

**UNITED
NATIONS**



International Tribunal for the
Prosecution of Persons
Responsible for Serious Violations of
International Humanitarian Law
Committed in the Territory of the
former Yugoslavia since 1991

Case No.: IT-98-32/1-T

Date: 12 May 2009

IN TRIAL CHAMBER III

Before: Judge Patrick Robinson, Presiding
Judge Christine Van den Wyngaert
Judge Pedro David

Acting Registrar: Mr. John Hocking

THE PROSECUTOR

v.

MILAN LUKIĆ

and

SREDOJE LUKIĆ

Public

with

Public Annexes A-D and Confidential Annexes E-F

PROSECUTION FINAL TRIAL BRIEF

The Office of the Prosecutor:

Mr. Dermot Groome

Counsel for Milan Lukić:

Mr. Jason Alarid

Mr. Dragan Ivetić

Counsel for Sredoje Lukić:

Mr. Djuro J. Čepić

Mr. Jens Dieckmann

**THE INTERNATIONAL CRIMINAL TRIBUNAL
FOR THE FORMER YUGOSLAVIA**

IT-98-32/1-T

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v.
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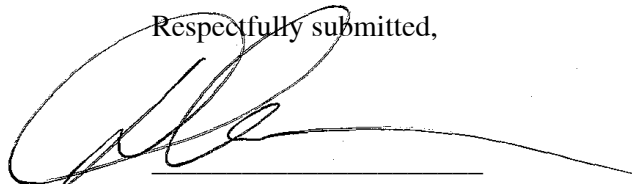
PROSECUTION FINAL TRIAL BRIEF

Pursuant to Rule 86 of the Rules of Procedure and Evidence the Prosecution submits its Final Trial Brief with the following Annexes:

- i. Public Annex A: List of *Pionirska-Fire* victims
- ii. Public Annex B: Index
- iii. Public Annex C: Glossary of Terms and Abbreviations
- iv. Public Annex D: Maps and Calendar
- v. Confidential Annex E: Submissions Regarding Non-Public Exhibits and Testimony.
- vi. Confidential Annex F: Summary of Identification Evidence.

Words (including Annex E): 59,551.

Respectfully submitted,



Dermot Groome
Senior Trial Attorney

Dated this 12th day of May, 2009
At The Hague, The Netherlands

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Section 1: Introduction

If the truth about what happened in Višegrad comes out one day, and I hope it does, it will show that **Milan LUKIĆ** is the criminal most responsible for the destruction of human lives in Višegrad.¹

Milan LUKIĆ and **Sredoje LUKIĆ** and all the members cannot refute this. They cannot say that this did not happen. They cannot say that they did not do this... This was done by the **LUKIĆ** cousins with their members. If you bring the surviving witnesses, they will prove this much better than my tears.²

The Accused

1. **Sredoje** and **Milan LUKIĆ** are charged with crimes committed as part of a widespread or systematic attack directed against a civilian population during the course of an armed conflict in Bosnia and Herzegovina(BiH).

2. **Milan LUKIĆ**, son of Mile, born 6 September 1967 in Foča, lived in Višegrad Municipality until he finished secondary school. He then left Višegrad for a number of years, and returned sometime in the beginning of April 1992.³ After his return he assumed leadership of a paramilitary group,⁴ which he referred to as the "Avengers."⁵

3. **Sredoje LUKIĆ**, son of Đorđe, born 5 April 1961, in Rujište, Višegrad Municipality, is a cousin of **Milan LUKIĆ**. Before the war, **Sredoje LUKIĆ** worked as a policeman in Višegrad. He was a member of the same group of armed men as **Milan**("Lukić-Group").

Summary of the Charges

4. Each Accused is charged with individual criminal responsibility pursuant to Article 7(1) of the Statute of the Tribunal("Statute") for committing or aiding and abetting crimes against humanity under Article 5 of the Statute and violations of the laws or customs of war, as recognised by Common Article 3(1)(a) of the Geneva Conventions of 1949 under Article 3 of the Statute. The crimes charged include persecution, extermination, murder, cruel treatment and inhumane acts. There are 21

¹ **TURJAČANIN:Exh.1D083**,p.1.

² **VG-115:T689**(o.s.).

³ **HOUGH:T6372**(o.s.);**Exh.P313**,p.3.**MARKOVIĆ:T3843-44**(o.s.).**MLD-10:T4046**(o.s.).**VG-014:T302-03**(o.s.).

⁴ **Exh.P096**,p.5(u.s.).

counts arising out of six separate criminal events. A single count of persecutions encompasses all of these events.

- i. The killing and cruel treatment of Bosnian Muslims at the Drina River(near Sase) on or about 7 June 1992(Counts 2, 3, 4 and 5)(“*Drina-Killings*”).
- ii. The killing of 7 Bosnian Muslims at the Varda factory on or about 10 June 1992(Counts 6 and 7)(“*Varda-Killings*”).
- iii. The killing and cruel treatment of over 65 Bosnian Muslims by setting them on fire in the Omeragić house on Pionirska Street on or about 14 June 1992(Counts 8, 9, 10, 11 and 12)(“*Pionirska-Fire*”).
- iv. The killing and cruel treatment of approximately 70 Bosnian Muslims by setting them on fire in the Aljić house in the Bikavac neighbourhood on or about 27 June 1992 (Counts 13, 14, 15, 16 and 17)(“*Bikavac-Fire*”).
- v. The killing of Hajira Korić(Counts 18 and 19) at the end of June or in early July 1992(“*Korić-Killing*”).
- vi. Beatings at the Uzamnica detention camp(Counts 20 and 21) which began in June 1992 and continued until October of 1994(“*Uzamnica*”).

5. **Milan LUKIĆ** is charged with all of these criminal acts and is charged under all 21 counts of the Indictment. **Sredoje LUKIĆ** is charged under 13 counts of the Indictment for the *Pionirska-Fire*, the *Bikavac-Fire*, and *Uzamnica*.

Background on Višegrad

6. The Municipality of Višegrad is located in south-eastern BiH. Its main town, Višegrad, is located along the Drina River.⁶ In 1991, approximately 21,000 people lived in Višegrad municipality, about 9,000 in the town itself. Approximately 63% of the population was Muslim, and 33% was Serb.⁷

7. Tensions between these ethnic groups manifested after BiH multi-party elections in November of 1990. The predominantly Muslim – *Party of Democratic Action*(“SDA”) won 27 of the 50 seats, while the predominantly Serb, *Serb*

⁵ **Exh.P150**,p.1(“I have been on the front in Višegrad and its surroundings since 10 April 1992. I am the commander of a group called the Avenger, initially known as the Obrenovac Detachment”).

⁶ *Lukić*AFDno.1.*See*,**Exh.1D087**(aerial photograph of Višegrad);**Exh.P046**.

⁷ *Lukić*AFDno.2;**Exh.P118**,p.1.

Democratic Party (“SDS”) won 13 seats.⁸ Serb politicians were dissatisfied with the results and felt they were under-represented in the government.⁹

8. Amid rising ethnic tensions, both groups began arming themselves and preparing for conflict. In early April 1992, conflict erupted throughout eastern Bosnia. Armed Serbs began a comprehensive effort to remove the Muslim population from Višegrad. In this armed conflict, the Accused committed the crimes charged.

⁸ *Lukić* AFDnos.3-4.

⁹ *Lukić* AFDno.4.

Section 2: Matters of General Applicability

Recognition vs. Identification Witnesses

“[The] essential issue in the case is identity.”¹⁰

9. Even in the absence of an alibi defence, the Prosecution bears the burden of establishing beyond reasonable doubt that the Accused perpetrated the crimes. The **LUKIĆs**’ assertion that they were somewhere else at the time of crimes charged in the Indictment places additional focus on what is an essential issue in the case.

10. The *ad hoc* Tribunals distinguish between those witnesses who *recognise* the Accused and those witnesses who only see the perpetrator for the brief moments of a typical crime and are called upon to *identify* a suspect or an Accused.

11. As Judge May stated in the *Sikirica* case,

There is a distinction, is there not, between the case in which a witness identifies somebody after what's often called a fleeting glance? ... Classically the case of a mugging in a street in which the whole thing happens within a few seconds and the accused is gone -- or the perpetrator is gone. It is particularly those cases which are the causes of concern, as I think you'll agree. Now, there is a distinction between that sort of case and the case where the witness knows the accused, has known him over a long time... And then it's simply a question of recognition rather than identification.¹¹

12. Judge May’s observations have been formalised in the jurisprudence of the *ad hoc* Tribunals in the distinction between “*recognition witnesses*” and “*identification witnesses*”.¹² *Recognition witnesses* are those witnesses who have sufficient familiarity with a perpetrator to reliably identify him or her at a later time, while *identification witnesses* are those whose lack of previous familiarity. Recognition is a natural human skill that infants learn at an early age when they quickly learn to recognise their parents. Throughout life, we employ that skill on a daily basis as we pass through the day instantaneously recognising our family, friends, colleagues and neighbourhood shopkeepers. Even after long periods we usually do not have any difficulty recognising a person we have familiarity with. Recognition is a natural, instinctive and instantaneous process.

¹⁰ Judge Robinson:T372(o.s.).

¹¹ *Sikirica*,T547.*See also*,T548(o.s.);Judge Robinson went on to note that these were matters that would affect the weight given the evidence.

¹² *Tadić*TJ,paras.545,546&552.*See also*,*Haradinaj*TJ,para.29.

13. On the other hand, identification is a far less honed skill in which a person is called upon to say whether someone is the same person with whom he/she had a single brief encounter sometimes under conditions not conducive to careful observation. In *Kayishema*, the Trial Chamber stated:

Very pertinent is the witnesses' [sic] who knew the accused prior to the massacres; identification is far more reliable when it is based upon recognition of a person already known to the witness.¹³

14. Several cases have considered the degree of familiarity necessary to characterise an eyewitness as a *recognition witness*. In *Kamahunda*, a witness met the Accused several times, for seemingly short periods of time.¹⁴ The Appeals Chamber found the Chamber was reasonable “to rely on the testimony that the witness had met the appellant at the opening of the Kayanga Health Centre and was thus able to identify him...”.¹⁵ Similarly, in *Semanza*, it was not unreasonable to conclude that a witness’s earlier sighting of the accused was sufficient for her to later be able to recognise him during the crime. The Appeals Chamber stated: “Contrary to what the Appellant seems to imply, it is not necessary for the witness to be personally or intimately acquainted with the person to be identified.”¹⁶ The Special Court for Sierra Leone has also considered this issue and is consistent in its approach.¹⁷

15. *Recognition witnesses* are not limited to witnesses who knew a perpetrator before the crime. Some crimes can be of a sufficient duration and under conditions allowing a witness to gain sufficient familiarity during the crime itself to reliably recognise him or her afterward.

16. Ultimately, in-court identifications are to be reviewed on a case-by-case basis before determining whether a witness is a *recognition* or *identification witness*.¹⁸ Differentiating between the two may include considering whether the witness and perpetrator come from the same community and whether the size and custom of that community lends itself to residents having familiarity with each other.¹⁹ For example,

¹³ *Kayishema*TJ,para.454.

¹⁴ *Kamuhanda*AJ,paras.248&251.

¹⁵ *Kamuhanda*AJ,para.248. While the identification referred to is not an in-court identification, it is instructive to note the fact that the ability to *recognise* is a consideration.

¹⁶ *Semanza*AJ,para.204.

¹⁷ *Sesay*TJ,para.494.*Fofana*TJ,para.261. In *Sesay*, the Chamber specifically examined the repeated contact a witness had with the accused when considering *recognition* evidence. One of the abducted peacekeepers, Lt.Col.Joseph MENDY was able to identify the accused because the two had met on several occasions..*See*,para.1817.

¹⁸ *Sikirica*,T578,(o.s.).

¹⁹ *Simic*TJ,para.26.

the *Simić* Trial Chamber observed, “given the close knit community from which both the Accused and witnesses come, that identification evidence may carry more weight when considering its reliability where witnesses have prior knowledge of the Accused.”²⁰

17. Three witnesses in this case had a visceral reaction to seeing **Milan LUKIĆ** which was clear to those in the court, again demonstrating the instinctive and reflexive process of *recognition*.²¹

18. Prosecution and Defence witnesses who knew **Sredoje** and **Milan LUKIĆ** readily recognised them in court.²²

Q. How long did it take you [Goran ĐERIĆ] to recognise **Milan LUKIĆ**?

A. One second.

Q. Now, some might say that it's implausible for you to be able to recognise him so quickly after such a long period of time. Is there any doubt in your mind that the **Milan LUKIĆ** you saw in the courtroom is the same person that you knew from the 1990s?

A. One million per cent. He's gained some weight, the same as I have. I'm 1 million per cent that's **Milan LUKIĆ**. I'm sure that that's **Milan LUKIĆ**.²³

Defence witnesses recognised the Accused without hesitation, although their descriptions of them varied – a phenomenon also seen with some Prosecution witnesses.²⁴ Indeed, the descriptions by Prosecution and Defence witnesses of **Milan** and **Sredoje LUKIĆ** were remarkably similar and often contained the same details.²⁵

²⁰ *Simić* TJ, para. 26.

²¹ Consider the following:

MR.GROOME: Your Honour, I just bring this to your attention. The witness has just asked the usher that she needs to have a moment of a break. She seems to be in distress.”

VG-035:T1690(o.s.). See also, **VG-063**:T1869(c.s.) & **VG-094**:T7006(c.s.).

²² **MARKOVIĆ**:T3866. The following Defence witnesses had not seen **Milan LUKIĆ** since 1992:

MLD-010:T3997(o.s.); **ĐERIĆ**:T4123(o.s.); **MLD-001**:T4386.(o.s.); **MLD-020**:T4517(o.s.).

²³ **ĐERIĆ**:T4123(o.s.).

²⁴ For example, **Zorka LUKIĆ** knew both **Milan** and **Sredoje LUKIĆ** and claimed that **Sredoje** might be taller(T3681)(o.s.). **ŽIVKOVIĆ** testified that **Sredoje** was 25 or 26 years old in June 1992(T3620)(o.s.). **MLD-001** described **Milan** as having “light brown hair” in 1992 and said that it is currently “a little darker”(T4386)(o.s.). **MLD-018**, on the other hand, stated that he has always had “black hair”(T4423)(o.s.).

²⁵ **MLD-020** testified that he was from the same village as the **LUKIĆs** and went to grades 1-4 in **Klašnik**; 4-8 in **Prelovo** and secondary school in **Višegrad**: **MLD-020**:T4491(o.s.). The same witness also testified that the bus to **Višegrad** carrying the students from **Rujište** would pass through **Koritnik**: **MLD-020**:T4491(o.s.).

19. The best evidence that Višegrad was the type of community in which residents had strong familiarity with each other come from **Milan LUKIĆ** himself. **LUKIĆ** told his Defence counsel that Latifa KURSPAHIĆ could not have died in the *Pionirska-Fire* because he recalled seeing her leave Višegrad on 29 May 1992.²⁶ He recalled her name and the fact that he saw her on a bus leaving Višegrad.

20. Factors for determining whether a witness is a *recognition* witness include:²⁷

- vii. The length of time the witness knew the perpetrator;
- viii. The frequency with which the witness had contact with the perpetrator;
- ix. Biographical details about the perpetrator provided by the witness;
- x. Biographical details about the witness indicating they had opportunities to become familiar with the perpetrator(i.e., place of origin, where the witness and accused went to school, where they worked, ages, etc.);
- xi. The size of the community in which the witness and the perpetrator live;²⁸
- xii. The interval between when the witness last saw the perpetrator and the crime itself;²⁹
- xiii. The ability of the witness to recognise the perpetrator *prior* to the commission of the crime;³⁰
- xiv. Any opportunity the witness had to recognise the perpetrator of the crime after the commission of the crime; and
- xv. Evidence suggesting that the accused knew or was familiar with the witness/victim.

With respect to **Sredoje LUKIĆ**, **Zorka LUKIĆ** stated that as a police officer, he was well known in town. **LUKIĆ**:T3676(o.s.).MLD-007 also claimed to know **Sredoje** for a long time, and when asked whether he met him for the first time during the war, he stated: "...Well, that's what I'm telling you. No, Višegrad is a small town. We are approximately the same age. We go back a long way, way before. He worked at the public security station in Višegrad, and everyone passes by that building in Višegrad." **MLD-007**:T4303(o.s.).See Prosecution evidence in section 3.

²⁶ *Milan Lukić Notice of Survivors*. **Exh.P272**(u.s.).

²⁷ *Limaj*AJ,para.30,citing *Kupreškić*AJ,para.40.

²⁸ *Simić*TJ,para.26.

²⁹ *See,Hardinaj*TJ,para.29.

³⁰ *For example*, testimony that a witness knew the perpetrator, did not see him for a substantial period of time and then recognised him upon seeing him again would indicate that the witness has acquired the ability to recognise the perpetrator of the crime.

21. For witnesses who first gained familiarity with the Accused during the commission of the crimes the Chamber should consider:

- i. The duration of the crime/the length of time the witness was in the presence of the perpetrator;
- ii. Whether the crime occurred during a single episode or over multiple encounters;
- iii. Whether the perpetrator was introduced to witnesses during the commission of the crime;
- iv. The proximity of the witness to the perpetrator during the commission of the crime;
- v. The opportunity of the witness to observe the perpetrator over the course of the crime; and
- vi. Whether there are particular physical characteristic or *modus operandi* that are especially remarkable.

22. In this case, Prosecution witnesses have identified the Accused in court. Both Accused have voiced objection to this in every instance. There is nothing improper in asking a *recognition witness* to confirm whether the person he/she testified to knowing is present in the courtroom. In the *Semanza* case, the Trial Chamber's reliance on in-court recognitions was not disturbed by the Appeals Chamber.³¹ In this case, the Chamber has heard both *recognition* and *identification witnesses*. While most are clearly one or the other (e.g., MLD-025 is indisputably a *recognition witness*), some witnesses are not so clear. Some witnesses are a *recognition witness* with respect to one Accused and an *identification witness* with respect to the other.³² The Prosecution does not rely on any in-court corporeal identifications by *identification witnesses*.

Evidence of Consciousness of Guilt

23. In this case, both Accused (but particularly **Milan LUKIĆ**) committed acts evidencing consciousness of guilt. Judge Shahabuddeen recognised in his dissent in

³¹ *Semanza* AJ, para. 224: "There was sufficient and credible evidence to show that the four witnesses the Appellant now seeks to impugn knew him prior to the attack and could properly identify him at the time". See also, paras. 203, 204, 209, 210, 213 & 218.

³² For example, VG-013 is a *recognition witnesses* with respect to **Sredoje LUKIĆ** and an *identification witness* with respect to **Milan LUKIĆ**.

the VASILJEVIĆ case that VASILJEVIĆ's lies – for example, that he was not armed during the *Drina-Killings* – implied an acknowledgement of his responsibility as a principal actor and not as an aider and abettor.³³ In addition to Australian law cited by Judge Shahabuddeen, the concept of consciousness of guilt is applied in other legal systems.

24. American courts have long admitted consciousness of guilt evidence in criminal trials for the purpose of proving *mens rea*.³⁴ Flight has long been admissible to establish an accused's consciousness of guilt.³⁵ "It is universally conceded today that the fact of an accused's flight, escape from custody, assumption of a false name, and related conduct, are admissible as evidence of consciousness of guilt, and thus guilt itself."³⁶

25. In addition, an accused's attempt to influence a prosecution witness³⁷ as well as acts such as procuring false testimony or bribing a witness are evidence of consciousness of guilt.³⁸

26. Under Italian law, there is a distinction between an alibi which is demonstrated to be false as opposed to being not sufficiently proved.³⁹ A false alibi is considered as evidence of guilt and an expression of the accused's will to escape from any verification of the truth.⁴⁰

27. In this case, as discussed in detail below, consciousness of guilt evidence is available as follows:

- i. Despite the Indictment being made public on 25 January 2000 and efforts since that time to arrest both Accused, **Milan LUKIĆ** fled and was

³³ *Vasiljević* AJ, Shahabuddeen dissent, para. 24.

³⁴ See *Hickory v U.S.*, 160 U.S. 408 (1896). See also, *Alberty v U.S.* 162 U.S. 499, 510 (1896).

³⁵ See *Ventura v. AG*, 2005 U.S. Appl. LEXIS 16605 (11th Cir. 2005); *U.S. v. Frazier*, 387 F.3d 1244 (11th Cir. 2004).

³⁶ 2 Wigmore on Evidence § 276 (Chadbourn rev. 1979). See, *U.S. v. Melson*, 7 F.3d 750, 752 (8th Cir. 1993).

³⁷ *U.S. v. Henderson*, 58 F.3d 1145, 1150 (7th Cir. 1995); See also *U.S. v. Linarez-Delgado*, 259 Fed. Appx. 506, 508 (3rd Cir. 2007).

³⁸ *Bennett v. Poole*, 2008 WL 3200242 (W.D.N.Y., 2008) ("Evidence that a defendant attempted to procure false testimony or to corrupt a witness is generally admissible as evidence of consciousness of guilt"); See also *U.S. v. Och*, 595 F.2d 1247, 1260 (2nd Cir. 1979); *Cannon v. U.S.*, 575 F. Supp. 2d 940, 955 (C.D. Ill., 2008) ("[C]ase law is well established that [attempts to bribe a witness] is admissible at trial as showing consciousness of guilt.").

R. v. Lawes, 44 Alta. L.R. (3d) 25, 187 A.R. 321, 127 W.A.C. 321, 119 C.C.C. (3d) 289 at 290 (Alberta Court of Appeal, 1996); See *R v. Hibbert*, 2002 SCC 39 (Supreme Court of Canada 2002) ("evidence that the accused attempted to put forward a fabricated defence, that effort, akin to an effort to bribe or threaten a witness or a juror, could be tendered as evidence of consciousness of guilt").

³⁹ cfr. Cass. S.S.U.U., sent. n. 6682 del 4.06.92 rv. 191231 imp. Musumeci ed altri.

arrested in Argentina on 8 August 2005; **Sredoje LUKIĆ** fled and was also at large until he surrendered in September 2005, more than five years after the Indictment was made public.

- ii. When the *Lukić-Group* discovered Hasib KURSPAHIĆ survived the *Pionirska-Fire* they tried to locate and kill him.
- iii. **Milan LUKIĆ** offered a reward to anyone who would tell him where Zehra TURJČANIN was.⁴¹
- iv. When **Milan LUKIĆ** discovered where Zehra TURJAČANIN was hiding after the *Bikavac-Fire* he planned to come and kill her.⁴²
- v. When **Milan LUKIĆ** was arrested on 26 October 1992 he was concealing his identity by carrying forged identification papers.⁴³
- vi. Hamdija VILIĆ was called by **Milan LUKIĆ** in an effort to bribe him to give false testimony in support of **Milan LUKIĆ's** *Pionirska-Fire* Alibi.
- vii. Attempts to bribe VG-146 to give false testimony in support of **Milan LUKIĆ's** *Pionirska-Alibi*.
- viii. Preparation of forged documents in support of **Milan LUKIĆ's** *Pionirska-Fire* Alibi.
- ix. Attempts to bribe the potential witness designated as "Mr. A" to give false testimony in support of the *Drina/Varda-Alibi*.

⁴⁰ cfr.Cass.Sez.II sent.10469 del 6.12.96 rv.206492 imp.Arena e altri, cfr.Cass.Sez.II,sent.10141 del 5.10.95 rv.202766 imp.Michelotto.

⁴¹ **VG-063**:T1864(o.s.).

⁴² **TURJAČANIN**:T2336(o.s.).

⁴³ **Exh.P146,Exh.P148.**

Section 3: The Prosecution Case

Introduction and Background

28. Several areas of evidence related to all of the crimes perpetrated by the *Lukić-Group* are discussed below prior to a summary of the evidence related to individual crimes to avoid repetition.

