

Bosna i Hercegovina

Босна и Херцеговина



Sud Bosne i Hercegovine
Суд Босне и Херцеговине

Case No.: S1 1 K004648 11 Kri (X-KR-05/111)

Date: Pronounced: 9 November 2011
Written Verdict issued: 8 December 2011

Before the Panel composed of: Judge Enida Hadžiomerović, Panel President
Judge Mira Smajlović, Panel Member
Judge Zoran Božić, Panel Member

CASE OF PROSECUTOR'S OFFICE OF BOSNIA AND HERZEGOVINA

V.

THE ACCUSED SAŠA BARIČANIN

VERDICT

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

Behaija Krnjić

Defense Counsel for the Accused Saša Baričanin:

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IN THE NAME OF BOSNIA AND HERZEGOVINA!

The Court of Bosnia and Herzegovina, sitting as a Panel composed of Judge Enida Hadžiomerović as the Presiding Judge, and Judges Mira Smajlović and Zoran Božić as the Panel members, with the participation of legal adviser-assistant Lejla Haračić as the minutes-taker, in the criminal case against the Accused Saša Baričanin charged with the criminal offense of Crimes against Humanity in violation of Article 172(1)(a) of the Criminal Code of Bosnia and Herzegovina (CC of BiH), as read with Article 29 of the same Code, and Sub-paragraphs c) and g) of the same Article of the CC of BiH, all as read with Article 180(1) of the CC of BiH, regarding the Indictment of the BiH Prosecutor's Office No.: T 20 0 KT RZ 0000594 10 dated 18 February 2011, confirmed on 22 February 2011, having held a main trial in part closed for the public, in the presence of the Prosecutor of the Prosecutor's Office of BiH Behaija Krnjić, the Accused Saša Baričanin and Defense Counsel for the Accused, Attorney Dušan Tomić, on 4 November 2011 rendered, and on 9 November 2011 announced the following:

VERDICT

The Accused: Saša Baričanin, son of Slavko and Mileva, née Marušić, born on 19 March 1969 in Sarajevo, residing in ..., ethnicity ..., citizen of ..., PIN/Personal Identification Number/: ..., literate, car painter, married, father of three minor children, compulsory military service completed in 1987/88, no military ranks, decorated, indigent, no prior convictions, no other criminal proceedings pending against him, currently in custody under a Decision of the Court of BiH no.: X-KRN-05/111 dated 3 February 2011.

IS HEREBY FOUND GUILTY

Because:

Within a widespread and systematic attack of the military, paramilitary and police forces of the so called Serb Republic of BiH, thereafter Republika Srpska, directed against the civilian non-Serb population of the city of Sarajevo, being aware of such an attack and knowing that his actions constituted an integral part thereof, as a member of these forces, he committed against these non-Serb civilians the criminal offenses of depriving these persons of their lives (murder), enslavement and rape in as much as:

On 13 July 1992, being armed and along with another person, he came to the apartment of the Balvanović family, which was located at the 22 Radnička St., in the Grbavica residential area, Municipality of Novo Sarajevo, where they found the victims Otilija Balvanović, daughter of Vinko, born in 1929; Amir Balvanović, son Alija, born in 1954; Emir Balvanović, son of Alija, born in 1963; and S-1 and S-2; told the victims Amir and Emir they had to go with them allegedly for a questioning, forcibly took them out of their

apartment and brought them to an abandoned apartment in the Vraca neighborhood, Municipality of Novo Sarajevo, where they tied the victims up, filled their mouths with cloths to prevent them from shouting, and left them in a room; thereupon they returned to the apartment and told the victims Otilija, S-1 and S-2 that they were to go with them, took them out of the apartment, forced into a "Golf" vehicle and drove all three of them to the same apartment located at Vraca, where they first seized from the victims all the golden jewelry they had on them, and tied their hands behind their back; thereupon they grabbed the victim Otilija Balvanović's hand and brought her into a room where the victims Amir and Emir had already been tied up, put a cloth into the victim Otilija's mouth too, and, intending to deprive all these three victims of their lives took them out of the apartment, and on a unidentified location, using fire weapons, deprived them of their lives and returned to the apartment in which another person had kept the victim S-1 in one of the rooms and repeatedly raped her, whereas the Accused Saša Baričanin, intending to force the injured party S-2 into a sexual intercourse, took her out of the apartment, brought her to another apartment, and using force and threats repeatedly raped her, and thereupon kept her locked in this apartment for several days in his absence, during which period he repeatedly raped the victim, and also enabled another unidentified person to enter the apartment and rape the victim; thereupon, the victim, helped by other persons, succeeded to flee from this apartment, and a subsequent exhumation of the mortal remains of the victims Otilija, Amir and Emir at the site of the Trebević Mountain revealed that they had died a violent death as a result of the projectiles fired at them from fire weapons, on which occasion the victim Otilija sustained entry-and-exit wounds on the skull bones resulting in the destroyed brain tissue structure; the victim Amir had fractures of the right and left upper arms, a fracture of the left sacroiliac bone, bullet-induced fractures of the left shoulder and the lower jaw, with fractures of the skull bones and destroyed brain tissue; and the victim Emir sustained bullet-induced fractures of the right fibula and the lower jaw.

Therefore, within a widespread and systematic attack of the military, paramilitary and police forces of the so called Serb Republic of BiH (thereafter Republika Srpska), directed against the civilian non-Serb population of the city of Sarajevo, being aware of such an attack and knowing that his acts were an integral part thereof, as a member of these forces, he committed against other persons the criminal offenses of depriving another person of their lives, enslavement and rape,

Whereby he committed

the criminal offense of Crimes against Humanity under Article 172(1)(a), as read with Article 29 of the CC of BiH, and Sub-paragraphs c) and g) of the same Article of the CC of BiH, all in conjunction with Article 180(1) of the CC of BiH.

Therefore, pursuant to Article 285 of the CPC of BiH, and applying Articles 39, 42, and 48 of the CC of BIH, the Panel of this Court

S E N T E N C E S

him to imprisonment for a term of 18 (eighteen) years

Pursuant to Article 56 of the CC of BiH, the time the Accused spent in custody under the Decision of the Court shall be credited toward the sentence imposed commencing from 1 February 2011 onwards.

III

Pursuant to Article 188(4) of the CPC of BiH, the Accused is relieved of the duty to reimburse the costs of criminal proceedings.

IV

Pursuant to Article 198(2) of the CPC of BiH, the aggrieved parties are hereby instructed to pursue their claims under property law in a civil action.

R e a s o n s

1. Indictment

1. The Indictment of the Prosecutor's Office of Bosnia and Herzegovina, Special Department for War Crimes, No.: T20 0 KTRZ 0000694 10 dated 18 February 2011, confirmed on 22 February 2011, charged the Accused Saša Baričanin that he committed the criminal offense of Crimes against Humanity in violation of Article 172(1)(a) and (k) of the CC of BiH, as read with Article 29 of the same Code, and Sub-paragraphs c) and g) of the same Article of the CC of BiH, all in conjunction with Article 180(1) of the CC of BiH.

2. On 18 March 2011, the Accused plead not guilty and stood by the same position until the main trial completion.

3. The main trial in this case commenced on 20 April 2011 by reading out the Indictment of the BiH Prosecutor's Office No. T20 0 KTRZ 0000521 05, and presenting both the Prosecution and the Defense opening arguments. The Prosecution stated that, through the presentation of evidence, the hearing of witnesses and expert witnesses, and through the adduced documentary evidence, it would offer to the Court sufficient grounds on which the Court would establish their decision on the Accused's responsibility for the committed acts charged against him under the Indictment of the BiH Prosecutor's Office.

4. In its opening argument, Counsel for the Accused submitted that the Defense would prove beyond a reasonable doubt that the Accused did not commit the acts charged against him under the Indictment since no relevant evidence existed in support of the referenced acts.

2. The evidence adduced

(a) Prosecution evidence

5. Upon the Prosecution motion, the following persons were examined in the capacity of witnesses: Hasan Gobeljić, Hatidža Babić, Jasmina Mujković, witness S-1, witness S-3, witness S-2, Kristina Breški-Kovačević, Zoran Vaclav and Avdo Huseinović.

6. During the main trial, a forensic medicine specialist Dr. Hamza Žujo testified with regard to the findings and opinion of the deceased forensic expert Ilijas Dobrača. Expert witness Dr. Hamza Žujo gave his professional opinion in relation to the analysis made by expert witness Ilijas Dobrača following the autopsy of human remains exhumed from a mass grave discovered in the village of Gornji Miljevići. Admitted in the Prosecution additional evidence was a written finding and opinion of expert witness Dr. Senadin Ljubović, specialist in neuropsychiatry, even though he had, already during the evidentiary proceedings, orally explained his findings and opinion related to the examination of the injured party. The reason behind the above acting was the fact that before the indictment was filed the protected witness S-2 was not available wherefore the referenced findings and opinion could not be proposed as evidence in the Indictment.

7. During the main trial, the Court has reviewed the following documentary evidence tendered into the case record by the Prosecution, namely: Document of the General Administration Department, Municipality Pale No.:06-566/07 dated 8 February 2011 with the military record information pertaining to Saša Baričanin; Decision of the Cantonal Court in Sarajevo to carry out exhumation No. Kri-84/99 dated 13 August 1999; Crime-scene Investigation Record of the Cantonal Court in Sarajevo No. Kri-84/99 dated 30 August 1999; Official Note of the Crime Police Sector Sarajevo No. 01/2.3-102/99 dated 17 September 1999; Forensic Department Report on the crime-scene criminal and technical investigation No. 1960/99 dated 30 August 1999; Forensic finding and opinion on a corpse exhumation, examination, autopsy and identification made by the Forensic Medicine Institute dated 8 March 2000; Firearms traces expert analysis made by Crime Police Sector No. 01/2.8-04-09-5887 dated 4 October 1999; Crime-scene sketch made by the Crime Police Sector No. 1960/99 dated 30 August 1999; Photo-documentation related to the exhumation carried out in Gornji Miljevići, made by the Crime Police Sector Sarajevo No. 1960/99 dated 5 October 1999; Mortal Remains Identification Record for Otilija Balvanović made by the Crime Police Sector Sarajevo No. 01/2.3 dated 13 September 1999; Death certificate for Otilija Balvanović made by the *Gradska groblja* Public Utilities Company (JKP) Visoko No. 366/99 dated 13 September 1999; Mortal Remains

Identification Record for Amir Balvanović, made by the Crime Police Sector Sarajevo No. 01/2.3 dated 13 September 1999; Death certificate for Amir Balvanović made by the JKP *Gradska groblja* Visoko No. 367/99 dated 13 September 1999; Mortal Remains Identification Record for Emir Balvanović made by the Crime Police Sector Sarajevo No. 01/2.3 dated 8 September 1999; Death certificate for Emir Balvanović made by the JKP *Gradska groblja* Visoko No. 329/99 dated 8 September 1999; Death notices for Otilija Balvanović, Amir Balvanović and Emir Balvanović published in the *Oslobođenje* Daily on 16 September 1999; Institute for Research of Crimes against Humanity and International Law from Sarajevo form No. 009986 dated 28 March 2002 pertaining to the deceased Amir Balvanović; Institute for Research of Crimes against Humanity and International Law from Sarajevo form No. 009794 dated 28 March 2002 pertaining to the deceased Otilija Balvanović; Institute for Research of Crimes against Humanity and International Law from Sarajevo form No. 009987 pertaining to the deceased Emir Balvanović; Summary made by the former Agency for Investigation and Documentation in Sarajevo; Information of the Intelligence and Security Service Sarajevo No. 04/7-233/11 dated 11 January 2011 with a review of the committed crimes in the Grbavica – Novo Sarajevo area; Footage from the documentary film *A Bloody Dance around the City* by Avdo Huseinović (original title: “*Krvavi ples po Šeheru*”).

(b) Defense evidence

8. The following persons were heard in the witness capacity: Meho Muharemović, Haris Grizović, witnesses S-2 and S-3 (previously heard as Prosecution witnesses), protected witness S-4 and the Accused Saša Baričanin.

9. The Court has reviewed the following documentary evidence adduced by the Defense: Defense documentary evidence presented in the Saša Baričanin case: *A Bloody Dance around the City* Film (redacted CD of the film), Witness Examination Record for S4 made in Dušan Tomić's attorney office in Sarajevo dated 22 September 2011, Military Post Certificate No.: 03-1202 dated 15 January 1996 confirming that Saša Baričanin sustained sniper wounds at Kromolj, bullet wounds at Mrkovići and shell shrapnel wounds at Mrkovići, Non-pecuniary damage compensation claim filed by Saša Baričanin with the Republic Attorney General of Republika Srpska on 23 February 2006, Finding and Opinion of the Lower Instance Military Medical Commission at M.P. 7491, Ilijaš, No. 2176 dated 9 December 1994 establishing that Saša Baričanin became unfit for military service after being wounded in the course of the military service in the Republika Srpska Army, Discharge Note and epicrisis issued by the *Banjica* SONB on 10 March 1993 in Belgrade, Disease history No. 79846 confirming that Saša Baričanin was medically treated in Belgrade and establishing that he was unfit for work, Discharge Note issued by the Military Medical Center (VMA) in Belgrade, Surgery Stationary No.: 171/58 referring to the wounds sustained by Saša Baričanin and the medical treatment he underwent, Discharge Note issued by the *Pale Koran* Hospital (M.P. 7395), confirming that Saša Baričanin was urgently admitted into the Surgery Ward on 8 September 1992 and thereupon transferred₇

by helicopter to the VMA for further medical treatment, Discharge Note issued by the *Pale Koran* Hospital (M.P. 7395), affirming that on 30 May 1992, Saša Baričanin was admitted as a matter of urgency due to severe lung injuries, and on 31 May 1992 transferred by a helicopter to the VMA Belgrade for further treatment, Discharge Note issued by the Military Medical Academy VJ, Cardiac Surgery Clinic, identification No.: 072279/1, showing the gravity of Saša Baričanin's injuries (admission date 31 May 1992 and discharge date 17 June 1992), with the disease history copy No.: 072279/001 from 31 May 1992 through 17 June 1992, Discharge Note issued by the VMC Belgrade, Surgery Stationary, disease history No.: 361/146, referring to the gravity of wounds sustained by Saša Baričanin and noting that the patient was approved a 30-day rehabilitation in the RC Mladenovac, Specialist medical findings issued by the VMA Citizens Polyclinic, No.: 4131 in relation to the injuries of Saša Baričanin dated 8 September 1992, noting it was necessary to refer the patient to further medical rehabilitation in the Mladenovac Spa, Decision of the General Administration Sector of the Municipality Pale, No.: 04/9-560/25 dated 19 May 2005 recognizing for Saša Baričanin the status of a IV- category war disabled veteran with 80% disability and the right to a personal disability allowance and orthopedic aid, Military Record information issued by the General Administration Sector, Municipality Pale No.: 06-566/17 dated 8 February 2011 showing that the Accused was a member of the MP 7536/13 Han Pijesak during the period from 4 April 1992 through 22 May 1995, and that on 9 December 1994 he was declared unfit for military service by the NVLK (T-307.3 NP and T-286.2. DE-1), Verified copy of Saša Baričanin's military ID (date of issuance 19 September 1994), demonstrating the Accused's movement, and that on 9 December 1994 he was declared unfit for military service.

3. Closing Arguments

(c) Prosecution Closing Argument

10. In his closing argument, the Prosecutor has referred to the witnesses' statements and the adduced documentary evidence supporting the existence of general elements of the criminal offense of Crimes against Humanity charged against the Accused Saša Baričanin. The Defense witnesses were not eye-witnesses during the commission of the criminal offense whereby they were not suitable to confirm the Accused's innocence. The importance of witness S-4 is apparent exactly from the fact that this witness made indisputable a large number of relevant facts. Upon examination of all the evidence adduced it could not be concluded that the Accused was a passive observer of the commission of crime, given that he also directly participated in the killing of the victims-members of the Balvanović family, and thereupon raped the injured witness S-2.

11. The Prosecutor has analyzed and compared the statements of the heard witnesses with the evidence presented by both the Prosecution and the Defense. Based on the foregoing, the Prosecution argued that the Indictment charges were proved in the manner as stated in the factual description and therefore moved the Court to render a convicting₈

verdict, and impose on the Accused the most stringent sentence for the crime committed, implying a long-term imprisonment.

