was just a "mere observer" of the unlawful deprivation of liberty of the persons identified in this section, namely that the Accused's acts were not unlawful as they were taken against members of the opposing party, and in abiding by an obviously lawful order. Contrary to such Trial Panel's finding, the Prosecution argued that the very acts of deprivation of liberty and detention of the persons identified in this Count

of the Indictment were unlawful; that the Accused was aware that the detention of persons who had been in their apartments was unlawful; that clearly, all the acts related to the unlawful detention of the referenced persons could not have been committed by a single person even though he had not held in his hand a list of persons to be arrested; that for this reason, members of the *Zulfikar* SPD HSC ARBiH, including the Accused himself, were engaged, in addition to members of the military police, to carry out this action, and that, having given significant and individual contribution to the commission of the act of unlawful arrest and detention, all these persons together committed the criminal offense at issue.

135. In the Appellate Panel's view, the referenced appellate complaints are ill-founded.

136. This Count of the Indictment charged the Accused with participating in the unlawful arrest and detention of the persons identified in this Count. The Appellate Panel has held, however, that the Trial Panel's finding, that the Accused's guilt for the specified acts was not proved beyond a doubt, was proper.

137. The Appellate Panel has first noted that the referenced Prosecution's complaint addressed the Accused's participation in the acts of unlawful deprivation of liberty and unlawful detention as if these two acts formed a single action, even though each of these two acts has its essential features which need to be proved in order to establish one's guilt. Therefore, unlawful detention does not equal unlawful deprivation of liberty, and the factual description of the Indictment, thereby also the enacting clause of the Verdict, did not address the way in which each of these acts was allegedly committed.

138. In addition, the Prosecution's appellate complaints were not successful in contesting the Trial Panel's finding that, even though a certain role of the Accused in the acts described in Section 5.a) of the enacting clause of the Verdict was proved, he is also guilty of unlawful deprivation of liberty and unlawful detention of the injured parties in a cellar-dugout in Donja Jablanica. As it ensues from the contested Verdict, the Trial Panel found, beyond a doubt, that the Accused had taken part in the escort of the injured parties, more precisely, that he had driven a vehicle by which the arrested men were transported to the place of Donja Jablanica. However, even the Prosecution's appeal failed to prove the Accused was guilty of the referenced acts.

139. In the Panel's view, the Trial Panel properly found, on the basis of evidence given by the heard witnesses and the other adduced evidence, that the apprehension action

described in Section 5.a) of the enacting clause of the Verdict had been carried out upon an order, and that members of the *Zulfikar* unit were engaged as support to members of the military police to carry out a successful action. The Appellate Panel has held that the Trial Panel properly found that the adduced evidence showed that the Accused had participated in the referenced action as a private, and that he had, in fact, assisted members of the military police. The Trial Panel refused the Accused's statement that he had participated in the arrest of only three members of the HVO. Based on the evidence given by the injured parties in relation to the circumstances described in this Section, the Trial Panel found proved that the Accused participated in the arrest of all persons identified in this Count of the Indictment by their names. In this regard, the accused Džeko testified, the witnesses-injured parties confirmed and the Trial Panel properly found that there was indeed a list of persons to be deprived of liberty, that during the arrest it was in possession of military police officers, and that it was drafted by the Accused's superiors.

140. The Trial Panel further properly found that the persons arrested were members of the other warring party, but that during the evidentiary proceedings or in its appeal the Prosecution failed to present any fact or evidence of why the Accused could have concluded that the deprivation of liberty was unlawful. It ensues from the adduced evidence, as properly found by the Trial Panel, that the Accused acted upon a task he was obligated to carry out, and that in carrying out the referenced action of arresting the HVO members he neither gave nor did the Prosecution show he could give any orders. Truly, the Prosecution's appeal stated that the Accused was not even charged with issuing any orders, but rather with the individual responsibility in carrying out the unlawful arrest of the injured parties, together with other participants in the referenced action, that is, he was charged for acting as an accomplice. However, the Prosecution should have proved, along this line, that the Accused was aware of the unlawful nature of the action at issue. In view of the foregoing, the Appellate Panel has held that the Trial Panel properly found that the Prosecution did not prove beyond a reasonable doubt that the accused Edin Džeko is guilty of the unlawful arrest of the injured parties Mirko Zelenika, Marko Zelenika, Miroslav Soko, Marinko Ljolje, Ivo Jurić, Jure Jurić, Vinko Ljubac, Vlado Ćurić and Mate Biloš.