Red Passat

29. One of the earliest crimes **Milan LUKIĆ** committed was the theft of a dark red Volkswagen Passat owned by Behija ZUKIĆ. **LUKIĆ** later murdered her.⁴⁴ Mirsada KAHRIMAN saw the **LUKIĆs** visit the ZUKIĆ house three times on the day she was killed. **Milan LUKIĆ** stole the car on his first visit.⁴⁵ Both **LUKIĆs** returned later and took away a group of men including Behija's husband in the family truck. **Milan LUKIĆ** returned a third time to kill Behija. KAHRIMAN, her neighbour, heard the shooting and arrived just after **LUKIĆ** shot Behija – she found her dead from a fatal head wound – **LUKIĆ** told KAHRIMAN that she might be next.⁴⁶

30. VG-133, who worked in the Višegrad Health Centre was present on the morning of 20 May 1992, when she saw both **LUKIĆs** arrive in the Passat as an ambulance brought Behija's corpse to the morgue.⁴⁷

31. The red Passat was exclusively driven by **Milan LUKIĆ** after he stole it.⁴⁸ The colour of the car was described as a dark red, sometimes “cherry-red” or “burgundy”.⁴⁹ The car was the only one of its kind in Višegrad.⁵⁰

32. The red Passat sightings corroborate the witnesses' recognition of the **LUKIĆs**, especially **Milan** as its driver. In addition to the crimes charged, witnesses saw the Passat used in other crimes including:

⁴⁴ **VG-133**:T2887, T2925,T2953(o.s.)& T2955-2956(c.s.).**Exh.1D067**,p.2(u.s.).**VG-042**:T2778-79,T2783-84&T2786(o.s.).**Exh.P116**,p.5,6(u.s.).

⁴⁵ **VG-042**:T2779(o.s.);**Exh.P034**,pp.3-4.

⁴⁶ **KAHRIMAN**:T806-08;T833-34&T840-42(o.s.);**Exh.P035**,para.7;**Exh.1D023**,p.4;**Exh.P034**,paras.19-24;**Exh.1D023**,p.4.

⁴⁷ **VG133**:T2953-54(o.s.);**Exh.P161**,paras.11-13(u.s.).*See also*,**VG-032**.

⁴⁸ **VG-133**:T2956&T3030(o.s.).**VG-097**:T595(o.s.).**VG-115**:T667-68(o.s.).**MLD-025**:T1499-1501(c.s.);**Exh.P096**,VT2002(u.s.).**VG-024**:T3219(c.s.).**VG-058**:T1593,T1608&T1627(c.s.).**VG-119**:2392-97(o.s.).*Note*: “VT” refers to “*Vasiljević* Transcript”.

⁴⁹ **VG-024**:T3219(c.s.).**VG-064**:T2881&T2887(o.s.).**VG-064**:T2878(c.s.).**VG-119**:T2392-93(o.s.).**VG-133**:T2953&T2975(o.s.).**VG-032**:T1152(o.s.).**VG-097**:T594(o.s.).**VG-014**:T305(o.s.).**VG-115**:T666(o.s.).**VG-131**:T3383-84(c.s.);**Exh.1D070**,p.4,5(u.s.).**Exh.P035**,para.7.**Exh.P034**,para.19.**Exh.P161**,para.12&19(u.s.).**Exh.P028**,p.3(u.s.).**VG-042**:T2839(o.s.).**Exh.1D168**,p.3(u.s.).**VG-082**:T2041(o.s.).**Exh.P116**,p.5(u.s.).**VG-141**:T6747(o.s.).

- i. The abduction of Jasmina VILA in late May 1992;⁵¹
 - ii. The killing of seven men at the Drina River on 25 May 1992;⁵²
 - iii. The abduction of two girls in June 1992;⁵³
 - iv. The abduction of Rasim ŠEHIĆ, Enver ŠEHIĆ, Esad ZUHAN;⁵⁴
 - v. The detention of VG-064's husband;⁵⁵
 - vi. The murder of 49 men on a bridge in Višegrad in early June 1992;⁵⁶
 - vii. The abduction of Mujo KURSPAHIĆ in June 1992;⁵⁷
 - viii. The abduction of Ramiz KARAMAN, Ahmed KASAPOVIĆ and VG-042's husband from Varda on 10 June 1992;⁵⁸
 - ix. The killing of 4 men on the old bridge at Višegrad on 10 June 1992;⁵⁹
 - x. The killing of two boys on the new bridge in Višegrad on 14 June 1992;⁶⁰
 - xi. The killing of Murka KOS on 18 June 1992.⁶¹
33. The evidence of MLD-025 is summarised in paragraphs 1-3 of Annex E.
34. **Milan LUKIĆ** was driving the red Passat when he was arrested in Serbia on 26 October 1992. He was in possession of forged documents including a vehicle registration document for the car in the name of Mile LUKIĆ,⁶² his father.⁶³ In a written statement to Serb officials on 26/27 October **LUKIĆ** told them he owned the red Passat that he was driving when arrested.⁶⁴ This was corroborated by **Sredoje LUKIĆ**.⁶⁵

⁵⁰ **KAHRIMAN**:T305-06(o.s.);**Exh.P161**,para.12(u.s.).**VG-141**:T6747(o.s.).

⁵¹ **VG-064**:T2886-2888(o.s.).**Exh.1D070**,p.2,3(u.s.).

⁵² **VG-024**:T3231(o.s.).**Exh.P034**,para.27;**Exh.P.190**[photo];**Exh.P.192** [photo]

⁵³ **Exh.1D070**,p.4,5(u.s.).

⁵⁴ **VG-064**:T2888-89(o.s.).

⁵⁵ **VG-064**:T2890-91(o.s.).

⁵⁶ **Exh.P034**,para.44.**Exh.1D023**,p.8.

⁵⁷ **Exh.P028**,p.4(u.s.).

⁵⁸ **VG-042**:T2787-88(o.s.).**Exh.1D069**,paras.9-11(u.s.).

⁵⁹ **VG-141**:T6747(o.s.);**VG-133**:T2975(o.s.);**Exh.P161**,para.19(u.s.).

⁶⁰ **VG-089**:T1759-66(o.s.).

⁶¹ **Exh.P028**,p.4,5(u.s.).

⁶² **Exh.P146**, para.6. **VG-142**:**Exh.P144**,para.6(u.s.).

⁶³ **MLD-024**:T5101(o.s.).

⁶⁴ **Exh.P149**,p.3(u.s.);**Exh.P150**,p.3.*See also*,**Exh.P147**,para.3(u.s.);**Exh.P148**,para.3.

⁶⁵ **SL-Record-of-Interview**,p.3.

35. **Milan LUKIĆ**'s regular use of the Passat is further corroborated by Defence witnesses. A photograph was tendered through MLD-023 depicting **Milan LUKIĆ** and Vidoje ANDRIĆ leaning on the bonnet of a dark red car.⁶⁶ MLD-023 testified that the red car they were sitting on "may be a Passat or a Lada."⁶⁷ During the Defence case **Milan LUKIĆ** advanced the theory that the red Passat was used by police commander Dragan TOMIĆ and that **LUKIĆ** was his driver and only then drove the red Passat. This Defence theory has no support. VG-148 gave evidence that just after the Užice Corps entered the town TOMIĆ asked VG-148 to loan him a car from VG-148's company. VG-148 agreed and personally delivered a white Peugeot 405 for TOMIĆ to use; he gave the keys to his driver and bodyguard, Vidoje ANDRIĆ. For the duration of the time VG-148 remained in Višegrad he never saw either TOMIĆ or ANDRIĆ driving a red Passat. They exclusively used the Peugeot and a white Volkswagen Golf. In fact, both men were killed when their Golf drove over a mine.⁶⁸

The Lukić-Group

36. The Accused committed crimes throughout May and June 1992 as members of the *Lukić-Group*. The *Lukić-Group* were referred to by themselves and others by several names. The group called itself the "Obrenovac Detachment"⁶⁹ and the "Avengers"⁷⁰ while others sometimes referred to them generically as the "White Eagles".⁷¹

37. This group was formed by **Sredoje LUKIĆ** and another police officer named Niko VUJIČIĆ after their release from captivity in April 1992.⁷² When **Milan LUKIĆ** first joined this group upon his return to Višegrad it was under the command of **Sredoje LUKIĆ**.

38. This group was affiliated with the Višegrad police in May and June of 1992 and utilised the Vilina Vlas hotel (also known as the "Višegrad Spa") as a base of operations.⁷³ As the leader of this group, **Milan LUKIĆ** stated he "personally liquidated many Muslims – extremists" and "dispensed with tolerance in advance, and

⁶⁶ Exh.1D126,[photo].

⁶⁷ MLD-023:T4947(o.s.).

⁶⁸ VG-148:T6840-51(o.s.).

⁶⁹ Exh.P148,p.2;Exh.P150,p.1;Exh.P313,p.3. SL-Record-of-Interview,p.2.

⁷⁰ Exh.P148,p.1;Exh.P150,p.1;Exh.P313,p.3.

⁷¹ Exh.P197,p.1;Exh.P256,p.2(Clip 31)(u.s.);Exh.P148,p.3;Exh.P147,p.3(u.s.).SPAHIC:T548(o.s.); TURJACANIN:T2353(o.s.);VG-119:T2428(o.s.);BERBEROVIĆ:T2529(o.s.); VG-138:T3479(o.s.), MLD-023:T4980(o.s.).

⁷² Exh.P197.SL-Record-of-Interview,p.2.Duga-Article,p.7. See,Exh.P209.

⁷³ Exh.P148,p.2;Exh.P150,p.1;Exh.P313,p.3. SL-Record-of-Interview,p.4.Duga-Article,p.7.

so did the *whole group which I lead*.”⁷⁴ **Sredoje LUKIĆ**, the deputy commander, stated that the group “organised an operation to cleanse the Višegrad area of Muslims.”⁷⁵

39. The *Lukić-Group* consisted of between 25 to 50 members and fluctuated as members of the group left and others joined.⁷⁶ Other evidence is summarised in paragraph 4 of Annex E.

40. The Višegrad police never took steps to investigate or prevent the *Lukić-Group* from acting with impunity.⁷⁷ The *Lukić-Group* became notoriously known as the “Avengers” and eventually were affiliated with the Višegrad Territorial Defence as Unit 7158 of the 1st Višegrad Light Infantry Brigade.⁷⁸ **Sredoje LUKIĆ** continued as a member of this formation after he was eventually terminated from the police.⁷⁹

Modus Operandi

41. The crimes perpetrated by the *Lukić-Group* often followed a pattern, a *modus operandi* that corroborates the identification evidence of witnesses. The unique manner in which they perpetrated crimes against the Muslim population of Višegrad was repeated and became routine. The most prominent feature was the use of ruses to facilitate the imminent killing of victims. Ruses were used to encourage Muslims to remain in Višegrad while the *Lukić-Group* went from neighbourhood to neighbourhood to systematically kill them. Days before the *Bikavac-Fire* **Milan LUKIĆ** met Zehra TURJAČANIN in Bikavac while she was having a coffee with a friend and he assured them that they were safe – that he would protect them – there was no reason to leave.⁸⁰ In most of the crimes charged ruses were used to facilitate the commission of crimes.

42. Their victims were sometimes told to remove their shoes – a practice that ensured that potential victims could not easily run away. This was done in the *Drina-Killings* and the *Pionirska-Fire* as well as some of the other incidents heard by the

⁷⁴ Exh.P148,p.2(emphasis added).

⁷⁵ SL-Record-of-Interview,p.2.

⁷⁶ Exh.P150,p.1;Exh.P256,p.4(Clip 60)(u.s.);P313,p.3.

⁷⁷ Exh.P317,p.2-5, MLD-024:T5098-99(o.s.).VG-141:T6749(o.s.).VG-089: T1766,T1771,T1776-77,T1782-83(o.s.).

⁷⁸ Prosecution witnesses referred to a “blue” uniform.Exh.P148,p.1;Exh.P150,p.1;Exh.P313,p.3

⁷⁹ Exh.P318(u.s.). SL-Record-of-Interview,p.4.

⁸⁰ TURJAČANIN:T2295-96(o.s.).

Chamber.⁸¹ Also victims were robbed of their valuables just prior to being killed- this is a prominent feature of all the crimes.

43. In addition to the red Passat, a sniper-rifle fitted with a silencer became another trademark of **Milan LUKIĆ**. Many witnesses observed this unique weapon and described its use by **Milan LUKIĆ**.⁸² When he was arrested in October 1992 by Serb officials he had this sniper-rifle weapon in the trunk of the red Passat.⁸³

44. While some Defence witnesses have described **Sredoje** and **Milan LUKIĆ** as being disposed toward humour many of the victims recount sadistic humour at the expense of vulnerable people. Men who were killed by the Drina were sometimes asked if they could swim just before they were killed.⁸⁴ Just prior to killing the two boys with VG-089 on the new bridge **Milan LUKIĆ** said “We’re out of petrol. We have to take the Drina river. It’s true, it’s a bit cold, but nevermind.”⁸⁵ Once in the police station and upon seeing the father of a former schoolmate asking for **LUKIĆ**’s help, **LUKIĆ** said, “I won’t kill you – – I’ll slit your throat”.⁸⁶ During the course of his many rapes **Milan LUKIĆ** would often joke about planning to marry the victims, or that they would now carry “little Milans”⁸⁷ He laughed in the parking lot of the Višegrad Health Centre as Behija ZUKIĆ’s body was brought to the morgue while he was sitting in her car.⁸⁸ VG-089 described a chilling scene when **Milan LUKIĆ** threw a 14-year-old boy off the new bridge in Višegrad and then shot him; another boy who was there began crying and frantically trying to find coins in his pocket to give to **LUKIĆ**. Some of the coins fell to the pavement and the little boy tried to pick them up to give **LUKIĆ**. **LUKIĆ** reached down toward the boy and told him not to worry – that he would do nothing. As soon as he said this he quickly tossed the boy over the rail and into the river.⁸⁹

⁸¹ See, e.g. **VG-119**:T2394-95(o.s.).

⁸² **VG-032**:T1210-12(o.s.) See, **Exh.P249**.

⁸³ **Exh.P150**, p.2.

⁸⁴ **VG-0032**:T1179(o.s.).

⁸⁵ **VG-089**:T1760(o.s.).

⁸⁶ **VG-089**:T1768(o.s.).

⁸⁷ This evidence will be discussed in detail below.

⁸⁸ **VG-133**:T2953,T3042-43(o.s.).

⁸⁹ **VG-089**:T1753,T1761-63(o.s.).

Section 3(a) The Killing of Five Men on the Banks of the Drina River

45. On or about 7 June 1992 the Accused, **Milan LUKIĆ**, along with Mitar VASILJEVIĆ and two members of the *Lukić-Group*, forcibly detained seven Bosnian Muslims and transported them to the Drina and shot at them, killing five of them.

Summary of the Prosecution Case

46. After the outbreak of the conflict as described in Section 4 and two unsuccessful attempts to leave, VG-032 hid in the Bikavac area of Višegrad.⁹⁰ On the afternoon of 7 June 1992, VG-032 and Hasan KUSTURA found themselves surrounded by the *Lukić-Group* when they ventured out of their hiding place for a few minutes.⁹¹ One of the four men was **Milan LUKIĆ**.⁹² He asked for their identification papers. VG-032 had a permit issued by the Višegrad police. **LUKIĆ**, face-to-face with VG-032 said, "Why are you hiding?" **LUKIĆ**, saying nothing more, tore up VG-032's permit to leave.⁹³

47. **LUKIĆ** ordered VG-032 and KUSTURA to follow him. They set out on foot with him and the group. **LUKIĆ** left VG-032 and KUSTURA in a house guarded by one of his group.⁹⁴ KUSTURA asked this soldier to speak with Branomir SAVOVIĆ, a local SDS leader and friend; the soldier replied that KUSTURA would have to wait and ask **LUKIĆ**.⁹⁵

48. While VG-032 and KUSTURA were there, other Muslim men were brought to the house.⁹⁶ Hasan MUTAPČIĆ entered with his son who was "trembling all over".⁹⁷ Meho and Ekrem DŽAFIĆ (father and son) were also brought there. Eventually, there were 10 to 13 Muslim men in the house.⁹⁸

49. At this time, **Milan LUKIĆ** had just forced himself into VG-014's apartment on a nearby street.⁹⁹ VG-014 recognised his former schoolmate the moment he

⁹⁰ **VG-032**:T1153-1155(o.s.).

⁹¹ **VG-032**:T1157-58;T1163(o.s.);T1159-60(p.s.).

⁹² **VG-032**:T1160-61(o.s.).

⁹³ **VG-032**:T1161(o.s.).

⁹⁴ **VG-032**:T1164(o.s.).

⁹⁵ **VG-032**:T1165(o.s.).

⁹⁶ **VG-032**:T1166(o.s.).

⁹⁷ **VG-032**:T1166(o.s.).

⁹⁸ **VG-032**:T1166(o.s.).

⁹⁹ **VG-014**:T295-96(o.s.).

entered.¹⁰⁰ **LUKIĆ**, and a man he referred to as “MONTENEGRO”, searched VG-014’s apartment and detained him along with Amir **KURTALIĆ**.¹⁰¹

50. **LUKIĆ** ordered them to follow as he left.¹⁰² When **KURTALIĆ** asked to get his identification, **LUKIĆ** responded “You need no identity card. I am your identity card.”¹⁰³ Although **LUKIĆ** refused VG-014’s request to kiss his wife and daughter, he went back and did so.¹⁰⁴ VG-014 and **KURTALIĆ** went outside to the car **LUKIĆ** was driving – it was **ZUKIĆ**’s red Passat.¹⁰⁵

51. **LUKIĆ** took VG-014 and **KURTALIĆ** to where the other captives were gathered.¹⁰⁶ It was a short distance and he parked near a grey Yugo which belonged to the **DŽAFIĆ**s.¹⁰⁷ VG-014 and **KURTALIĆ** remained in the Passat as **LUKIĆ** went into the house.¹⁰⁸

52. Once inside, **KUSTURA**’s request to speak to **SAVOVIĆ** was conveyed to **LUKIĆ** – he responded by cursing **KUSTURA**’s mother.¹⁰⁹ He ordered the captives to stand in a semicircle, remove their shoes, and place their personal documents and valuables in the middle of the room.¹¹⁰ He threatened to kill anyone who hid anything – they complied.¹¹¹ **LUKIĆ** put their money in his pocket and kicked their identification documents behind a door.¹¹² Without shoes, any escape by the men was made more difficult, a technique repeated with the large number of victims of the *Pionirska-Fire*.

53. After learning the Yugo belonged to Osman **DŽAFIĆ**, **LUKIĆ** told Meho, his father, to get the keys.¹¹³ He then ordered four of the men – VG-032, Hasan **MUTAPČIĆ**, Hasan **KUSTURA** and Ekrem **DŽAFIĆ** – to leave the house.¹¹⁴ From

¹⁰⁰ **VG-014**:T298(o.s.).

¹⁰¹ **VG-014**:T295-96,306(o.s.).

¹⁰² **VG-014**:T300(o.s.).

¹⁰³ **VG-014**:T306(o.s.).**Exh.P005**,p.5(u.s.).

¹⁰⁴ **VG-014**:T304(o.s.).

¹⁰⁵ **VG-014**:T305-306,308(o.s.).

¹⁰⁶ **VG-014**:T310(o.s.).

¹⁰⁷ **VG-014**:T310(o.s.).

¹⁰⁸ **VG-014**:T310-11(o.s.).

¹⁰⁹ **VG-032**:T1168(o.s.).

¹¹⁰ **VG-032**:T1166(o.s.).

¹¹¹ **VG-032**:T1166(o.s.).

¹¹² **VG-032**:T1168(o.s.).

¹¹³ **VG-032**:T1168(o.s.)(VG-014 also observed this Yugo when originally pulling up to the house:T310).

¹¹⁴ **VG-032**:T1168(o.s.).

the red Passat, VG-014 saw the men led toward the other car.¹¹⁵ MUTAPČIĆ joined VG-014 and KURTALIĆ in the Passat,¹¹⁶ while the remaining four and a soldier entered the Yugo.¹¹⁷ Both cars drove north through the town and toward the Vilina Vlas Hotel, northeast of town.¹¹⁸

54. Upon arriving at Vilina Vlas,¹¹⁹ **LUKIĆ** ordered the captives into the lobby and to stand by the reception desk.¹²⁰ Here, VG-014 recognised Mitar VASILJEVIĆ and Momir SAVIĆ.¹²¹ Meho DŽAFIĆ was a friend and colleague of VASILJEVIĆ for over 15 years. He also recognised another man whose family name was “ŠUŠNJAR”.¹²² After **LUKIĆ** tried unsuccessfully to find keys to the manager’s office, he ordered his captives back into the cars.¹²³ VASILJEVIĆ joined **LUKIĆ** in the Passat and the two cars left the hotel.

55. They drove back toward Sase along the road they had come. On the way, **LUKIĆ** said that the men would be exchanged for soldiers who had fallen at Žepa.¹²⁴ **LUKIĆ** ordered the men out of the red Passat.¹²⁵ Once the detainees were on the road, the demeanour of the *Lukić-Group* changed “dramatically” becoming extremely aggressive and abusive.¹²⁶

56. **LUKIĆ** ordered the men to walk towards the Drina.¹²⁷ They walked single file through a field until they reached a spot about 10 metres from the riverbank – **LUKIĆ** ordered them to stop.¹²⁸ He asked who could swim¹²⁹ and then ordered them to the riverbank.¹³⁰ Meho DŽAFIĆ plead vainly with VASILJEVIĆ to spare his life.¹³¹

57. VG-014 described his emotions while looking across the river at the village where he grew up:

¹¹⁵ **VG-014**:T310(o.s.).*See also*,**VG-032**:T1168-69(o.s.).

¹¹⁶ **VG-014**:T311(o.s.).**Exh.P005**,p.6(u.s.).**VG-032**:T1169(o.s.).

¹¹⁷ **VG-014**:T312(o.s.).**VG-032**:T1169(o.s.).

¹¹⁸ **VG-014**:T312(o.s.).**VG-032**:T1174(o.s.).

¹¹⁹ **Exh.P002**.

¹²⁰ **VG-014**:T313(o.s.).**VG-032**:T1176-77(o.s.);**Exh.P069**.

¹²¹ **VG-014**:T313(o.s.).**VG-032**:T1175(o.s.).

¹²² **VG-014**:T313-14(o.s.).**Exh.P-005**,p.6(u.s.).

¹²³ **VG-014**:T315(o.s.).**VG-032**:T1177(o.s.).**LUKIĆ** ordered the men to sit in the same places they were in earlier.

¹²⁴ **VG-014**:T318(o.s.).

¹²⁵ **VG-014**:T319(o.s.).

¹²⁶ **VG-032**:T1178(o.s.).

¹²⁷ **MLD-025**:T5362(c.s.).

¹²⁸ **VG-014**:T319(o.s.).**VG-032**:T1178-79(o.s.);**Exh.P003**.**Exh.P004**.

¹²⁹ VG-032 said he knew how to swim because “I knew very clearly what was going to happen, and I thought since I was forced to watch, I should go first in order not to see the rest.” **VG-032**:T1179(o.s.).

¹³⁰ **VG-014**:T320(o.s.).

[A]s we were getting close to the river bank, one behind the other in a line, I could see, and I was also able to sense that the end was coming. I still had an image of my daughter and my wife in my head, but what could I do? Nothing could be changed.¹³²

VG-032 also thought of his young child at home,

After I made the first few steps I was half frozen. I was frozen, and I wanted those last ten metres -- I wanted to go those last ten metres with only my daughter in my mind. At that time, nothing else around me existed. I only thought of her playing in her room.¹³³

58. The men lined up along the water's edge; **LUKIĆ** and the others only a few metres behind.¹³⁴ **LUKIĆ** was armed with a sniper-rifle with a silencer.¹³⁵ **VASILJEVIĆ** and the others were armed with automatic rifles that could be adjusted to fire single shots(semi-automatic mode).¹³⁶ One of his group asked **LUKIĆ** whether they should shoot bursts or single shots to which he replied they should fire individual rounds.¹³⁷ The two survivors heard the "click" of the automatics as the perpetrators switched them into semi-automatic mode.¹³⁸

59. As VG-014 heard the first shot he instinctively fell into the water – he was not injured. He heard the screams of one victim, heard bullets hit another, and felt another fall limply on top of him.¹³⁹ VG-032 had also fallen into the water uninjured when the firing began.¹⁴⁰ VG-032 described the scene,

Falling into the water I heard shots and screams, the screams of the others, and I must say they were not all fatally wounded by the first shot. I have to admit that around me there was chaos at that moment, inferno with hellfire that I cannot describe with mere words.¹⁴¹

60. The soldiers noticing that someone was still alive fired again.¹⁴² Shots passed by VG-014's head – he remained still. It was only after he heard the car doors shut that he slowly raised his head to see if the *Lukić-Group* had left. When VG-032 dared to open his eyes he saw VG-014 looking at him; the two soon realised that the other

¹³¹ **VG-014**:T320(o.s.).**VG-032**:T1179(o.s.).

¹³² **VG-014**:T319-20(o.s.).

¹³³ **VG-032**:T1180(o.s.).

¹³⁴ **VG-014**:T321(o.s.).**VG-032**:T1184(o.s.).*See also*,**Exh.P065**(u.s.)&**MLD-025**:T1507(c.s.).