12. As regards the extension of the Accused's custody, the Prosecutor has noted that, in addition to obligatory requirement under Article 138(1) of the CPC of BiH, there were also the circumstances indicating that if released under a non-final verdict sentencing the Accused to imprisonment, the Accused would flee, and that it was therefore justified to extend his custody on the grounds of Article 132(1)(a) of the CPC of BiH. In addition, it is quite clear that the Accused's release after being found guilty of the most severe crime could cause unrest among the population, which could give rise to the public peace and order disturbance. The public has been very much interested in this case given the gravity of the crime consequences, and the fact that the Accused acted in concert with the Accused Veselin Vlahović a.k.a. Batko.

(d) Defense Closing Argument

13. In his closing argument, Counsel for the Accused Saša Baričanin, Attorney Dušan Tomić petitioned the Panel to observe Article 6 of the ECHR and the right to the equality of arms in respect of the delivery of the Prosecution's closing argument in writing. Pursuant to the principle of "equality of arms", and following the Counsel's objection, the Panel President returned the written closing argument delivered to the Court by the Prosecutor.

14. The Counsel has argued that the indictment allegations were not proved beyond a reasonable doubt, both with respect to the general elements of the crime and the individual charges. Noting the Nurnberg process case law in trials against war criminals after World War II, the Counsel pointed to a systematic and complex nature of Crimes against Humanity.

15. As regards the killing, the Counsel has referred to the case law of the Court of BiH according to which the fact that a person was last seen with the killed persons does not presume his/her guilt since, in the case at hand, there is no direct evidence that the Accused participated in the killing of the victims. Witness S-3 confirmed that the Accused and Veselin Vlahović a.k.a. Batko had returned after 5 minutes, and that they heard no shots, even though the exhumation and the autopsy demonstrated that the victims died most likely after a burst of fire. Finally, the persons found in the mass grave had winter clothing even though they had been abducted from the apartment in the summer period. The Accused had no motive to act in a discriminatory way because it was exactly Ismet Bajramović a.k.a. Čelo who had released his brother from the Central Prison in 1992. The creators of the horror at Grbavica, who are responsible for both the concrete killings and the other killings at the time, have never been prosecuted, or were acquitted of charges before this Court.

16. Following an examination of the testimony of the victim-witness S-2, it is obvious that she neither uses the phrase "sexual intercourse" nor a term "rape", which was not as,

such mentioned in the Prosecutor's presentation either. It is also an indisputable fact that the victim-witness S-2 does not seek to be compensated by the Accused since she is not certain as to whether he was responsible for the killing of members of the Balvanović family. Also indisputable is the fact that, until 2011, the victim S-2 did not mention the Accused as a person who perpetrated the killing and the rape. She has no memories about the details pertaining either to these vents nor to the event with a person with whom she had stayed alone on the following night. Finally, the Counsel contested that any elements of the crime of rape within the criminal offense of Crimes against Humanity existed at all.

17. The Accused is indeed guilty for spending two days at Grbavica with a person like Veselin Vlahović a.k.a. Batko and for taking part in the abduction of civilians. However, no one could oppose "Batko", and the only thing the Accused could have done was not to be with him. Their relationship at the time cannot be extended to the killing, inhumane treatment and rape. None of the witnesses whatsoever testified that the Accused sent threats to, or physically abused anyone.

18. Finally, the Counsel submitted that a violation of the criminal procedure was made during the main trial when the victim-witness S-2 was heard, and when Attorney Safet Medošević attended the trial instead of Attorney Izet Baždarević with no prior approval being obtained from the Accused.

19. In view of the foregoing, the Counsel proposed that the Accused be acquitted of charges and his custody be terminated. The Counsel noted that, unwillingly, the Accused was indeed a co-perpetrator in the persecution of the killed members of the Balvanović family, but that this mistake of his should not be converted into Crimes against Humanity.

20. In his presentation, the Accused Saša Baričanin admitted that at the critical time he was indeed a soldier but that he did not abuse, kill or rape anyone in this capacity. The Accused expressed his sincere compassion with the Balvanović family's anguish because he had himself experienced the horrors of war. The Accused also expressed his sincere regrets for all the victims of the past war. The Accused stated that his family, his three underage children, his parents and friends are being killed by an unfair verdict. Finally, the Accused petitioned the Court to comprehensively evaluate all the evidence adduced.

2. Procedural Decisions

(a) Established facts

21. On 20 April 2011, pursuant to Article 4 of the Law on the Transfer of Cases, the BiH Prosecutor's Office filed with the Court of BiH a motion to accept as proved the facts established under the ICTY final Judgments rendered in the cases number: IT-98-29-T

dated 5 December 2003, *Prosecutor v. Stanislav Galić*, IT-98-29-T dated 12 December 2007 in *Prosecutor v. Dragomir Milošević* and IT-00-39-T dated 27 September 2006 in *Prosecutor v. Momčilo Krajišnik*.

22. The Motion stated that the Law on the Transfer of Cases was foreseen as a *lex specialis* of the Criminal Procedure Code in order to ensure that the evidence obtained in the proceedings conducted before the ICTY can be used by the courts in BiH. The proposed facts are relevant, they neither directly nor indirectly charge the Accused with the crime as stated in the Indictment, and they are not the subject of any reasonable dispute. The proposed facts have entirely satisfied the required criteria, and as such, they should be accepted in their entirety, particularly in order to satisfy the fundamental requirements under Article 4 of the Law on the Transfer of Cases, namely judicial efficiency and economy.

23. The Counsel for the Accused Saša Baričanić responded that it was up to the Prosecution to prove beyond a reasonable doubt the guilt of the Accused Saša Baričanić because the Accused is entitled to the presumption of innocence as guaranteed both under Article 3 of the CPC of BiH and Article 6(2) of the European Convention on Human Rights and Fundamental Freedoms. According to the Defense, the facts contained in the ICTY judgments are the positions of a certain Trial Panel pertaining to the evidence presented to them in a certain case. In support of the foregoing, the Counsel has referred both to the jurisprudence of the European Court of Human Rights and the case law of the Constitutional Court of BiH. The Counsel further submitted that the acceptance of the established facts as such would mean that they were already proved beyond a reasonable doubt, while the Accused would be prevented from contesting these facts in the concrete case.

24. On 11 May 2011, pursuant to Article 4 of the Law on the Transfer of Cases, the Court partly granted the referenced motion of the BiH Prosecutor's Office, and accepted as relevant certain facts established in the ICTY final Judgments in the cases: *Prosecutor v. Stanislav Galić*, No. IT-98-29-T dated 5 December 2003; *Prosecutor v. Dragomir Milošević*, No. IT-98-29-T dated 12 December 2007 and *Prosecutor v. Momčilo Krajišnik*, No. IT-00-39-T dated 27 September 2006.

25. The facts accepted in the aforementioned cases in favor of the BiH Prosecutor's Office are as follows:

26. "In September 1991, the Main Board of the SDS recommended the formation of Serbian Autonomous Regions. The first of these was the region of Romanija-Birač in the Sarajevo area". (*Galić Judgment*);

27. "By the end of 1991, Yugoslav People's Army ("JNA") troops and tanks, withdrawn from Slovenia and Croatia, headed towards strategic locations in BiH". (*Galić Judgment*);

28. "Sarajevo was made up of ten municipalities: Stari Grad (Old Town), Centar (Centre), Novo Sarajevo, Novi Grad, Vogošća, Ilidža, Pale, Ilijaš, Hadžići, and Trnovo". (*Galić Judgment*);
29. "According to the 1991 census, the municipality of Pale was the only one in which BiH Serbs constituted an absolute majority (around 69%). The Serbs were a simple majority in Ilidža and Ilijaš. In Novo Sarajevo they were in approximately equal numbers to the Muslims." (*Galić Judgment*);
30. "Armed conflict broke out after the European Community recognized BiH as a sovereign state on 6 April 1992." (*Galić Judgment*);
31. "The JNA expanded its control of approaches to the city by establishing road blocks along key roads." (*Galić Judgment*);
32. "By the end of April, the contour of Sarajevo's siege was largely established". (*Galić Judgment*);
33. "On 2 May 1992, a major JNA attack on the centre of Sarajevo occurred. After that the town was exposed to very heavy shelling. A couple of days later, the Bascarsija, the centre of old Sarajevo was set alight, the national and university libraries, the railway station, the post office and many key buildings in town were heavily shelled and destroyed". (*Galić Judgment*);
34. "The parliament of Republika Srpska ordered on 12 May 1992 the formation of the Bosnian-Serb Army, designating General Ratko Mladić Chief of its General Staff. That same day, General Mladić ordered the formation of the Sarajevo Romanija Corps ("SRK")". (*Galić Judgment*);
35. "Between May and September 1992, shelling of military and civilian targets by both sides continued, and fighting was intense and brutal". (*Galić Judgment*);
36. "Civilians in ABiH-held areas of Sarajevo deferred even basic survival tasks to times of reduced visibility, such as foggy weather or night time, because they were targeted otherwise." (*Galić Judgment*);
37. „Civilians in Novo Sarajevo were targeted from the SRK-controlled area of Grbavica“. (*Galić Judgment*);
38. "The underlying reason for the "campaign" of sniping and shelling was that of terrorizing the civilian population of Sarajevo". (*Galić Judgment*);
39. "The most populated areas of Sarajevo seemed to be particularly subject to indiscriminate or random shelling attacks." (*Galić Judgment*);

40. “Most of Grbavica was controlled by the SRK, but was surrounded on three sides by the ABiH.” (*Dragomir Milošević Judgment*);

41. “There were two main civilian hospitals in the ABiH-controlled area of Sarajevo during the conflict, the Koševo Hospital in the north-east of Sarajevo and the State Hospital in the area Marindvor. The State Hospital was the target of shelling and sniping in the 1992 to 1994 period. There is evidence that following the decision of the JNA to evacuate the hospital on 9 May 1992, the VRS deliberately targeted it and was “intent on destroying vital parts of the hospital.” (*Dragomir Milošević Judgment*);

42. “According to the 1991 census in Bosnia-Herzegovina, the ethnic composition of Hadžići municipality was 15,392 (64 per cent) Muslims, 6,362 (26 per cent) Serbs, 746 (3 per cent) Croats, 841 Yugoslavs, and 859 persons of other or unknown ethnicity.” (*Krajišnik Judgment*)

43. “From mid April 1992, SDS leaders and JNA barracks commanders in Hadžići cooperated openly in bringing in JNA reserve units from Serbia and Montenegro. These units occupied strategically important buildings and positions in the town of Hadžići in the course of the second half of April 1992.” (*Krajišnik Judgment*)

44. “According to the 1991 census in Bosnia-Herzegovina, the ethnic composition of Ilidža municipality was 29,337 (43 per cent) Muslims, 25,029 (37 per cent) Serbs, 6,934 (10 per cent) Croats, 5,181 Yugoslavs, and 1,456 persons of other or unknown ethnicity.” (*Krajišnik Judgment*)

45. “In April and May 1992, various paramilitary formations arrived in the municipality, including Brne Gavrolović’s group, Bokan’s group, “Chetniks” from Zvornik, and Arkan’s men.” (*Krajišnik Judgment*)

46. “According to the 1991 census in Bosnia-Herzegovina, the ethnic composition of Ilijaš municipality was 11,325 (45 per cent) Serbs, 10,585 (42 per cent) Muslims, 1,736 (7 per cent) Croats, 1,167 Yugoslavs, and 371 persons of other or unknown ethnicity.” (*Krajišnik Judgment*)

47. “According to the 1991 census in Bosnia-Herzegovina, the ethnic composition of Novi Grad municipality was 69,430 (51 per cent) Muslims, 37,591 (28 per cent) Serbs, 8,889 (7 per cent) Croats, 15,580 Yugoslavs, and 5,126 persons of other or unknown ethnicity.” (*Krajišnik Judgment*)

48. “According to the 1991 census in Bosnia-Herzegovina, the ethnic composition of Novo Sarajevo municipality was 33,902 (36 per cent) Muslims, 32,899 (35 per cent) Serbs, 8,798 (9 per cent) Croats, 15,099 Yugoslavs, and 4,391 persons of other or unknown ethnicity.” (*Krajišnik Judgment*)

49. “From the outbreak of conflict until October 1992, KP Dom Butmir or Kula in Novo Sarajevo accommodated 10,000 Muslim civilians of all ages, for periods ranging from a few days to several months (*Krajišnik Judgment*)
50. “Another detention centre in Novo Sarajevo where non-Serbs were detained was under army jurisdiction and located at Lukavica, Novo Sarajevo.” (*Krajišnik Judgment*)
51. “According to the 1991 census in Bosnia-Herzegovina, the ethnic composition of Pale municipality was 11,284 (69 per cent) Serbs, 4,364 (27 per cent) Muslims, 129 (1 per cent) Croats, 396 Yugoslavs, and 182 persons of other or unknown ethnicity.” (*Krajišnik Judgment*)
52. “According to the 1991 census in Bosnia-Herzegovina, the ethnic composition of Trnovo municipality was 4,790 (69 per cent) Muslims, 2,059 (29 per cent) Serbs, sixteen Croats, 72 Yugoslavs, and 54 persons of other or unknown ethnicity.” (*Krajišnik Judgment*)
53. “According to the 1991 census in Bosnia-Herzegovina, the ethnic composition of Vogošća municipality was 12,499 (51 per cent) Muslims, 8,813 (36 per cent) Serbs, 1,071 (4 per cent) Croats, 1,730 Yugoslavs, and 534 persons of other or unknown ethnicity.” (*Krajišnik Judgment*)
54. Having considered the Prosecution motion to take notice of adjudicated facts, and once the Counsel for the Accused has submitted his written response to the referenced motion, the Court decided to accept the facts concerned for the reasons to follow:
55. Article 4 of the Law on the Transfer of Cases prescribes that at the request of a party or *proprio motu*, the courts, after hearing the parties, may decide to accept as proven those facts that are established by legally binding decisions in any other proceedings by the ICTY.
56. Provisions of the Law on the Transfer of Cases, as well as provisions of the CPC of BiH do not provide for any criteria on the basis of which the Court may exercise this discretion. In its decision, this Panel has stated the criteria it considered appropriate to be applied in using the discretion set out in Article 4 of the referenced Law, being mindful of the Court’s duty to respect the right to a fair trial as guaranteed under the European Convention on Human Rights and Fundamental Freedoms (ECHR), and the CPC BiH too. The Trial Panel has applied the criteria established along this line by the ICTY in its decision dated 28 February 2003 in the *Prosecutor v. Momčilo Krajišnik*. The Panel has stated that rule 94(b) (Judicial Notice) of the ICTY Rules of Procedure and Evidence and Article 4 of the Law on the Transfer of Cases are not identical, and that the Court is not bound by the ICTY decisions. Yet, it is obvious that certain issues with which both the ICTY and this Court were faced are similar in relation to the consideration of adjudicated facts, wherefore the view of this Panel will also be similar.

57. In view of the foregoing, in deciding to accept the established facts, the Court was mindful of the following criteria: 1) a fact must be distinct, concrete and identifiable; 2) it is restricted to factual findings and does not include legal characterizations; 3) it was contested at trial and forms part of a judgment which has either not been appealed or has been finally settled on appeal; 4) it was contested at trial and now forms part of a judgment which is under appeal, but falls within issues which are not in dispute during the appeal; 5) it does not attest to the criminal responsibility of the Accused 6) it is not the subject of reasonable dispute between the Parties in the present case; 7) it is not based on plea agreements in previous cases; 8) it does not impact on the right of the Accused to a fair trial.

58. The facts proposed in the Prosecution motion with a view to establishing political and military events in the wider area of the Sarajevo region during the 1991-1994 period as well as the outbreak of armed conflict and the declaration of the state of war, were considered by the Panel within the scope of Indictment. Having referred to the legal requirements to accept the established facts which are binding for the Panel, this Panel must not take judicial notice of the established facts if the facts do not satisfy the established criteria. The Panel recalls that one of the criteria is whether the facts sought to be accepted are relevant to the proceedings in question.