141. This Count of the Indictment also charged the Accused with unlawful detention of the referenced persons at a cellar-dugout in Donja Jablanica. In this regard, the Appellate Panel has first noted that the factual description of the Indictment did not state that the Accused took part in the detention of the injured parties, and that particularly, it did not

specify the way in which he did so. None of the injured parties mentioned the accused Džeko as a person who had detained them at the cellar-dugout in Donja Jablanica. On the contrary, the injured parties consistently testified that the Accused and the other participants in the arrest had brought them to the “Rogić’s houses” compound, that the ARBiH command personnel were present there, that is, the accused Džeko’s superiors too, and that, as most injured parties ascertained, “*someone from among the command personnel*” or “*some of the soldiers who had brought them to Donja Jablanica*”, without identifying the accused Džeko as that specific soldier, had said that “*they should be placed in a hole.*” Witness Vinko Ljubas explicitly stated he could not remember what the Accused’s role was while they were being escorted to the dugout. Witness J-3 also confirmed the foregoing.

142. In view of the foregoing, the Appellate Panel has concluded that the Prosecution’s appellate complaints raised no doubt concerning the Trial Panel’s finding that it was unproved that the accused Edin Džeko committed the offenses as described in this Count. Therefore, in relation to this Count of the Indictment, the Trial Panel rendered a proper acquitting Verdict pursuant to the principle of *in dubio pro reo*, which forms part of Article 3 of the CPC BiH.

## **2. Section 5.b) of the enacting clause of the acquitting part of the Verdict**

143. The Prosecution argued that the state of facts in relation to section 5.b) of the enacting clause of the acquitting part of the Verdict was erroneously established because of the Trial Panel’s finding that a convicting verdict could not be based solely on the testimony of one witness, the injured party Miroslav Skoko. The appeal stated that the Trial Panel gave no credence to the evidence of Miroslav Skoko, who had identified Nezir Vila as an eye-witness to the referenced incidents, considering that witness Vila, who had been examined upon the proposal of the Accused’s Defense, did not confirm Skoko’s assertions. Witness Miroslav Soko testified that Nezir Vila was a refugee whom he had received in his house, and that, at the critical time, when the accused Džeko arrested him together with Nedžad Hodžić, strongly punching and kicking him on his head and all over his body, it was exactly Nezir Vila who had tried to help him. The Prosecution, however, argued that the foregoing testimony of witness Skoko could not be brought into suspicion

by the evidence of witness Vila as there was no reason whatsoever for which witness Soko would not state what had indeed happened.

144. Contrary to the Prosecution's complaint, the Appellate Panel has concluded that the Trial Panel's conclusion, that it was unproved that the Accused committed the referenced offenses, was drawn after a diligent evaluation of all pieces of adduced evidence, individually and in combination. The Prosecution's appeal unreasonably stated that the Trial Panel acquitted the Accused of the charges for the referenced offenses exclusively finding that a convicting verdict could not be based on the statement of a single witness-injured party. Contrary to such an appellate assertion, the Trial Panel explained, in para. 359 of the Verdict, that considering that "*the evidence of the injured party is the only evidence on which this Count of the Indictment is based, it should be carefully considered and evaluated, starting from the very first information he gave about the incident and the perpetrator, to his testimony at the main trial...*". Therefore, the Trial Panel did not eliminate the witness's evidence and concluded it could not be the basis for the convicting verdict exclusively because the Prosecution offered no other pieces of evidence relating to this Count of the Indictment, but rather evaluated and analyzed this testimony, and ultimately found it unreliable, and gave no credence to it. Furthermore, the Trial Panel did not find that the evidence of witness Miroslav Soko could not be given credence only because it is contrary to witness Nezir Vila's evidence, but because it was not corroborated with the other adduced evidence, namely, because the witness himself testified several times about the circumstances of his arrest, but differently regarding the decisive facts.