¹³⁵ **VG-014**:T299(o.s.),T323(o.s.).**VG-032**:T1163(o.s.).**MLD-025**:T1506(c.s.).

¹³⁶ **VG-014**:T323(o.s.).**VG-032**:T1163(o.s.).

¹³⁷ **VG-014**:T321(o.s.),T322-23(o.s.).**VG-032**:T1180(o.s.).

¹³⁸ **VG-014**:T321(o.s.),T324(o.s.).**VG-032**:T1180(o.s.).

¹³⁹ **VG-014**:T321(o.s.).**Exh.P005**,p.7(u.s.).

¹⁴⁰ **VG-032**:T1180(o.s.).“I heard Meho's scream that was not even uttered to the end. It was frozen midway. And I must say I didn't even hear the shot at that moment.”

¹⁴¹ **VG-032**:T1181(o.s.).**MLD-025**:T1509(c.s.).

five were dead.¹⁴³ They saw the upturned body of MUTAPČIĆ, revealing a fatal head wound, and saw the other four men floating lifeless in the river.¹⁴⁴ VG-014 suggested they leave quickly since LUKIĆ said he was bringing more men to the river.¹⁴⁵ They crossed the Drina on a log and headed toward a Muslim-held village along the left bank.¹⁴⁶

61. VG-079 saw the shooting from the far bank. He watched the executions unfold across the river with an unaided eye(his brother-in-law watched through binoculars).¹⁴⁷ VG-079 saw a car parking at Sase and then saw ten people walk through the meadow leading to the river.¹⁴⁸ VG-079 recognised Meho DŽAFIĆ and KURTALIĆ among the group.¹⁴⁹

62. VG-079 saw the civilians lined up facing the river.¹⁵⁰ The armed men took aim from seven metres behind them and opened fire.¹⁵¹ When the shooting began VG-079 turned away – unable to watch.¹⁵² VG-079 looked again after it subsided and saw two soldiers who had begun to leave, return abruptly and fire more bullets into the victims. The soldiers walked to the cars and drove towards Višegrad.¹⁵³

63. After the soldiers left, VG-079 walked closer to the bank.¹⁵⁴ He saw two survivors stand up in the water and walk along the right bank until they crossed to the left bank on a log.¹⁵⁵ VG-079's brother-in-law knew VG-014 and spoke to him.¹⁵⁶ VG-079 returned two days later and saw the five corpses still floating along the bank.¹⁵⁷

¹⁴² VG-032:T1182(o.s.).VG-014:T321(o.s.).

¹⁴³ VG-014:T321(o.s.).VG-032:T1182(o.s.).

¹⁴⁴The body of Hasan KUSTURA was recovered from the communal grave in Slap, which lies downstream on the Drina from Višegrad. It was referred to as body number 328 at the time an autopsy was performed. Clark:T2109.(o.s.).Exh.P126(o.s.).

¹⁴⁵ VG-014:T322(o.s.).Exh.P005,p.8(u.s.).

¹⁴⁶ VG-014:T327(o.s.).

¹⁴⁷ VG-079:T427-28(o.s.).

¹⁴⁸ VG-079:T428(o.s.).

¹⁴⁹ VG-079:T428,T446(o.s.).Exh.P008VT325(o.s.).

¹⁵⁰ VG-079:T430(o.s.).

¹⁵¹ VG-079:T430(o.s.). Exh.P008VT325(o.s.).

¹⁵² VG-079:T430(o.s.).

¹⁵³ VG-079:T431(o.s.). Exh.P008VT325(o.s.).

¹⁵⁴ VG-079:T431-32(o.s.).

¹⁵⁵ VG-079:T432(o.s.).

¹⁵⁶ VG-079:T432-33(p.s.).

¹⁵⁷ VG-079:T434(o.s.).VG-032 also observed the corpses in the water on the days following the execution: VG-032:T1183(o.s.).

Evidence of Identification

64. **Milan LUKIĆ** was a perpetrator of the *Drina-Killings*. The two survivors who knew him before the *Drina-Killings* described him in nearly identical terms, and confidently confirmed his identity in court. In VG-014's videotaped account shortly after the *Drina-Killings* he provided evidence entirely consistent with his in-court testimony 16 years later and unequivocally identified **Milan LUKIĆ**.¹⁵⁸

65. VG-014 knew **LUKIĆ** before the day of the *Drina-Killings*. From the moment **Milan LUKIĆ** entered his home, VG-014 recognised his former schoolmate.¹⁵⁹ They attended secondary school together for two years and were in the same year of study.¹⁶⁰ He saw **LUKIĆ** daily during class breaks.¹⁶¹ VG-014 also knew **LUKIĆ** was from Rujište, that he studied metal work – a fact corroborated by **LUKIĆ's** school records – and that he had moved to Obrenovac.¹⁶²

66. VG-014's prior knowledge of **Milan LUKIĆ** and instantaneous recognition of him when he first encountered him on 7 June 1992 defines him as a *recognition* witness. When asked to confirm if the **Milan LUKIĆ** in court is the same person he testified about, he identified him saying "I am sure, a hundred percent."¹⁶³

67. VG-032 also knew **Milan LUKIĆ** prior to the *Drina-Killings*. Shortly after the conflict began, VG-032 saw **LUKIĆ** at a local café and took note of his sniper rifle with a silencer – a rare sight.¹⁶⁴ This unique weapon prompted him to inquire about who this man was – VG-032 was told he was **Milan LUKIĆ**.¹⁶⁵

68. The next time VG-032 saw **LUKIĆ** was on the day Behija ZUKIĆ's body was brought to the morgue.¹⁶⁶ VG-032 was in the Health Centre at the time and knew the ZUKIĆ family well.¹⁶⁷ He recalled that on the day they bought their new red Passat, VG-032 went to congratulate them.¹⁶⁸ Some staff members told VG-032 that "she had

¹⁵⁸ **VG-014:T332-36(o.s.).See also,Exh.P004.**

¹⁵⁹ **VG-014:T296&T301(o.s.).**

¹⁶⁰ **VG-014:T297(o.s.).Exh.P005,p.5(u.s.).**

¹⁶¹ **VG-014:T302(o.s.).**

¹⁶² **VG-014:T297-98(o.s.).Exh.P005,p.5(u.s.).Exh.1D105**

¹⁶³ **VG-014:T335(o.s.).**

¹⁶⁴ **VG-032:T1210-12(o.s.).** VG-032 believes this first encounter happened before 25 or 26 April 1992. He is certain it occurred prior to the Užice Corps leaving town [19 May 1992].

¹⁶⁵ **VG-032:T1210(o.s.).**

¹⁶⁶ **VG-032:T1153&T1212(o.s.).**

¹⁶⁷ **VG-032:T1152-53(o.s.).**

¹⁶⁸ **VG-032:T1152(o.s.).**

practically half her head missing.”¹⁶⁹ Shortly after breakfast, VG-032 saw the ZUKIĆs’ Passat stop in front of the Health Centre.¹⁷⁰ VG-032 recounted, “when you know who the owner of the vehicle is and that she’s lying in the mortuary [...] you become very curious to know who’s driving the car now.”¹⁷¹ VG-032 saw **Milan LUKIĆ** behind the wheel.¹⁷² He recognised **Milan LUKIĆ** as the same person he had seen several weeks earlier and made inquiries about. VG-032 thus had two opportunities to observe **LUKIĆ** under optimal conditions shortly before the *Drina-Killings*. VG-032 immediately recognised **Milan LUKIĆ** the third time he encountered him on 7 June 1992. VG-032 is a *recognition witness*.

69. In court, VG-032 unhesitatingly recognised **Milan LUKIĆ**.¹⁷³ When instructed to look around the courtroom, VG-032’s gaze came to rest on **LUKIĆ**, who stared back with a grin. When asked if he were certain he recognised **Milan LUKIĆ**, VG-032 answered, “Yes, Your Honour. It’s the same smirk that I remember very well”.¹⁷⁴

70. On the day of the *Drina-Killings* both VG-014 and VG-032 were in **Milan LUKIĆ**’s presence for extended periods of time. They both had ample opportunities to view **LUKIĆ**’s unobstructed face under the midday sun.¹⁷⁵ VG-014 recognised him “as soon as he came in” and “didn’t have any doubts about it”.¹⁷⁶ He stood an arm’s length from VG-014 in his home.¹⁷⁷ He then stood right next to VG-014 when he opened the Passat’s trunk for VG-014 to put his old JNA uniform in.¹⁷⁸ VG-014 sat in the middle seat behind **Milan LUKIĆ** during the approximately 20-25 minute drive to Vilina Vlas.¹⁷⁹ VG-014 spent another 15-20 minutes in the lobby of the hotel while **LUKIĆ** searched unsuccessfully for keys – again in daylight – again without obstruction.¹⁸⁰ During this time, VG-014’s full attention was on **Milan LUKIĆ**, anxious to see what he intended to do to them.¹⁸¹ Similarly, **LUKIĆ** stood face-to-

¹⁶⁹ VG-032:T1152(o.s.).

¹⁷⁰ VG-032:T1153(o.s.).

¹⁷¹ VG-032:T1153(o.s.).

¹⁷² VG-032:T1153(o.s.).

¹⁷³ VG-032:T1230(o.s.).

¹⁷⁴ VG-032:T1230(o.s.).

¹⁷⁵ VG-014:T300(o.s.).VG-032:T1161(o.s.).

¹⁷⁶ VG-014:T298(o.s.).

¹⁷⁷ VG-014:T300(o.s.).

¹⁷⁸ VG-014:T305(o.s.).

¹⁷⁹ VG-014:T312(o.s.).

¹⁸⁰ VG-014:T316(o.s.).

¹⁸¹ VG-014:T316(o.s.).

face with VG-032 when he first interrogated him.¹⁸² Like VG-014, VG-032 also observed **LUKIĆ** during the entire time that they were in the Vilina Vlas hotel.¹⁸³ The trip to the Vilina Vlas provides further corroboration as **Sredoje LUKIĆ** acknowledged that Vilina Vlas was the headquarter of the unit he and **Milan LUKIĆ** belonged to.¹⁸⁴

71. Their recognitions are further reinforced by the fact that VG-014 and VG-032 gave similar descriptions of **LUKIĆ**. Both describe him wearing a blue police camouflage uniform.¹⁸⁵ Both recall a beret with a double-headed eagle emblem, his partially blackened face and athletic shoes.¹⁸⁶ Both observed a bandage on the inside of his elbow.¹⁸⁷ This is independently corroborated by an entry in the Višegrad Health Centre records from that day.¹⁸⁸ Both recall that he carried a sniper-rifle with a silencer.¹⁸⁹ The consistency of their descriptions demonstrates the strength of these witnesses' recollection and further strengthens their identification of him. VG-032 described his time spent looking at **LUKIĆ**,

We were looking at each other closely. Still today, as I recall that particular incident, I see that face before me. I don't think that there's an individual or a human being in the world who spends as much time with a person who wishes to kill him without remembering the face and the contours. That's something one cannot ever forget."¹⁹⁰

72. In addition the Chamber heard testimony from MLD-025 in closed session that both corroborates the survivors and establishes an entirely independent basis for finding that **Milan LUKIĆ** perpetrated these crimes. This evidence is discussed in paragraphs 5-6 of Annex E.

The Prosecution has Established the Accused Milan LUKIĆ's Guilt for the Drina-Killings.

73. Counts 2-5 of the Indictment charge **Milan LUKIĆ** with two counts of murder, and single counts of inhumane acts and cruel treatment. The elements of

¹⁸² VG-032:T1161(o.s.).

¹⁸³ VG-032:T1177(o.s.).

¹⁸⁴ SL-Record-of-Interview,p.4.

¹⁸⁵ VG-014:T296&T299(o.s.).VG-032:T1161(o.s.).

¹⁸⁶ VG-014:T296&T299(o.s.).VG-032:T1161-62(o.s.).

¹⁸⁷ VG-014:T299(o.s.).Exh.P005,p.5(u.s.).VG-032:T1162(o.s.).

¹⁸⁸ Exh.P068.

¹⁸⁹ VG-014:T296&99(o.s.).Exh.P005,p.5(u.s.).VG-032:T1163(o.s.).

¹⁹⁰ VG-032:T1163(o.s.).

murder under Articles 3 and 5 of the Statute are equivalent and differ only in their *chapeau* requirements.¹⁹¹ They are:

Actus reus:

- (i) the death of a victim;
- (ii) the death was the result of an act or omission of the accused or of one or more persons for whom the accused is criminally responsible;

Mens rea:

- (iii) the act or omission was committed with intent to kill or with the reasonable likelihood that it might lead to death.¹⁹²

74. The *actus reus* required for committing a crime is that the accused participated, physically or otherwise directly, in the material elements of a crime, through positive acts or omissions, whether individually or jointly with others.¹⁹³ “Commission” covers “first and foremost the physical perpetration of a crime by the offender himself, or the culpable omission of an act that was mandated by a rule of criminal law.”¹⁹⁴

75. **Milan LUKIĆ** murdered the five men at the Drina River even if his bullets did not kill them. **LUKIĆ** directed the conduct of other co-perpetrators to kill the Muslims; he ordered the victims to turn over their valuables¹⁹⁵ and he collected them;¹⁹⁶ he took the men captive, he transported them to Vilina Vlas and then to the Drina – all acts calculated to culminate in their death.

76. When they arrived at Sase, he ordered the men to the riverbank.¹⁹⁷ In response to a question, he directed members of the *Lukić-Group* how to set their guns. His control of the situation and his intent to kill the seven men is unequivocal.

77. The *mens rea* of murder is satisfied by proof of either direct or indirect intent to kill.¹⁹⁸ Actors are presumed to intend the natural and probable consequences of

¹⁹¹ *Martić*TJ,para.58;*Blagojević*TJ,para.556;*Brdanin*TJ,para.380;*Stakić*TJ,para.631;*Kordić*TJ, paras.229,233&236;*Strugar*TJ,para.236;*Orić*TJ,para.345.

¹⁹² See for example, *Čelebići*AJ,para.423;*Kordić*AJ,para.37;*Krajišnik*TJ,para.715.

¹⁹³ *Lima*JTJ,para.509;*Galić*TJ,para.168.

¹⁹⁴ *Tadić*AJ,para.188.

¹⁹⁵ **VG-032**:T1166(o.s.).

¹⁹⁶ **VG-032**:T1167-68(o.s.).

¹⁹⁷ **VG-014**:T319(o.s.).

¹⁹⁸ *Delić*TJ,para.48;*Strugar*TJ,para.235;*Lima*JTJ,para.241.

their actions.¹⁹⁹ The repeated shooting of the men confirms **LUKIĆ**'s intention to kill them.

78. Early on **LUKIĆ** gave clear indications of his intentions. The first indication of his intent to kill the men occurred when he told KURTALIĆ he did not need his identity card.²⁰⁰ His intentions became clearer when he kicked the other identification documents behind the door²⁰¹ and tore up VG-032's permit to leave.²⁰² **LUKIĆ**'s purpose was clear to his victims and co-perpetrators. When KUSTURA spoke to one of the *Lukić-Group*, the soldier replied, "Well, why have you waited for so long? Why didn't you hide somewhere safely"?²⁰³

79. After leaving Vilina Vlas, **LUKIĆ** lied, telling his captives they were being exchanged. While such a statement, if true, would indicate non-homicidal intentions, in this context the statement demonstrates the contrary. It was spoken aloud to gain the compliance of the captives, to prevent their escape and facilitate their murder. No attempt was made to arrange an exchange. The destruction of the victims' identification papers and abrupt change in demeanour minutes later makes clear these words were a tool used to facilitate his murderous intention.

80. On the road between Bikavac and the Vilina Vlas hotel, **LUKIĆ** made clear the persecutory nature of his intentions when he stopped several pedestrians to inquire about their ethnicity and when at the Sase checkpoint he boasted that he successfully "hunted" some Muslims.²⁰⁴ As they approached Sase, **LUKIĆ** asked VASILJEVIĆ whether a house on the road belonged to a Muslim.²⁰⁵ **LUKIĆ**'s persecutory intent is also manifest as his victims were all Muslim.

81. The elements of inhumane acts as a crime against humanity are:

Actus reus:

- i. the victim must have suffered serious bodily or mental harm;

¹⁹⁹ Phipson on Evidence states:

As a general rule, proof that a person knew that an act was likely to have certain consequences is relevant evidence which may found an inference that he intended those consequences when he did the act.

Hodge Malek, ed. *Phipson on Evidence*, 16th ed. 2005, p.424. See also, I.H. Dennis, *The Law of Evidence*, 1999, p.389.

²⁰⁰ **VG-014:T306**(o.s.).

²⁰¹ **VG-032:T1168**(o.s.).

²⁰² **VG-032:T1161**(o.s.).

²⁰³ **VG-032:T1165**(o.s.).

²⁰⁴ **VG-014:T312-13**(o.s.).

²⁰⁵ **VG-014:T318-19**(o.s.). **Exh.P003&Exh.P004**.

- ii. the suffering must be the result of an act or omission of the accused or his subordinate; and

Mens rea:

- iii. when the offence was committed, the accused or his subordinate must have been motivated by the intent to inflict serious bodily or mental harm upon the victim.²⁰⁶

82. With regard to the *mens rea* requirement, direct or indirect intent is sufficient. The perpetrator must have had the intention to inflict serious physical or mental suffering or to commit a serious attack on the human dignity of the victim, or must have known that his act or omission was likely to cause serious physical or mental suffering or a serious attack upon human dignity.²⁰⁷

83. Cruel treatment as a violation of the laws and customs of war is:

- (i) an intentional act or omission [...] which causes serious mental or physical suffering or injury or constitutes a serious attack on human dignity;
- (ii) committed against a person taking no active part in the hostilities.²⁰⁸

84. Acts constituting cruel treatment must be of similar seriousness to the other enumerated crimes under Article 3.²⁰⁹ The *mens rea* for cruel treatment is satisfied by proof of direct or indirect intent.²¹⁰

85. By making two Bosnian Muslim men fear for their lives to the point of absolute desperation and even resignation, whilst shooting five of their friends, **Milan LUKIĆ** and his co-perpetrators subjected the victims to mental anguish and suffering of immeasurable proportions.

86. The names of the five men killed on 7 June 1992 in the *Drina-Killings* are listed in the Indictment. These five victims are listed in P119, followed by information from various sources that were searched in order to corroborate the death of these men.²¹¹ Four of these five men (Both DŽAFIĆs, MUTAPČIĆ and KURTALIĆ) were listed in the 2005 ICRC List of Missing Persons for BiH as well as the ICMP list.²¹² There is additional corroboration that MUTAPČIĆ and KUSTURA were killed; both

²⁰⁶ KordićAJ, para. 117; VasiljevićAJ, para. 165.

²⁰⁷ MartićTJ, paras. 80, 85; SimićTJ, para. 76; GalićTJ, para. 154; KrojelacTJ, para. 132.

²⁰⁸ ČelebićiAJ, para. 424; BlaškićAJ, para. 595.

²⁰⁹ KrnojelacTJ, para. 130; SimićTJ, para. 83.

²¹⁰ KrnojelacTJ, para. 132.

²¹¹ With respect to the entry for KUSTURA in Exh.P119 see Exh.300, p.10, fn.11.

²¹² Exh.P119; Exh.P184.

the ICMP and BCMP records indicate that their bodies were exhumed.²¹³ This evidence corroborates witness testimony that these men were killed in the *Drina-Killings*.

Section 3(b) The Killing of Seven Men at the Varda Factory

87. **Milan LUKIĆ** committed murder by killing seven Bosnian Muslim men during the *Varda-Killings* on or around 10 June 1992.

Summary of the Prosecution case

88. VG-017, VG-042, and VG-024 each saw the incident from a different perspective and described a segment of the overall event. VG-024 was at work inside the factory where she was able to observe some events up close.²¹⁴ VG-042 watched from the balcony of her house, overlooking the place where **Milan LUKIĆ** killed the men.²¹⁵ VG-017 watched from a position close to where the crimes occurred.²¹⁶

89. On or about the morning of 10 June 1992, VG-017 and VG-042 saw **Milan LUKIĆ** arrive at the Varda furniture factory south of the town in the red Passat.²¹⁷ Varda was a large furniture factory employing over 1,000 people of both Serb and Muslim ethnicities working in three shifts.²¹⁸ VG-017 recognised this car as the one owned by Džemo and 'Behka' ZUKIĆ²¹⁹ and which **LUKIĆ** had previously driven to VG-017's house.²²⁰ He saw **LUKIĆ** park by the guardhouse.²²¹ VG-017 was familiar with **Milan LUKIĆ**, having seen him two or three times before.²²² VG-042 also saw **LUKIĆ** get out of the car.²²³ **LUKIĆ** went into the workshop and brought a man named Nedžad BEKTAŠ down to the guardhouse.²²⁴ He returned to the factory to collect other Muslim workers.²²⁵

90. VG-024 saw **LUKIĆ** once he entered the factory. At about 11:30, Mirko ĐUKANOVIĆ, a fellow employee, told VG-024 to leave (she believes he "understood

²¹³ **Exh.P184**. See **Exh.P300** for additional information about KUSTURA.

²¹⁴ **VG-024**:T3225(o.s.).

²¹⁵ **VG-042**:T2791(o.s.).

²¹⁶ **VG-017**:T2690(c.s.).

²¹⁷ **VG-017**:T2689-90(o.s.); **VG-042**:T2788(o.s.).

²¹⁸ **VG-024**:T3219-20. See **Exhs.P189;P190;P191;P152&P153**.

²¹⁹ **VG-017**:T2693-94(o.s.).

²²⁰ **VG-017**:T2693(o.s.).

²²¹ **VG-017**:T2694-95(o.s.). See: **Exhs.P154,155,P156&P157**(u.s.).

²²² **VG-017**:T2695(o.s.).

²²³ **VG-042**:T2788(o.s.).

²²⁴ **VG-017**:T2696(o.s.).

the situation”).²²⁶ As she turned, **LUKIĆ** came in her direction – they passed each other.²²⁷ Before leaving, VG-024 watched **LUKIĆ** approach Sabahudin VELAGIĆ and Lutvo TABAKOVIĆ.²²⁸ He told three Serb employees to guard them.²²⁹ VG-024 encouraged VELAGIĆ to flee, but Serb workers would not allow it.²³⁰

91. VG-024 left the factory, but returned a few minutes later to see what was happening.²³¹ She saw **LUKIĆ** bringing Hamed OSMANAGIĆ, Nusret ALJUŠEVIĆ, Ibrišim MEMIŠEVIĆ, VELAGIĆ and TVRTKOVIĆ from the polishing area.²³²

92. VG-017 and VG-042 could see **LUKIĆ** again when he brought the workers outside. VG-017 recognised Nedžad BEKTAŠ, ALJUŠEVIĆ, and MEMIŠEVIĆ as three of the six or seven workers he saw.²³³ VG-017 was able to easily recognise those he knew from his hiding place nearby.²³⁴ Similarly, VG-042, from her balcony, recognised Mušan ČANČAR, Lutvo TVRTKOVIĆ, Ibrišim MEMIŠEVIĆ, Nedžad BEKTAŠ, and Nusret ALJUŠEVIĆ.²³⁵ These men were walking in front of **LUKIĆ** “like sheep”.²³⁶ When they reached the sawmill gate, MEMIŠEVIĆ took off his overalls, while the other captives removed their personal effects and tossed them on MEMIŠEVIĆ’s shirt.²³⁷ **LUKIĆ** then forced his prisoners to walk down the bank of the Drina.²³⁸

93. Several other people watched these events with VG-042 on her balcony. Among them were MEMIŠEVIĆ’s wife Mujesira and daughter Meliha.²³⁹ Meliha, seeing her father being led away and recognising him from the same distance as VG-

²²⁵ **VG-017**:T2696(o.s.).

²²⁶ **VG-024**:T3225(o.s.).

²²⁷ **VG-024**:T3225(o.s.).

²²⁸ Although VG-024 gave this victim’s surname as TABAKOVIĆ during her testimony, the Prosecution submits that his surname was in fact TVRTKOVIĆ. VG-042 testified that this victim’s name was Lutvo TVRTKOVIĆ. **VG-042**:T2788(o.s.).

²²⁹ These three older Serbs were: Sloba PEHOVIĆ, Budimir GLADANAC and Ljupko LNU. **Exh.2D034**,p.5. **VG-024**:T3225(o.s.).

²³⁰ **VG-024**:T3225-26(o.s.).

²³¹ **VG-024**:T3226(o.s.).

²³² **VG-024**:T3226(o.s.).

²³³ **VG-017**:T2696-99(p.s.). **Exh.1D064**,para.15.(u.s.).