(b) Witness Protection Measures

59. In deciding on the Prosecution motion No. T20 0 KTRZ 0000 694 10 dated 15 February 2011, the Preliminary Proceedings Judge of this Court issued a Decision No. S1 1 K 004648 11 Krn dated 17 February 2011 determining pseudonyms for the witnesses S-1, S-2 and S-3. This decision was issued because the Preliminary Proceedings Judge has concluded that the Witness Examination Record showed that these witnesses fell within the category of vulnerable witnesses. In addition, the Preliminary Proceedings Judge indisputably concluded that there were reasonable grounds for a fear that the witnesses' personal security, or their families' security would be at risk as a result of their testimony. Therefore, pursuant to the Law on the Protection of Witnesses under Threat and Vulnerable Witnesses, the Preliminary Proceedings Judge ordered the protective measures for these witnesses. The Prosecution did not seek for additional protective measures during the examination of witness S-3, except that the witness's photos and video-footage do not be publicly disclosed. The witness was therefore examined in the courtroom with his identity not being disclosed and with a ban on his photos public disclosure.

60. At the hearing held on 27 April 2011, the Panel accepted the Prosecution's motion to grant additional protective measures for the witness under the pseudonym S-1. The witness was given a possibility to testify from another room, and in addition, the witness's photos and physical appearance were not disclosed, and the video-streaming from the courtroom was excluded. The Panel explained its decision by concluding that there was an

obvious risk concerning this witness's personal security and her family's security if she gave evidence without being granted the protective measures. Therefore, the concrete protective measures were ordered pursuant to Article 13 of the Law on the Protection of Witnesses. In deciding to grant the additional protective measures for the witness S-1, the Panel was mindful of the fact that the Defense had objected to the additional protective measures being granted. The Defense argued that the Prosecution's reasons were ill-founded.

61. Over the course of the entire proceedings, the Court was mindful of the identity protection of the witnesses to whom the protective measures were granted. These witnesses' full names were neither mentioned at the main trial, nor in the verdict, but rather their pseudonyms, while their personal details are being kept in the case record under special protection. The Court was in particular mindful of these witnesses' protection given that they are direct victims who had appeared before the Court in the capacity of protected witnesses.

62. In addition, at the hearing held on 27 May 2011, the Panel accepted the Prosecution motion to grant additional protective measures to the witness under the pseudonym S-2. The referenced measures included the examination of the witness from another room, and the distortion of her image and voice. In addition, the public was excluded from the main trial given that this witness could have disclosed her identity while speaking about the events which were the subject of the Indictment. The Panel has concluded that, in the concrete case, the requirements set out in Article 13 of the Law on the Protection of Witnesses under Threat and Vulnerable Witnesses, which provide for additional protective measures for the witness under exceptional circumstances, were satisfied. The Panel was first mindful of the information delivered to the Court by the Witness Support Section stating that the witness has been suffering from a severe mental disorder—paranoid fear and that she has a fear from having communication with any person, and that therefore this witness is not able to testify without the sought protective measures. Given the witness's poor mental state, an officer of the Witness Support Section of the Court of BiH was allowed to accompany the witness in the other room.

63. Finally, during the proceedings, protective measures were also granted to the Defense witness S-4 who testified on 28 September 2011. The Defense Counsel presented the reasons for which the protective measures were sought for this witness. The Counsel submitted that this witness was concerned that the disclosure of his identity would put his security at risk. Given that the Prosecutor had no objections to this motion, the Panel announced that in the further course of the proceedings this witness would enjoy the protection of his personal details, namely that he would testify under the given pseudonym, and that his image would not be disclosed in any print or electronic media, but that the contents of his testimony would be available to the public.

64. In rebuttal to the Defense closing argument at the hearing held on 1 November

2011, the Prosecutor petitioned the Court to issue a decision on the non-disclosure of any trial-related information given the protective measures that were granted to the witness S-2 in this case. The Panel President thereupon informed the present representatives of the media that, pursuant to the previously granted protective measures to the witness S-2, any disclosure of the information that could result in the disclosure of the witness's identity, or any disclosure of the contents of her testimony from which the public was excluded, was prohibited.

(c) Exclusion of the public

65. At the main trial held on 27 April 2011, the Prosecution proposed, upon the witness's S-1 prior consent, that pursuant to Article 235 of the CPC of BiH, the public be excluded during this witness's testimony. The Prosecution's reasons for such a proposal included the protection of this witness's personal life given that she is a rape victim, and the fact that during the examination the witness could disclose her identity, the names of her relatives-direct victims, and also the names of other witnesses in the case conducted in relation to the event in the Grbavica neighborhood.

66. The Defense for the Accused objected to the referenced Prosecution motion. The Defense argued that the Accused had not abused the witness, and that therefore the Prosecution motion to exclude the public, was not justified.

67. The Panel accepted the Prosecution's motion, and pursuant to Article 235 of the CPC of BiH, decided to exclude the public from the main trial during the examination of witness S-1. The Panel has taken into account the witness's right to the protection of private life and the right of the public to proper and timely information. It is clear that the exclusion of the public is an exemption from the rule of public procedure. In the concrete case, however, the Panel has concluded that the desired goal would be achieved by the exclusion of the public, that is, prevention against any consequences taking place to the prejudice of the witnesses, and that the public would be provided with information in another, more acceptable way. In ruling on the exclusion of the public, the Panel was mindful of the specific nature of the contents of the protected witnesses' testimony, as well as of the protection of the witness's interests, particularly the protection of the witness's personal and intimate life.

68. The Panel has noted that both the Accused and his Defense Counsel were notified of the protected witness's identity and the full contents of the witness's evidence.

69. At the hearing held on 27 May 2011, pursuant to Article 235 of the CPC of BiH, the Prosecution proposed that the public be excluded during the examination of witness S-2. The Prosecution reasoned the foregoing with the severity of the witness's mental state, and a risk that certain information related to the witness's identity might be disclosed.

70. Neither the Defense Counsel for the Accused nor the Accused himself had any

objections to the exclusion of the public.

71. The Panel accepted the Prosecution motion and decided that, pursuant to Article 235 of the CPC of BiH, the public would be excluded during the examination of witness S-2 given that it was necessary to protect this witness's personal and intimate life.

72. The public was excluded from the main trial two times, first on 28 September 2011 at the beginning of the trial, in order to read out to the Accused the Information related to the protected witness S-2 whose identity had to be protected from the public. On the same day, once the parties have been heard, the public was excluded again during the Accused's testimony in the capacity of a witness. The Panel's view was that the disclosure of certain facts and circumstances would put the protected witnesses' security at risk since the public could reveal their identity. At the same time, the public had to be excluded from the trial in order to protect the Accused's private life too. The Panel therefore concluded that the requirements under Article 235 of the CPC of BiH have also been satisfied.

73. In rendering its decision, the Panel was also mindful of the public right to proper and timely access to information since, pursuant to the applicable regulations, the exclusion of the public is an exemption prescribed by the CPC. In the concrete case, the Panel has concluded that the desired goal, namely the prevention of consequences to the witnesses' detriment, would be achieved by the exclusion of public, while the access to information would be ensured in another, more acceptable way. In deciding to exclude the public, the Panel was also mindful of the specific nature of the contents of the protected witness's testimony, and the protection of the witness's interests, particularly the protection of the witness's personal and intimate life.

74. Therefore, in addition to the granted protective measure of giving pseudonyms to the referenced witnesses and the additional protective measures, the Panel has, pursuant to the legal regulations, fully excluded the public during their testimony. The view of the Panel was that it was necessary to additionally strengthen the pseudonyms given to the witnesses as the basic measure for the protection of these witnesses' identity.

75. On 7 June 2011, the public was excluded from the main trial during the reproduction of a documentary film titled "*Bloody Dance around the City*" because there was no censure on the personal details of the protected witness S-3, wherefore it was necessary to protect this witness's identity.

(d) (Non)-acceptance of the Defense evidence

76. On 7 September 2011, the Defense Counsel for the Accused proposed that the witness S-2 and witness S4 be confronted, and Veselin Vlahović a.k.a. Batko and the Accused heard in the capacity of witnesses. On 14 September 2011, the Defense Counsel notified the Court in writing that he would withdraw the evidence of Veselin Vlahović a.k.a.

Batko as the Defense witness on a conclusion that this witness was not reliable.

77. At the main trial held on 29 June 2011, the expert witness Senadin Ljubović orally explained his finding and opinion, whereupon the Defense Counsel for the Accused, Attorney Dušan Tomić, proposed a complementary expert analysis. The Defense Counsel explained the foregoing request at the main trial held on 17 August 2011 and argued that the finding and opinion would have been more comprehensive had the expert witness reviewed the case record, particularly the statement of the victim-witness S-2.

78. Having provided the Prosecutor with a possibility to respond to the foregoing, the Panel dismissed the referenced request of the Defense. The Panel concluded that the findings were quite clear, concise, exhaustive and sufficiently orally explained, and that therefore it was not necessary to supplement the findings, particularly the testimony of the protected witness S-2, which was to be finally evaluated by the Court in its verdict.

79. The requested expert analysis should have explained the witness's mental state as a result of the rape to which she had been subjected. The Panel has held, however, that the referenced findings and opinion had fully explained this issue. In addition, for the purpose of expert evaluation, the forensic expert had directly interviewed the victim, and on the basis of information obtained in such a way, and based on his own professional experience, made the impartial findings and opinion in accordance with the rules of profession. For this purpose, the expert witness did not have to review the case record, or the testimony of this witness, or the evidence of other witnesses since these were not the subject of his expert evaluation.

80. Finally, the Panel has accepted the finding and opinion of this witness even though it was not proposed as evidence in the Indictment against the Accused Saša Baričanić. The Panel took into account the fact that the referenced finding could not have objectively been finalized at the time the indictment was brought, and concluded that it was produced in an objective and impartial manner, and pursuant to the rules of profession.

81. On 7 September 2011, the Defense Counsel for the Accused proposed that the protected witnesses S-2 and S-4 be confronted, and Veselin Vlahović a.k.a. Batko heard. However, on 14 September 2011, the Counsel notified the Court that he withdrew this witness on a conclusion that his evidence at the main trial would not be reliable. The Panel refused to confront the referenced protected witnesses bearing in mind the specific nature of the severe mental state of the witness S-2 who was, during the entire proceedings, in fear that her identity would be disclosed because of the exceptional interest of the public media in this case. Therefore, over the entire course of the proceedings, the public was excluded from certain parts of the main trial where the identity of this witness could be disclosed. Taking into account the findings of expert witness Senadin Ljubović, to be explained in more detail below, the Panel concluded that the witness S-2 was not able to confront the witness S-4. The Panel has found that in this way the Defense's procedural rights were not violated given that on 21 October 2011 the referenced witness was¹⁹

examined in the capacity of a Defense witness, and given that the Defense Counsel for the Accused had an opportunity to directly examine her regarding all the circumstances he considered relevant.

(e) Expiration of the 30 (thirty) day-deadline

82. The composition of the Panel has remained unchanged over the entire course of the proceedings. Article 251(2) of the CPC of BiH, however, prescribes that: “The main trial that has been adjourned from the beginning if the composition of the Panel has changed or if the adjournment lasted longer than 30 days. However, with the consent of the parties and the defense attorney, the Panel may decide that in such a case the witnesses and experts not be examined again and that no new crime scene investigation be conducted, but that the minutes of the crime scene investigation and the testimony of the witnesses and experts given at the prior main trial be used instead.”

83. More specifically, the main trial held on 29 June 2011 was attended by the Accused Saša Baričanin and the then Defense Counsel of his, Attorney Izet Baždarević. The Accused proposed that the Defense Counsel Izet Baždarević be relieved of his duty. The Defense Counsel agreed with this proposal and added that he could reach no agreement with the Accused concerning the issues relevant to the defense preparation in this case.

84. The Accused Saša Baričanin also asked for additional consultations with a new counsel to take over the case. The Accused agreed that the main trial be adjourned since he would be unable to prepare the cross-examination of expert witness Senadin Ljubović originally scheduled for 6 July 2011. The Court concluded this was justified given that the findings and opinion in writing were delivered no sooner than at the main trial held on 29 June 2011. For all the presented reasons justifying the main trial adjournment, the Court has concluded that the Defense also agreed, pursuant to Article 251(2) of the CPC of BiH, that the main trial be adjourned for a period longer than 30 (thirty) days, to which the Prosecution had no objections either.

85. Accordingly, the main trial in this case resumed on 17 August 2011. Attorney Dušan Tomić appeared at this hearing in the capacity of a new Defense Counsel for the Accused Saša Baričanin. At the same hearing, the Court refused the motion to complement the existing expert analysis given that the subject of analysis was the personal and mental state of the victim S-2 rather than the status of the case record in this case, as underlined by Attorney Dušan Tomić. Thereupon, the Counsel for the Accused sought to be withdrawn from the case, but the Court refused his motion as ill-founded, and stated that a disagreement with the Court’s procedural decision constitutes no basis for the Defense Counsel’s withdrawal.

86. The main trial in this case was held pursuant to the cited provision of the CPC of BiH because the referenced deadline was exceeded only upon the Defense’s petition in

order to provide the new Counsel with some additional time to cross-examine expert witness Senadin Ljubović and to study the case.

(f) The Accused's right to a defense

87. The Court has found that the Accused's right to a defense was not violated at the main trial held on 27 May 2011 when his case was represented by a substitute defense counsel, Attorney Safet Medošević. This is so because over the entire course of the proceedings, the Accused has indisputably enjoyed the right guaranteed in Article 45 of the CPC of BiH which provides for cases of mandatory defense. It is therefore important to note that no hearing was held without the presence of the Accused's defense counsel. In addition, at the main trial held on 27 May 2011, the Accused was provided with an opportunity to cross-examine the protected witness S-2. At the main trial held on 21 October 2011, when witness S-2 was heard as a witness for the Defense, the Accused could, along with the Defense Counsel he retained himself, pose questions related to all the facts and circumstances he was interested in. Given that direct examination of a protected witness allows for a far wider range of examination than the one to which cross-examination is limited, it is not clear in which way the right to a defense was allegedly violated by the acts of the Court.

(g) Authenticity of the main trial records

88. In his closing argument, the Accused Saša Baričanić has also contested the regularity of both the audio recordings made during the trial and the transcripts made on the basis thereof. The Accused stated that certain parts of the witnesses' statements were omitted not only from the written transcripts, but were not entered in the audio-recordings from certain hearings either. In this context, the Court has referred to Article 253 of the CPC of BiH, which clearly stipulates that a record shall be kept of the entire course of the main trial, and to Article 155 of the CPC of BiH which prescribes that all actions undertaken during the criminal proceedings shall be audio or audio-video recorded. The quality of the recording depends on the courtroom conditions, and it should be therefore noted that no irregularities alleged by the Accused in his closing argument could be established along this line. In addition, the composition of the Trial Panel remained unchanged during the entire main trial, and it was orally and directly informed about the contents of all statements of the heard witnesses, which were as such subjected to an overall and free evaluation of evidence.

II. APPLICATION OF SUBSTANTIVE LAW

89. The Panel has first considered the issue of substantive law applicable to the concrete case. More specifically, it ensues from the Prosecution's Indictment that the incriminating acts were committed in July 1992 when the Criminal Code of the Socialistic Federative Republic of Yugoslavia (the CC of SFRY) was in force. Even though the CC of

SFRY contains a chapter titled "Crimes against Humanity and International Law", it contained no provisions that would directly pertain to Crimes against Humanity.

90. The legal qualification of the criminal offenses in the Indictment, and likewise in the Verdict, was given pursuant to the 2003 CC of BiH, that is, pursuant to the Criminal Code which entered into force after the critical period. Article 4 of this Code prescribes time constraints regarding the applicability of the criminal code, implying that the law which was in effect at the time when the criminal offense was perpetrated shall apply to the perpetrator of the criminal offense, unless in cases where the law has been amended on one or more occasions after the criminal offense was perpetrated, in which case the law that is more lenient to the perpetrator shall be applied.

91. Article 3 of the CC of BiH prescribes the principle of legality, namely that 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 offense by law or international law, and for which a punishment has not been prescribed by law (*nullum crimen sine lege, nulla poena sine lege*).