145. The Trial Panel first evaluated the evidence the injured party Miroslav Skoko gave in the other cases, where<sup>8</sup> he never mentioned he had received any blows as described in this Count of the Indictment. The witness's explanation of the reasons for which he did not mention the full name of Edin Džeko, as one of the persons present at his arrest is understandable and acceptable to the Appellate Panel, as it was to the Trial Panel too. This was so because witness Skoko gave statements in other cases against other accused persons, and focused on the events related specifically to those persons. While asserting in his earlier statements that "he was arrested by members of Zuka's unit", witness Skoko never mentioned anywhere that those soldiers had abused him, or particularly that he was heavily punched and kicked in his head, which he would have

undoubtedly remembered. Therefore, the Trial Panel found, the witness would have certainly mentioned this fact of his own initiative, even if not directly asked about it.

146. In addition, the Trial Panel properly took into account that no other witness, from among those arrested and transported to the “Rogić’s houses” together with Miroslav Skoko in the same vehicle, mentioned that any injuries were visible on the injured party Miroslav Skoko. Thus, the blows described in this Count of the Indictment would have surely left some traces on the injured party’s body (his head unprotected with any clothing). Furthermore, the medical documentation relating to the injured party Miroslav Skoko also contains information about the injuries he sustained during his captivity at Jablanica, but not the injuries he allegedly sustained when arrested on 8 September 1993.

147. Ultimately, the Trial Panel correlated all the foregoing with the testimony of witness Nezir Vila. According to the injured party Miroslav Skoko, witness Vila eye-witnessed the referenced incident, and even tried to protect him. Witness Vila, however, testified at the main trial, and denied he had even been at the house during the arrest of witness Miroslav Skoko. Witness Vila stated that his wife had informed him about the incident at issue, and told him that there had been no problems on the referenced occasion.

148. All the foregoing on the whole, rather than a single evidence of witness Nezir Vila, amount to the circumstances by which the credibility of witness Miroslav Skoko’s evidence was brought into question. As this is the only piece of evidence incriminating the Accused for the acts described in this Count, the Appellate Panel has therefore concluded that the Trial Panel’s finding, that the charges at issue remained unproved, was proper, and acquitted the Accused of the charges in relation to this Count of the Indictment.

### **3. Section 5. c) of the enacting clause of the acquitting part of the Verdict**

149. The Prosecution argued that the Trial Panel erroneously established the state of facts relating to the charges described in this Count by finding unproved that the Accused had indeed committed the described criminal-legal acts. The Prosecution further argued that, contrary to the Trial Panel’s finding unproved that “after the Croat civilians had been unlawfully arrested.... in front of Muslim citizens... the Accused shouted “*look at the*

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<sup>8</sup> The witness’s two statements given during the investigation conducted against Zijad Kurtović and his testimony from the main trial in the criminal case conducted against Zijad Kurtović.

*Ustashas...*”, the testimonies of witnesses Miroslav Skoko, J-3, Marinko Ljoljo and Vinko Ljubas had proved exactly the referenced charges, and that therefore the state of facts, in this part, was erroneously established.

150. Contrary to the Prosecution’s complaints, the Appellate Panel has concluded that the Trial Panel properly found, upon examining the adduced evidence, that none of the witnesses-injured parties confirmed that the accused Edin Džeko addressed the Muslim citizens by the words “*Look at the Ustashas*”, despite being in a group of soldiers who had escorted the arrested Croat civilians, or who had transported the captives on the car body through the town of Jablanica, as proved beyond a doubt. The Prosecution’s appeal properly paraphrased the witness’s statements, and stated that Miroslav Skoko felt uncomfortable for hearing the citizens’ shouting “*Ustashas*”; that the injured party-witness J-3 stated that the Accused had driven a vehicle on whose body he and the other arrested men were transported; that citizens shouted after them “*Ustashas*”, that from the car cabin they heard the words “*Look at the Ustashas*”; however, the witness could not identify the soldier, of the four of them in the car cabin, that had shouted “*Look at the Ustashas*”, and particularly, he could not remember that the soldier was exactly the accused Edin Džeko. Also, witness Marinko Ljoljo testified that he and the other arrested men had been transported through Jablanica on the car body, and saw people’s different reactions, from wondering and fear to the reactions such as “*They took away the Ustashas*”, and swears and curses. Witness Ljoljo, however, also did not confirm the Indictment allegations that the accused Džeko had shouted “*Look at the Ustashas*”. Ultimately, witness Vinko Ljubas also confirmed that, while passing through the town, they had felt uncomfortable, that they were called names and vulgar words. Witness Ljubas also did not confirm the Indictment allegations that such a conduct of citizens was “provoked” by the accused Džeko’s shouting “*Look at the Ustashas*”. On the contrary, the witness stated that, while they were driving, he observed no communication ongoing between the soldiers and citizens.