²³⁴ **VG-017**:T2762(o.s.). See: “B” on **Exh.P154**(u.s.). He later moved to a 3 storey henhouse for a better view. **VG-017**:T2703(p.s.) testifying about **Exh.P155**(u.s.).

²³⁵ **VG-042**:T2788(o.s.). The transcript records the name as “Nusreta Jušević.” The Prosecution submits, however, that this person is Nusret Aljušević as identified by VG-017 and VG-024.

²³⁶ **VG-042**:T2788(o.s.).

²³⁷ **VG-042**:T2788(o.s.).

²³⁸ **VG-042**:T2789(o.s.). **VG-024**:T3227(o.s.).

²³⁹ **VG-042**:T2861(p.s.).

042, cried out, “Dad, dad”!²⁴⁰ MEMIŠEVIĆ heard his daughter’s cry and turned to look at his screaming child.²⁴¹

94. When the men reached the water’s edge, **LUKIĆ** lined them up and killed them one by one.²⁴² VG-024, realizing what was about to happen, ran back into the factory – on her way she heard the gunshots.²⁴³ From his hiding place, VG-017 could only hear the shooting.²⁴⁴ After killing the men, **Milan LUKIĆ** walked back toward the factory. He shot a burst of gunfire toward VG-042 and the others watching from the balcony.²⁴⁵ He returned to the red Passat and drove towards town.²⁴⁶

95. Inside the factory, VG-024 told VELAGIĆ’s father Suljo what happened. He rushed to the riverbank – when he returned crying and carrying his son’s jacket; he told VG-024 that all seven were dead.²⁴⁷ Suljo continued, “Now that my son’s gone, my life’s worth nothing.”²⁴⁸

Evidence of Identification

96. All of the Prosecution’s witnesses for the *Varda-Killings* are *recognition* witnesses. All three knew **Milan LUKIĆ** prior to the day of the incident and had a strong basis for recognising him during it.

97. VG-024 knew **Milan LUKIĆ** the longest. Some of her evidence is summarised in paragraph 7 in Annex E.

98. In addition to her extensive familiarity with **Milan LUKIĆ**, witness VG-024 also had the opportunity to closely observe him shortly before the *Varda-Killings*. VG-024 testified that **Milan LUKIĆ** was “almost a regular visitor” to Varda and “would just walk through the factory sometimes”.²⁴⁹ **LUKIĆ**’s notice of alibi admits he went to the Varda factory to arrest Muslim workers and bring them to the police station.²⁵⁰

²⁴⁰ VG-042:T2861(p.s.).

²⁴¹ VG-042:T2861-62(p.s.). VG-024 saw the people on the balcony and heard the little girl scream. VG-024:T3229(o.s.). VG-017 also described this incident. VG-017:T2736(o.s.).

²⁴² VG-042:T2789(o.s.).

²⁴³ VG-024:T3228(o.s.).

²⁴⁴ VG-017:T2701&T2705(o.s.).

²⁴⁵ VG-042:T2790(o.s.).

²⁴⁶ VG-017:T2705(o.s.). VG-024:Exh.2D034,p.5.

²⁴⁷ Exh.2D034,p.5.VG-024:T3228-29(o.s.).

²⁴⁸ VG-024:T3228-29(o.s.).

²⁴⁹ VG-024:T3222-23(o.s.);Exh.2D034,pp.3-4(u.s.).

²⁵⁰ See,M.Lukić-AlibiNotice,09/01/2008.

99. VG-024 recognised **Milan LUKIĆ** when he came to Varda on 25 May in the red Passat and took away several Muslim workers.²⁵¹ She saw him in near proximity when he told her co-worker named “Milan” that he had the same name.²⁵²

100. On 10 June, VG-024 was inside the factory when **LUKIĆ** entered and she watched as he moved through the factory taking Muslim employees captive. VG-024, was a reluctant witness,²⁵³ appeared pursuant to a subpoena and gave a candid and detailed account of her observations. VG-024 followed **LUKIĆ** outside the factory and watched until the executions began. VG-024 at all times had an unobstructed view of **LUKIĆ**. VG-024 confirmed that the **Milan LUKIĆ** in court is the same person she recognised at the *Varda-Killings*.²⁵⁴

101. VG-042 also had a solid foundation for recognising **Milan LUKIĆ**. VG-042 knew him when he was a boy. Like VG-024, she knows that he went to primary school in Klačnik, and then in Prelovo. She would regularly take the same bus **LUKIĆ** took to school. VG-042 rode this bus “countless times” and saw **LUKIĆ** frequently.²⁵⁵ VG-042 knew **LUKIĆ** was from Rujište, and their families shared grazing pastures.²⁵⁶ She knew his parents Kata and Mile. His parents were friendly with VG-042’s parents and grandparents, and they occasionally shared a coffee or brandy.²⁵⁷

102. In addition to this familiarity with the **LUKIĆ** family, VG-042 had an opportunity to see **Milan LUKIĆ** immediately before the *Varda-Killings*. Earlier that same day, VG-042 saw **LUKIĆ** come to Varda in **ZUKIĆ**’s red Passat. He captured three workers: Ramiz KARAMAN, Ahmed KASAPOVIĆ, and VG-042’s husband. He put them in the Passat and drove off towards town passing directly in front of her.²⁵⁸

103. During the *Varda-Killings* VG-042 had the best vantage point which is indicated in a confidential exhibit.²⁵⁹ From this elevated point approximately 100 metres from the riverbank(50 from the guardhouse) she had an unobstructed view of

²⁵¹ **VG-024:T3223-24;2D034**,pp.3-4(u.s.).

²⁵² **VG-024:T3224;2D034**,p.4(u.s.).

²⁵³ A subpoena was issued for VG-024’s appearance by the Chamber on 08/09/2008 .

²⁵⁴ **VG-024:T3217-18(c.s.)**.

²⁵⁵ **VG-042:T2780(o.s.)**.

²⁵⁶ **VG-042:T2780**.

²⁵⁷ **VG-042:T2780-82(o.s.)**.

²⁵⁸ **VG-042:T2787-88(o.s.)**.

²⁵⁹ **VG-042:T2861(p.s.)** She circled her house on **Exh.P157**(u.s.).

LUKIĆ as he emerged from the factory. From her vantage point she could clearly see and recognise not only **LUKIĆ**, but his victims as well.²⁶⁰

104. While VG-017 was not as familiar with **LUKIĆ** as either VG-024 or VG-042, he had seen him several times before the *Varda-Killings*. After the conflict began, VG-017 saw **Milan LUKIĆ** going around the Dušće neighbourhood.²⁶¹ He used to pass by VG-017's house in the red Passat that he used during the *Varda-Killings*.²⁶² One day VG-017 was in a room on the first floor of his house when he heard a car outside. From the window he saw **LUKIĆ** get out of the car and climb the stairs to his home. VG-017 hid, and **LUKIĆ** eventually left.²⁶³

105. VG-017 was also familiar with **LUKIĆ**'s family background. He knows that **LUKIĆ** is from Rujište²⁶⁴ and that many of his family worked in the Forestry Department. He remembered his uncle, Đorđe LUKIĆ, a forestry stock manager in particular.²⁶⁵ On the day of the killings, VG-017 saw **Milan LUKIĆ**'s face clearly.²⁶⁶ When asked how he could recognise **Milan LUKIĆ**, he answered, "How wouldn't I? I know him. I know the man."²⁶⁷

The Prosecution has established the Accused Milan LUKIĆ's guilt for the *Varda-Killings*.

106. The minor differences in the accounts of the three eye-witnesses are explained by their different perspectives. The minor inconsistency between the testimony of VG-042 and VG-017 with respect to how **LUKIĆ** shot his victims can be explained by the opportunity of each witness to observe the events. VG-017 recalls **LUKIĆ** taking the men down the final few steps to the river in two groups – VG-042 recalls him taking them in a single group.²⁶⁸

107. VG-042's observations are more reliable because she had an unobstructed view of the killings, whereas VG-017 could only hear the shooting. VG-017's line-of-site was blocked by an outhouse.²⁶⁹

²⁶⁰ **VG-042**:T2861-62(p.s.)*See:Exh.P157*(u.s.).

²⁶¹ **VG-017**:T2744,T2745(o.s.).

²⁶² **VG-017**:T2724(o.s.).

²⁶³ **VG-017**:T2732(o.s.).

²⁶⁴ **VG-017**:T2695(o.s.).

²⁶⁵ **VG-017**:T2725&T2728(o.s.).

²⁶⁶ **VG-017**:T2754(o.s.).

²⁶⁷ **VG-017**:T2724(o.s.).

²⁶⁸ **VG-024**:T3228(o.s.).

²⁶⁹ **VG-017**:T2705,*Exh.P155*(u.s.).

108. Minor differences exist as to the victims. All of the witnesses recognised Nusret ALJUŠEVIĆ, Ibrišim MEMIŠEVIĆ and Lutvo TVRTKOVIĆ. VG-017 and VG-042 also recognised Nedžad BEKTAŠ. Only VG-024 knew two of the victims, Sabahudin VELAGIĆ and Hamed OSMANAGIĆ – VG-042 alone knew Mušan ČANČAR. The differences in their recollections are explained by the fact that no witness was fully familiar with the all of the victims prior to this day. Each witness recognised and focused on their friends or co-workers. VG-024's recognition of VELAGIĆ was confirmed by his father Suljo who went to the body by the riverbank. VG-017's recognition of MEMIŠEVIĆ was confirmed when he later assisted in the burial of his bullet-ridden body.²⁷⁰ All of the victims of the *Varda-Killings* were reported missing and the bodies of OSMANAGIĆ and MEMIŠEVIĆ were later exhumed.²⁷¹

109. **Milan LUKIĆ** was the sole perpetrator of the *Varda-Killings* and performed all aspects of the *actus reus*. He selected his victims and directed Serb workers to guard them while he collected additional victims. Once he had selected the victims he wanted, he forced them outside, made them surrender their valuables and marched them down the embankment where he summarily executed them.

110. Although there is no evidence of him saying anything which indicates his state of mind, his actions speak clearly and unequivocally about his intent to kill the men. In addition, forcing them to turn over their valuables prior to their murder is a recurrent characteristic of his *modus operandi* and one he had used during the *Drina-Killings*. He selected only Muslims from amongst a pool of diverse factory workers, thus indicating his persecutory intent. By forcing the unarmed Muslim men to the riverbank and firing into their backs his intention to kill them is unquestionable.

Section 3(c) The Killing of Over 65 People in the *Pionirska-Fire*.

111. **Sredoje** and **Milan LUKIĆ** barricaded over 65 people into the ground floor room of a house laden with flammable chemicals and set them on fire. Seven people survived - six of them gave evidence.²⁷² Their evidence establishes beyond reasonable doubt that both **Sredoje** and **Milan LUKIĆ** are guilty of the crimes charged.

²⁷⁰ VG-017:T2706,T2710(o.s.).

²⁷¹ Exh.P119,Exh.P176.Exh.P184.

²⁷² Hasib KURSPAHIĆ died in 1996.

Summary of the Prosecution case.

112. The *Pionirska-Fire* involved the killing of a large group of Bosnian Muslim civilians, primarily the Kurspahić family, originating from the village of Koritnik seven kilometres from Višegrad.²⁷³ The plan to kill all members of the *Kurspahić-Family* was first revealed to CW-001 at the end of May when **Milan LUKIĆ** met his former schoolmate at the police station. He asked her which “house” she had married into. She recounted the chilling conversation.

I said, I'm married into the Kurspahić family. He said, To me it's my regret. We got the order, that from the Kurspahićs, not an ear is to survive.²⁷⁴

113. After the departure of the Užice Corps the inhabitants of Koritnik felt increasingly insecure;²⁷⁵ many men and older boys fled or hid in the surrounding woods.²⁷⁶ Women, elderly men and children remained to tend their livestock often spending nights in their fields rather than risk sleeping in their beds.²⁷⁷ On 10 June, local Serbs again attacked their Muslim neighbours.²⁷⁸

114. On the day before the *Pionirska-Fire* local Serbs ordered the Muslims in Koritnik, mostly members of the extended *Kurspahić-Family*, to leave the following day.²⁷⁹ They told them that they were under threat from the approaching Serbs from Prelovo and that the following day buses from Greben²⁸⁰ would drive them to Kladanj, a town under ABiH control.²⁸¹

²⁷³ **VG-018:Exh.P082**, VT1555(o.s.).

²⁷⁴ **CW-001**:T5614(o.s.).She also described her reaction at T5592-93(o.s.).“And I just stood there frozen. I was totally shocked. He didn't ask anything else, just the family I was married into”.

²⁷⁵ See, **VG-013**:T1109(o.s.).

²⁷⁶ See: **VG-018:Exh.P082**, VT1561(o.s.), VT1563-65(o.s.). **VG-013**:T1012-13;T1092(o.s.). **VG-084**:T1262-63(o.s.).

²⁷⁷ **VG-018:Exh.P082**, VT1559(o.s.).

²⁷⁸ **VG-013**:T1012(o.s.).

²⁷⁹ The Prosecution's witnesses identified several men, some of whom were police officers who conveyed this message: Dušan GAVRILOVIĆ, Radomir ĐURIĆ, MLD-024, Dušan GRUJIĆ, Dragomir ĐURIĆ, Ilija GAVRILOVIĆ and Radomir GRUJIĆ. It is reasonable to conclude that different Serb locals went to the homes of the various Muslim families which is why they did not all identify precisely the same person. See: **VG-084**:T1268-70(o.s.). **VG-018**:T1336-37(o.s.). **VG-038**:T972(o.s.). **VG-078:Exh.P088**, VT1278-79(o.s.); **Exh.P092**, p.2(u.s.). **VG-101**:T1481-82(o.s.). **VG-013**:T1014(o.s.).

²⁸⁰ **VG-101**:T1421-22(o.s.); **Exh.1D037**, VT1144(o.s.); **Exh.1D036**, p.2(u.s.). **VG-078:Exh.P088**, VT1278-79(o.s.). **VG-038:Exh.P044**, VT1350(o.s.). **VG-018:Exh.P082**, VT1559(o.s.).

²⁸¹ **VG-013**:T1014(o.s.). **VG-101**:T1424(o.s.)& **Exh.1D037**, VT1144(o.s.); **Exh.1D036**, p.2(u.s.).

115. On the morning of the fire the *Kurspahić-Family* (a group of approximately fifty Muslim civilians including a two-day-old baby²⁸²) left Koritnik.²⁸³ No one was armed – none wore military uniform.²⁸⁴

116. The group arrived in Greben around 8:00 a.m.²⁸⁵ When no buses could be seen they realised “something was wrong.”²⁸⁶ MLD-024²⁸⁷ twice called the Višegrad police station.²⁸⁸ The *Kurspahić-Family* was told the bus had broken down and that they should walk to town.²⁸⁹ A Serb told the group a bus would be waiting for them and that the police would escort them.²⁹⁰ The fact that something sinister was being contemplated was confirmed when Ilija GAVRILOVIĆ, a local Serb, yelled to the group: “You, the Turks, should move. You need to go to Višegrad, and no one is to leave it alive.”²⁹¹

117. MLD-024 escorted the *Kurspahić-Family* to Sase,²⁹² near the intersection of the road leading to the Vilina Vlas hotel,²⁹³ one of the places the *Lukić-Group* used as a headquarters.²⁹⁴ Five soldiers manned a checkpoint there.²⁹⁵ Some in the group became fearful.²⁹⁶ Adding to this apprehension, two soldiers coming from the direction of Vilina Vlas said to MLD-024, “You are not supposed to touch them over

²⁸² **VG-101:T1423(o.s.);Exh.1D037,VT1146,49;VT1187(o.s.);Exh.1D036,p.3(u.s.).VG-078:Exh.P088,VT1279(o.s.)(about 50).VG-018:Exh.P082,VT1566(o.s.)(40,45-47 people gathered in Greben).See:LukićAFD,no.63.**

²⁸³ **VG-078:T1379(o.s.).VG-013:T1015-16(o.s.)&T1019(o.s.)(stating it was Sunday).VG-018:Exh.P082,VT1570(o.s.).See:LukićAFD,no.62.See:VG-018:Exh.P082,VT1560(o.s.).**

²⁸⁴ **VG-101:T1423(o.s.).VG-018:Exh.P082,VT1566(o.s.).**

²⁸⁵ **VG-101:Exh.1D037,VT1146(o.s.).VG-018 and her son VG-084 left after the column from Koritnik.VG-018:Exh.P082,VT1563-65(o.s.).**

²⁸⁶ **VG-018:Exh.P082,VT1567(o.s.).VG-038:Exh.P044,VT1349(o.s.).VG-101:T1423-24(o.s.).VG-078:Exh.P088,VT1279-80(o.s.);Exh.P092, pp.2-3(u.s.)**

²⁸⁷ MLD-024 was also referred to as MLD-006 in earlier defence filings.

²⁸⁸ **MLD-024:Exh.P255,p.1.**

²⁸⁹ **VG-078:Exh.P088,VT1280(o.s.).**

²⁹⁰ **VG-018:T1355(o.s.).**

²⁹¹ **VG-101:T1482-83(o.s.);Exh.1D037,VT1148-49(o.s.)&Exh.1D036 pp.2-3(u.s.).VG-038:Exh.P044,VT1351(o.s.).VG-018:Exh.P082,VT1565(o.s.).HusoKURSPAHIĆ: Exh.P036,pp.3-4(u.s.).**

²⁹² The road at Sase intersects with the road to the Vilina Vlas Hotel also known as “Banja”.**VG-018:Exh.P082,VT1567(o.s.).VG-038:Exh.P044,VT1351-52(o.s.)&VT1357-58(o.s.);Exh.1D037,VT1147(o.s.)&VT1190(o.s.).**

²⁹³ **VG-013:T1018(o.s.).VG-038:Exh.P044,VT1352-53(o.s.).**

²⁹⁴ **VG-101:Exh.1D037,VT1150(o.s.).**

²⁹⁵ **VG-038:Exh.P044,VT1353(o.s.).SL-Record-of-Interview,p.3 VG-018:Exh.P082,VT1568(o.s.).**

Note, This is the very same checkpoint that Milan LUKIĆ passed through a week earlier during the *Drina-Killings*.

²⁹⁶ **VG-013:T1018-19(o.s.).**

here, and I don't know what's going to happen over there.”²⁹⁷ Some Muslim residents of Sase joined the *Kurspahić-Family*;²⁹⁸ Jasmina VILA also joined the group.²⁹⁹

118. They arrived in Višegrad around noon³⁰⁰ - it had rained most of the day.³⁰¹ Some witnesses recall MLD-024 escorting the group all the way to town.³⁰² Upon arriving at the police station they were told to go to the Red Cross office.³⁰³ The Red Cross office was closed and the large group congregated in front of the “Novi Hotel” off the main square(also known as the “Višegrad Hotel”).³⁰⁴ Armed men wearing uniforms moved around the area,³⁰⁵ going in and out of the hotel.³⁰⁶ Serb policemen ordered the group to line up in “twos”, and directed them to stand in the hotel’s side garden next to the old bridge.³⁰⁷ These policemen yelled provocations at the *Kurspahić-Family*, while they discussed amongst themselves what to do with them.³⁰⁸ Hasib KURSPAHIĆ recalled:

And when we arrived there, they appeared with a car, asking us, “Where are your sons”? I don't know. They said, “You have sent your sons to beat us up and you took to the woods and ran away”. And he said “Slaughter, Slaughter all of them, he says, “All of them have to be slaughtered”.³⁰⁹

119. Several policemen suggested the group go to Bikavac.³¹⁰ Mitar VASILJEVIĆ, a Serb from Prelovo, broke up the discussion.³¹¹ Some of the people recognised

²⁹⁷ **VG-013:T1019(o.s.)**.

²⁹⁸ The witnesses are inconsistent on exactly how many people joined the *Kurspahić-Family* in Sase. See, e.g., ten to thirteen people joined in Sase. **VG-018:Exh.P082**, VT1568-69(o.s.); **VG-038:Exh.P044**, VT1354(o.s.). Five people from Sase join the Koritnik Group. **VG-101:Exh.1D037**, VT1151(o.s.). Two families, roughly seven people from the villages of Sase and Banja joined the group. **VG-078:Exh.P088**, VT1278-80(o.s.). Between ten and thirteen people joined in Sase. **VG-038:Exh.P044**, VT1354(o.s.).

Note: The “Kurspahić-Family” defined earlier henceforth incorporates and refers to the other people that joined the group at Sase.

²⁹⁹ **VG-078:Exh.P092**, p.4.

³⁰⁰ **VG-038:Exh.P044**, VT1356-57(o.s.); **VG-078:Exh.P088**, VT1280(o.s.); **VG-101:Exh.1D036**, p.2-3(u.s.).

³⁰¹ **VG-101:T1431(o.s.)**.

³⁰² **VG-038:Exh.P044**, VT1357-59(o.s.).

³⁰³ **VG-101:T1427(o.s.)&Exh.1D037**, VT1152(o.s.); **VG-018:Exh.P082**, VT1568-69(o.s.); **VG-084:Exh.P074**, p.3(u.s.) See also, *Lukić* AFD, no.64.

³⁰⁴ **VG-101:T1427-28 and Exh.1D037**, VT1153-54(o.s.); **VG-013:T1020**, T1112(o.s.).

³⁰⁵ **VG-013:T1020-21(o.s.)**; **VG-101:Exh.1D037**, VT1154-55&VT1208(o.s.); **VG-038:Exh.P044**, VT1364(o.s.).

³⁰⁶ **VG-101:T1479(o.s.)**; **VG-101:Exh.1D037**, VT1154(o.s.); **VG-018:Exh.P082**, VT1570(o.s.).

³⁰⁷ **VG-101:T1428(o.s.)**.

³⁰⁸ **VG-101:T1428-29(o.s.)**; **Exh.1D037**, VT1155(o.s.); **VG-078:Exh.P089**, VT1324-25(o.s.).

³⁰⁹ **Hasib KURSPAHIĆ:Exh.P041**. See also, **VG-013:T1113(o.s.)**.

³¹⁰ **VG-101:T1429(o.s.)**.

³¹¹ **VG-101:Exh.1D037**, VT1155-56(o.s.). VG-038 saw VASILJEVIĆ talking to MLD-024. **VG-038:Exh.P044**, VT1359(o.s.). **VG-078:Exh.P088**, VT1280(o.s.); **Exh.P089**, VT1298(o.s.)&**Exh.P092**, p.2(u.s.).

VASILJEVIĆ because of his longstanding work as a waiter at several restaurants owned by the Panos company.³¹² VASILJEVIĆ directed the group to the Mahala settlement, in which Pionirska Street is located.³¹³ VASILJEVIĆ led the way ahead of the group.³¹⁴ Some became immediately suspicious because there were many vacant apartments near the Višegrad Hotel where they could have stayed,³¹⁵ but the group nevertheless made its way up a narrow street in a long bedraggled column, walking in single file and sometimes two by two.³¹⁶

120. VG-115, who lived in an apartment in Mahala saw the column proceeding up the lane, and saw armed soldiers escorting them and keeping the group together.³¹⁷ She saw **Sredoje LUKIĆ** in front of a house belonging to the **SMAJIĆ** family pushing three people in front of him on the street leading to Mahala.³¹⁸ She also saw **Milan LUKIĆ** as well as a large group of people.³¹⁹

121. Due to the large number of people in the column, the amount of baggage they carried,³²⁰ and difficulties in assisting the elderly and the children,³²¹ the group was no longer contiguous and not all members of the group arrived in Mahala at the same time. The majority of the *Kurspahić-Family* entered Jusuf Memić's house ("Memić-house").³²² Others entered the house of Jusuf's son, Mujo, but later re-joined the larger group in the Jusuf Memić house.³²³

122. VASILJEVIĆ arrived at the Memić-house while some members of the *Kurspahić-Family* were outside.³²⁴ He told them he represented the Red Cross and that he was in charge of their accommodation and security.³²⁵ He told the group that

³¹² **VG-101:Exh.1D037**,VT1155(o.s.).**VG-013:T1029**(o.s.).**VG-084:Exh.P074**,p.3(u.s.).*See:VG-078:Exh.P088*,VT1281(o.s.).

³¹³ **VG-101:T1429**(o.s.);**Exh.1D037**,VT1155(o.s.);**Exh.1D036**,p.3(u.s.).**VG-013:T1021**(o.s.).**VG-078:Exh.P088**,VT1283(o.s.).*See:LukićAFD*,no.65.

³¹⁴ **VG-038:Exh.P044**,VT1365(o.s.).

³¹⁵ **VG-018:Exh.P082**,VT1572(o.s.).