92. Articles 3 and 4 of this Code, however, do not prejudice the trial and punishment of any person for any act or omission, which, at the time when it was committed, was criminal according to the general principles of international law (Article 4a of the CC of BiH).

93. Similarly, the issue of the principle of legality and the exemptions therefrom have been set out in the provisions of the European Convention on Human Rights (Convention), whose Article 7 reads as follows:

94. "(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.

95. "(2) This article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by civilized nations."

96. Article II(2) of the Constitution of BiH explicitly prescribes that "The rights and freedoms set forth in the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols shall apply directly in Bosnia and Herzegovina. These shall have priority over all other law."

97. Analyzing this concrete situation, it can be clearly concluded beyond any doubt that, at the critical time, Crimes against Humanity were prescribed as a criminal offense under "general principles of law recognized by civilized nations," that is "general principles of international law". Accordingly, even though the Criminal Code applicable at the time when

the criminal offenses, which are a subject of the Indictment, were perpetrated, did not explicitly prescribe Crimes against Humanity, yet their prosecution was obligatory.

98. Along this line, the Panel was mindful of the Judgment of the Constitutional Court of BiH No. AP-1785-06 (*A. Maktouf*), which has clearly established that war crimes constituted “crimes under international law, and a conviction resulting from a retrospective application of law, shall not constitute a violation of Article 7(1) of the European Convention, or of the Constitution of BiH, following the same analogy“.

99. Furthermore, the Panel has also taken into account that the CC of SFRY provided for no possibility to pronounce either a sentence of long-term imprisonment or life imprisonment, but rather a death penalty in case of a serious crime or a 15 year maximum sentence in case of a less serious crime. Following the death penalty abolition, the overall sentencing system in the CC of SFRY has become inapplicable, because, according to the above referenced Decision of the Constitutional Court of BiH, “a sanction cannot be separated from the totality of goals sought to be achieved by the criminal policy at the time of application of the law“.

100. In view of the foregoing, the Panel has concluded that in the concrete case, it is necessary and justified to apply the Criminal Code of BiH.

A. GENERAL EVALUATION OF EVIDENCE

101. Having conscientiously evaluated every item of evidence and its correspondence with the rest of the evidence adduced at the main trial, pursuant to Article 281 of the CPC of BiH, in addition to a prior examination of both the Prosecution and Defense arguments, the Panel determined the state of facts as stated in the operative part of the Verdict for the reasons to follow.

102. Article 3(1) of the CPC of BiH prescribes that the accused shall be considered innocent of a crime until his guilt has been established.¹ The prosecutor, therefore, bears a burden of proving the Accused’s guilt, and pursuant to Article 3(2) of the CPC of BiH, this guilt has to be determined beyond a reasonable doubt.²

103. The fact that the Defense did not contest certain factual allegations contained in the Indictment does not mean that the Panel has accepted these facts as proved. The burden of proof remains on the Prosecutor during the entire trial for each count of the Indictment.

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

² Article 3(2) of the CPC of BiH stipulates that „A doubt with respect to the existence of facts constituting elements of criminal offense or on which the application of certain provisions of criminal legislation depends shall be decided by the Court verdict in the manner more favorable for the accused.“

Accordingly, in determining whether the Prosecutor has proven the case beyond a reasonable doubt, the Panel carefully examined if there were any other reasonable interpretation of the evidence adduced, in addition to the accepted interpretation following its conclusion that the essential elements of the crime charged against the Accused were satisfied, including any form of liability of which he was found guilty.

104. Pursuant to Article 15 of the CPC of BiH, the Panel has the right of a free evaluation of evidence.³ Accordingly, the charges against the Accused, including all the tendered evidence, were carefully evaluated. The Panel has evaluated with due diligence the evidence adduced during the main trial, including *inter alia* the witnesses individual circumstances, their possible participation in the events, a risk of self-incrimination, and their relationship with the Accused. The Panel has also considered the internal consistency of the evidence given during the direct or cross-examination by each witness individually, and thereupon compared it with the statements they had given in the course of the investigation.

105. The witnesses' oral statements sometimes differed from their statements given during the investigative phase. One should, however, be mindful of the fact that eighteen years have passed since the occurrence of events covered by the Indictment and that it is therefore justified to expect that the elapsed period of time has affected the accuracy and credibility of the witnesses' memories.

106. In addition, it is a fact that due to the nature of the criminal proceedings, different questions may be posed to the witnesses at the main trial in relation to the questions posed on them in the previous interviews. It is, therefore, justified to expect that, upon concretization of certain questions, the witnesses will remember additional details. Of course, in determining the weight to be given to such evidence, the Panel has carefully considered such situations.

107. There is no doubt that a large number of witnesses who testified before the Panel were eye witnesses to the events that had occurred in the city of Sarajevo itself, and particularly in the Grbavica neighborhood. Thus, the memories of and recounting such traumatic events can stir up strong emotional reactions and diminish the witnesses' ability to clearly express themselves and fully present their experiences with a legal context. This is so particularly because a certain number of witnesses lived, for a longer period of time, in the conditions of mental and physical terror imposed by different military and paramilitary units. One must not disregard here that the freedom of movement was restricted especially for the non-Serb population, whereby the already existing fear for their own lives was only intensified. It is clear that in such circumstances, many witnesses had

³ Article 15 of the CPC of BiH stipulates that „ ... the existence or non-existence of facts shall not be related or limited to special formal evidentiary rules“.

paid no attention to details, or considered them irrelevant, wherefore they did not mention them in their previous statements at all.

108. The Panel, however, rendered its final decision first on the basis of oral and direct evidence given by the witnesses at the main trial, where certain inconsistencies between different witnesses' evidence constituted a relevant factor in the evaluation of the weight thereof. At the same time, it is important to note that these inconsistencies will not necessarily discredit the overall witnesses' evidence. Therefore, if the witness recounted in detail the essence of the event in question, peripheral discrepancies will not necessarily bring into question the truthfulness of such evidence. In any case, the reasons for certain evidence acceptability, and the evaluation of its credibility and grounds, have been explained in detail in relation to each count of the indictment of which the Accused Saša Baričanin was found guilty.

109. Finally, in these criminal proceedings, the Accused has waived his right to remain silent. The Accused enjoyed this right under Article 6(3) of the CPC of BiH⁴ and Article 6 of the European Convention on Human Rights⁵ which provide that no accused shall be bound to give evidence against him. The Accused's testimony given in the capacity of a witness was evaluated by the Panel within the scope of all the evidence adduced. The Panel has noted that no conclusion to the detriment of the Accused was drawn as a result thereof.

B. LEGAL ELEMENTS OF THE CRIMINAL OFFENSE OF CRIMES AGAINST HUMANITY UNDER ARTICLE 172 OF THE CC OF BIH

110. The confirmed Indictment of the BiH Prosecutor's Office charged the Accused Saša Baričanin with committing the criminal offense of Crimes against Humanity under Article 172(1)(a) and (k) of the CC of BiH, as read with Article 29 of the same Code, and Sub-paragraphs c) and g) of the same Article of the CC of BiH, all as read with Article 180(1) of the CC of BiH.

111. The relevant part of the referenced Article reads as follows:

⁴ Article 6(3) of the CPC of BiH prescribes that "the accused shall not be bound to present his defense or to answer questions posed to him."

⁵ Even though not specifically stipulated in Article 6 of the European Convention on Human Rights, the European Court of Human Rights has held that the right to remain silent and the right not to incriminate oneself are generally recognized international standards which constitute a core of the principle of a fair trial under Article 6(1) of the Convention. These rights are closely related to the principle underlying Article 6(2), namely that "Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law." See, *Saunders v. the United Kingdom* (Appeal 19187/91), Judgment dated 17 December 1996, (1997); *R. V. Director of the Serious Frauds Office, ex parte Smith*, 3 WLR 66 (1992).

“Whoever, as part of a widespread or systematic attack directed against any civilian population, with knowledge of such an attack, perpetrates any of the following acts:

a) Depriving another person of his life (murder);

c) Enslavement

g) Coercing another by force or by threat of immediate attack upon his life or limb, or the life or limb of a person close to him, to sexual intercourse or an equivalent sexual act (rape), sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization or any other form of sexual violence of comparable gravity;

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

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

112. The Accused is charged with individual criminal responsibility under Article 180(1) of the CC of BiH, which is also one of the core principles of international criminal law particularly foreseen for the commission of the gravest crimes referred to in Chapter XVII of the CC of BiH. The relevant part of this provision reads as follows: “A person who planned, instigated, ordered, perpetrated or otherwise aided and abetted in the planning, preparation or execution of a criminal offense referred to in Article 171 (*Genocide*), 172 (*Crimes against Humanity*), 173 (*War Crimes against Civilians*), 174 (*War Crimes against Wounded and Sick*), 175 (*War Crimes against Prisoners of War*), 177 (*Unlawful Killing or Wounding of the Enemy*), 178 (*Marauding the Killed and Wounded at the Battlefield*) and 179 (*Violating the Laws and Practices of Warfare*) of this Code, shall be personally responsible for the criminal offense. The official position of any accused person, whether as Head of State of Government or as a responsible Government official person, shall not relieve such person of criminal responsibility nor mitigate punishment.”

113. Paragraph 1 of the cited provision of the CC of BiH more broadly foresees different forms of complicity in the perpetration of the referenced category of crimes. First, the foregoing refers to the forms of perpetration of crimes and a large number of the acts of complicity characterized by an essentially different way of determination from that in the so called “general criminal offenses”.⁶ Having analyzed all the elements of the quoted Article, the Court concluded that there existed individual criminal liability on the part of the Accused Saša Baričanin in relation to all the acts of which the Accused was found guilty because the Accused had indirectly or personally perpetrated these acts. The Panel has

⁶ Commentaries on the Criminal Codes in Bosnia and Herzegovina, the Council of Europe and the European Commission, Sarajevo. 2005, p.593.

therefore found that it is not necessary to explain this conclusion again in the part of the Verdict addressing the guilt of the Accused.

114. Pursuant to Article 29 of the CC of BiH, the Accused was also charged that in the perpetration of certain acts he acted in the capacity of a co-perpetrator. The referenced Article prescribes as follows: “If several persons who, by participating in the perpetration of a criminal offense or by taking some other act by which a decisive contribution has been made to its perpetration, have jointly perpetrated a criminal offense, shall each be punished as prescribed for the criminal offense.”

115. According to Article 29, complicity exists when several persons jointly perpetrated a crime by participating in the commission thereof, or by taking some other act by which a decisive contribution has been made to its perpetration. More precisely, co-perpetration is a form of perpetration which exists when several persons, who have satisfied all the requirements to qualify as perpetrators, on the basis of a joint decision, knowingly and willingly, perpetrate a crime. Unlike accomplices in a narrower sense, co-perpetrators do not participate in an offense being committed by another person (someone else’s act), but they all jointly perpetrate (their) joint act, wherein each of them individually gave their decisive contribution without which the crime would not be perpetrated, or would not be perpetrated as planned.

116. This form of liability was determined in relation to the Accused Saša Baričanin for the killing of the victims Otilija Balvanović, Emir Balvanović and Amir Balvanović. The Panel will further elaborate on its conclusion along this line in the part of the Verdict addressing the guilt of the Accused.

117. Prior to explaining the Accused’s guilt for the factual allegations referred to under the Indictment, the Panel finds it useful to note that, instead of the name Veselin Vlahović a.k.a. Batko in the factual description of the operative part of the Verdict, the Panel used the term “another person” given that other criminal proceedings are currently pending before the Court of BiH against him. The Panel has thereby tried to avoid any prejudicing as to the final outcome of the referenced proceedings.

118. In addition, the pronoun “he” used in the Indictment for the Accused Saša Baričanin in the part related to the take-over and rape of the protected witness S-2 was replaced with the Accused’s full last name and name.

119. The Court has not found that the referenced amendments to the factual description of the Indictment exceeded the identity of the Indictment given that the amendments in the first case were made in the interest of the Accused Veselin Vlahović a.k.a. Batko, whereas in the latter, the amendments merely refer to the specification of the Indictment allegations.

120. Further below, the Panel will present its conclusion as to the existence of general elements required for the existence of the criminal offense of Crimes against Humanity

under Article 172 of the CC of BiH, whose existence was determined on the basis of a comprehensive evaluation of the evidence adduced.

121. More specifically, the following general elements of the referenced crime charged against the Accused ensue from the legal qualification of the criminal offense of Crimes against Humanity under Article 172(1) of the CC of BiH in relation to the acts of commission stated in the operative part of the Indictment:

- the existence of a widespread or systematic attack,
- the act of the accused was perpetrated as a part of such an attack,
- the attack was directed against any civilian population,
- the Accused was aware of such an attack.

1. Existence of a widespread or systematic attack

122. Prior to determining the nature of the attack itself, the Panel finds it useful to examine Article 172(2)(a) of the CC of BiH, which stipulates that, within the context of the cited provisions, an attack, in fact, means “a course of conduct involving the multiple perpetrations of acts referred to in paragraph 1 of this Article against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack”.

123. Within this context, the Panel will first explain the existence of a sub-element of this criminal offense, that is, the policy to commit an attack, which concretely requires (1) the existence of a state or organizational policy to commit such attack, and (2) that the attack was in fact undertaken on the basis of, or in furtherance of such policy.

124. The statements of the witnesses heard indisputably showed that the conduct pattern of members of the Serb military and paramilitary forces could not have been a result of random acts of violence. On the contrary, all the circumstances of the case clearly suggest that there existed joint activities of the army and the police of the Serb Republic of BiH, including paramilitary formations. The activities of members of the foregoing formations can undoubtedly be viewed as the implementation of the higher-level policy, as clearly presented in the then official documents issued by the Assembly of the Serb people in BiH.

125. Given that the general element of the crime implies the existence of a widespread and systematic attack, and given that the provisions of the Criminal Code of BiH do not provide in more detail a definition thereof, in evaluating the evidence the Panel has relied on the so far established jurisprudence of both the ICTY and the Court of BiH regarding this issue. Thus, the ICTY Appeals Chambers Judgments in *Kunarac*, *Kovač* and *Vuković*

have defined the factors necessary for the evaluation of a widespread or systematic nature of the attack⁷:

126. In “assessing the constitutive elements of a “widespread” or “systematic” attack, the Trial Panel must first identify the population which is the object of the attack and, in light of the means, methods, resources and result of the attack upon the population, ascertain whether the attack was indeed widespread or systematic. The consequences of the attack upon the targeted population, the number of victims, the nature of the acts, the possible participation of officials or authorities, or any identifiable patterns of crimes, could be taken into account to determine whether the attack satisfies either or both requirements of a “widespread” or “systematic” vis-à-vis this civilian population.”

127. More specifically, the term “widespread” has been defined in the ICTY Trial Chamber’s Judgment in *Kordić and Čerkez*⁸, and the Trial Judgment in *Blaškić*, whose para. 206 stated that: [“The concept of “widespread” may be defined as massive, frequent, large scale action carried out collectively with considerable seriousness and directed against multiplicity of victims. The concept of “systematic” may be defined as thoroughly organized and following a regular pattern on the basis of a common policy involving substantial public or private resources. There is no requirement that this policy must be adopted formally as the policy of a state. There must however be some kind of preconceived plan or policy”].⁹

128. Furthermore, the term widespread refers to the “scale of the acts perpetrated and to the number of victims.”¹⁰

129. On the grounds of the evidence adduced, the Panel concluded that during the period relevant to the Indictment, more precisely, from May 1992 through mid December 1995, there was a widespread and systematic attack exclusively directed against the Bosniak civilian population, which was, in addition to the accepted facts,¹¹ also corroborated by the statements of all the Prosecution witnesses heard.

130. Witness Hasan Gobeljić, to whose evidence the Court has given full credence, testified that in early 1992 he lived at the Lenjinova Street in the Grbavica neighborhood. During March and April, the witness regularly went to work until the first road blocks were

⁷ ICTY Appeals Chamber Judgment in *Kunarac et al.* dated 12 June 2002; para. 95.

⁸ ICTY Trial Chamber Judgment in *Kordić* dated 26 February 2001; para. 179.

⁹ ICTY Trial Chamber Judgment in *Akajesu*, para. 580.

¹⁰ ICTY Trial Chamber Judgment in *Blaškić* dated 3 March 2000, para. 206.