151. In view of the foregoing, the Appellate Panel has concluded that the Prosecution’s appellate complaints raised no doubt into the Trial Panel’s finding that it was unproved that the Accused had indeed committed the offenses at issue. Therefore, these complaints were considered as ill-founded and dismissed as such.

**4. Section 6 of the enacting clause of the acquitting part of the Verdict**

152. The Prosecution argued that the Trial Panel erroneously established the state of facts in relation to this section of the enacting clause of the Verdict too. The appeal stated that the Trial Panel referred to the statement witness J-2's had given to the Ministry of Defense, Security and Information Service of the Croat Republic of Herceg-Bosna, without mentioning the accused Edin Džeko as a person who had ordered his abuse. According to the Prosecution, the referenced statement is insignificant considering that the witness J-2 identified the Accused at the main trial as a perpetrator of the incriminating acts, and thereby fully confirmed the statement he had given to the Prosecution during the investigation phase. In the Prosecution's view, the erroneously established state of facts also ensues from the fact that the Trial Panel had compared the witness J-2's testimony with that of witness Marko Rozić, and improperly found that they contradicted each other. Contrary to the Trial Panel's finding, the Prosecution's appeal stated that witness Marko Rozić fully confirmed the testimony of witness J-2, namely that the Accused had not abused witness J-2, but rather one "Deba", while witness J-2 was determined in describing the way in which the Accused had ordered his abuse.

153. In the Appellate Panel's view, the foregoing complaints are ill-founded.

154. Contrary to the above appellate complaints, the Appellate Panel has concluded that the Trial Panel properly found it was not proved beyond a reasonable doubt that the accused Edin Džeko was present when the witness J-2 was abused, or that he had personally ordered his abuse by the words "*kill him, kill him*".

155. Truly, the Trial Panel drew the foregoing conclusion also by referring to the statement the witness J-2 gave to the Security and Informative Service of the Croat Republic of Herzeg Bosnia. The Prosecution, however, unreasonably argued this statement was irrelevant exclusively for the fact that, at the main trial, the witness confirmed his assertions from the statement given to the Prosecution during the investigation. The Defense adduced the referenced statement as evidence in the case record. In rendering its Verdict, the Trial Panel properly evaluated the statement, individually and in combination with the other evidence, and in this Panel's view properly found that this statement, evaluated in combination with the other evidence, also raised doubts into the credibility of witness J-2's testimony given at the main trial, as well as into the statements

he gave during the investigation, incriminating the Accused.

156. The Trial Panel found that witness J-2 was undoubtedly physically abused in the way as described in Section 6 of the enacting clause of the acquitting part of the Verdict. The participants in the abuse and the person who ordered the abuse however, remain disputable. The fact that the injured party-witness J-2 testified that the Accused was somewhat shorter than him, black-haired and wore a hat, raised serious doubts into the identification of the Accused as a person who had ordered the abuse. This was not confirmed by the consistent testimonies of the other witnesses that the Accused's hair at the time was a bit longer, that he wore a hair-holder, and that they had never seen him wearing a hat. In addition to the fact that the Accused is a markedly tall man, these testimonies fully confirmed the evidence of the Accused himself. The Accused stated his hair was long, a pageboy-hairstyle, and that he wore a hair-holder, but never a hat, because he loved his hair.