³¹⁶ **VG-101:Exh.1D037**,VT1210&1429(o.s.).

³¹⁷ **VG-115:T683**(o.s.);**Exh.1D021**.

VG-084 saw large gaps form in the column as it made its way up to Mahala.**VG-084:Exh.P072**,VT1659(o.s.).

³¹⁸ **VG-115:T686**(o.s.).

³¹⁹ **VG-115:T683**(o.s.).

³²⁰ **VG-101:Exh.1D037**,VT1159(o.s.).

³²¹ **VG-013:T1019-20**(o.s.).

³²² **VG-078:Exh.P088**,VT1285-86(o.s.)&**Exh.P089**,VT1296(o.s.).**VG-038:Exh.P044**,VT1366(o.s.).**VG-013:T1021**(o.s.).

³²³ **VG-013:T1023,T1028,T1031**(o.s.);**Exh.P044**,VT1366-67(o.s.).

³²⁴ **VG-013:T1029**(o.s.).**VG-101:T1430**(o.s.);**Exh.1D037**,VT1159(o.s.)&**Exh.1D036**(u.s.).**VG-038:Exh.P044**,VT1367(o.s.).

³²⁵ **VG-084:Exh.P072**,VT1663(o.s.).*See:VG-018:Exh.P082*,VT1578(o.s.).

they would be transferred to Kladanj the following morning and would be given homes abandoned by Serbs who would come to live in their homes.³²⁶ He presented Mujo HALILOVIĆ, a friend, with a document, assuring the group that it would guarantee their safety.³²⁷ These representations gave false assurance to the group and encouraged them to remain in the Memić-house.³²⁸ Before leaving, VASILJEVIĆ told them to stay together in the Memić's home;³²⁹ between sixty and seventy people crowded into the Memić-house.³³⁰

123. The Memić-house contained several rooms and an upper floor, which the group filled.³³¹ In the tense hours that followed,³³² the group dried off and rested from the long journey.³³³ They spread into three rooms.³³⁴ Two women left briefly to check on relatives, Sećo and Rasema KURSPAHIĆ, an elderly couple originally from Koritnik who lived nearby.³³⁵ They found the couple murdered in their house.³³⁶ Sometime in the afternoon VASILJEVIĆ took three or four elderly men from the group to help bury some bodies.³³⁷

124. Around 4 or 5 p.m., approximately one hour after VASILJEVIĆ departed, four men arrived.³³⁸ They kicked open the door,³³⁹ Sredoje and Milan LUKIĆ and other members of the *Lukić-Group* entered.³⁴⁰ None wore anything to cover their faces.³⁴¹

³²⁶ **VG-101:T1430(o.s.);Exh.1D037,VT1160(o.s.)&Exh.1D036,p.3(u.s.).See:VG-084:T1290(o.s.);Exh.P072,VT1663(o.s.).**

³²⁷ **VG-101:T1431(o.s.);Exh.1D037,VT1160-61(o.s.).VG-018:Exh.P082,VT1578-79(o.s.).VG-013:T1029(o.s.).VG-038:Exh.P044,VT1367-68(o.s.).VG-084:Exh.P074,p.4;Exh.P041,p.4.**

³²⁸ **VG-018:Exh.P082,VT1578-79(o.s.).**VG-084 testified that VASILJEVIĆ purported to be a "good man," trying to provide safety.*See:VG-084:T1260&T1290(o.s.).*

³²⁹ **VG-018:Exh.P082,VT1578(o.s.).VG-101:T1430-31(o.s.).**

³³⁰ **VG-101:T1434-35&T1463(o.s.).VG-018:Exh.P082,VT1567(o.s.).**

³³¹ **VG-101:T1434(o.s.).**

³³² **VG-078:Exh.P089,VT1313-14(o.s.).**

³³³ **VG-101:T1431-32(o.s.).VG-018:Exh.P082,VT1572-73(o.s.).**

³³⁴ **VG-101:Exh.1D037,VT1161(o.s.).VG-078:Exh.P088,VT1283(o.s.);Exh.P092,p.4(u.s.).**

³³⁵ **VG-101:T1464(o.s.);Exh.1D037,VT1163(o.s.).**

³³⁶ **VG-101:Exh.1D037,VT1163(o.s.).VG-018:Exh.P082,VT1573-74(o.s.).VG-038:Exh.P044,VT1407-08(o.s.).**

³³⁷ **VG-018:T1309-10;T1351(o.s.)&Exh.P082,VT1581(o.s.).VG-078:Exh.P088,VT1292-93(o.s.).VG-038:Exh.P045,VT1415-16(o.s.).VG-038:T1030(o.s.).**

³³⁸ **VG-101:Exh.1D037,VT1167-69(o.s.).**(The *Lukić-Group* arrived soon after Mitar VASILJEVIĆ left.) **VG-101:Exh.1D036,p.4.(u.s.).VG-078:Exh.P088,VT1287-88(o.s.).(Milan LUKIĆ arrives about an hour later). No one came in the interim.VG-038:Exh.P044,VT1369-70(o.s.).**

³³⁹ **VG-101:T1432;Exh.1D037,VT1165(o.s.).**

³⁴⁰ **VG-101:T1432(o.s.)&Exh.1D036(u.s.).VG-038:T946(p.s.);Exh.P044,VT1370(o.s.).**VG-018 and VG-084 only saw three men enter the house although VG-018 saw others around the outside.*See:VG-018:Exh.P082,VT1581-82(o.s.).VG-084:T1244(o.s.).*VG-013 testified that Sredoje LUKIĆ was "somewhere around the house" **VG-013:T1031&T1035(o.s.).**

Given the large number of people in the house and the crowded environs, it is reasonable that they did not all have the same vantage points and did not always see the same things.

Milan LUKIĆ introduced himself,³⁴² but many recognised him without the introduction. **Sredoje LUKIĆ** also introduced himself, but as a well-known policeman in the town he too was immediately recognised by many in the group.³⁴³ VG-101 described some of the others who accompanied them. One “sported a moustache and had black curly hair”³⁴⁴ – VG-013 identified this man as Milan ŠUŠNJAR.³⁴⁵ The last was a “tall, gangly” youth of about eighteen years.³⁴⁶

125. **Sredoje** initially entered with **Milan** but then stood outside the house to prevent people from escaping through the windows.³⁴⁷ **Milan LUKIĆ** put a bag on a table and demanded that the *Kurspahić-Family* surrender their valuables,³⁴⁸ threatening to murder or maim anyone who hid something.³⁴⁹

126. ŠUŠNJAR then ordered them into a separate room to be strip-searched.³⁵⁰ He said it was to check for hidden valuables.³⁵¹ The searches were humiliating and were used to identify which women would be raped.³⁵² The women went in groups of three and four.³⁵³ VG-018 was one of the first to be strip-searched.³⁵⁴ With a rifle by his side, ŠUŠNJAR ordered them to strip naked.³⁵⁵ He ordered some to bend over or dance for him.³⁵⁶ When a young woman refused to disrobe, two older women tore the clothes from her body fearing what would happen if they did not.³⁵⁷ These searches took perhaps 1 or 1 ½ hour(s).³⁵⁸ During much of this time **Sredoje LUKIĆ** was just

³⁴¹ VG-101:T1432-33(o.s.).VG-038:Exh.P044,VT1373(o.s.).“There was no difficulty in seeing them.

How could we not see each other, being in the same room?” VG-013:T1032-33(o.s.).

³⁴² VG-018:T1303(o.s.).

³⁴³ VG-038:Exh.P044,VT1370,VT1409(o.s.).

³⁴⁴ VG-101:T1432(o.s.).

³⁴⁵ VG-013:T1034(o.s.).VG-038:T946-47(p.s.).

³⁴⁶ VG-101:T1432(o.s.).

³⁴⁷ VG-013:Exh.P060,p.4(u.s.).

³⁴⁸ VG-078 reported them saying, “We will cut your throat and cut off your fingers”.VG-078:Exh.P088,VT1288(o.s.).VG-101:Exh.1D036,(u.s.).But see, VG-038:Exh.P044,VT1373(o.s.).VG-018:Exh.P082,VT1583(o.s.).HusoKURSPAHIĆ:Exh.P038,VT875(o.s.).

³⁴⁹ VG-101:T1434(o.s.);Exh.1D037,VT1165(o.s.).VG-078:T1383(o.s.);Exh.P088,VT1288(o.s.);Exh.P089,VT1306(o.s.).VG-018:T1306(o.s.).

³⁵⁰ VG-038: Exh.P044 VT1408;VT1374-76(o.s.).VG-018: Exh.P082,VT1583;T1308(o.s.).VG-101:T1435-37(o.s.).

³⁵¹ VG-101:T1435(o.s.).

³⁵² VG-101:T1436-37(o.s.).When he was all done with it, then the moustached Serb told Lukić, “I found a good one for you.” LUKIĆ then asked him “what size does she wear”? VG-101:T1437(o.s.).

See:VG-013:T1034(o.s.) VG-101:Exh.1D036,p.4(u.s.).

³⁵³ VG-018:Exh.P082,VT1586(o.s.).VG-101:Exh.1D036,p.4(u.s.).

³⁵⁴ VG-018:T1306-07(o.s.);Exh.P082,VT1583-84(o.s.).

³⁵⁵ VG-018:T1306-07(o.s.);Exh.P082, VT1583-84(o.s.).

³⁵⁶ VG-013:T1034(o.s.).

³⁵⁷ VG-013:T1034(o.s.).VG-018:Exh.P082,VT1567(o.s.)(They had to tear off VG-078’s clothes).

³⁵⁸ VG-018:T1308(o.s.).VG-038:Exh.P044,VT1376(o.s.)(2 ½ hours).

outside the house preventing anyone from escaping or throwing valuables out.³⁵⁹ The presence of a policeman like **Sredoje LUKIĆ** in front of the house helped prevent passers-by from stopping to investigate what was going on inside. Men and boys were also searched.³⁶⁰

127. After these searches were completed, the *Lukić-Group* led out three young women.³⁶¹ One was a 15-year-old relative of VG-101 and the others were Ifeta KURSPAHIĆ and Jasmina VILA.³⁶² **Milan LUKIĆ** knew VILA and he called her by name, “How come you’re here,” seemingly surprised that although she was not related to the KURSPAHIĆs she was with them.³⁶³ He had previously raped her several times after abducting her from her village of Mušiči(near Rujište).³⁶⁴ The women were away for an hour.³⁶⁵ When the *Lukić-Group* brought them back **Milan LUKIĆ** came into the room.³⁶⁶ VILA “was weeping and lay down, covered herself with a blanket and stayed silent.”³⁶⁷ VG-101’s young relative told her that the men had raped her, and had threatened to do the same to the other women.³⁶⁸ She quoted **Milan LUKIĆ**, “It’s not going to be just you. All the women and girls will experience the same.”³⁶⁹ The *Lukić-Group* tried to take another woman, a young mother, but could not separate her from her young child.³⁷⁰

128. Before leaving, **Milan LUKIĆ** and the others told the *Kurspahić-Family* to remain in the house while they went “to have roast of lamb and something to drink.”³⁷¹ Hasib KURSPAHIĆ remembers them saying:

Now you can go to sleep but don’t go anywhere. In the morning, at half past 7:00, there will be a bus, so don’t disperse.³⁷²

³⁵⁹ VG-013:T1035(o.s.).

³⁶⁰ VG-038:T978(o.s.).

³⁶¹ VG-013:T1035-36(o.s.).VG-101:Exh.1D036,p.4(u.s.).VG-018 states that as **Milan** and **Sredoje LUKIĆ** were leaving with the valuables, **Milan** said, “You, VILA, and you in the leather jacket come out.” VG-018:T1308(o.s.).See: *Lukić*AFD,no.68.

³⁶² VG-101:T1437-38(o.s.) VG-018:T1308-09(o.s.) VG-078:T1383-84(o.s.) VG-013 recalls that in addition to VILA, Ifeta and Mujesira KURSPAHIĆ were also taken out by the group.VG-013:T1035(o.s.).Exh.P061.

³⁶³ VG-078:T1383(o.s.);Exh.P092,p.4(u.s.).VG-018:T1308(o.s.).

³⁶⁴ VG-078:Exh.P088,VT1288(o.s.).VG-101:T1438(o.s.);Exh.1D036,p.4(u.s.).VG-013:T1016.(o.s.).

³⁶⁵ VG-013:T1036(o.s.).

³⁶⁶ VG-013:T1036(o.s.)&T1056(o.s.).

³⁶⁷ VG-101:T1439(o.s.).VG-013:T1037(o.s.).VG-018:Exh.P082,VT1587(o.s.).

³⁶⁸ VG-101:T1438(o.s.).VG-013:T1035(o.s.).

³⁶⁹ VG-101:T1438-39,41(o.s.);Exh.1D037,VT1166(o.s.).

³⁷⁰ VG-101:T1440(o.s.);Exh.1D037,VT1167,(o.s.).

³⁷¹ VG-101:T1440(o.s.);Exh.1D037,VT1167(o.s.).VG-013:T1033(o.s.).VG-038:Exh.P044,VT1376(o.s.).

All of the men promised that they would be back.³⁷³

They said that nobody should leave the house that we all had to stay indoors. We weren't even allowed to come out the front door. We all had to stay in the house.³⁷⁴

It was dusk when the men left.³⁷⁵ Afterward, the house fell silent, save for minimal talking.³⁷⁶

Their return after dark was announced by a car that sounded as if the muffler had been damaged. The precise time is unclear as many in the group had their watches taken earlier.³⁷⁷ The vehicles shone their headlights into the dark house.³⁷⁸ The group began to panic.³⁷⁹

129. **Milan LUKIĆ**, accompanied by **Sredoje** approached the Memić-house and knocked on the door.³⁸⁰ **Milan LUKIĆ**, positioned at the doorway, ordered the *Kurspahić-Family* to leave the house saying it was no longer safe.³⁸¹ The group was told Muslim soldiers were shooting in that direction.³⁸² **Milan LUKIĆ** shouted at the group, "faster, faster" – they were not allowed to put on their shoes.³⁸³ When Kada ŠEHIĆ tried he said, "You won't need them. Move faster".³⁸⁴ Some in the group shot their guns while others said "The berets are attacking us, so we're taking [you] ... to a

³⁷² **HusoKURSPAHIĆ:Exh.P038**, VT895(p.s.); **Exh.P037**, VT791(o.s.); **Exh.P038**, VT876(o.s.).
See, **HasibKURSPAHIĆ:Exh.P041**.

³⁷³ **VG-101:T1441**(o.s.).

³⁷⁴ **VG-101:1440**(o.s.).

³⁷⁵ **VG-101:Exh.1D037**, VT1167(o.s.). **VG-018** estimated the the group was there for approximately 1-1 ½ hours. **VG-018:Exh.P082**, VT1622-23(o.s.). **VG-038** estimated 2 ½ hours. **VG-038:Exh.P044**, VT1376(o.s.).

³⁷⁶ **VG-101:T1442**(o.s.).

³⁷⁷ Although the witnesses are inconsistent regarding the precise time the *Lukić-Group* returned they all place their return between 10:00 and midnight. See: **VG-018:T1312**(o.s.). **VG-038:T955**(p.s.); **Exh.P044**, VT1377(o.s.)(10:30). **VG-078:Exh.P089** VT1306(o.s.). **VG-101:T1442-43**(o.s.).

³⁷⁸ **VG-101:T1443**(o.s.); **Exh.1D037**, VT1168&VT1201(o.s.). **VG-018:T1312;Exh.P082**, VT1590(o.s.). **VG-078:Exh.P089**, T1293(o.s.).

³⁷⁹ "**VG-078:Exh.P092**, p.4(u.s.).

³⁸⁰ **VG-013** states that **SredojeLUKIĆ** and **VASILJEVIĆ** were also there. **VG-013:T1037**(o.s.). **VG-018:T1313**(o.s.). See: **VG-101:Exh.1D036**, p.4(u.s.).

³⁸¹ **VG-013:T1038**(o.s.). **HasibKURSPAHIĆ:Exh.P041**, p.5.

HusoKURSPAHIĆ:Exh.P037, VT791(o.s.). See: **VG-018:Exh.P082**, VT1591(o.s.). **VG101:Exh.1D037**, VT1169-70(o.s.).

³⁸² **VG-038:Exh.P044**, VT1377(o.s.). **VG-084:Exh.P074**, p.4(u.s.).

³⁸³ **VG-038:T980**(o.s.).

³⁸⁴ **VG-013:T1038**(o.s.). "Somebody said: "Shall we take our things?" He says: "No, no thing, You will not take things". **HasibKURSPAHIĆ:Exh.P041**, p.5. **VG-101:Exh.1D037**, VT1168(o.s.)& **Exh.1D036**, p.5(u.s.). See: **VG-078:Exh.P089**, VT1293(o.s.). **VG-018:T1312**(o.s.).

safe place.”³⁸⁵ Both **Sredoje** and **Milan LUKIĆ** escorted the group to Adem Omeragić’s house which had been prepared with flammable chemicals.³⁸⁶

130. The *Kurspahić-Family* was directed along a dirt footpath towards the Omeragić house³⁸⁷ VG-084 considered that the real purpose behind moving the group to the Omeragić-house was “[b]ecause it was right next to the creek, and this would muffle the voices and the wailing of the women and children.”³⁸⁸

131. Each of the men who was present earlier in the day was also present that night,³⁸⁹ including **Sredoje LUKIĆ**, **Milan LUKIĆ** and Milan ŠUŠNJAR; they moved the *Kurspahić-Family* from the Memić to the Omeragić house.³⁹⁰ The *Lukić-Group* “took up positions between one house and the next”³⁹¹ and illuminated the footpath with their cars and handheld torches.³⁹² The group stretched out into a thin broken line walking either one by one or sometimes two by two.³⁹³ Those with small children had difficulty waking them up and lagged behind. At least one child was sick fatefully delaying his mother.³⁹⁴ One woman went to the balcony in the Memić-house and contemplated jumping.³⁹⁵ The first victims entered the ground floor room of the Omeragić-house while people were still leaving the Memić-house. **Sredoje LUKIĆ** patted VG-084 on the shoulder as he passed.³⁹⁶

132. VG-101 and VG-078 escaped from the haphazard line. VG-078 ducked into a shed in the corner of the yard and was followed by VG-101.³⁹⁷

133. Over 65 women, children, and elderly were ultimately crowded into the small two-windowed concrete bunker-like room of the Omeragić house.³⁹⁸ The carpets had

³⁸⁵ **HasibKURSPAHIĆ:Exh.P041.**

³⁸⁶ **HusoKURSPAHIĆ:Exh.P037,VT795(o.s.).**

³⁸⁷ **VG-013:T1042(o.s.);Exh.P053(u.s.);Exh.P058,Exh.P059,Exh.P063(u.s.).VG-101:T1463(o.s.).**

³⁸⁸ **VG-084:T1248(o.s.);Exh.P079.**

³⁸⁹ “They were the same ones who were there during the daytime.” **VG-078:Exh.P088,VT1290(o.s.).**

³⁹⁰ **VG-038:T980(o.s.),T954(p.s.);Exh.P044,VT1377(o.s.).VG-078:Exh.P088,VT1283(o.s.);VG-078:Exh.P092;Exh.P092p.4,(u.s.).VG-101:Exh.1D036,p.4(u.s.).**

³⁹¹ **VG-038:Exh.P044,VT1378(o.s.).VG-078:Exh.P088,VT1290(o.s.).**

³⁹² **VG-101:Exh.1D037,VT1169(o.s.).**

VG-038:Exh.P044,VT1378(o.s.);Exh.P045,VT1410(o.s.).

³⁹³ **VG-101:T1463;Exh.1D037,VT1171(o.s.).VG-078:Exh.P089,VT1293-94(o.s.)&Exh.P092,p.4(u.s.).**

Hasib KURSPAHIĆ said: “And so, one by one we went to a cellar.” **HasibKURSPAHIĆ:Exh.P041.**

³⁹⁴ **VG-018:T1314(o.s.).**

³⁹⁵ **VG-101:T1444(o.s.).**

³⁹⁶ VG-013 testified:

SredojeLUKIĆ was outside of the house, and when we were to be driven from Jusuf Memić’s house to Omeragić’s house, he escorted us.

VG-013:T1058(o.s.);Exh.P060, (“Sredoje went ahead of MilanLUKIĆ and waited at the other house for us.”).See:VG-038:T954&T985(o.s.).VG-084 saw SredojeLUKIĆ in front of the Omeragić house.VG-084:T1285;T1284(o.s.);Exh.P080;Exh.P072,VT1674(o.s.).

been soaked with a volatile liquid – “stained with some sort of liquid that stuck to our feet, and it exuded a smell. We were choking on it.”³⁹⁹ The only door to the room was closed and locked behind the last victim.⁴⁰⁰ People in the room could see the *Lukić-Group* encircling the building – laughing could be heard outside.⁴⁰¹

134. On a summer night the crowded, unventilated room created ideal conditions for the volatile chemicals to vaporize around the victims creating the potential for a fuel-air effect explosion.⁴⁰² This toxic atmosphere was asphyxiating⁴⁰³ – some had fallen asleep, perhaps the result of the fume-laden air.⁴⁰⁴

135. After approximately 30 minutes the silence was broken by a woman screaming, “They are going to set light to us.”⁴⁰⁵ **Milan LUKIĆ** threw “some sort of device, something like a bomb” at the door.⁴⁰⁶ Flames appeared “as large as the door itself” near the entrance and reached up to the ceiling when the door opened.⁴⁰⁷ The fire was immediate and blazing.⁴⁰⁸ The smoke was suffocating.⁴⁰⁹ Shooting and explosions followed the fire’s ignition.⁴¹⁰ VG-115, who was on a balcony less than a hundred metres distance, described the scene:

All of a sudden there was a lot of gunfire that was heard, a lot of screaming that was heard, a big explosion. Everybody had to hear that. The entire neighbourhood had to hear that, all of Pionirska Street. Perhaps it was heard all the way down to the centre of town. Soon

³⁹⁷ **VG-078:T1378(o.s.).VG-101:Exh.1D037,VT1168-69&1433(o.s.).**

³⁹⁸ **VG-013:T1043-44(o.s.).VG-084:T1256(o.s.).VG-101:T1423.VG-038:Exh.P044 VT1379(o.s.).See:HasibKURSPAHIĆ:Exh.P041.VG-018 testified that she had to be pushed into the room.VG-018:T1315(o.s.).**

³⁹⁹ **VG-013:T1043(o.s.).VG-038:Exh.P044,VT1384(o.s.).**

⁴⁰⁰ **VG-018:T1318(p.s.).VG-038:T955(p.s.).**

Hasib KURSPAHIĆ during an interview shortly after the fire stated:

[HK]...And I came in as the last one. It was packed, one on each other. There is something...

Journalist: Where they alive when you entered?

HK: Yes, they were. Alive. When I entered the key turned in the lock.

HasibKURSPAHIĆ:Exh.P041, See:VG-084:Exh.P072,VT1675(heard the turning of the lock)(o.s.).

⁴⁰¹ **HasibKURSPAHIĆ:Exh.P041.VG-018:T1351(o.s.);Exh.1D033,p.6(u.s.).**

VG-084: Exh.P072,VT1676(o.s.).