¹¹ The fact accepted under the Decision of the Court of BiH dated 11 May 2011: „On 2 May 1992, a major JNA attack on the centre of Sarajevo occurred. After that the town was exposed to very heavy shelling. A couple of days later, the Baščarsija, the centre of old Sarajevo was set alight, the national and university libraries, the railway station, the post office and many key buildings in town were heavily shelled and destroyed“. (*Galić Judgment*).

set up. One day, he was woken up by the sound of the *gusle* (one-stringed folk fiddle) coming from a nearby store. The neighbors rumored that certain men from the Romanija Mountain area had arrived there. On the same morning, on his way out of the building in which he lived, a soldier approached the witness and asked for his ID, not allowing him to exit the building. At the time, certain rights of the witness, his family and other non-Serbs became restricted. Thus, the witness's father ceased receiving his pension wherefore they had to live on their neighbors' support. Some of the witness's friends advised him not to move around a lot because "if Veselin Vlahović a.k.a. Batko saw him, it would be his end". In addition, they also advised him not to have his ID with him as otherwise he would be taken to the Ministry of Interior, and in that case "there would be chances". The Panel has concluded that this meant that Muslims or Croats had to conceal their identity in order to avoid mistreatment and other forms of abuse to which they would otherwise be subjected.

131. The witness testified that at the time the Muslims' and Croats' apartments were searched on a large scale. During one such search, soldiers came to the witness's apartment where his mother and the brother were present. The witness's mother subsequently admitted to him that these soldiers intended to throw his brother from the balcony, but that the police came and prevented them from doing so. During these days, other persons from the neighborhood were mobilized in work details. The witness testified that they had neither tried to flee, nor to confront the Serb soldiers, because the soldiers had threatened them that if they tried anything, their family members would be killed.

132. At the relevant time, witness Hatidža Babić also lived at Grbavica with her husband. This witness testified that in early April people started leaving the neighborhood, and that forcible removal of Muslims from the buildings started in June. The witness stayed in the apartment with her husband until 20 September 1992, when three persons came to the apartment, took her and her husband in a high-rise direction, allegedly to search them. However, having arrived there, the referenced persons seized her fur coat and told her that "Alija would give her a Serb fur coat", whereupon they were expelled from the area across a bridge near the *Bristol* Hotel.

133. The witness thought that only on this particular day of 30 September 1992, around 500 Muslims and Croats were expelled from Grbavica. Although the Panel cannot accept the witness's estimate as absolutely correct and precise, it nevertheless showed that this was a mass-scale expulsion of all non-Serb civilians, that is, of those whose stay in the Grbavica was undesired.

134. Witness Jasmina Mujković also explained the way in which the non-Serb population experienced the living conditions in this neighborhood. The witness testified that at the time, Grbavica became "an enclave" with the restricted freedom of movement. The witness stated that "following 1 May, one had to look for ways to avoid catching someone's eye", and that "at any time, a soldier could identify you and take you wherever he wanted". On the grounds of the foregoing, the Panel has undoubtedly concluded that at the time

covered by the Indictment, the Grbavica neighborhood was fully controlled by the Serb formations which supervised each segment of the civilian life of the non-Serb population.

135. The protected witnesses S-1, S-2 and S-3, and witness Avdo Huseinović similarly described the conditions in which the civilian population had lived in early 1992. Witness Avdo Huseinović made a documentary film about the referenced events titled “*A bloody Dance around the Town.*” This film was reproduced at the trial and tendered in the documentary evidence.

136. Insofar as this part is concerned, the witnesses’ statements are clear, unequivocal, consistent and undisputed by the Defense evidence. Therefore, the Court has accepted these statements in the part supporting the existence of a widespread and systematic attack.

137. Hence, on the grounds of the documentary evidence adduced, the established facts accepted, and the evidence of the witnesses present at the relevant time in the Grbavica area, Municipality of Novo Sarajevo, the Panel has concluded that the attack of the military, paramilitary and police forces of the so called Serb Republic of BiH, included the territory of the city of Sarajevo and its narrower area, whereby the first alternative requirement of the general element of Crimes against Humanity was satisfied.

138. Having in mind the general situation prevailing in Sarajevo during the critical period, however, and taking into account the fact that “the systematic attack element requires an organized nature of the acts and improbability of their random occurrence”,¹² the Panel has undoubtedly established that, at the same time, the launched attack was also **systematic**, because the non-Serb population of the Grbavica neighborhood, Municipality of Novo Sarajevo, was subjected to a well-established pattern of violent behavior, manifested through the killings, seizure of private property, restricted movement of the population, unlawful detention and imprisonment in inhumane conditions.

139. The Information of the Intelligence and Security Agency of Bosnia and Herzegovina, No.: 04/7 -233/11 dated 11 January 2011, tendered as the Prosecution exhibit¹³, contains a Review of the crimes committed in the Grbavica area – Novo Sarajevo. The Review clearly demonstrates that crimes were committed on a mass scale and in a large number. The Prosecution’s exhibit,¹⁴ stating in detail the information about mass graves and individual graves in the territory of Municipalities Ilijaš, Vogošća, Novi grad, Ilidža, Hadžići and Novo Sarajevo, also documented the large number of the committed crimes.

¹² *Naletilić and Martinović*, Trial Chamber, 31 March 2003, para. 236.

¹³ T-21- Information of the Intelligence and Security Agency of Bosnia and Herzegovina, No.: 04/7 -233/11 dated 11 January 2011.

¹⁴ T-20- Review of the events in the territory of the Municipalities of Ilijaš, Vogošća, Novi grad, Ilidža, Hadžići and Novo Sarajevo in the 1996-1998 period pertaining to the excavations of mass and individual graves.

140. The implementation of such a public campaign of terror and fear exclusively directed against the non-Serb civilian population further suggests the existence of a higher-level organization, or systematic nature of the plan furtherance itself, the obvious intent of which was to create a hostile and unbearable environment, fully inappropriate for the Muslim population to stay in the parts of the city under the army control.

141. Identical conclusions as to the existence of a widespread and systematic attack in the Sarajevo city area also ensue from the final ICTY judgments in *Dragomir Obrenović* (case No. IT-98-29/1) and *Momčilo Krajišnik* (case No. IT-00-39-T).

142. In view of the foregoing reasons, the Panel has undoubtedly established that there was a widespread and systematic attack in the Sarajevo city area, particularly in the Grbavica neighborhood where the referenced crimes were committed, whereby the first general element of the criminal offense of Crimes against Humanity under Article 172 of the CC of BiH has been satisfied.

2. Status of the persons subjected to the attack: civilians

143. In order to have a clearer overview of the status of victims against whom the attack was directed, the Panel has relied on the Common Article 3 of the Geneva Conventions, which is applicable in the national legislation on the basis of Annex 6 to the Dayton Peace Agreement, and which is, according to the ICTY case law, also considered an integral part of customary law. More specifically, this Article defines conditions under which persons shall enjoy protection of the Conventions, and clearly defines “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*.” The referenced Article also stipulates that this category of population “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.”

144. During the main trial, the Panel has undoubtedly established on the grounds of evidence of the heard witnesses that, when arrested and detained, all these persons were entitled to the protection pursuant to Common Article 3 of the Conventions. More specifically, all Prosecution witnesses testified that they and other victims had been arrested as civilians, namely that they were taken out of their apartments. Therefore, it is obvious that the injured parties took no active part in the fighting and hostilities, that they were unarmed and that they were not active within any combat context.

145. The Court’s conclusion that the attack was exclusively directed against the non-Serb civilian population, whereby the second general element of the criminal offense of Crimes against Humanity under article 172 of the CC of BiH has been satisfied, will be further corroborated in the part of the Verdict explaining the Accused’s criminal liability on the basis of the context within which the crimes were committed, and on the basis of all

other circumstances.

3. The Accused knew about the attack and his acts were part of the attack (nexus)

146. It ensues from the heard witnesses' evidence that, at the time relevant to the Indictment, the Accused Saša Baričanin was a soldier, namely, according to his own statement he was a member of the Koševo Battalion. The foregoing was confirmed by the Defense documentary evidence too.¹⁵ Therefore, in terms of the formations, the Accused was within the armed forces engaged in a widespread and systematic attack.

147. This general element of the crime charged against the Accused further foresees the Accused's inherent knowledge about the attack, namely "the accused must know that there is an attack directed against the civilian population and he must know that his acts are part of that attack or at least take the risk that they are part hereof."¹⁶

148. Along this line, quite irrelevant is the fact that, at the moment of commission of the crime the Accused was not a member of the White Angels (*Bijeli anđeli*) unit, or of which unit within the RS armed formations specifically he was a member, given that since the commencement of the attack, the Accused was assigned appropriate tasks and duties in military formations. It is obvious that the Accused was issued with a uniform and the weapons that he had with him at the time the offenses of which he was found guilty were committed. According to the Panel, it is indisputable that during the commission of the crime the Accused was wounded and given medical treatment in the VMA Hospital in Belgrade, where he met Zoran Stavnjak, and about which he submitted ample documentary evidence. Within this context, the Court has found it useful to note that the Certificates on the Accused's wounding after 1992 that the Accused tendered as evidence, were considered irrelevant to the proceedings at issue, except in the relevant part confirming the Accused's assertions that he was a member of the Koševo Battalion and that he knew Zoran Stavnjak.

149. Therefore, if the foregoing is viewed within the mass-scale nature of the attack itself, the wide scope of the Serb forces activities in the territory under their control, it is justified to conclude that the Accused, as an integral part of the formations that launched the attack, had full knowledge about the daily activities and events.

150. The manner in which the Accused participated in the commission of the crime of which he was found guilty undoubtedly demonstrates that he was aware that there was a widespread and systematic attack, and that the acts he had undertaken were part of this attack. This is so because the incidents in the Grbavica area were neither sporadic nor

¹⁵ Documentary evidence - 5 Finding, evaluation and opinion of the 2nd Lower instance military medical commission stating that the Accused was a member of the military post VP 7033 Semizovac.

¹⁶ *Krnjelac*, Trial Panel, Judgment dated 15 March 2002, para. 59.

random, and the crimes committed were not individual crimes that could be considered an exception, but it was rather a systematic action toward the non-Serb civilians, their lives, freedom and property.

151. In other words, the Accused was fully aware of his acts and the consequences thereof, he wanted them to be part of the attack systematically launched in the territory of the city of Sarajevo, whereby this last, general element of the criminal offense of Crimes against Humanity under Article 172 of the CC of BiH has been satisfied.

C. INDIVIDUAL CHARGES UNDERLYING CRIMES AGAINST HUMANITY

152. Having established the existence of general elements of the criminal offense of Crimes against Humanity under Article 172 of the CC of BiH, on the grounds of the evidence adduced the Panel found the Accused guilty of the commission of all individual acts charged against him under the Indictment.

153. Having evaluated the evidence adduced, the Panel concluded that the acts of the Accused have satisfied the elements of the criminal offense of Crimes against Humanity in violation of Article 172(1)(a), (c) and (g) of the CC of BiH, as read with Article 29 and Article 180(1) of the CC of BiH.

(a) Killing of the victims Otilija, Amir and Emir Balvanović

154. The eye-witnesses who testified in this case, and to whose evidence the Court gave full credence, may provide the most reliable and detailed information about the killing of members of this family.

155. On the grounds of the heard witnesses' evidence, the Court has concluded that on 13 July 1992, the Accused Saša Baričanin and Veselin Vlahović a.k.a. Batko came to the apartment in which the victims Emir Balvanović, Amir Balvanović, Otilija Balvanović, the protected witnesses S-2 and S-1 lived, tied them up, and under the excuse that they would take them for interrogation, took the victims Amir Balvanović, Emir Balvanović out of the apartment, whereas Otilija Balvanović stayed in the apartment with the witnesses S-1 and S-2.

156. Witness S-1 explained in detail that two men who had come to their apartment on the critical occasion were uniformed and armed, that one soldier had a camouflage uniform and a peasant cap (šajkača) on his head, and that the other one, who was somewhat taller, had only the upper part of the uniform. They carried rifles and ammunition belts around their chests. The soldiers told them they would take the men for interrogation, and after they left, a young boy stayed with the witnesses in the apartment, allegedly to guard them and prevent them from fleeing. At one point, the witness asked him to let them go, but he only shrugged and told them he did not dare do so.

157. After a while, the two soldiers returned to the apartment and ordered the women to get ready, but did not tell them where they would take them or why. They sat in a white-red *Golf* vehicle and drove to a building near a roundabout route. The witness testified that this had happened in the Vraca neighborhood, that they entered a building entrance and climbed up to the second floor. The witness remembered that in the apartment, they were brought into a room which had a glass-door. The persons who had been in the previous apartment were in this apartment too. The men with the peasant cap ordered that they all be tied. The two soldiers seized from the injured parties all the golden jewelry they had with them. The witness explained that they themselves had taken off all the jewelry. The man wearing the peasant cap subsequently gave two rings back to her, thereupon grabbed her breasts and said: "This one is mine!" Thereupon he approached Otilija Balvanović and took her out of the room.

158. The witness did not see what happened thereafter, but she heard the voices coming from the anteroom where the light was barely discernible. The witness could hear the voice of the second soldier asking: "Bato, shall we use a rifle or a pistol?", and the former answered: "With a pistol, it is less loud." At that point, the witness realized that "Bato" was in fact the "Batko" who "wreaked havoc" around Grbavica.

159. Immediately thereafter, the two soldiers went away, and again only the said young boy stayed with the witnesses S-1 and S-2. They again begged him to help them, but he only responded that he did not dare to do so. When the soldiers came back, the soldier with the peasant cap told the boy he was free to go, and then he turned toward the witness S-1 and ordered her to get undressed. At that point, the witness noticed that the other soldier had taken witness S-2 out of the room.

160. Witness S-1 testified that on this occasion the soldier with the peasant cap had repeatedly raped her and thereupon left her locked in the room. He ordered her not even to look through the window. During this period, he was coming in the afternoon hours bringing her food. Witness S-1 kept intensively thinking how to flee, but she had neither courage nor possibility to do so. However, on the second night, that is, during the night of 13/14 July, she noticed a golden plate on a small cabinet in the room, which was similar to the one of her mother-in-law's, and she realized what had happened. Witness S-1 stated: "I decided I had to flee. I even thought about poisoning myself, but I decided to jump out."

161. In the morning hours of 15 July, after the Accused had left the apartment, witness S-1 threw out some rags on a small hill below the window, and jumped out. As a result of this jump, she broke her spine and she could not get up. Shortly thereafter, a woman spotted her and called the medical service which took her to a provisional infirmary at Vraca. From there, witness S-1 was first sent to the *Kasindol* Hospital, and thereupon to Pale, from which she was transferred to the B. Academy (VMA). The witness underwent a surgery there, whereupon she had a 20-day recovery. Witness S-1 continued living in Belgrade until she went abroad.

162. Witness S-1 testified that as a result of the foregoing, she still suffers pains, and damages of the nerves controlling her urinary bladder and the large intestine. According to the medical prognosis, this will remain her health condition for life. The injuries that the victim sustained on this occasion were also confirmed by witness Kristina Breški-Kovačević. At the relevant time, this witness had worked in a Romanija hospital where the victim was hospitalized before her transfer to Belgrade.

163. Witness S-1 subsequently learned about the destiny of the other protected witness (witness S-2) who had been with her in the apartment on the critical occasion. Witness S-1 learned about the destiny of Otilija, Amir and Emir Balvanović only upon the exhumation of their bodies from a site at the Trebević curve. On that occasion, one of the forensic experts who had carried out the exhumation, Dr. Ilija Dobrača, showed to the witness a photo depicting Veselin Vlahović a.k.a. Batko in a camouflage uniform and with a peasant cap on his head. Witness S-1 recognized the person who had raped her, and added that she learned his name and last name much later.

164. Witness S-1 did not know from before the other soldier who had accompanied him on the critical day, and she could not recognize him in the courtroom. However, during the cross-examination of this witness, the Accused Saša Baričanić asked her "Did she know if on these days, witness S-2 went to feed pigeons", whereby in fact he confirmed that at the time covered by the Indictment, he had had contacts with witness S-2. Bearing in mind that after the critical event witness S-2 spent her time only in the Accused's apartment who had repeatedly raped her, the Panel undoubtedly concluded that the Accused Saša Baričanić was exactly the person who had come to the victims' apartment in the afternoon hours on 13 July 1992, escorted by Veselin Vlahović a.k.a. Batko, seized jewelry and other valuable items from them, and thereupon tied them up with the help of the other soldier, and transported them to an apartment at Vraca, wherefrom they took them out again, and went with them in an unknown direction. The victims were unaccounted for until the exhumation of their mortal remains.