157. Ultimately, the Prosecution's appeal unreasonably stated that witness Marko Rozić's testimony fully confirmed the assertions of witness J-2, because this witness did not identify the person who ordered the abuse, and had no information about this decisive fact. Witness Rozić only confirmed the undisputed parts of the incident at issue. Witness Rozić testified he had seen "*Deba dragging witness J-2 by his hair and pushing his head into a barrel*". This witness, however, did not mention seeing the Accused at this site at all on the critical occasion, or hearing that anyone, particularly the accused Džeko, shouted "*kill him, kill him*", which action was charged against the Accused under the Indictment.

158. In view of all the foregoing, this Panel has concluded that the Prosecution's complaints were unsuccessful in removing the doubt into the identity of person who had ordered the abuse of witness J-2. Since any suspicion into the facts constituting the essential elements of a criminal offense, or on which the application of certain provisions of the criminal legislation depends, shall be resolved in favor of the Accused, the Appellate Panel has concluded that the Trial Panel properly acted by acquitting the Accused of the charges for the acts described in this section of the acquitting part of the Verdict.

**B. APPELLATE GROUND UNDER ARTICLE 298 OF THE CPC BiH – VIOLATIONS OF THE CRIMINAL CODE**

**1. Sections 1 and 2 of the enacting clause of the acquitting part of the Trial Verdict**

159. The Prosecution argued that the Trial Panel violated the criminal code in Sections 1 and 2 of the enacting clause of the acquittal for finding that common Article 3 of the Geneva Conventions did not apply to the charges factually described therein, wherefore it find that one of the essential elements of the criminal offense of War Crimes against Civilians did not exist, as a result of which the Accused was acquitted of the charges for these acts. The Prosecution's appeal stated that the Trial Panel erred in finding that there was no reason to apply common Article 3 of the Geneva Conventions considering that the Accused was not charged with causing severe mental suffering and violation of human dignity by plunder, and considering that the Prosecution did not prove any such consequences during the main trial. Contrary to the foregoing Trial Panel's view, the Prosecution's appeal pointed to the positions the ICTY has taken in *Naletilić and Martinović*, noting that plunder is "*willful and unlawful appropriation of property, and as enshrined in Article 3.e) of the Statute may affect both private and public property...*", and that "*plunder as a crime...has been committed when the general requirements of Article 3 of the Statute, including the seriousness of the violation – if private or public property was appropriated unlawfully or willfully*", and in *Blaškić*, finding that "*plunder should be understood to embrace all forms of unlawful appropriation of property in armed conflict for which individual criminal responsibility attaches under international law, including these acts traditionally described as 'pillage'.*" Pursuant to the referenced ICTY's views, the Prosecution argued that the plunder of property does not imply the causing of serious mental suffering or outrages on human dignity, as erroneously found by the Trial Panel, wherefore common Article 3 of the Geneva Conventions does not apply. According to the Prosecution, this is the reason why Article 298(a) of the CPC BiH was violated. The Prosecution argued that the Trial Panel erred in finding that the crime charged against the Accused was not a criminal offense.

160. The Prosecution argued that the Trial Panel violated the criminal code also in relation to the charges described in Sections 3 and 4 of the acquitting part of the Verdict because it found that the factual description of the acts described in the referenced sections,

charged against the Accused, had no such result so as to be qualified as unlawful acts (causing serious suffering and violence to personal integrity of the injured parties), in terms of common Article 3 of the Convention. Within this context, the Prosecution argued that the unlawful acts under the referenced Counts of the Indictment amount to inhuman treatment which, as a result, require neither severe suffering nor violence to life and person (referring to the *Blaškić* Judgment). Referring to the *Kordić and Čerkez* Judgment, the Prosecution also added that there is a significant distinction between “inhuman treatment” and willful causing of great suffering or severe violence to body or health.

161. The Appellate Panel has held that the foregoing complaints are ill-founded.

162. The Prosecution’s complaints related to the acquittal in Sections 1 and 2 of the Verdict, in fact, addressed the issue of what plunder is in itself, and how the international case law defined it. The Prosecution, however, provided no convincing reasons for such complaints so as to successfully challenge the Trial Panel’s finding that plunder, as described in the Prosecution’s Indictment, does not amount to a violation of common Article 3 of the Geneva Conventions.