⁴⁰² **O'DONNELL:T5497(o.s.).**

⁴⁰³ **O'DONNELL:T5497(o.s.).**

⁴⁰⁴ **VG-038:Exh.P044,VT1383(o.s.).**

⁴⁰⁵ **VG-038:Exh.P044, VT1383.(o.s.) VG-013 estimated it was 30 minutes before the fire started.VG-013:T1049(o.s.).**

⁴⁰⁶ **VG-084:Exh.P074,p.4(u.s.).**

As **MilanLUKIĆ** was preparing to place the bomb he saw VG-018 and VG-084 jumping out of the rear window – he quickly grabbed a rifle and went around to shoot at them.**VG-013:T1049(o.s.).**

⁴⁰⁷ **VG-038:Exh.P044, VT1384(o.s.).VG-084:Exh.P074,p.4(u.s.).**

⁴⁰⁸ **VG-115:T687(o.s.).VG-018:T1318(p.s.).VG-013:T1046-47(p.s.)&T1050(o.s.).**

⁴⁰⁹ **VG-038:Exh.P044,VT1384(o.s.).**

⁴¹⁰ **VG-084:T1258.(o.s.).VG-018:T1318.(p.s.).VG-038:T955.(p.s.).See:HasibKURSPAHIĆ:Exh.P041.**

smoke could be seen. I could see that from all sides, from all windows. Ahead, in front, on the sides, you could see smoke. You could see fire. The smoke had a bad smell.⁴¹¹

VG-084 who was inside the room testified:

Yes, yes. There wasn't just one grenade. There were several of them falling. There was fire from - - there were shots from firearms. And the fire, the way it started burning, it wasn't like you - - you had a small spark, and it did not develop slowly. You could escape from such a fire. But there were - - there were weapons there. There were blasts from grenades.⁴¹²

136. A few were able to escape. VG-018 managed to move toward the window past young mothers trying to shield their small children from the flames.⁴¹³ She smashed her arm against the pane of the window five-six times. Although she broke the glass, she was unable to escape on her own; her 14-year-old son, VG-084 pushed her through the window and to the ground below.⁴¹⁴ Shrapnel from the explosion struck VG-084 before he escaped through the same window as his mother.⁴¹⁵ After the glass was broken a "bomb" was thrown in through the window closest to the door.⁴¹⁶

137. VG-018 and VG-084 hid behind a tree in the yard.⁴¹⁷ From their hiding place they heard blasts and shooting and watched the house become engulfed. VG-084 recalled the sounds of crying children, moans and screams⁴¹⁸ and saw the *Lukić-Group* firing at the windows.⁴¹⁹

138. In the midst of that room filled with dozens of screaming people whose clothes and very selves were by then engulfed in fire, VG-013(already hit by shrapnel) decided to die by bullets rather than burning alive. She pushed her son out the window and jumped after him.⁴²⁰ She landed no more than two or three metres from **Milan**

⁴¹¹ **VG-115**:T686-87(o.s.);**Exh.1D019**,VT1026.(o.s.).

⁴¹² **VG-084**:T1253.(o.s.) Defence expert O'DONNELL's examination of the room found approximately 30 impact marks consistent with a grenade or grenades being detonated in the room.**O'DONNELL**:T5459(o.s.).

⁴¹³ **VG-018**:**Exh.P082**,VT1598(o.s.).

⁴¹⁴ **VG-018**:T1318(o.s.).

⁴¹⁵ **VG-084**:T1253(o.s.);**Exh.P073**,VT1754-55(o.s.);**Exh.P074**,p.4(u.s.).

⁴¹⁶ **VG-038**:**Exh.P044**,VT1383(o.s.).

⁴¹⁷ **VG-084**:T1248,1250(o.s.).**Exh.P080**.**VG-018**:T1319(p.s.).

⁴¹⁸ **VG-084**:T1248(o.s.);**Exh.P073**,VT1755-57(o.s.).

⁴¹⁹ **VG-084**:**Exh.P073**,VT1764(o.s.).

⁴²⁰ **VG-013**:T1050(o.s.):

Q.Did people's clothes catch fire?

A.Certainly. Everything was burning. The screaming was deafening. For those who haven't seen it or heard it, I can't describe it. Those were women, children, elderly people, innocent small children.

VG-013:T1054(o.s.).

LUKIĆ who then shot her. Hasib KURSPAHIĆ ran out at the first explosion and jumped into the creek to take cover from the shooting.⁴²¹

139. Those who escaped hid near the perimeter of the yard – close enough to experience the continuing horror. VG-101 and VG-078 listened to the shooting from the shed.⁴²² VG-013 could smell the smell of “burns of humans, a terrible stench” as she lay in dirty creek water.⁴²³

The last thing I remember I heard Halida, a 10-year-old girl. She was crying and calling to her mother, “Mother please don’t give up on me”.⁴²⁴

VG-013 showed the court the scar on her arm made by **Milan LUKIĆ**’s bullet.⁴²⁵

140. As VG-038 jumped out of the window, light from the flames illuminated the area around the house.⁴²⁶ He hid behind a bush, listening to the automatic gunfire.⁴²⁷ He watched the house burn and listened to the screaming, believing his mother was trapped inside.⁴²⁸ VG-018 and VG-084 spent the night hiding by the creek. They continued to hear shooting and the sounds of the screams and moans for an hour or two.⁴²⁹ Those who died did not all die in the house; some died outside, mortally wounded from being shot. Hasib KURSPAHIĆ described what he saw, “there up it [Omeragić house] is burning, they are shooting.” He could hear sounds of the victims dying, including those of the two-day-old baby.⁴³⁰

141. VG-115 on the balcony of a nearby house recalled:

Previously, I had the occasion to sense the smell of houses burning, the woodwork of the houses and such, but this time you could smell the smell of human flesh burning. So that night I just remain in the house. There was nothing I could do. There was nowhere I could go.⁴³¹

⁴²¹ **Hasib KURSPAHIĆ:Exh.P041**,p.6.

⁴²² **VG-101:T1451&T1466(o.s.);Exh.1D037,VT1175(o.s.).VG-101:Exh.1D036,p.5(u.s.).**

⁴²³ **VG-013:T1053-54(o.s.).**

⁴²⁴ **VG-013:T1054(o.s.).**

⁴²⁵ **VG-013:T1051(o.s.).**

⁴²⁶ **VG-038:Exh.P044,VT1386(o.s.).**

⁴²⁷ **VG-038:Exh.P044,VT1386(o.s.).**

⁴²⁸ **VG-038:Exh.P044,VT1388(o.s.).Exh.P078,(u.s.).Exh.P048,(u.s.).Exh.P050(u.s.).**

⁴²⁹ **VG-084:Exh.P073,VT1755-57(o.s.).VG-018:T1319(p.s.).**VG-115 also testified that the sounds of “burning and everything else” lasted an hour and a half or two hours.**VG-115:Exh.1D019,VT1025(o.s.).**It would have been impossible for survivors listening to the cries to discern their exact location from either inside or outside of the house.

⁴³⁰ **Hasib KURSPAHIĆ:Exh.P041**,p.6.

⁴³¹ **VG-115:T688(o.s.).VG-115:Exh.1D019,VT1026(o.s.).**

The *Lukić-Group* set the two Memić-houses on fire as well.⁴³²

142. Only eight survived – those who died were nearly all members of the extended *Kurspahić-Family* – nearly an entire village murdered.⁴³³ VG-084 recalled 10-15 children that were his age or younger.⁴³⁴ Hasib KURSPAHIĆ passed away after the incident in 1996.⁴³⁵ VG-013 and VG-038, mother and son, were separated during the escape.⁴³⁶ VG-013 believed that her son was killed that night only to learn four years later that he survived.⁴³⁷ VG-018 and her son VG-084 escaped together and fled through the hills. The sisters, VG-078 and VG-101 escaped without ever having to go into the Omeragić house. Evidence suggests that Edhem KURSPAHIĆ may also have survived, but died before the case was investigated. The names of the more than 65 people whom **Sredoje** and **Milan LUKIĆ** killed that night are listed in Annex A.⁴³⁸

143. The Indictment lists the names of 70 victims who were killed in the *Pionirska-Fire* and 16 named victims(of approximately 70) who were killed in the *Bikavac-Fire*. On 3 March 2009, the Defence filed a motion for an indefinite stay of proceedings in this case based on its claims to have identified 18 alleged survivors of the *Pionirska* and *Bikavac-Fires*.⁴³⁹ Although the Prosecution is satisfied that three of the victims named in the Indictment in fact survived the conflict, the Defence is mistaken in the remainder of its claims.

144. On 16 March 2009, the Prosecution responded and filed a Clarification related to issues raised by the Defence.⁴⁴⁰ After a thorough review of the new Defence information the Prosecution moved to strike-out the names of three people originally listed as victims: Latifa, Lejla, and Meva KURSPAHIĆ.⁴⁴¹ With respect to the other 15 victims named by the Defence as alleged survivors, 13 alleged survivors are different people with similar names to those who died in the fire. In two cases the Defence has not provided sufficient information to investigate their claims. Many of the Defence claims of newly found survivors derive from searches of current

⁴³² **Hasib KURSPAHIĆ:Exh.P041.**

⁴³³ **Huso KURSPAHIĆ:T878(o.s.).VG-018:T1302-3(o.s.).**

⁴³⁴ **VG-084:T1248(o.s.).**

⁴³⁵ **See:Hasib KURSPAHIĆ:Exh.P041.**

⁴³⁶ **VG-013:T1048(p.s.).**

⁴³⁷ **VG-013:T1054(o.s.).VG-038:T955-56(p.s.).**

⁴³⁸ **Exh.P119,Exh.P090(u.s.);Exh.P039.**

⁴³⁹ **Milan-Lukić-Notice-of-Survivors,paras.25-45.**

⁴⁴⁰ **SeeExh.P300.**

⁴⁴¹ On 18/03/09 the Prosecution applied in an oral motion to strike-out the names of these women from the Indictment(T5626)(o.s.). The Chamber on 09/04/09 decided to reserve its decision on this motion

telephone directories for people with the same or similar names as victims. Many of the victim's names are common in the region. The Defence has not established with any reliability that remaining alleged survivors in fact did survive.⁴⁴²

The date

145. The Indictment charges that the *Pionirska-Fire* occurred "[o]n or about 14 June 1992".⁴⁴³ The precise date is not an element of the crime and need not be proved beyond a reasonable doubt. Most witnesses believe that the *Pionirska-Fire* occurred on 14 June 1992(the night of the 14th to 15th) however Huso KURSPAHIĆ testified in *Vasiljević* that based on conversations with his father Hasib the fire occurred on the night between the 13th and the 14th, between 23:30 and 24:00 hours.⁴⁴⁴ VG-038 testified that the *Kurspahić-Family* left on 13 June and were set on fire on 14 June.⁴⁴⁵

Evidence of Identification(Milan LUKIĆ)

146. Reliable witnesses with prior knowledge of the **LUKIĆs** testified about seeing both men during the crime. In addition, many of the deceased also recognised them.

Recognition Witnesses

147. VG-101 and VG-078 are sisters and who are both close in age to **Milan LUKIĆ** and attended the same school with him for many years.⁴⁴⁶ After leaving secondary school VG-101 recognised **LUKIĆ** at social functions held for young adults.⁴⁴⁷ She recognised him instantly when he entered the Memić-house and had no doubt he was the same **Milan LUKIĆ** she knew.⁴⁴⁸ Shortly after she escaped she told Huso KURSPAHIĆ that **Milan LUKIĆ** was one of the perpetrators.⁴⁴⁹ VG-101 is a *recognition witness*.

148. VG-078 also attended the same schools as **Milan LUKIĆ** albeit never in the same class.⁴⁵⁰ When he entered the Memić-house she immediately recognised him.⁴⁵¹

until the conclusion of evidence.(T6593)(o.s.). As of this date the Chamber has not issued a decision on the application.

⁴⁴² **UŠCUMLIĆ**:T6602-03(o.s.),T6607-09(o.s.),T6652-53(o.s.).

⁴⁴³ Indictment,para.7.

⁴⁴⁴ **KURSPAHIĆ:Exh.P037**,VT789-90(o.s.).In his previous statement, KURSPAHIĆ stated that the fire was either on 13 or 14 June 1992:**Exh.P036**,p.3 The Prosecution notes that in his video interview, Hasib KURSPAHIĆ states that the fire was on 14 June 1992: **Exh.P041**,p.1.

⁴⁴⁵ **VG-038:Exh.P044**, T1398-1399. The Prosecution also notes that VG-038 testified that 14 June was a Monday, when it was in fact a Sunday, again indicating some confusion in his recollection.

⁴⁴⁶ **VG-101**:T1433(o.s.). **VG-078**:T1378(o.s.). **VG-078:Exh.P088**,VT1287(o.s.).

⁴⁴⁷ **VG-101**:T1433-34(o.s.).

⁴⁴⁸ **VG-101**:T1434(o.s.).

⁴⁴⁹ **HusoKURSPAHIĆ:Exh.P037**,VT806(o.s.).

⁴⁵⁰ **VG-078**:T1391-92(o.s.).

⁴⁵¹ VG-078 went to school in Sarajevo for a period of time.**VG-078**:T1392(o.s.).

Although she was momentarily unable to recall his name VG-101 reminded her.⁴⁵² VG-078 is a *recognition witness*.

149. VG-115, a Serb from Višegrad, is also a *recognition witness*. She had significant prior knowledge of **Milan LUKIĆ**. The basis of her familiarity with **Milan LUKIĆ** is summarised in paragraphs 8-11 in Annex E.

150. Evidence adduced during the trial established that some of the deceased also had prior familiarity with **Milan LUKIĆ**. VG-084 estimated that as many as a quarter of the people in the room knew **LUKIĆ** before that day, “[t]here were girls in the house who used to go to school with him.”⁴⁵³ Sajma KURSPAHIĆ told VG-038 that she knew **Milan LUKIĆ**.⁴⁵⁴ Ismeta KURSPAHIĆ told VG-013 that her husband sat at the same school-bench as **LUKIĆ**.⁴⁵⁵ Both of these dead women provide *recognition evidence* of **Milan LUKIĆ**. Their recognition of him was introduced as hearsay evidence through survivors.

151. **Milan LUKIĆ**, 25, attended school with some of the victims whose age placed them in his year or the years ahead and behind him in school. Women as young as 20 and as old as 28 at the time of the fire likely attended secondary school with **LUKIĆ**. An examination of the list of victims indicates that there are at least five such women:

- i. Munevera KURSPAHIĆ, approximately 20 years old;
- ii. Ismeta KURSPAHIĆ, approximately 26 years old;
- iii. Džehva KURSPAHIĆ, approximately 22 years old;
- iv. Sajma KURSPAHIĆ, approximately 20 years old; and
- v. Mina KURSPAHIĆ, approximately 20 years old;

152. VG-038 testified that **LUKIĆ** was identified to him by VG-101 and Sajma KURSPAHIĆ and others in the room.⁴⁵⁶ While survivors were unable to recall all the

⁴⁵² VG-078:T1382-83.VG-078:T1392(o.s.).

⁴⁵³ VG-084:T1246(o.s.) Also, VG-013 heard people who had gone to school with him and Jasmina VILA identify **Milan LUKIĆ**.VG-013:T1101-03.(o.s.).

⁴⁵⁴ VG-038:T947(p.s.).

⁴⁵⁵ VG013:T1056(o.s.).

⁴⁵⁶ VG-038:T947.

women who knew **Milan LUKIĆ** from school, it is clear that several victims knew him and expressed that to those around them.⁴⁵⁷

153. Jasmina VILA knew **LUKIĆ** because he had repeatedly raped her.⁴⁵⁸

She was at the military camp at Kamanica for 10 days, that **Milan LUKIĆ** took her over there, and he was the one who brought her over to Stanisava SIMIĆ who was supposed to bring her to our village...She was black and blue, bitten all over, and that's because she was raped.⁴⁵⁹

The extended period of time that she spent with **Milan LUKIĆ** establishes VILA as a *recognition witness*. She identified him to both VG-018⁴⁶⁰ and VG-038.⁴⁶¹

154. While Huso KURSPAHIĆ was not a direct witness to the fire, his father Hasib told him which perpetrators he recognised. To the extent that Huso KURSPAHIĆ's prior familiarity with **Milan LUKIĆ** is relevant, he knew him when he was an elementary school student and broke into a commercial bus.⁴⁶² KURSPAHIĆ testified:

My father told me on that date this was done by **Sredoje LUKIĆ**, **Milan LUKIĆ**, Mitar VASILJEVIĆ, and Boško ĐURIĆ was seen nearby then Zoran JOKSIMOVIĆ, a man with the last name ŠUŠNJAR, Zoran JOKSIMOVIĆ and another individual with blonde, with white complexion with long hair and he was **Milan LUKIĆ**'s escort. Nobody knows his exact name. There were a total of seven men who arrived in front of the house on Pionirska Street.⁴⁶³

155. The evidence is unclear as to what prior knowledge Hasib KURSPAHIĆ had of **Milan LUKIĆ**. Although Hasib did not describe to his son how he knew **Milan LUKIĆ**, he clearly identified him as being present. Hasib also reported that **Sredoje LUKIĆ** and VASILJEVIĆ (whom Hasib did know well) referred to **LUKIĆ** as "Milan" throughout.⁴⁶⁴

⁴⁵⁷ VG-038 described how he was unable to see which of the women were saying they went to school with **LUKIĆ**, because the room was so crowded. **VG-038:T948(o.s.)**.

⁴⁵⁸ **VG-013:T1016-17(o.s.)**.

⁴⁵⁹ **VG-013:T1016-17(o.s.)**.

⁴⁶⁰ **VG-018:T1310(o.s.)**.

⁴⁶¹ **VG-038:T948(o.s.)**.

⁴⁶² **HusoKURSPAHIĆ:T897(o.s.)**.

⁴⁶³ **HusoKURSPAHIĆ:T879**. See: **Exh.P037, VT790(o.s.); Exh.P036, p.3**.

⁴⁶⁴ **HusoKURSPAHIĆ:Exh.P037, VT805(o.s.)**.

Identification witness

156. Witnesses such as VG-013 had heard of **Milan LUKIĆ** prior to that day, but it was on that day she recalls seeing him for the first time.⁴⁶⁵ VG-084, similarly, saw **Milan LUKIĆ** for the first time on the day of the fire.⁴⁶⁶ Although VG-018 knew **Milan LUKIĆ** attended the same local school as her children, her lack of prior personal encounters with **Milan LUKIĆ** distinguishes her and requires that she be classified as an *identification witness*.⁴⁶⁷

157. VG-013, VG-018, VG-038, VG-084 all attended court; however, in light of the fact that the evidence fails to clearly establish that they are *recognition witnesses*, the Prosecution does not rely on their in-court identification of **Milan LUKIĆ**.⁴⁶⁸

Evidence of Identification(Sredoje LUKIĆ)

Recognition witnesses

158. **Sredoje LUKIĆ**, as a long-serving police officer in Višegrad, was well known to many of the victims.⁴⁶⁹ Huso KURSPAHIĆ described how they had been colleagues for ten years in a police force with only 31 officers.⁴⁷⁰ “**Sredoje LUKIĆ** was a publicly known figure who was everywhere around the municipality,”⁴⁷¹ and regularly patrolled villages throughout the municipality.⁴⁷²

159. KURSPAHIĆ and **Sredoje** were not only colleagues but good friends – KURSPAHIĆ often invited **Sredoje** into his Koritnik home for a meal or drink.⁴⁷³ They referred to each other as “*amidža*” or “cousin”, a term of endearment in the region. So close was their bond that KURSPAHIĆ secured **Sredoje’s** release when he was held prisoner.⁴⁷⁴ KURSPAHIĆ is a *recognition witness*. During his testimony he looked over at him and said:

Well, there is **Sredoje LUKIĆ**. I'm looking at him, and he's looking at me. You can ask him if he knows me. We are being confronted. That's why I wanted to testify, so I can say these things in their faces in

⁴⁶⁵ VG-013:T1011(o.s.).

⁴⁶⁶ VG-084:T1245-46(o.s.).

⁴⁶⁷ VG-018:T1303(o.s.).

⁴⁶⁸ Some of these witnesses are *recognition witnesses* with respect to **Sredoje LUKIĆ**. See, e.g., evidence of VG-084 summarised below.

⁴⁶⁹ VG-084:T1244-45(o.s.). See: VG-018:T1304(o.s.).

⁴⁷⁰ Huso KURSPAHIĆ:T884-85(o.s.).

⁴⁷¹ Huso KURSPAHIĆ:T930(o.s.). One of **Sredoje LUKIĆ’s** frequent assignments was directing traffic in the town. Huso KURSPAHIĆ:T915(o.s.).

⁴⁷² Huso KURSPAHIĆ:T931(o.s.).

⁴⁷³ Huso KURSPAHIĆ:T915(o.s.).

⁴⁷⁴ Huso KURSPAHIĆ:T920(o.s.).

public, that I wouldn't be saying anything behind anyone's back. I wanted to say all I know from A to Z. That is **Sredoje LUKIĆ**, my former colleague.⁴⁷⁵

160. Because of **Sredoje LUKIĆ**'s frequent visits to Koritnik, either on patrol or to visit Huso, many in the village also came to know **LUKIĆ** well.⁴⁷⁶

161. One such person is Hasib, Huso's father. His father saw **Sredoje** on his frequent visits to the family home.⁴⁷⁷ Hasib regularly left messages for Huso with **Sredoje** and would shake hands if they met on the street.⁴⁷⁸ Hasib KURSPAHIĆ is a *recognition witness*.

162. VG-013 also knew **Sredoje LUKIĆ** for many years. She grew up close to Rujište and saw him at social gatherings organised for young adults.⁴⁷⁹ As they became adults they took the same bus to their respective workplaces.⁴⁸⁰

163. After she married, VG-013 moved to Koritnik and saw **LUKIĆ** patrolling the small village. On some occasions when **LUKIĆ** patrolled alone, he would speak with her father-in-law who would offer him a coffee.⁴⁸¹

164. During the 1980s, VG-013 worked overseas and left for several years – after her return she again regularly encountered **Sredoje LUKIĆ** and readily recognised him.⁴⁸² VG-013 is a *recognition witness*. When asked to look around the courtroom to see if she recognised anyone, she quickly and with certainty confirmed the Accused **Sredoje LUKIĆ** was the same **Sredoje LUKIĆ** she saw perpetrate the *Pionirska-Fire*.⁴⁸³

⁴⁷⁵ **HusoKURSPAHIĆ**:T886(o.s.).

⁴⁷⁶ On cross-examination the defence put many names of Višegrad residents to HusoKURSPAHIĆ and he knew them. It is reasonable to infer that given the size of the town, and the similar positions KURSPAHIĆ and **LUKIĆ** held that **SredojeLUKIĆ** would have also known these people and that they in turn would have known him. **HusoKURSPAHIĆ**:T893-900;T907-12(o.s.).

⁴⁷⁷ **VG-061:Exh.P037**,VT805(o.s.). **HusoKURSPAHIĆ:Exh.P037**,VT805(o.s.). See also, cross-examination of KURSPAHIĆ, it became clear that the KURSPAHIĆ's had a close relationship with **SredojeLUKIĆ**'s father as well. **HusoKURSPAHIĆ**:T914(o.s.).

⁴⁷⁸ **HusoKURSPAHIĆ**:T914-15(o.s.).

⁴⁷⁹ **VG-013**:T1001-02.(o.s.).

⁴⁸⁰ **VG-013**:T1005-06(o.s.). This fact was corroborated by the testimony of VG-018 who when questioned by the **SredojeLUKIĆ** Defence as to whether VG-013 knew him, "She knew them [**SredojeLUKIĆ**] because she worked at Hidrogradnja. She knows everything about what was going on in town." **VG-018**:T1370(o.s.).

⁴⁸¹ **VG-013**:T1007(o.s.). When HusoKURSPAHIĆ was asked whether VG-013 would have known **SredojeLUKIĆ** he emphatically stated "They should know him." **HusoKURSPAHIĆ**:T916(o.s.).

⁴⁸² **VG-013**:T1008(o.s.).

⁴⁸³ **VG-013**:T1010(o.s.).

165. Other witnesses, although having less familiarity with him than Huso KURSPAHIĆ and VG-013 were nonetheless able to recognise him during the *Pionirska-Fire*.

166. Although VG-038 did not know his name until the day of the fire he recalled seeing **Sredoje LUKIĆ** in Višegrad on his way to school – sometimes seeing him several times a week over a period of seven years.⁴⁸⁴ VG-038 saw him by the police station in the town centre or patrolling the nearby streets.⁴⁸⁵ VG-038 knew he was a colleague of his relative Huso KURSPAHIĆ and saw them together often.⁴⁸⁶ Despite not knowing **Sredoje LUKIĆ**'s name, VG-038 is properly characterised as a *recognition witness*.⁴⁸⁷

167. Edhem KURSPAHIĆ, who may have escaped the fire but died afterward, was an elderly man from Koritnik. He had the same opportunities to see **Sredoje LUKIĆ** patrolling the village as VG-013 and VG-038.⁴⁸⁸ His exclamation upon recognising **Sredoje LUKIĆ** at the *Pionirska-Fire* demonstrates his prior familiarity with **LUKIĆ** and establishes him as a *recognition witness*.

168. Although unidentifiable, a large number of the victims of the fire knew **Sredoje LUKIĆ** as a police officer in the town. While witnesses were uncertain about precisely who among the large group stated they knew him as a police officer, witnesses estimated that as many as 25% of the victims knew **Sredoje LUKIĆ** as a police officer and voiced that prior to their death in the fire.⁴⁸⁹

169. VG-115 is also a *recognition witness* with respect to **Sredoje LUKIĆ**. Please see paragraph 12 in Annex E.

170. Other witnesses who gave evidence about charges unrelated to **Sredoje LUKIĆ** also gave evidence about the general familiarity of the citizens of Višegrad with **Sredoje LUKIĆ**.⁴⁹⁰

⁴⁸⁴ **VG-038**:T949&953(o.s.).**VG-038**:T942-43(p.s.). See:**VG-038:Exh.P044**,VT1370;VT1409(o.s.).