165. The injured party-witness S-2 almost identically described the critical event and the abduction of victims Otilija Balvanović, Amir Balvanović and Emir Balvanović from the apartment. The witness S-2 added that she had heard a stifled scream when Otilija Balvanović was taken out probably because her mouth was tied up. This witness assumed that the men were tied up in the hallway since she had seen their silhouettes while being taken out. The fact that the men had their hands tied up at the time they were executed can be confirmed by the Crime-Scene Investigation Record¹⁷ made during the bodies' exhumation from the mass grave. On this occasion, white sleeve bands were found in the waist area of the corpse of the victim Emir Balvanović in the state of saponification.

¹⁷ Crime-scene investigation record No.: Kri-84/99 dated 30 August 1999 tendered as Prosecution Exhibit T-3.

166. Witness S-2 subsequently learned from her neighbor-witness S4 about their destiny, and that the Accused bragged about what he had done to this family. This neighbor told the witness S-2 that, having hearing what had happened, many people organized themselves to help this witness; namely they thought to send S4 to take the witness away in order to prevent the Accused from harming her too.

167. The evidence of the protected witness S-3 corroborated the evidence of the injured parties, who at the critical time had not known the Accused Saša Baričanin. This witness was the person who was left in the apartment to guard the protected witnesses S-1 and S-2 during the absence of the Accused and Veselin Vlahović a.k.a. Batko. More specifically, witness S-3 remembered that in the evening hours of 13 July, he, Veselin Vlahović a.k.a. Batko and the Accused Saša Baričanin, whom he recognized in the courtroom, had come to the apartment of the victims Amir Balvanović and Emir Balvanović, and “took them for interrogation“, while witness S-3 stayed in the apartment with the protected witnesses S-1, S-2 and Otilija Balvanović. Shortly thereafter, the Accused and Veselin Vlahović a.k.a. Batko returned to the apartment, and on the same day transported the women into another apartment at Vraca using a white *Golf* vehicle driven by Veselin Vlahović a.k.a. Batko.

168. Witness S-3 explained that the injured parties were brought into an apartment in which he had already been once when Veselin Vlahović a.k.a. Batko called him to meet the “prisoner Manuela” Immediately upon their arrival, the older woman was taken to a room where Veselin Vlahović a.k.a. Batko seized her jewelry by opening her bag and taking the gold out of it. On this occasion, he threw away a gold chain with a cross, and thereupon tied up the victim’s mouth. He tried to took a ring off a finger of one of the protected witness in the presence of the Accused Saša Baričanin, even though he did not remember whether the Accused Saša Baričanin had seized any golden jewelry from the victims too. While they were in the apartment, the victims-men were locked in a lumber room with their hands and mouths tied up.

169. Witness S-3 saw that, having seized the golden jewelry from the victims, the Accused and Veselin Vlahović a.k.a. Batko discussed something, thereupon took the two men and the woman away, and told the witness S-3 to stay in the apartment with the two younger women. At that point, the witness realized “what had happened, and he got afraid”. Some 15-20 minutes later, the Accused and Veselin Vlahović a.k.a. Batko returned to the apartment, but they did not tell him what happened with the abducted persons. Thereupon, Veselin Vlahović a.k.a. Batko grabbed the younger woman’s breasts and started smiling. He told the witness S-3 that he was free to go, while he and the Accused Saša Baričanin stayed in the apartment alone with the injured parties.

170. Witness S-3 subsequently learned that on the very same day one of these women had jumped through the window, but at the time he knew nothing about the destiny of other persons. Only after crossing over to the other part of the town did witness S-3 learn that the three persons abducted from the apartment had been killed.

171. The Accused Saša Baričanin did not contest that the referenced event had taken place. The Accused, however, contested his participation in the killing of the three members of this family. More specifically, the Accused testified that on the relevant day, at around 20:00 hrs, intending to visit Zoran Stavnjak, he came to the front of his house in which the premises of the *Digitron* company were located. He saw there members of the White Angels unit, who used to gather there at the time, while the “Veselin Vlahović a.k.a. Batko’s group” came subsequently. Along this line, the Accused added that “Grbavica was Veselin Vlahović a.k.a. Batko’s terrain” and that, in his opinion, Veselin Vlahović a.k.a. Batko was not a member of the White Angels unit. Soldiers rumored about him a lot, and everybody stated he was a coward afraid of going to front lines, wherefore he had stayed in the city and abused the civilian population.

172. The Accused testified that shortly after his arrival in front of the *Digitron* premises, he told Veselin Vlahović a.k.a. Batko that the Command had ordered him to go to an apartment to pick up two members of the *Green Berets*, and apprehend them for interrogation. Upon mere mentioning of these words, the Accused decided to go with Veselin Vlahović a.k.a. Batko given that it was exactly members of the *Green Berets* who had arrested the Accused Saša Baričanin’s brother. During the examination, the Accused tried to explain his decision, categorically refusing the allegation that his motive was retaliation. At the same time, the Accused provided no logical explanation as to why he decided at that point to go with Veselin Vlahović a.k.a. Batko whom he had scarcely known.

173. The Accused has almost identically described the abduction of the men from their apartment and bringing them to Veselin Vlahović a.k.a. Batko’s apartment. The Accused, however, stated that as of that point, he became suspicious about the real intentions of Veselin Vlahović a.k.a. Batko because he had come with him believing that the apprehended persons would be taken to the Command for interrogation. The Panel, however, could not give credence to the Accused’s testimony in this part given that he had returned to the victims’ apartment together with Veselin Vlahović a.k.a. Batko, took the two protected witnesses, including the victim Otilija Balvanović, out of the apartment, and brought them to Veselin Vlahović a.k.a. Batko’s apartment.

174. Therefore, the Panel cannot accept the Accused’s assertions that he could not, at any point, have known the real intentions of Veselin Vlahović a.k.a. Batko because he was present when the money and the jewelry were seized from the victims, and because along with Veselin Vlahović a.k.a. Batko he participated in the abduction of the victims Amir, Emir and Otilija Balvanović into an unknown direction.

175. In addition, the Panel has found unconvincing the assertion that, after the exit from the apartment, the Accused Saša Baričanin stayed in front of the building entrance, while Veselin Vlahović a.k.a. Batko took the victims into an unknown direction. This is so because witness S-3 stayed in the apartment with a task to guard the injured parties until

the return of the Accused Saša Baričanin and Veselin Vlahović a.k.a. Batko, wherefore there was no need to additionally secure the building. In addition, the Accused Saša Baričanin maintained all the time that he had disagreed with the Veselin Vlahović a.k.a. Batko's conduct and that he was afraid of his real intentions. Therefore, it remains unclear why he failed to use the opportunity, when he stayed alone, to help the injured parties-protected witnesses, or to leave the crime-scene, if he had indeed disagreed with the treatment of these injured parties.

176. Even the Accused himself testified that, at one point, it was obvious from Veselin Vlahović a.k.a. Batko's conduct that the real intentions of coming to the victims' apartment was not to apprehend them for interrogation at the Command, he nevertheless stayed at the crime-scene, took active part in the injured parties' abduction from the apartment, returned there 15-20 minutes later along with Veselin Vlahović a.k.a. Batko, took out the witness S-2, and brought her to the apartment allocated to him in the Grbavica neighborhood.

177. The Accused Saša Baričanin tried to explain that, at that point, he still believed that the victims Emir, Amir and Otilija Balvanović had been taken to the Command, wherefore he stayed to help out the protected witnesses to prevent them from being raped by Veselin Vlahović a.k.a. Batko. The Panel cannot accept the foregoing as an argument, because no piece of evidence, other than the Accused's statement, exists whatsoever to support the allegations that following the victims' abduction, he indeed stayed in front of the building, namely that he did not go to the execution site, or that he himself did not participate in the victims' killing. Also contradictory are his assertions that he wanted to help the injured parties-women who had stayed in the apartment, if one takes into account that he was found guilty of rape and detention of one of the protected witnesses.

178. The Accused testified that he was afraid of Veselin Vlahović a.k.a. Batko because "Grbavica was his terrain", but at the same time he stated that on the critical occasion, he himself "feared no one, because he was a boxer". Thus, the Panel could not accept his assertion that he could not leave the crime-scene because he was in fear for his own life. It can only be concluded from the foregoing that in the commission of the described offenses the Accused acted willingly, namely that he committed the crime with direct intent because he was aware of the offense and he wanted the commission thereof. The foregoing is confirmed with the testimony of witness S1 who had heard the question: "Are we going to use a rifle or a pistol", the statement of witness S3 that they had agreed on something, and the statement of witnesses S1, S2 and S3, and the Accused himself, that they told witness S3 they needed him no more.

179. Having analyzed the witnesses' evidence, and having compared the distance between Veselin Vlahović a.k.a. Batko's apartment at Vraca and the execution site¹⁸ (which is very short), the Court concluded that the Accused and Veselin Vlahović a.k.a. Batko had sufficient time to take the victims to the execution site, and to return to the apartment in 10-15 minutes, which is, according to the injured parties, exactly the period during which they were absent.

180. Witness Hasan Gobeljić, to whose testimony the Court gave credence in the relevant part, also confirmed the killing of the Balvanović family. This witness testified that before October 1992, a woman friend of his from Grbavica had told him about the tragedy of the Balvanović family since people rumored about it. Witness Hatidža Babić better knew the members of this family, and particularly Otilija Balvanović. This witness learned from one Dušanka that upon their arrival in the apartment, soldiers had slit throats of the victim and her two sons and that they wanted to rape the injured party's two daughters-in-law, but that one of them had jumped through the window and managed to escape. Within this context, mostly mentioned by the neighbors were Veselin Vlahović a.k.a. Batko and one Lule. The Court has not given full credence to this witness's testimony given that her information about the referenced event was indirect and unreliable. Therefore, this witness's testimony is acceptable only in so far as it confirmed the fact that the death of the Balvanović family was a tragic incident, namely that the referenced persons died a violent death.

181. Witness Jasmina Mujković, who had known members of the Balvanović family, also presented her indirect knowledge about the victims' killing. This witness testified that the mother and her sons were taken out and killed, and the protected witnesses S1 and S2 were taken to the *Digitronka* building. Witness Jasmina Mujković also heard that one of them had escaped by jumping from a balcony. She subsequently heard that the other one had escaped too. Even though this witness's information is almost unreliable, the Court has noted that further in her testimony, this witness identified the persons who had possibly killed the victims. Thus, the witness stated that her acquaintance Zoran, a neighbor of the Balvanović family, had once said: "For God's sake, they killed the Balvanovićs!" He mentioned Veselin Vlahović a.k.a. Batko and another person whose name the witness did not remember. In this context, the Court has taken into account that, during cross-examination, this witness testified that she did not know the Accused and that she had no information related to him. That is why her testimony was accepted only in the part confirming the fact that the victims had died a violent death.

¹⁸ Crime-scene investigation Record No.: Kri-84/99 dated 30 August 1999 tendered as Prosecution Exhibit T-3.

¹⁸ Photo-documentation of the exhumation in the place of Gornji Miljevići, made by the Crime Police Sector Sarajevo, No. 1960/99 dated 5 October 1999, tendered as Prosecution Exhibit T-9.

182. Witness Hajrudin Pešto described the manner in which the victims had been executed. On 28 March 2002, he communicated the information in his possession to the Institute for the Investigation of Crimes against Humanity and International Law in Sarajevo. In the forms related to the killed persons, this witness wrote that their throats were slit. However, the foregoing is only a piece of information given by a single person, and as such, it was supported with no concrete evidence or facts whatsoever. A forensic analysis carried out following the discovery, exhumation and identification of the victims' bodies confirmed that they had been killed by fire arms.

183. More specifically, the bodies of the victims Emir, Amir and Otilija Balvanović were found after members of the BiH Federation commission, OHR representatives and members of the Physicians for Human Rights organization had together visited the sites and carried out investigations, including the crime-scene investigation carried out on 30 August 1999.¹⁹ The exhumation was carried out in the part of the road leading from Sarajevo toward Trebević and Pale. Coming from the Sarajevo direction, this part of the road is surrounded by a large left curve. Thus, the referenced site is partially located above and partially below the road. It is a wider area, consisting of several plateaus, and it is surrounded by the woods.

184. Mortal remains of human bodies were found below one meter thick debris found in a waste area. A total of 15 bodies were found following the excavation. Additional 13 bodies were found following the excavation of the next layer of the soil. Thus, a total number of 28 bodies were exhumed from the referenced mass-grave and transferred to the mortuary of the PUC City Cemeteries Visoko for further forensic analysis and identification.

185. On this occasion, as noted in the Exhumed Persons Identification Record made by the MUP Crime Police Sector Sarajevo, No.: 01/2-3 dated 13 September 1999,²⁰ the victims were identified. Photo-documentation was also made in relation to the crime-scene investigation.²¹

186. Following the exhumation and identification of the found corpses, the cause of death was determined in the Forensic finding and opinion, corpse examination, autopsy and identification No.: Krl: 84/99 dated 8 March 2000, made by forensic medicine specialist, Dr. Ilijas Dobrača. It was determined that the death of Amir Balvanović was most likely a result of entry-exit wounds inflicted by the mechanical action of a number of bullets (burst of fire) fired from a hand-held fire weapon. The death was violent and instant as a result of brain tissue destruction. The victim Otilija Balvanović had an entry-exit

¹⁹ Crime-scene investigation Record No: Kri-84/99 of 30 August 1999 tendered as Prosecution Exhibit T-3.

²⁰ Prosecution Exhibit T-11,12,13,14 and 15.

²¹ Photo-documentation of the exhumation carried out in the place of Gornji Miljevići made by the Crime Police Sector Sarajevo, No. 1960/99 dated 5 October 1999, tendered as Prosecution Exhibit T-9.

wound on her skull, inflicted by a bullet fired from a hand-held fire weapon, as a result of which the death was violent and instant, with the brain tissue destruction. Finally, entry-exit wounds were also found on the lower jaw and lower leg of the victim Emir Balvanović, inflicted by a number of bullets (burst of fire) fired from a hand-held fire weapon, which caused a violent fast death due to superficial bleeding. The referenced findings and opinion was orally explained at the main trial by Dr. Hamza Žujo, forensic specialist, given that Dr. Ilijas Dobrača, who had made the finding, died in the meantime.

187. The Panel, however, has not accepted the Defense theory that the referenced persons did not die at the time covered by the referenced Indictment. This is so because the parts of clothing found during the exhumation were *a wool-made checkered jacket, a grey button-through sweater, and a winter cap*, while according to the evidentiary proceedings, the injured parties were taken out of their apartment in the evening hours of 13 July 1992.

188. The Panel did not consider the foregoing fact as decisive, having held that it could not inherently bring into question the Court's conclusion that the Accused is guilty of their killing. More specifically, exactly the found clothing and footwear can confirm how confused the victims were while selecting their clothing. The victim Emir Balvanović had a wool-made checkered jacket, a grey sweater, blue socks, a winter cap and loafers. The victim Otilija Balvanović had a bra, jeans, perforated shoes with layered heels, while the victim Amir Balvanović had a jeans jacket and trousers, a belt, a sweater and shoes with shoestrings. It is a fact that the victims' identification records have identified the referenced clothing as the clothing in which Emir, Amir and Otilija Balvanović had been last seen alive.

189. It can be noted exactly by way of the footwear that the victims were properly dressed for summer. However, given the then generally chaotic situation at Grbavica, the constant and uncontrolled forced entries of various military and paramilitary formations, and the unlawful removal of people from the apartments, it is justified to conclude that many Grbavica civilians lived in a constant fear that they would be taken away, and that therefore each time they left their apartments, they wore such clothing in order to be prepared for a longer absence from their homes. Even before the critical event, the victims Emir and Amir Balvanović were abducted from the apartment in which they had lived. Thus, on 18 June, unidentified uniformed persons took them "for interrogation in Kula" and brought them back on the following day. In view of the foregoing, it is justified to conclude that they had warmer clothing, unlike the victim Otilija Balvanović, who until the critical day had never been taken away from the apartment. According to the Panel, the foregoing explains why the found bodies were not uniformly dressed. The Panel has also held that the referenced fact, suggested by the Defense during the proceedings, is not inherently sufficient so as to draw a conclusion other than that drawn by the Panel establishing the Accused's guilt for taking part in the referenced event.