163. Undisputedly, the plunder of the population property in certain circumstances may be an act of commission of the criminal offense of War Crimes against Civilians, and as such, it is provided for in Article 173(1)(f) of the CC BiH. In the concrete case, however, the Trial Panel examined common Article 3 of the Geneva Conventions, that is, whether the act of property plunder may be subsumed under the prohibitions provided for in the referenced Article, or more precisely, whether the main guarantees this provision provided for the protected individuals, *hors de combat*, also imply the protection of those persons against plunder, with the elements of the act charged against the accused Džeko.

164. With regard to the foregoing, the Trial Panel found that common Article 3 of the Geneva Conventions, in its relevant part, provides for one’s obligation to accord human treatment to the protected categories of persons. Along this line, it provides the following:

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

165. For a violation of common Article 3 of the Geneva Conventions to exist in the light of the above referenced provision, it is necessary that the act of commission

charged against the Accused amounts to inhuman treatment. Therefore, it was necessary to examine whether the plunder, committed in the way as the Prosecution's Indictment described, is inhuman treatment by its nature, which is how the act charged against the Accused might fall under the scope of protection of common Article 3 of the Geneva Conventions, which was not accepted by the Trial Panel in the concrete case. The Trial Panel properly found, which the Prosecution's appellate grievances did not challenge, that the act of plunder, as described and charged against the accused Edin Džeko, is not by its nature a gross assault on human dignity, which would result in the severe suffering of the victims, or at least such a result of the act was not described in the factual description of the Indictment.

166. Even when stating that plunder did not imply causing severe mental suffering or violence to personal dignity, the Prosecution's appeal does not explain why the referenced act would or should have been enshrined in common Article 3 of the Geneva Conventions, that is, why should the protection of protected persons against plunder enter the sphere of the basic guarantees provided under the referenced provisions. The Appellate Panel has compared the vague nature of the advanced appellate complaint with the comprehensive line of arguments the Trial Panel provided in the contested Verdict for its finding that the Accused's acts, as described in the prosecution charges, did not in their nature amount to violations of common Article 3 of the Geneva Conventions. The Appellate Panel has held that these Prosecution's objections failed to raise doubts into this part of Trial Panel's finding, and therefore dismissed them as ill-founded.

167. The Appellate Panel has held equally ill-founded the Prosecutions' complaints challenging the Trial Panel's findings that the acts described in Sections 3 and 4 of the enacting clause of the acquittal contained no elements of violations of common Article 3, and thereby no violation of the blanket norm as an underlying element of the criminal offense of War Crimes against Civilians. Therefore, the Appellate Panel rendered the acquitting verdict in relation to these acts too.

168. All the arguments of the referenced Prosecution's complaint aim at analyzing the differences between inhuman treatment and torture, that is, inhuman treatment and willful causing of great suffering or severe violations to body and health. However, there was no indication whatsoever as to why the acts charged against the accused Edin Džeko under these Counts of the Indictment would be characterized as a violation of common Article 3 of the Geneva Conventions, which is the essential element of the crime the Trial

Panel did not find in the description of these acts. Contrary to such a vague complaint, the Trial Panel's provided in its Verdict a detailed line of arguments and reasons for finding that the Accused's acts did not satisfy the essential element of the criminal offense of War Crimes against Civilians, which is apparent from violations of international law. Since the Prosecution's vague complaints failed to challenge the Trial Panel's findings, the Appellate Panel has concluded that the complaints advanced along this line must be dismissed as ill-founded.

169. For the foregoing reasons, the Appellate Panel has concluded that the acquitting part of Trial Verdict was unreasonably challenged by the Prosecution's appeal on the grounds of incorrectly and incompletely established state of facts and on the grounds of a violation of the criminal code.

**RECORD-TAKER**

**Nevena Aličehajić**

**PANEL PRESIDENT**

**JUDGE**

**Mirko Božović**

**NOTE ON LEGAL REMEDY:** No appeal lies from this Verdict.