⁴⁸⁵ **VG-038**:T949-50(o.s.).

⁴⁸⁶ **VG-038**:T950-51(o.s.).

⁴⁸⁷ VG-038 also demonstrated the reliability of his memory when he provided details about MLD-024 which were later confirmed by him when he testified.**MLD-024**:T5028(p.s.)

⁴⁸⁸ **VG-013**:T1132(o.s.).

⁴⁸⁹ **VG-084**:T1244-45(o.s.).

⁴⁹⁰ See:**VG-024**:T3215-18(p.s.).

VG-024 testified she went to school with **Sredoje LUKIĆ** and their fathers were good friends. She said she had a "great relationship" with him. She knew he was a police officer in the town – and that he would sometimes wear glasses.**VG-042**:T2798-99(o.s.).

Identification witness

171. Other survivors of the *Pionirska-Fire* did not have the prior familiarity with **Sredoje LUKIĆ** that the *recognition witnesses* did and relied on those who knew him to identify him.

172. VG-018 did not have familiarity with **LUKIĆ** and learned his name when he entered the Memić-house and introduced himself.⁴⁹¹ VG-084 was only two metres from **Sredoje LUKIĆ** when he introduced himself to the *Kurspahić-Family*.⁴⁹² VG-084 also saw **Sredoje LUKIĆ** for the first time that day and relied on others who told him who he was.⁴⁹³

173. Neither VG-078 nor VG-101 knew **Sredoje LUKIĆ** prior to this day and learned his name from others.⁴⁹⁴ Witnesses VG-018, VG-078, VG-084 and VG-101 are *identification witnesses* with respect to **Sredoje LUKIĆ** and the Prosecution does not rely on their in-court identifications of him.

The hearsay evidence of deceased victims who recognised Sredoje and Milan LUKIĆ should be given weight

174. An important body of evidence exists in the statements of those who died in the *Pionirska-Fire*. Their statements form a unique body of evidence contributing to the truth about who is responsible.

175. From the early days of the Tribunal it has been well-settled that hearsay evidence is admissible.⁴⁹⁵ It is left for a Chamber to consider the appropriate weight to place on hearsay after considering the content of the declarant's statement, the circumstances surrounding it, the general context and character of the evidence as well as the credibility and reliability of the in-court witness providing this evidence.⁴⁹⁶

176. Legal systems which generally prohibit hearsay recognise that in some situations there are sufficient indicia of reliability that the general prohibition gives way to the admission of such evidence, placing its reliability on a par with that of direct evidence. For example, there is a well established hearsay exception permitting the admittance of spontaneous statements. The underlying rationale considers that a

⁴⁹¹ VG-018:T1298(o.s.).

⁴⁹² VG-084:T1277(o.s.);Exh.P072,VT1673(o.s.).

⁴⁹³ VG-084:T1244-45(o.s.).

⁴⁹⁴ VG-078:T1387(p.s.)

⁴⁹⁵ See, *Tadić*, Decision on the Defence Motion on Hearsay, 05/08/1996;and *Blaškić Hearsay Decision*. *Aleksovski*, Decision on Admissibility of Evidence, para.15.

⁴⁹⁶ *Milošević*, Case No.IT-02-54-AR73.2, [Appeals Chamber] Decision on Admissibility of Prosecution Investigator's Evidence, 30/09/2002, para.18.

spontaneous statement made during a situation that did not permit reflection, bias or guile to affect the declarant's exclamation is sufficiently reliable to merit its admittance. This principle is referred to as the "spontaneous" or "excited utterance" exception to the general rule banning hearsay (closely related to the "present-sense impression" exception).⁴⁹⁷ Because of the inherent reliability of such statements they are routinely admitted at trial.

177. Similarly, persons who are aware of the likelihood of their impending death have no reason to fabricate information related to their approaching death. This "dying declaration" exception to the general ban on hearsay recognises the inherent reliability of statements made by people under the present belief that their death is imminent and unavoidable.⁴⁹⁸ The statements of murder victims identifying their assailant made just prior to their death are routinely admitted as evidence of identification of an accused. The reasoning underpinning the reliability of these statements is that persons who believe they are about to die at the hands of a perpetrator have no motive to falsely accuse another person of their death. Their identification of the perpetrator as a person they know is considered sufficiently reliable to base a conviction upon.⁴⁹⁹

178. Considerable evidence demonstrates that when **Sredoje** and **Milan LUKIĆ** entered the Memić-house a number of victims spontaneously told others who they were and how they knew them.⁵⁰⁰ These victims did not have the opportunity for

⁴⁹⁷ See, Rule 803, United States Federal Rules of Evidence.

Rule 803: Hearsay Exceptions; Availability of Declarant Immaterial

...

(2) Excited utterance. A statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition.

⁴⁹⁸ See, Rule 804, United States Federal Rules of Evidence.

Rule 804: Hearsay Exceptions; Declarant Unavailable

...

(B)(2) Statement under belief of impending death. In a prosecution for homicide or in a civil action or proceeding, a statement made by a declarant while believing that the declarant's death was imminent, concerning the cause or circumstances of what the declarant believed to be impending death.

⁴⁹⁹ One indication of its reliability is the fact that in at least one reported instance of this hearsay evidence the declarant was unable to recognise the perpetrators. Consider the following:

A. Some of the people who were by the window could see the car out in the street quite clearly.

Q. And were the people in the front of the window say anything about who was in the car?

A. No. They weren't able to see who was in the car.

VG-101: T1443(o.s.).

⁵⁰⁰ See for example, testimony of VG-084 in response to a question posed by the **Sredoje LUKIĆ** defence,

Q. I am asking about your knowledge. I'm not asking you about what other people knew.

A. But, sir, I listened to people who were older than me, and they knew these men very well. I was a 14-year-old boy. I listened to what my elders were telling me, and there were some elderly people who knew him very well.

VG-084: T1280(o.s.). See also:

reflection or time for other thought processes to influence them perhaps causing them to identify someone who was not actually present but whom they may have wanted to implicate. None of the deceased victims(or survivors) reported seeing MLD-024, Dušan GRUJIĆ or Ilija GAVRILOVIĆ – three men many believed were primarily responsible for their predicament. Those who recognised the **LUKIĆs** and said so told others spontaneously – they were both truthful and accurate. Also significant is that many people knew the two **LUKIĆs** and no one disputed their identities. Witnesses either did not know them or knew them to be **Sredoje** and **Milan LUKIĆ**.

179. The excitability was best described by VG-018, “Everybody was shouting ‘The **LUKIĆs** – Here – The **LUKIĆs** are coming again.’”⁵⁰¹ These “excited utterances” should be afforded their due weight. The Chamber can have confidence in the reliability of the deceased who recognised **Sredoje** and **Milan LUKIĆ** as the perpetrators.

180. While some believed earlier in the day that Serbs intended to kill them, when the *Kurspahić-Family* was accosted in the Memić-house, most, if not all of the victims had abandoned all hope. These victims believed they would die shortly. Why would the women who knew **Milan LUKIĆ** falsely identify him while not identifying the real perpetrator? Similarly, those who recognised **Sredoje LUKIĆ** had no reason to falsely accuse him. Most witnesses had neutral or positive memories of **Sredoje LUKIĆ**. Victims identified the perpetrators they recognised and died never knowing the identity of the others.

181. The voices of the dead speak credibly and reliably through those who shared their final day. The inherent reliability of their declarations speak loudly about **Sredoje** and **Milan LUKIĆ’s** presence and role in their death.

A. There were people in the house, the older ones, who knew him, and when they left they said, "That's the policeman who works at -- in Višegrad." There were people there, including elderly women, who knew him.

JUDGE ROBINSON: They said, "That's the policeman." Did they go further to identify the name of the police?

A. **Sredoje LUKIĆ.**

VG-084:T1275(o.s.).

⁵⁰¹ **VG-018:**T1313(o.s.).

See also, testimony of VG-101 who said:

Q. Did anyone talk about who these men were?

A. Yes. A man was saying – they were all saying that they knew them. We all knew who those men were and what they were.

VG-101:T1442(o.s.).

Observations by Witnesses During the *Pionirska-Fire*.

182. The opportunity that witnesses had to observe **Sredoje** and **Milan LUKIĆ** during the *Pionirska-Fire* is an important consideration in evaluating the reliability of their evidence. A number of factors contribute to witnesses having an adequate opportunity to recognise the perpetrators. These factors include the length of time over which the observations are made, the lighting conditions and whether their view of the perpetrators was unobstructed.

183. The witnesses encountered the *Lukić-Group* on two separate occasions. The first encounter was sometime in the afternoon⁵⁰² and lasted between two and three hours.⁵⁰³ While these several hours spent with the *Lukić-Group* were undoubtedly stressful for the victims they had ample opportunities to observe their attackers under optimal conditions.

184. After dark, the *Lukić-Group* returned purposefully and moved the victims into the Omeragić house. While the observation was shorter they could still reliably recognise them as the same men they had spent considerable time with just a few hours earlier. The recognition of a familiar face or someone recently met can occur in a matter of seconds. The night-time lighting was more than adequate for the victims to recognise those barricading them into the Omeragić-house.

185. During both encounters the victims had multiple opportunities to see the **LUKIĆs. Sredoje** and **Milan LUKIĆ** were constantly moving around, coming in and out of rooms during the day and moving around the group at night to direct them toward the Omeragić house. Each witness had multiple occasions to see the perpetrators and recognise them.

Lighting conditions

186. Most of the time the *Lukić-Group* spent in the presence of the *Kurspahić-Family* was during daylight. Although there was intermittent rain on this day by midday the sun pervaded the Memić-house, providing the victims more than sufficient light to reliably recognise those perpetrators they knew and make reliable additional observations about those they saw for the first time that day.

⁵⁰² VG-013 estimates that the group came at 6pm and left between 8 and 9pm. **VG-013:T1033-34(o.s.)**. VG-038 believed that the group arrived around 5pm and remained there between 2 and 2 ½ hours. **VG-038:T946(p.s.)**. **VG-038:Exh.P044**, VT1370(o.s.). **VG-018:T1308(o.s.)**.

⁵⁰³ **VG-038:Exh.P044**, VT1376(o.s.). **VG-018:Exh.P082**, VT1585(o.s.)

187. When **Milan** and **Sredoje LUKIĆ** returned later in the night it was dark outside. However, a number of sources of artificial light made it possible to see and recognise the perpetrators.⁵⁰⁴ There were both ambient sources of light(indirect lighting around the Memić and Omeragić houses which illuminated the area) and direct sources(lights used by the perpetrators to intentionally illuminate the scene and facilitate the crime). The ambient sources were from the surrounding houses and street lights both on Pionirska Street, by the Memić-house and at the rear of the Omeragić-house from the adjoining Glavica area. They include:⁵⁰⁵

- i. Lights in the Mahala neighbourhood. (A1)
- ii. The exterior lights attached to Mujo and Jusuf Memić's houses. (A2)
- iii. Light from Glavica, behind the Omeragić house. (A3)
- iv. Light in front of the Omeragić house. (A4)
- v. Light from the fire itself. (A5)

188. The *Lukić-Group* used several sources of direct lighting.

- i. The perpetrators set up an artificial light source probably from the two cars they drove.(D1)
- ii. Four of the perpetrators were carrying hand-held torches. (D2)

Ambient sources of light

189. **(A1) Ambient light in the Mahala neighbourhood.** The witnesses are consistent in their recollection that there were no operational lights in the Memić-house.⁵⁰⁶ Serb families and a few remaining Muslims lived in the Mahala neighbourhood. There were lights on in these surrounding houses(indicating functional electric service to the area) shedding ambient light on the scene.⁵⁰⁷ The houses were close together, typical of an urban environment and streetlights lined the road providing general illumination of the area.⁵⁰⁸ The light coming from the interior

⁵⁰⁴ **VG-013:T1057(o.s.).VG-018:Exh.P082,VT1626(o.s.).**

⁵⁰⁵ These light sources are designated to correspond with **Figure 1**. For example "A1" is the first source of ambient light and corresponds to the locations labelled "A1" in **Figure 1**. "D2" indicates the second source of direct lighting.

⁵⁰⁶ **VG-013:T1040(o.s.).VG-018:T1348(o.s.).VG-078:T1385.**

⁵⁰⁷ **VG-013:T1040(o.s.).**

⁵⁰⁸ **VG-013:T1042.VG-018:T1348.** See **Exh.P293**. This photo was taken in front of the Memić-house and shows the lightpole on Pionirska Street.

and exterior lights of these houses helped illuminate the area.⁵⁰⁹ This lighting “made it possible for me to see quite well.”⁵¹⁰

190. **(A2) Ambient light from an exterior fixture on the Memić-house.** While the interior lights of the house were non-functional, the exterior of the Memić-house had a light on; the house still had electricity.⁵¹¹ Other houses had external lights.⁵¹² Mujo Memić’s house (the house next to Jusuf Memić’s house) also had an exterior light on.⁵¹³

191. **(A3) Ambient light from the Glavica neighbourhood behind the Omeragić house.** Another source of ambient light illuminating area around the Omeragić-house emanated from the adjoining neighbourhood immediately behind the house and across the creek.⁵¹⁴ This light shone in through the windows of the darkened Omeragić-house with enough brightness to permit witnesses to see the interior of the room and the furniture that was there.⁵¹⁵

192. **(A4) Ambient light from the Omeragić house.** The neighbourhood had electrical service and inhabited structures had light.⁵¹⁶ The Omeragić-house as well as the nearby shed had light fixtures shedding some illumination on the area.⁵¹⁷ The area just in front of the Omeragić-house was well illuminated.⁵¹⁸

⁵⁰⁹ **VG-013:**T1040;T1083(o.s.).

⁵¹⁰ **VG-084:**T1247-48(o.s.);T1289(o.s.).**VG-018:Exh.P082**,VT1623(o.s.).

VG-101:T1461-62(o.s.).

⁵¹¹ **VG-038:**T978-80(o.s.);**Exh.P044**,VT1377-78(o.s.).

⁵¹² **VG-078:**T1385(o.s.)([T]here were lights outside. In the houses you could see proper lights”).

⁵¹³ **VG-038:Exh.P044**,VT1378.

⁵¹⁴ **VG-013:**T1042(o.s.);T1088;T1063 describing **Exh.P057**. **VG-084:**T1247-48;T1289(o.s.).**VG-078:**T1385(o.s.).

⁵¹⁵ **VG-013:**T1042(o.s.) Although there were no lights in the Omeragić house VG-013 was able to see what was inside because of light shining in the windows from the neighbourhood behind. The windows faced these lights. “The lights were not on inside, but there was light from the other side of the street that reached us.” **VG-013:**T1043;T1088&T1094(o.s.).**VG-013:Exh.P060**,p.5(u.s.).**VG-084:**T1254;T1289(o.s.).

⁵¹⁶ **VG-013:Exh.P060**,p.5

⁵¹⁷ **VG-084:**T1248;T1289(o.s.).

⁵¹⁸ **VG-101:**T1462(o.s.).

VG-084 testified:

Q.You said there was a light in front of the house. Can you say which house or which houses had lights in front of them?

A.I said that about the Omeragić house.

VG-084:T1289;T1247(o.s.)

See also, VG-101, “Yes, They were reaching the blonde Serb who was in the lit-up area. They first reached him and then proceeded to enter the second house.” **VG-101:**T1247(o.s.)

193. (A5) **Ambient light from the fire.** The fire burned quickly and brightly having been accelerated with flammable substances.⁵¹⁹ Light from it also contributed to the illumination of the area around the Omeragić house giving survivors adequate light to again reliably recognise some of the perpetrators of the fire.⁵²⁰

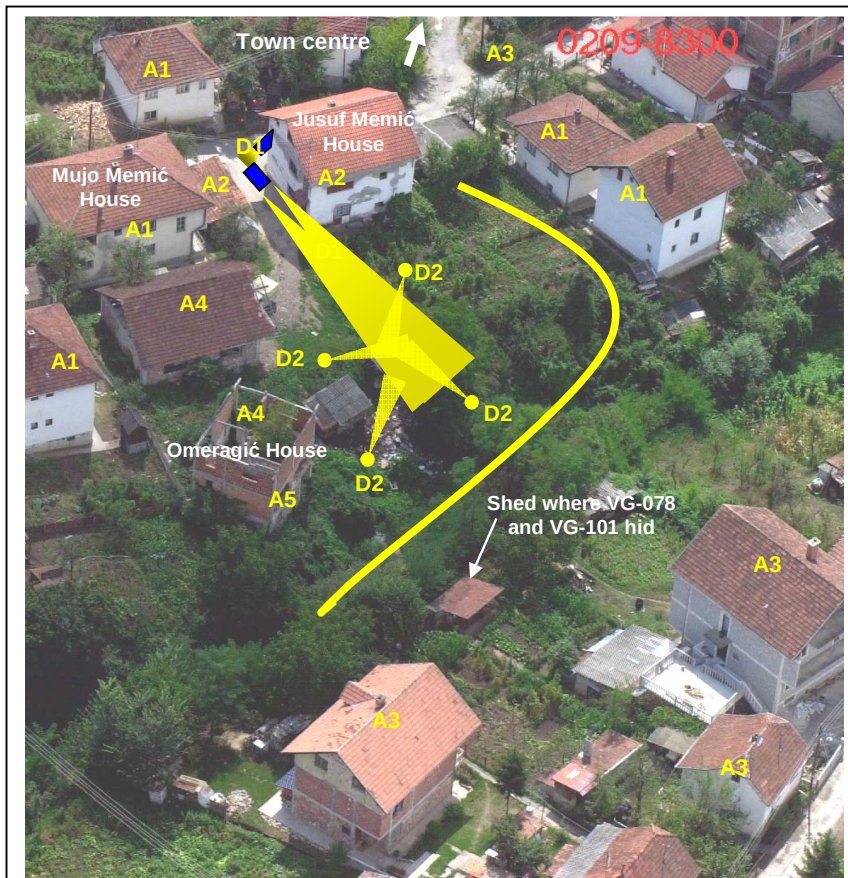


Figure 1. This figure is a compilation of the several exhibits in which survivors indicated the light sources illuminating the Memić yard. VG-101 said that the area inside the curved line was “all lit up.” T1449-50(o.s.). See exhibits P094, P057 and testimony of the witnesses as summarised below.

Direct Sources of Light

194. (D1) The **Lukić-Group** set up an artificial light source(s) to facilitate the crime. When the **LUKIĆs** returned at night with their group they used a source of artificial light to illuminate the area outside the Memić-house.⁵²¹ “As they arrived,

⁵¹⁹ VG-038:Exh.P044,VT1386(o.s.).

⁵²⁰ VG-038 was able to look back at the house on fire and recognise VG-084 jumping out of the window.VG-038:Exh.P045,VT1412(o.s.).

⁵²¹ VG-013:T1057(o.s.).VG-018:Exh.P082,VT1625(o.s.).VG-101 testified:

A.[T]he entire area was lit up.I don’t know where the light came from but it was there.

they switched on the lights and one could see...”⁵²² “It was around midnight when the car arrived and when they placed light, those that I know, placing light. After they had placed the light, they came to the door.”⁵²³ While some of the witnesses did not recall the specific source of the light they do recall the illumination just outside the Memić-house, “It seemed as if the entire area had been lit up by way of bulbs that were somewhere there.”⁵²⁴

195. The headlights on the cars the *Lukić-Group* used shone their lights on and into the Memić-house.⁵²⁵ VG-018 was standing in the kitchen when the headlights from a car illuminated the house.⁵²⁶ The front door of the house does not face Pionirska Street itself but is in the alley along the side of the house.⁵²⁷ The cars were parked in such a way that the headlights illuminated the windows and front door of the house.

A car pulled over in front of the house. It was quite noisy, the engine of the car. They flashed the lights at the windows and at the front door of the house and told us to get out of that house and move over to another house.⁵²⁸

196. Cars parked in a way that directed their headlights toward the door of the Memić-house would have also illuminated the path toward the Omeragić house. The lights were “strong lights”.⁵²⁹ The bright lights of these cars provided the level of direct illumination that witnesses recall. Once the last person was forced into the Omeragić-house the car lights were turned off.⁵³⁰

Q. So lit up by like floodlights?

A. It seemed as if the entire area had been lit up by way of bulbs that were somewhere there. Plus they had torches with them. So the entire area was lit up.

VG-101:T1461(o.s.).

⁵²² **VG-018:Exh.P082**,VT1625(o.s.).

⁵²³ **Hasib KURSPAHIĆ:Exh.P041**,p.5

⁵²⁴ **VG-101:**T1461(o.s.).

⁵²⁵ **VG-078:Exh.P089**,VT1334(o.s.);**Exh.P092**,p.4(u.s.).

⁵²⁶ “Around 11 at night we saw headlights from a car lighting up the room we were in. I myself was in the kitchen.” **VG-018:Exh.P083**,p.8(u.s.). *See also*, testimony of VG-018: “We saw them moving up our street because we were right by the street and when they turned, the lights of the car hit our windows and lit them up and one woman said...” **VG-018:**T1590(o.s.).

⁵²⁷ **VG-084:Exh.P072**,VT1671(o.s.).

⁵²⁸ **VG-101:**T1443(o.s.).

⁵²⁹ **Hasib KURSPAHIĆ:Exh.P038**,VT896(p.s.).

⁵³⁰ “The man went behind me and I saw the others along the road, you could see a little bit, but then they turned the lights, the car lights off.” **VG-018:Exh.P082**,VT1592(o.s.).



Figure 2. Exhibit P056 shows the view from in front of the Omeragić house looking toward the front door of the Memić house. It makes clear that the headlights of a car parked by the entrance would illuminate the path the *Kurspahić-Family* took to the Omeragić-house (marked in blue).

The perpetrators were carrying hand-held battery operated torches

197. (D2) The ***Lukić-Group*** used handheld battery torches to illuminate the area. In addition to the light sources described above the *Lukić-Group* also used handheld torches or flashlights.⁵³¹ VG-038 described the torches as “military flashlights, round in shape and rather large”.⁵³² These torches designed for military use provided good illumination – capable of illuminating an area that was at least 20 metres away. After escaping the fire VG-084 hid behind a tree he estimated was 20 metres from the Omeragić house. While hiding, one of the group shone the flashlight in his direction and he recalls the torchlight “flashed around the tree I was hiding behind. And I could see this light flashing in my eyes...”⁵³³ Similarly, VG-018 also remembers being illuminated by the light as she reached the creek behind the Omeragić-house.⁵³⁴ The group used these torches as they moved back and forth along the line of people making their way by ones and twos toward the Omeragić-house trying to ensure that no one escaped.

198. Some witnesses recall two torches, others recall seeing four.⁵³⁵ Witnesses were able to identify three different individuals who were using torches. VG-078 and VG-

⁵³¹ VG-084:T1254-5;Exh.P072,VT1673(2-3 flashlights).VG-018:Exh.P082,VT1634.

⁵³² VG-038:Exh.P045,VT1410-11(o.s.).

⁵³³ VG-084:Exh.P073,VT1756(o.s.).

⁵³⁴ VG-018:Exh.P082,VT1629-30(o.s.);Exh.P082,VT1635(o.s.).

⁵³⁵ VG-038:Exh.P044,VT1378;Exh.P045,VT1410-11(o.s.).VG-084:Exh.P072,VT1673(o.s.).

101 both recall a man whose name they did not know but who had a moustache standing near the Memić-house shining a torch.⁵³⁶ Ahead of them VG-101 saw someone she described as a “blonde Serb” holding a “large torchlight lighting the road we were to take.”⁵³⁷ He was positioned near the Omeragić house and shone the flashlight up toward the Memić-house.⁵³⁸ Finally, VG-013 saw VASILJEVIĆ shining a torch on the rear of the Omeragić-house so that **Milan LUKIĆ** could shoot victims fleeing the fire.⁵³⁹

199. Both ambient and direct sources of illumination combined to illuminate the area from several directions. In this enclosed area, light from these different sources reflected off the walls of houses, sheds, trees and other objects and increased the overall level of ambient illumination. The darkness was overcome with these sources of illumination. The survivors had sufficient light to reliably recognise people they had known, in some cases, for years and who, in others, had terrorised them just hours earlier.

Observations of Milan LUKIĆ during the Pionirska-Fire.