190. The protected witnesses confirmed that the Accused and Veselin Vlahović a.k.a. Batko had allowed the injured parties to get dressed before they were first taken away. However, it undoubtedly ensues from all the referenced witnesses' evidence that Veselin Vlahović a.k.a. Batko was involved in the event at issue. This is important given the fact that, in addition to the Accused Saša Baričanin, the eye-witnesses have identified Veselin Vlahović a.k.a. Batko as a co-perpetrator in the victims' killing. Witness Zoran Vaclav confirmed Veselin Vlahović a.k.a. Batko's participation in the critical event. Witness Zoran Vaclav's neighbor Veljko Veselinović told this witness that he had seen some unburied bodies on the Trebević Mountain, among which he recognized members of the Balvanović family. He told the witness that "Batko's group" had done this. In addition, this witness confirmed the site where the exhumation of bodies of the victims Emir, Amir and Otilija Balvanović was carried out.

191. Therefore, on the grounds of all the referenced evidence and the undisputed testimony of the injured parties-witnesses, the Court has concluded beyond a doubt that on the critical day the Accused Saša Baričanin was, along with this other soldier, present in the apartment of the victims Otilija, Emir and Amir Balvanović.

192. Even though eye-witnesses to the victims' killing were not examined during the proceedings, the Court has concluded, on the grounds of all the evidence adduced, that the killing of the victims was a direct result of the acts of the Accused and Veselin Vlahović a.k.a. Batko, because they were the last persons who had any contacts with the victims as they were abducted from their apartment. In addition, the Exhumation Record has clearly confirmed that the victims' death was caused by fire weapons. This must be viewed within the context of the witness S-1's testimony. This witness heard that before the victims were taken out these two soldiers had discussed the way in which they would kill them, and they mentioned using a rifle or a pistol.

193. The expert analysis²² of the submitted cartridge cases and rounds found in the place of Gornji Miljevići (Republika Srpska), at the site where 28 bodies were exhumed, exactly confirms that the cartridge cases belong to the bullets fired from an automatic rifle caliber 7.62x39mm. It was not possible, however, to identify the weapon from which a round caliber 9x19mm 9mm Luger was fired. The foregoing must be inevitably viewed within the context of the fact that, at the critical time, the Accused Saša Baričanin and the other soldier were armed with automatic rifles, which fact the Accused did not even contest in his testimony.

194. Therefore, on the basis of the evidence adduced, the Court has concluded that with the above described acts, as a co-perpetrator, the Accused committed the criminal offense in violation of Article 172(1)(a) of the CC of BiH, as read with Article 29 of the CC of BiH. In

²² The expert analysis was carried out on 4 October 1999 by the MUP of Canton Sarajevo, Crime Police Sector, Homicide and Sexual Assaults Forensic Department.

the commission of the referenced crime, the Accused acted with direct intent, being aware that a direct result of his acts would be the victims' violent death. Thus, having wanted the foregoing result and prior to the commission of the crime, the Accused asked Veselin Vlahović a.k.a. Batko: "Bato, are we going to use a rifle or a pistol?" Thereupon, along with the other soldier, the Accused took the victims Amir, Emir and Otilija Balvanović out of the apartment, and they were not seen alive ever since.

(b) Inhuman treatment of the injured parties

195. Given that Article 172(2) of the CC of BiH does not explain in more detail the meaning of this term, in evaluating the existence of elements of the referenced charges, the Panel has relied on the jurisprudence of various international judicial bodies that dealt with the crime of inhuman treatment. There is no doubt that the crimes of torture and inhuman treatment have been almost generally socially condemned. The Geneva Conventions, the CC of BiH and the UN instruments have prohibited inhuman treatment.²³ None of the foregoing instruments, however, has tried to provide a definition of inhuman treatment.

196. All international bodies have provided a relatively imprecise definition of inhuman treatment and the distinction thereof taking into account all the factual circumstances, the nature of act or omission, the context within which the act was perpetrated, its duration or repetition, physical, mental and moral consequences for the victims, and victims' personal circumstances, including their age, sex and health condition.

197. Having considered the meaning of inhuman treatment within the context of international case law, the Panel found that inhuman treatment is an intentional act or omission, that is, an act which is intentional rather than random, which causes severe mental or physical suffering, or constitutes a serious attack on human dignity, or an injury to physical integrity.

198. The Panel, however, did not accept the qualification from the confirmed Indictment under which the Accused Saša Baričanin was charged that the above described acts also satisfied the elements of inhuman treatment of the victims-members of the Balvanović family.

199. Notwithstanding that the conduct of the Accused and the other soldier was extremely inhuman and humiliating, the Panel finds it irrelevant to evaluate whether the elements of the crime of inhuman treatment under Article 172(1)(k) of the CC of BiH were

²³ Article 5 of The Universal Declaration of Human Rights, Article 7 of the ICCPR, Article 3 of the European Convention; Article 5 of the African Charter on Human and Peoples' Rights; Article 5(2) of the American Convention on Human Rights; Article 6 of the Inter-American Convention; Article 16 of the Convention against Torture; and Article 3 of the Declaration on Torture.

satisfied too. This is so given that the Panel has found the Accused guilty of the killing of the referenced persons' under Article 172(1)(a) of the CC of BiH, whereby a more lenient qualification was consumed by a more severe one.

200. In addition, the evidence adduced undoubtedly indicated that all the jewelry the victim Otilija Balvanović had with her was seized from her, particularly bearing in mind that a certain quantity of jewelry, which she had earlier hidden, was found with her during the exhumation. The evidence adduced also indicated that the jewelry was seized by the other soldier and that the Accused just watched that all. However, even though the described acts were included in the factual description of the Indictment, the Prosecutor has neither provided their legal qualification, nor was pillaging, as an individual crime, included in the elements of the criminal offense of Crimes against Humanity. The Court, therefore, did not establish the responsibility of the Accused Saša Baričanin along this line since this would amount to an exceeding of charges.

(c) Rape and detention of the protected witness S-2

201. The Panel's belief that the Accused Saša Baričanin is criminally responsible for the rape of the protected witness S-2, as factually described in the Indictment, is first based on the testimony of the protected witness, who is at the same a victim of the referenced crime. The Panel has found that the evidence of this witness is detailed, unequivocal, consistent with her statement given during the investigation with regard to the decisive facts, and also supported with the evidence of the other witnesses.

202. As described above, on 13 July 1992, the Accused Saša Baričanin and Veselin Vlahović a.k.a. Batko came to the apartment in which the victims Emir, Amir and Otilija Balvanović, protected witness S-2 and witness S-1 lived, tied them all up and, under the excuse that they would be taken for interrogation, took the victims Amir, Emir and Otilija Balvanović out of the apartment, while the women-witnesses S-1 and S-2 stayed in the apartment.

203. Shortly thereafter, the Accused returned to the apartment escorted by a young boy. The protected witness S-2 "realized that they would be raped" because the men "had divided" the two of them among themselves in a way that Veselin Vlahović a.k.a. Batko said that the witness S-1 would go with him, while the Accused Saša Baričanin "got" witness S-2.

204. The witness S-1 confirmed the foregoing in her evidence. This witness described in detail that on this occasion Veselin Vlahović a.k.a. Batko had grabbed her breasts and said: "This one is mine!" Thereupon, he took her to one room and raped her, while the witness S-2 went with the Accused Saša Baričanin in the other room.

205. In this other room, the Accused Saša Baričanin told the witness S-2 not to worry about the injured parties abducted from the apartment as they were transferred to the

other side, and that he would help her too to cross over to the territory controlled by the army. The Accused told her his name was Saša, that he was from the Koševsko hill area but that “he was not a lunatic like Veselin Vlahović a.k.a. Batko”.

206. Witness S-2 further testified that the Accused had taken her to his apartment. Immediately after their arrival there, the Accused showed the witness S-2 where she should put away her things. The witness S-2 left her things on a bed, but the Accused started yelling at her. He ordered her to leave her things in a hall. The Accused put down his rifle by the bed side where she had to lay, and told her not to try to kill him over the night. The witness responded to him she would not do so because he had helped her family.

207. During the referenced night, the Accused and witness S-2 had repeated sexual intercourses. Along this line, witness S-2 testified that she was in a state of shock, and that she had simply let him “do whatever he wanted, because she was alone with him”. The Accused neither beat her nor applied any force during the intercourses.

208. On the following days, the witness S-2 was locked in his apartment. During this time, she cleaned and washed around the apartment in order to avoid “being raped again”. According to the witness, their relationship was strange in a way, because the Accused behaved as if she had lived there of her own will, and as if the two of them had been a couple. The witness, however, persistently attempted to leave his apartment and to leave Grbavica, and in return she offered him money and gold.

209. The Accused had several sexual intercourses with the injured party S-2 over the following days. While the Accused was in the apartment, the victim-witness cleaned the house, or did some other work in order to avoid being abused. On one of those days, while she was cleaning the apartment, witness S-2 found a document with a photo of the person in whose apartment she was detained, and read that his last name was Baričanin and that he was born on 19 March 1960.

210. On the second day of her detention in the apartment, the Accused brought in a man, told him he could stay there that night with witness S-2, and thereupon left the apartment. This man raped the witness three or four times during the night. The witness testified that “there was no violence” that night.

211. During the three-day stay in the Accused’s apartment, witness S-2 was “desperate and she constantly thought of the way to make her escape”. At the same time, she attempted to avoid making the Accused livid, and she “did all that she was expected to do”.

212. Finally, witness S-2 succeeded to escape from Grbavica helped by one S4, whom she had not known until then, and who came to the apartment to pick her up having told her that “Saša intended to kill her”. Witness S4 told witness S-2 about the destiny of her

household's other members abducted by the Accused and Veselin Vlahović a.k.a. Batko (since the Accused had recounted this to a number of people). Some of the witness's neighbors subsequently told witness S-2 that, at the time, Saša had bragged around stating that "whoever was unable to slit someone's throat could not keep his company".

213. Witness Zoran Vaclav too testified about the way in which witness S-2 had left Grbavica. He testified that two women had come to his apartment begging him to receive witness S-2, but that he refused to do so, and sent them to one Dimša, who eventually helped her. The foregoing, in fact, merely confirms the testimony of witness S-2, including the segments not closely related to the incriminating acts, but which eventually corroborated the Court's conclusion that her entire testimony was truthful, objective and convincing.

214. Having established the state of facts as such, the Panel examined whether the underlying elements of the criminal offense of rape under Article 172(1)(g) of the CC of BiH were satisfied by the acts of the Accused Saša Baričanin. Along this line, the Panel has examined if the following elements existed:

- coercing another by force or by threat of immediate attack upon his
- life or limb (...)
- to sexual intercourse or an equivalent sexual act.

215. With a view to further elaborate on the above set elements, the Panel was also mindful of the ICTY jurisprudence in *Furundžija*, where the Trial Chamber has held that "sexual penetration will constitute rape if it is not truly voluntary or consensual on the part of the victim, while the relevance not only of force, threat of force and coercion but also of absence of consent or voluntary participation". In *Kunarac*, the referenced definition was further elaborated in a way that force is given a broad interpretation and includes "rendering the victims helpless"²⁴.

216. Established in the same case were the following factors which must be satisfied (alternatively, rather than cumulatively) for the existence of the crime of rape:

- the sexual activity is accompanied by coercion or force or threat of force against the victim or a third person;
- the sexual activity is accompanied by force or a variety of other specified circumstances which made the victim particularly vulnerable or negated her ability to make an informed refusal; or

²⁴ See *Kunarac et al.*, ICTY Trial Chamber Judgment, para. 440.

- the sexual activity occurs without the consent of the victim.

217. Like torture, rape is used for such purposes as intimidation, degradation, humiliation, discrimination, punishment, control or destruction of a person²⁵.

218. Within this context, the Panel has evaluated the relative objective circumstances which suggested beyond a reasonable doubt that the sexual intercourses between the Accused and the victim S-2 occurred without the consent of the victim, and that during the rape the victim was unable to offer any resistance in order to successfully frustrate the Accused's intent. In the concrete situation, a possibility that the victim will give her consent was fully excluded, while the Accused's intent to have a sexual intercourse, and his awareness that the intercourse occurred without the consent of the victim, clearly ensued from all the evidence adduced.

219. The Accused did not contest that while being with the victim, he had repeated sexual intercourses with her, but he did contest that the nature of intercourses was violent. The Accused defended himself by stating that on such occasions he had not physically abused the injured party, nor did he coerce her into any sexual intercourse.

220. The Panel could not accept the referenced statements of the Accused given that they were unsupported by the other evidence adduced. In addition, it undoubtedly ensues from the Accused's testimony that he did indeed bring the injured party to the apartment given to him by Zoran Stavnjak for use, and that on the first night he kept a rifle by the bed in the room where she slept. The witness S-2 explained that it was exactly for this reason that she feared for her own life, and that therefore she offered no resistance to the Accused when he raped her.

221. Although significant, the referenced circumstance itself caused no fear, anxiety or uncertainty in the victim S-2, because she got into a state of fear, shock and disbelief already after members of her family had been taken into an unknown direction, and following the inhuman treatment accorded to them when Veselin Vlahović a.k.a. Batko and the Accused Saša Baričanin had come into the apartment. The witness S-2 testified that while she had been in the apartment she offered no resistance to the Accused in order to avoid any possibility of provoking the Accused's revolt.

222. In relation to the foregoing, the Panel has been particularly mindful of the circumstances under which the victim-witness S-2 was brought to the witness's apartment, namely the fact that on the very same day following the burst of unidentified persons into their apartment, the closest members of her family were taken away in an unknown direction. The foregoing was itself a traumatic experience for the victim. In such a hopeless

²⁵ See *Furundžija*, ICTY Trial Chamber Judgment, para.176.

position, with no real possibility of choice, the victim followed the Accused even though, already at that point, she felt that something bad would happen.

223. Bearing in mind that the act of rape implies sexual activity accompanied by force or a variety of other specified circumstances which made the victim particularly vulnerable or negated her ability to make an informed refusal, the Panel took into account the overall difficult situation of the victim S-2. In his response given during cross-examination, forensic expert, Dr. Senadin Ljubović described this situation from a psychological aspect. The expert witness asked: "Do you think that, in such a terrifying situation in which this witness found herself, it is possible... that anyone can have a normal sexual intercourse, unless one was brutally coerced into it?" The forensic expert added in the end that this victim had offered no active resistance because she was totally helpless in that situation. He explained that such a behavior is a result of the experienced stressful events of extreme proportions, which were totally beyond the ordinary course of the events, and directly aimed at her personal integrity, or at someone closely-related to the victim.

224. In the context of the victim's physical non-resistance, the Panel has also taken into account the Accused's conduct before the perpetration of the crime since he had presented himself to the victim-witness S-2 as a person who would save her, and took her out of the room in which the other person intended to rape witness S-1. Thereafter, the Accused continued lying to witness S-2 by telling her that her family members had safely crossed over to the territory controlled by the army, even though already at this point he knew that they had been killed. Thereupon, the Accused convinced the victim that he would secure for her too to safely cross over so that she could join her family, whereby he created with the victim a feeling of trust and security, which was subsequently very easy to abuse.

225. Bearing in mind the above general elements of the criminal offense of Crimes against Humanity, namely that at the critical time the Accused was, as a soldier, aware of the widespread and systematic attack, and that his acts fitted into this attack, the Panel has concluded that he consciously used his position and the victim's vulnerability in order to have coerced sexual intercourses with her. Therefore, at the time the crime was perpetrated, the Accused knew that the victim came from among the civilian population against which the referenced attack was launched, namely that there existed an expressed fear with the victim for her own and her family's safety, which would prevent her in offering any form of resistance.

226. During the proceedings, the Defense has contested the testimony of the protected witness S-2. The Defense argued that since the war ended, she neither spoke about being raped, nor did she indicate the Accused Saša Baričanin as a perpetrator of the rape. Thus, she did not give her first statement until 2011. Forensic expert Senadin Ljubović, neuropsychiatry specialist, carried out an expert analysis of such a behavior, and an analysis of mental and physical health condition of the injured party. At the hearing held on

29 June 2011, the referenced forensic expert orally explained his findings and opinion.

227. The forensic expert has explained in detail the mental traumas that the injured party still suffers from. A mere fact that she did not report the crime for 10 full years sufficiently demonstrates how serious this attack was on her human dignity. The witness stated “she was ashamed of what she had been through”. In the Panel’s view, such kind of emotion is, in fact, a wrong perception of the perpetrator’s criminal behavior, which caused in the victim’s awareness a feeling of helplessness and guilt. As observed during her testimony, the foregoing has finally resulted in the witness’s reverting to an unstable mental state each time this tragic incident is evoked.

228. The Defense contested the witness’s credibility first with the fact that, before giving her statement in the BiH Prosecutor’s Office, she had never mentioned that at the relevant time she had been raped by the Accused. Along this line, forensic expert Senadin Ljubović testified that the injured party had survived extremely severe traumatic experience, which deeply affected her personality in terms of still present considerable subjective difficulties. Therefore, the witness was diagnosed with During the interview, the forensic expert used the methodologies typical of his profession in order to verify the truthfulness of the witness’s testimony. Following cross-examination, the expert witness noted that he did not use the witness’s previous statements, nor did he ask her about them. This would only disturb the objectivity of the findings and opinion, which was produced after his direct contact with the victim, that is, after the interview. It should be noted at this point that, following the interview with the witness, the forensic expert concluded that the events the witness testified about were authentic, because she was coherent and convincing during the interview. However, the presentation of the referenced events was accompanied by “painful crying, sobbing, mimics and gesticulating”.

229. During the proceedings, the Defense has also emphasized the fact that a long period of time elapsed between the incident and the point when the injured party identified the perpetrator. This was another objection to the authenticity of the witness’s testimony. Along this line, forensic expert Dr. Senadin Ljubović explained that the witness had unwillingly spoken about the experienced incident. All practical experiences in the work with the women-rape victims have showed that 10-20% of women reported rapes with certain delay, while a larger percentage of women never speak about being raped. According to the forensic expert, the witness was among the latter majority group until she reported the perpetrator, but at a certain point she decided to break silence about her experience. It is impossible to evaluate exactly what justifies the moment when a person will begin speaking about the events that are severe and traumatic for him/her. According to the Panel, this is so because the foregoing falls within the sphere of individual approach to such events. The witness herself tried to provide an explanation along this line, and stated that after she had seen the film “A Bloody Dance around the City” she felt the urge to disclose her experiences.

230. The Panel has not to a large extent considered the circumstances which motivated the witness to testify about her experiences given that her testimony was evaluated as authentic, concise and consistent in all essential details. In support of the truthfulness of her evidence and the intent to testify sufficiently speaks the fact that during the proceedings she filed no property claim, nor did she request any pecuniary compensation for the tragedy survived. This only stands in support of the witness's sincerity.

231. On the basis of the foregoing, the Panel has concluded that, being aware of the victim's situation, the Accused had brought her to the apartment where he repeatedly had sexual intercourses with her, from which intercourses her consent was fully excluded. Thus, by the acts factually described in the Indictment the Accused committed the criminal offense of Crimes against Humanity under Article 172(1)(g) of the CC of BiH with direct intent.

(d) Enslavement of the protected witness S-2

232. The Indictment also charged the Accused Saša Baričanin that with the above described acts he also committed the crime of Enslavement under Article 172(1)(c) of the CC of BiH.

233. Paragraph 2 of the cited Article specifies enslavement as "the exercise of any or all of the powers attaching to the right of ownership over a person, and includes the exercise of such power in the course of trafficking in persons, in particular women and children." The legislator's intent to emphasize that women are a particularly protected category clearly ensues from the foregoing. The Panel has taken into account the foregoing in evaluating the Accused's acts against witness S-2.

234. Along this line, the Panel has taken into account the elements established by the Appeals Chamber in *Kunarac, Kovač and Vuković*,²⁶ which under the term enslavement (taking into slavery) imply "control of someone's movement, control of physical environment, psychological control, measures taken to prevent or deter escape, force, threat of force or coercion, duration, assertion of exclusivity, subjection to cruel treatment and abuse, control of sexuality and forced labor".

235. In the referenced case, in para. 542 of its Judgment, the Trial Chamber has held that "indications of enslavement include exploitation; the exaction of forced or compulsory labor or service, often without remuneration, and often, though not necessarily, involving physical hardship sex; prostitution; and human trafficking."

236. Therefore, it would be an absurd to conclude that the Accused was protecting the witness by prohibiting her from opening the door to unknown persons and by allowing

²⁶ ICTY Appeals Chamber Judgment in *Kunarac, Kovač and Vuković* dated 12 June 2001, para. 359.

them to enter the apartment, if on the critical night it was exactly the Accused who had directly subjected her to the other person's arbitrary acts. More specifically, it is clear that the Accused did not care about the security of the protected witness S-2 during any night, and particularly during the critical night, because he consciously left her alone with an unknown person, whereby he enabled the unidentified man to repeatedly rape the victim.

237. Having analyzed the Accused's conduct and the conditions in which the victim was held, the Panel concluded that the Accused first controlled her movement by holding her in the conditions in which free-decision making was fully excluded. Thus, each time he went out, the Accused locked the apartment in which the victim-witness S-2 was held, whereby he had prevented her from leaving the apartment and thus avoiding being further abused in the forthcoming period.

238. Contesting the witness's statement, the Accused testified that the victim had had the apartment keys, but he suggested her not to open the door to anyone but him. The Accused also told her they would use a kind of watchword, namely three knocks on the door.

239. The Panel, however, could not accept the Accused's statement that, by holding the injured party locked in the apartment he in fact intended to help her by protecting her against unknown persons. This is so given the fact that, already on the following night, the Accused brought an unknown man to the apartment and left the witness alone with him. Thereupon, the Accused went to his friend Zoran Stavnjak's place where a party had been organized that evening, and where he stayed over the night.

240. It clearly ensues from the foregoing that the Accused had thought he enjoyed all proprietary rights over the victim, namely that he could dispose of her freedom, or even of her will to take certain actions to which she had to consent.

241. In addition, the witness testified that she had frequently done the cleaning in the Accused's apartment "in order to avoid being raped". At this point, it should not be disregarded that the Accused expected that the witness would do some work, but without being paid in return. The Accused was therefore convinced that it was the witness's duty to do so, whereby he additionally demonstrated his proprietary relationship with her, having fully disposed of her freedom and will, and having given her no possibility to make her own choices whatsoever.

242. In view of the foregoing, it can be concluded beyond a doubt that having acted with direct intent, being aware that prohibited consequences may take place, and having wanted these consequences to take place, the Accused has satisfied, by the above described acts, all the elements of Enslavement under Article 172(1)(c) of the CC of BiH.

D. CONCLUSION

243. Having evaluated all the adduced pieces of evidence, individually and in combination, and as elaborated in the reasoning of the Verdict, the Panel has found the Accused guilty beyond a doubt of the commission of the criminal offense of Crimes against Humanity under Article 172(1)(a) of the Criminal Code of Bosnia and Herzegovina (CC of BiH), as read with Article 29 of the same Code, and Sub-paragraphs c) and g) of the same Article of the CC of BiH, all in conjunction with Article 180(1) of the CC of BiH.

244. On the grounds of the evidence adduced, the Panel has also found that, in the commission of all crimes referred to in the operative part of the Verdict, the Accused acted with direct intent, being aware of the lasting prohibited consequences of each act undertaken individually, and wanting these consequences to take place. Along this line, the Panel has taken into account that direct intent on the part of the perpetrator also exists when the perpetrator wants to commit one act, but in addition to this act, it is quite certain that another act will be committed too. There is a possibility that the perpetrator does not even want the other act to take place, but his will to commit the principal crime is so strong that direct intent is being recognized for this other crime too.

245. In the concrete case, the Accused Saša Baričanin testified that he went on to commit the crime after he had heard that members of the *Green Berets* would be apprehended. However, following the arrival in the apartment and the agreement made with Veselin Vlahović a.k.a. Batko, the Accused became aware of the ultimate consequences related to the victims Emir Balvanović and Amir Balvanović, who were abducted from their apartment and taken to another apartment at Vraca, at the time used by Veselin Vlahović a.k.a. Batko. The Panel has also concluded that as of this point the Accused had to be fully aware that the victims would not be taken to the Command, as reportedly initially stated by Veselin Vlahović a.k.a. Batko.

246. The Accused and Veselin Vlahović a.k.a. Batko subsequently brought the protected witnesses S-1 and S-2 to the same apartment at Vraca. Once they entered the room, Veselin Vlahović a.k.a. Batko grabbed witness S-1's breasts and said "This one is mine!". Thereupon, he took Otilija Balvanović out of the room where the women had been held. The Panel has concluded that at that point a sort of "division of roles" took place between the Accused and Veselin Vlahović a.k.a. Batko, and that this is exactly the point when the Accused Saša Baričanin developed direct intent to rape the other victim, that is, the protected witness S-2. At the time, the Accused and Veselin Vlahović a.k.a. Batko realized, in fact, that the victim Otilija Balvanović would pose a threat to their plans' realization. Therefore, they developed intent to kill Otilija Balvanović. Having orally agreed how to liquidate Otilija Balvanović, Amir Balvanović and Emir Balvanović, and having chosen the means to be used to do so, they took all three of them out of the apartment.

247. When he returned to the apartment, the Accused Saša Baričanin started acting as if in a way he had “seized possession of” the victim-witness S-2. On the grounds of the foregoing, the Panel has concluded that, in addition to the direct intent to rape the injured party, there was also the intent to further detain her, of which the Accused was found guilty too.

248. In view of all the foregoing, it is clear that the Accused Saša Baričanin went on to commit with direct intent the referenced crimes against the victims Emir Balvanović and Amir Balvanović, originally being led by reasons of retaliation and discrimination. The circumstances that subsequently took place were just a further incentive for the Accused to take other criminal acts of which he was found guilty, namely to kill the victim Otilija Balvanović, and to rape and detain the protected witness S-2. Having thoroughly evaluated all the evidence, as elaborated in detail in the Verdict reasoning, the Panel found the Accused guilty of the commission of the criminal offense of Crimes against Humanity under Article 172(1)(a) of the Criminal Code of Bosnia and Herzegovina (CC of BiH), as read with Article 29 of the same Code, and Sub-paragraphs (c) and (g) of the same Article of the CC of BiH, all in conjunction with Article 180(1) of CC of BiH.

III. DECISION ON SENTENCE

249. Article 2(2) of the CC of BiH stipulates that “The prescription of criminal offences, as well as the types and the range of criminal sanctions, shall be based upon the necessity for criminal justice compulsion and its proportionality with the degree and nature of the danger against personal liberties, human rights and other basic values”.

250. Article 39 of the CC of BiH regulates general and special purpose of punishment, which, in addition to deterring the perpetrator from perpetrating crimes in the future, also includes the community’s condemnation of the perpetrated criminal offense, by increasing the consciousness of citizens of the danger of criminal offenses and of the fairness of punishing perpetrators. The purpose of punishing the perpetrators adequately for the perpetrated criminal offense is also to prevent unlawful conducts violating or jeopardizing the fundamental general or individual values.

251. In meting out the punishment for the criminal offense of which the Accused was found guilty, having started from the purpose of punishment set forth in Article 39 of the CC of BiH, and in compliance with the general principles of meting out punishments under Article 48 of the CC of BiH, the Panel took into account the manner in which the crime was committed, namely the fact that in the commission of killing, the Accused had acted as a co-perpetrator, whereas in the rape of the victim-witness S-2 and her detention, he acted as a direct perpetrator. In all cases, the Accused acted with direct intent.

252. The Panel has further taken into account all the extenuating and aggravating circumstances on the part of the Accused Saša Baričanin. Considered as an extenuating

circumstance was the fact that, according to the documentary evidence tendered by the Defense in the case record, the Accused is an 80% (eighty percent) disabled person. The Panel was also mindful of the facts that the Accused is a father of 3 underage children, and that he had no prior convictions. The Panel has held, however, that in terms of their quality and quantity, the referenced circumstances were not sufficient so as to result in rendering a more lenient sentence than that imposed by the Panel, given the specific circumstances of the crime the subject of which was a whole family.

253. As regards the extenuating circumstances on the part of the Accused, the Panel was further mindful of the fact that during the relevant time the Accused had helped a certain number of Muslims. Along this line, Defense witness Meho Muharemović testified that he had known the Accused's parents from before, and that the Accused helped him during the war. The Panel, however, has found the foregoing irrelevant to the extent to which all other circumstances, established beyond a doubt on the part of the Accused, would be annulled. Defense witness Haris Grizović also testified that after he had seen the film titled *A Bloody Dance around the City*, the Accused Saša Baričanin contacted him and told him he wanted to report to the law enforcement agencies. This witness added that at the time he was surprised because the Accused was prosecuted for war crimes since he had known him from before. From this witness's evidence, the Panel can conclude that the Accused felt guilty for the acts he had committed and that therefore he wanted to report himself. However, bearing in mind that this is a Defense witness, the Panel will not interpret the foregoing to the Accused's prejudice by characterizing this circumstance as either extenuating or aggravating. In any case, there remains an open suspicion into the real intentions of the Accused, who after all did not report himself to the law enforcement agencies after the conversation with the witness.

254. On the other hand, the Panel considered the gravity of the protected value injury as an aggravating circumstance. In this regard, the Panel took into account that the final consequence of the Accused's acts was physical and mental destruction of an entire family. Two brothers and their mother, all at young age, were brutally and for no reason deprived of their lives in a single day, while the injured party-witness was raped in the way and in the circumstances that render such acts beneath contempt, in addition to the inevitable consequences in the form of physical pains, and still present mental suffering and degradation.

255. The Panel has also taken into account that the principal initiator of the crimes was Veselin Vlahović a.k.a. Batko, and that the Accused subsequently joined him being led by discriminatory motives. The Accused himself admitted that, when members of the *Green Berets* were mentioned, he decided to go to the Balvanović family apartment, where he was present while they were plundered and mistreated, the culmination of which finally were the crimes of which he was found guilty.

256. In the concrete case, the Panel has found no highly extenuating circumstances on

the part of the Accused that would, pursuant to Article 49 of the CC of BiH, form the basis for the Court to set the punishment below the limit prescribed by the law.

257. In view of all the foregoing, the Panel has concluded that, in the concrete case, the purpose of punishment will be attained by imposing on the Accused the sentence of imprisonment for a term of 18 (eighteen) years.

IV. DECISION ON THE COSTS OF CRIMINAL PROCEEDINGS

258. Having applied Article 188(4) of the CPC of BiH, the Court relieved the Accused of the duty to reimburse the costs of criminal proceeding due to indigence, which clearly ensues from the fact that even the expenses of the Defense for the Accused were paid from within budget appropriations of the Court.

259. In addition, the Accused was in custody during the entire proceedings, wherefore he could not work and make any earnings, which should be viewed in the context of the fact that the Accused has three underage children. Bearing in mind that a long-term sentence of imprisonment was imposed on the Accused, the duty to reimburse the costs of proceedings would certainly jeopardize the support of persons the Accused is required to support economically.

260. In view of the foregoing, the Court decided that the costs of proceedings will be paid from budget appropriations.

V. DECISION ON PROPERTY CLAIMS

261. Pursuant to Article 198(2) and (3) of the CPC of BiH, the Court has instructed the injured parties 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.

MINUTE-TAKER:

Lejla Haračić

**PANEL PRESIDENT
JUDGE**

Enida Hadžiomerović

NOTE ON LEGAL REMEDY: This Verdict may be appealed by the parties and the Defense Counsel with the Appellate Panel of this Court within 15 (fifteen) days following the receipt of a written copy thereof.

Pursuant to Article 293(4) of the CPC of BiH, the injured parties may contest the Verdict only with respect to the decision of the Court on the costs of the criminal proceedings, and the decision on the claim under property law.

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