200. VG-115 was the first person to see **Sredoje** and **Milan LUKIĆ** the day of the fire escorting people up Pionirska Street.⁵⁴⁰ These were observations, made in broad daylight by an accidental observer who described everyone she recalled seeing – both victims and perpetrators.⁵⁴¹ She was standing in the “nearest proximity” to **Sredoje LUKIĆ**.⁵⁴²

201. The day after the *Pionirska-Fire* **Milan LUKIĆ** visited the large company in Višegrad where VG-115 worked.⁵⁴³ She saw **Milan LUKIĆ** as he entered the building and noticed his arm was bandaged. **LUKIĆ** explained that he injured his hand the previous night.⁵⁴⁴

202. One of the first people to recognise **Milan LUKIĆ** when he entered the Memić-house was VG-078. VG-078 was only 1½ metres away from **Milan LUKIĆ**

⁵³⁶ **VG-078**:T1386(o.s.); **VG-101**:T1444(o.s.); **Exh.P094**(T1449-50(o.s.)).

⁵³⁷ **VG-101**:T1443(o.s.).

VG-101:T1443-44,T1449-50(o.s.); **Exh.P094**.

⁵³⁸ **VG-101**:T1445(o.s.).

⁵³⁹ **VG-013**:T1088-90(o.s.); **Exh.P060**,p.6(u.s.); **VG-013**:T1073(p.s.).

⁵⁴⁰ **VG-115**:T683(o.s.).

⁵⁴¹ **Exh.P031**, (u.s.); **VG-115**:T683-88(o.s.); T683-94(p.s.).

⁵⁴² **VG-115**:T796(o.s.).

⁵⁴³ **Exh.P119**; **Exh.P090**(u.s.) & **Exh.P039**.

⁵⁴⁴ **VG-115**:T663&T695(p.s.).

and had ample opportunity to get a good look at his face.⁵⁴⁵ **Milan LUKIĆ** was the only person in the group she knew and her attention was drawn to him.⁵⁴⁶ She had no doubt that she knew him.⁵⁴⁷ VG-078's attention was focused on **Milan LUKIĆ** when he spoke and told them to remove their valuables.⁵⁴⁸

203. During the time the people were being robbed, VG-078 had intermittent views of **Milan LUKIĆ** and the other perpetrators. VG-078 recalls another time during the afternoon when **Milan LUKIĆ** took a young boy who had become upset and threatened to cut his throat.⁵⁴⁹ During this tense moment VG-078's gaze was firmly fixed on her former schoolmate as he threatened to kill the young boy.

204. VG-078 again focused on **Milan LUKIĆ** as he took Jasmina VILA away. She was only ten steps away when he walked over to VILA and placed his arm around her. As they left he passed directly in front of her.⁵⁵⁰

205. As the people were forced toward the second house VG-078 saw **Milan LUKIĆ** from a distance of 30 steps.⁵⁵¹ Nothing obstructed her view, and although it was dark, there was sufficient light for her to recognise **Milan LUKIĆ**.⁵⁵²

206. VG-101 also immediately recognised **Milan LUKIĆ** when he entered the Memić-house.⁵⁵³ She had no difficulty recognising him; she remarked in court "the face remained quite the same".⁵⁵⁴

207. VG-101 was close enough to **LUKIĆ** to hear him tell people to remove their valuables.⁵⁵⁵ She heard his remark upon seeing foreign currency.⁵⁵⁶ During the period when the women were strip-searched VG-101 saw **Milan LUKIĆ** standing on the stairway in the house.⁵⁵⁷ VG-101 was close enough to **Milan LUKIĆ** to overhear a

⁵⁴⁵ VG-078:T1381(o.s.).

⁵⁴⁶ VG-078:T1382(o.s.).

⁵⁴⁷ VG-078:T1382(o.s.).

⁵⁴⁸ VG-078:T1383(o.s.).

⁵⁴⁹ VG-078:Exh.P089,VT1304,VT1314(o.s.).

⁵⁵⁰ VG-078:T1383-84(o.s.).

⁵⁵¹ VG-078:T1385(o.s.). See also, VG-078:Exh.P092,pp.4-5(u.s.).

⁵⁵² VG-078:T1386(o.s.).

⁵⁵³ VG-101:T1433(o.s.). This was confirmed by **HusoKURSPAHIĆ:Exh.P037**,VT806(referring to P039)(o.s.). See also, **VG-038:T947**(p.s.).

⁵⁵⁴ VG-101:T1434(o.s.).

⁵⁵⁵ VG-101:T1434(o.s.).

⁵⁵⁶ VG-101:T1435(o.s.).

⁵⁵⁷ VG-101:T1435;T1437(o.s.).

conversation he had related to finding a “nice one” for him – **Milan LUKIĆ** left shortly afterward with a young woman.⁵⁵⁸

208. After a period of time **Milan LUKIĆ** returned to the Memić-house with the young woman and VG-101 once again recognised him. He then spoke directly to her:

Milan LUKIĆ entered the room and told me, “Get up. Are you wearing jeans”? He was able to see full well that I didn’t have any jeans, but nevertheless he said, “Get up. Are you wearing any jeans”? I stood up, and we looked [at] each other in the eye and gazed into each other’s eyes for five minutes. Then the moustached Serb came along and said, “That’s not her.”⁵⁵⁹

209. While VG-101’s estimate of the time she and **LUKIĆ** stared at each other may be influenced by the stressful situation it is clear that she did stand for a time, face-to-face, eye-to-eye with her old schoolmate.

210. After this, **Milan LUKIĆ** tried to take away a young mother with three children. VG-101 watched as the woman’s daughter gripped her mother’s leg, crying, refusing to let go. **LUKIĆ** was unable to separate the little girl from her mother and eventually gave up.⁵⁶⁰ Again, the intensity of the moment riveted VG-101’s attention. Finally, she was close enough to hear **Milan LUKIĆ** say they were going to get food and would be back later that night.⁵⁶¹ When he returned VG-101 saw him again. VG-101 saw **Milan LUKIĆ** standing in the light directing the people into the Omeragić house.⁵⁶²

211. VG-013 who had seen **Milan LUKIĆ** on several occasions recognised him immediately when he first came to the door of the house.⁵⁶³ VG-013 was a metre from him when he threw a rag on the table to rob them.⁵⁶⁴ She had an unobstructed view of his face for an extended period under optimal conditions.⁵⁶⁵

212. VG-013’s evidence that **Milan LUKIĆ** took VILA out of the house that night is corroborated by VG-101.⁵⁶⁶ VG-013’s limited interaction with **Milan LUKIĆ** does

⁵⁵⁸ **VG-101:T1437(o.s.).**

⁵⁵⁹ **VG-101:T1438(o.s.).**

⁵⁶⁰ **VG-101:T1440(o.s.).**

⁵⁶¹ **VG-101:T1440-41(o.s.).**

⁵⁶² **VG-101:T1446,62(o.s.).**

⁵⁶³ **VG-013:T1031(o.s.).** Although the Prosecution does not rely on VG-013’s in-court identification of **Milan LUKIĆ** her recognition of him during the crime as the same person who was there earlier in the day is significant evidence which the Prosecution does rely on.

⁵⁶⁴ **VG-013:T1031-32(o.s.).**

⁵⁶⁵ **VG-013:T1031-33(o.s.).**

⁵⁶⁶ **VG-013:T1035(o.s.).**

not weaken her evidence that she immediately recognised him when he returned with the two young women.⁵⁶⁷ During daylight hours VG-013 had multiple opportunities to see and remember **Milan LUKIĆ**, a person she had some familiarity with prior to the day of the fire.

213. VG-013 again recognised **Milan LUKIĆ** when he returned with **Sredoje LUKIĆ** and forced them out of the Memić-house.⁵⁶⁸ She passed him in the doorway as they were leaving,

Q. Can I ask you if you're able to approximate the distance that you were from Milan LUKIĆ as you passed through the doorway he was standing by.

A. The door was opened and the distance that we were passing was less than 30 centimetres. It was really close.⁵⁶⁹

As she left she could hear a neighbour say that **Milan LUKIĆ** had taken her husband and son.⁵⁷⁰ VG-013 did not see **Milan LUKIĆ** while walking to the Omeragić house but she did see him when he prepared an explosive device at the door of the room.⁵⁷¹

Milan LUKIĆ was in the doorway while he was setting up that device to explode when he noticed that VG-018 and VG-084 had jumped out of the window. They grabbed a rifle and started shooting at both windows.⁵⁷²

214. Once the fire began VG-013 saw **Milan LUKIĆ** for the last time. She followed VG-018 out of the window, landing directly in front of **LUKIĆ** – other members in the *Lukić-Group* were shining torches so that he could shoot those desperately trying to escape.⁵⁷³ VG-013 was no more than 2–3 metres from **Milan LUKIĆ**.⁵⁷⁴ VG-013 watched for approximately half an hour from a sewage canal 30 metres from the house.⁵⁷⁵

215. VG-038 had never met **Milan LUKIĆ** before – he relied on others to tell him who he was.⁵⁷⁶ During the robbery VG-038 saw **LUKIĆ** just outside the window.⁵⁷⁷

⁵⁶⁷ VG-013:T1036(o.s.).

⁵⁶⁸ VG-013:T1037-38(o.s.).

⁵⁶⁹ VG-013:T1039(o.s.).

⁵⁷⁰ VG-013:T1038,T1055-56(o.s.).

⁵⁷¹ VG-013:T1046-47(p.s.).

⁵⁷² VG-013:T1049(o.s.).

⁵⁷³ VG-013:T1047(o.s.).

⁵⁷⁴ VG-013:T1051(o.s.).

⁵⁷⁵ VG-013:T1053(o.s.).

⁵⁷⁶ VG-038:T972(o.s.).

⁵⁷⁷ VG-038:T978(o.s.).

He heard him instruct those outside about the need to watch that no one threw anything out the window.⁵⁷⁸

Observations of Sredoje LUKIĆ during the Pionirska-Fire

216. VG-013 saw **Sredoje LUKIĆ** around the outside of the Memić-house during the robbery.⁵⁷⁹ VG-013 also saw **Sredoje LUKIĆ** when the *Lukić-Group* returned that night.⁵⁸⁰ VG-013 candidly told the Chamber that once they were moved to the Omeragić house she “lost track of him”.⁵⁸¹ She recalled though that Edhem KURSPAHIĆ called out that **Sredoje LUKIĆ** was beside them.⁵⁸² Over the entire incident VG-013 had several opportunities to see and recognise the person she grew up with and knew well.

217. Approximately 7-10 days after escaping to Mededa, VG-013 identified the perpetrators to Huso KURSPAHIĆ.⁵⁸³ When he recalled this for the Chamber, Judge Robinson queried his reaction to hearing an old friend had killed his mother and sisters – he replied that it was initially one of disbelief.⁵⁸⁴ At this very first opportunity to report what happened, VG-013 identified **Milan** and **Sredoje LUKIĆ** as two of the perpetrators. Huso KURSPAHIĆ recorded this information.⁵⁸⁵

218. VG-038 recalls seeing **Sredoje LUKIĆ** inside the house helping ŠUŠNJAR rob the group.⁵⁸⁶ While the strip-searches were being conducted, he saw **Sredoje LUKIĆ** standing in the adjacent room.⁵⁸⁷ VG-038 had a clear, unobstructed view of

⁵⁷⁸ **VG-038:Exh.P044**,VT1374(o.s.).

⁵⁷⁹ **VG-013:T1031,T1035**(o.s.).

⁵⁸⁰ **VG-013:T1037**(o.s.).

⁵⁸¹ **VG-013:T1052**(o.s.).

⁵⁸² **VG-013:T1037-39,T1042,T1058,1099**(o.s.).

⁵⁸³ **VG-061:T923&T932-33**(o.s.);**Exh.P037**,VT803-04(o.s.).*Note*, VG-013 was also telling Huso KURSPAHIĆ about how his mother and two sisters perished in the fire – this would obviously have been an unforgettable moment for him. Shortly after the fire both HasibKURSPAHIĆ and VG-013 told HusoKURSPAHIĆ that **Sredoje** and **MilanLUKIĆ** were among the perpetrators. His father alone recognised Zoran JOKSIMOVIĆ.

⁵⁸⁴ *See*, following exchange:

Robinson: And what was your first reaction when you heard about **Sredoje’s** involvement in those crimes?

A.It was hard to believe, but I did believe, and it actually happened.

Robinson: But why did you believe it, considering that you had been on friendly terms with him.

A.I believed the witness who told me about that, because she had no reason to tell me something that was not true.

HusoKURSPAHIĆ:T924(o.s.).

⁵⁸⁵ KURSPAHIĆ destroyed all of the reports he took from witnesses related to this after the fall of Mededa on 31 May 1993. He set them on fire to prevent them from getting into the hands of Serbs.**KURSPAHIĆ:T901,T926-27&T933**(o.s.).

⁵⁸⁶ **VG-038:T946**(p.s.);**Exh.P044**,VT1373(o.s.).

⁵⁸⁷ **VG-038:Exh.P044**,VT1373-74(o.s.).

him for a prolonged period. VG-038 did not recall where **Sredoje LUKIĆ** was during the move from the Memić-house to the Omeragić-house.⁵⁸⁸

219. Hasib KURSPAHIĆ told his son that **Sredoje LUKIĆ** was one of the perpetrators of the *Pionirska-Fire*.⁵⁸⁹ Hasib spoke to his son about what happened on five or six occasions.⁵⁹⁰ He was able to readily recognise **Sredoje LUKIĆ**, the long-standing colleague of his son.⁵⁹¹ He left his son a solemn task.

“I leave it up to you to tell about what happened on that day in Pionirska Street in Višegrad since I am sick and old and I probably won't live long enough to see the freedom.” He left it to me, and I gave him my word that I would do it.⁵⁹²

220. KURSPAHIĆ listened to his father's account not only as a son trying to fulfil his father's dying wish, or as one seeking justice for the murder of family members, but also as a police officer with twenty years of experience.⁵⁹³

221. VG-018 and VG-084's evidence confuses **Sredoje** and **Milan LUKIĆ**. However, this confusion does not undermine the significance of their recognition of both men's presence that night.

222. VG-018 was not certain about which of the two men named **LUKIĆ** was **Milan**, and which was **Sredoje**. Her failing eyesight prevented her from distinguishing them during her in-court corporeal identification.⁵⁹⁴

223. VG-018 described the level of certainty she had with respect to the men that pushed her into the Omeragić house:

I didn't look them in the face to see which one was saying those words. One of them was following me, and most probably it was the one who came to the house and that must have been **Milan**. But I didn't look him in the face. When they were talking, I didn't dare to look up. I just proceeded on my way.⁵⁹⁵

⁵⁸⁸ VG-038:T985(o.s.).

⁵⁸⁹ HusoKURSPAHIĆ:T879(o.s.);Exh.P037,VT790(o.s.).Exh.P036,p.3(u.s.).

⁵⁹⁰ HusoKURSPAHIĆ:T899-900(o.s.).

⁵⁹¹ HusoKURSPAHIĆ:T914-915(o.s.).

⁵⁹² HusoKURSPAHIĆ:T879(o.s.).

⁵⁹³ HusoKURSPAHIĆ testified in the *Vasiljević* case:

Q.When you spoke with your father regarding this incident would it be fair to say that you not only spoke with him as his son but also as a police officer investigating a crime?

A.Yes, I was interested in every detail specifically.

HusoKURSPAHIĆ:Exh.P037,VT790(o.s.).

⁵⁹⁴ VG-018:T1323,T1361(o.s.).

⁵⁹⁵ VG-018:T1318(p.s.).

She originally assumed that the **LUKIĆs** were brothers because they shared the same surname and came together.⁵⁹⁶

224. Although VG-018 has difficulty distinguishing who perpetrated which act, she connected both men to the crimes. Her evidence, when evaluated in the context of other witnesses, corroborates that both Accused were there that day.⁵⁹⁷

225. She was in another room when they first introduced themselves and could not see them until they came into the room where she was.⁵⁹⁸ She is clear in her recollection that both were wearing uniforms.⁵⁹⁹ VG-018 spoke with Hasib KURSPAHIĆ and he told her **Sredoje LUKIĆ**, a colleague of his son, was there.

226. VG-018 stated that certain acts were committed by one or both of the **LUKIĆs**. She differentiated acts of other members of the *Lukić-Group* from those of **Sredoje** and **Milan LUKIĆ**. For example, VG-018 is certain that the person who conducted the strip search of her was neither of the Accused.⁶⁰⁰ VG-018 is certain that **Milan LUKIĆ** was present and “was in the forefront,” but lacks specificity as to his specific acts.⁶⁰¹

227. Like VG-018, VG-084 testified that **Sredoje** and **Milan LUKIĆ** and one other man came to the Memić-house.⁶⁰² “There was one elderly man and all my neighbours and friends who were in the house knew him, and 20 to 25 per cent of them knew **Sredoje LUKIĆ** who was allegedly a policeman.”⁶⁰³ VG-084’s evidence is unclear as to whether he heard **Sredoje LUKIĆ** introduce himself to the group, or whether he only heard from others that he had done so.

Other evidence establishing the identity of the perpetrators

228. In addition to the *recognition* and *identification* evidence of eyewitnesses other evidence compels the conclusion that the **LUKIĆs** were responsible for the *Pionirska-Fire*. The recognitions and identifications of **Sredoje** and **Milan LUKIĆ**

⁵⁹⁶ VG-018:T1344(o.s.).

⁵⁹⁷ VG-018:T1310(o.s.) For corroboration about car see, VG-108:T1309 and VG-101:T1443(o.s.). Other witnesses corroborated what happened to Jasmina VILA; see, VG-018:T1308-09; VG-078:T1383(o.s.); VG-101:T1438(o.s.). Men burying the bodies: VG-018:T1310& Exh.P082, VT1581(o.s.); VG-078:Exh.P088, VT1292-93(o.s.); VG-038:Exh.P045, VT1415-16(o.s.). Description of what happened in the room: VG-018:T318-19; VG-038:Exh.P044, VT1383-84(o.s.).

⁵⁹⁸ VG-018:T1304-05; T1367(o.s.).

⁵⁹⁹ VG-018:T1350(o.s.).

⁶⁰⁰ VG-018:T1348(o.s.).

⁶⁰¹ VG-018:T1306(o.s.).

⁶⁰² VG-084:T1244(o.s.).

⁶⁰³ VG-084:T1244. See also T1275(o.s.).

are mutually reinforcing and corroborating. Both **Sredoje** and **Milan LUKIĆ** stated that they were members of the same unit – the presence of one makes it more likely that other perpetrators were also members of the same unit.⁶⁰⁴

229. A prominent feature of *modus operandi* during the commission of the *Drina-Killings*, the *Pionirska-Fire* and the *Bikavac-Fire* is the use of a ruse to overcome the resistance of victims and facilitate commission of the crimes. In each of these cases the victims were told that they would be taken to safety, either in a convoy or in a prisoner exchange. In the case of the *Pionirska-Fire* VASILJEVIĆ went as far as to tell the *Kurspahić-Family* that he represented the Red Cross.

230. After VASILJEVIĆ left the Memić-house no other people came to the house prior to the arrival of the *Lukić-Group*. Later when the *Lukić-Group* returned they pretended nearby gunfire threatened the group's safety.

You have to leave. You have to go away from here. You're not safe here. The Green Berets are shooting up there from Babin Potok. You're on the road here, on the line of fire. So you have to leave. We can't look after you here.⁶⁰⁵

231. The manner in which they stormed into the house suggests they knew the *Kurspahić-Family* was in the house – they did not simply happen upon them. As VG-018 points out:

Well, who else but **Sredoje** and **Milan**. One of the two approached the door only, but they were the only ones who knew that we were there. They were the ones who left us there. By their voice, by the sound of the car, and by the story that he told us politely, we knew who he was.⁶⁰⁶

232. Before they left “[a]ll of them said that they would be back.”⁶⁰⁷ Their earlier expression of future intent is also evidence of identification in that it demonstrates that in the afternoon they had already planned to return – the fact that they were the only people to return corroborates their presence after dark.

233. During his interview with Serb officials on 2 November 1992, **Milan LUKIĆ** made a reference to this very ruse used against the *Kurspahić-Family* when describing how he would have carried out a particular crime in Rudo.

⁶⁰⁴ **SL-Record-of-Interview**,p.2,4.**Duga-Article**,p7. Further **Sredoje****LUKIĆ**'s admission to being involved in an operation to cleanse Višegrad and that **Milan****LUKIĆ** never acted alone also makes their presence more likely.

⁶⁰⁵ **VG-018:Exh.P082**,VT1591(o.s.).

⁶⁰⁶ **VG-018:T1313**(o.s.).

If I had wanted to carry out this, I would have brought a bus with Red Cross markings and, with white coats, got the people on the bus by saying that they were in danger, and then I would have taken them wherever I wanted.⁶⁰⁸

234. **LUKIĆ's** spontaneous suggestion about how a crime should have been carried out is spoken with a confidence that comes from having successfully employed this technique in the past – compelling evidence of identification in this case.

235. Other common features of the *modus operandi* include the robbery of the murder victims just before the murder. This occurred in the *Drina-Killings*, the *Varda-Killings*, the *Pionirska-Fire* and later the *Bikavac-Fire*.⁶⁰⁹ In both the *Pionirska* and *Bikavac-Fires* potential victims were also told that members of the *Lukić-Group* would return to them later in the night after preparations for the crime were completed.

236. **Milan LUKIĆ's** alibi defence has been rebutted, in part, with evidence of sexual crimes he committed at times he asserts he was not present. This corpus of evidence establishes that he is nothing other than a serial rapist. The chronology of his conduct in June of 1992 is a rampage of sexual and ethnic violence – an insatiable intermingling of crimes. **Milan LUKIĆ** raped several of the victims before they were murdered. This additional evidence confirms **Milan LUKIĆ** was one of the perpetrators.

237. Identification of **Sredoje** and **Milan LUKIĆ** as perpetrators in these crimes is also found in their relationship to the police structures in Višegrad and the role these structures played in the crimes. **Sredoje LUKIĆ** was a police officer and **Milan LUKIĆ** allegedly worked as a police reservist.⁶¹⁰ Evidence suggesting that the police as an organisation was involved in this crime serves to narrow the possible perpetrators of this crime and corroborates the testimony of Prosecution witnesses.⁶¹¹

238. VG-018 recalled that prior to leaving Koritnik they were told the police would be escorting them.⁶¹² When the *Kurspahić-Family* initially arrived in the town some

⁶⁰⁷ VG-101:T1441(o.s.).

⁶⁰⁸ Exh.P147,p.3(u.s.).

⁶⁰⁹ In the case of Bikavac in addition to **Milan LUKIĆ** stealing Zehra TURJAČANIN's necklace victims were robbed before the house was set ablaze. TURJAČANIN:Exh.2D036,p.1.

⁶¹⁰ **Sredoje LUKIĆ**- VG-084:T1244,1275,1288(o.s.).VG-038:T948-49(o.s.).VG-115:T717-18(c.s.).Exh.P318(u.s.).**Milan LUKIĆ**- Exhs.P148,256,314&317.Exh.1D025.

⁶¹¹ None of the Prosecution witnesses had information that **Milan LUKIĆ** was a member of the Višegrad police. His assertion that he was is important corroboration of their evidence.

⁶¹² VG-018:T1355(o.s.).

went to the police station.⁶¹³ VASILJEVIĆ's statement that their safety was guaranteed and issuing them a certificate echoed earlier statements about members of the Višegrad police being aware of the movement of the *Kurspahić-Family* and being responsible for their security.

Summary of identification evidence

239. The following survivors are *recognition witnesses* with respect to **Milan LUKIĆ**: VG-078, VG-101 and VG-115. The following victims are also *recognition witnesses* with respect to **Milan LUKIĆ**: Sajma KURSPAHIĆ, Kada ŠEHIĆ, Jasmina VILA and Ismeta KURSPAHIĆ. The following survivors are *recognition witnesses* with respect to **Sredoje LUKIĆ**: VG-013, VG-038, VG-115, Huso KURSPAHIĆ. Hasib KURSPAHIĆ, who died after surviving the fire, is also a recognition witness with respect to **Sredoje LUKIĆ**.

The Prosecution has Established the Accused's Guilt for the *Pionirska-Fire*.

240. All of the survivors of the fire have testified in person before the Chamber and evidence from one survivor who died subsequently was adduced through his son. Their account was largely corroborated by Defence forensic examinations conducted recently.⁶¹⁴ Evidence of one or more explosions in the room of the Omeragić house, the existence of a fire and the possible subsequent efforts to conceal the crime are all corroborated by Defence expert examinations.

241. Consideration of the events leading up to the *Pionirska-Fire* is essential to an understanding of the overall event and an assessment of both the *actus reus* and *mens rea* of the crimes. Firstly, evidence of motive can provide a basis for findings in relation to both *actus reus* and *mens rea*(as well as identification). The Defence of **Milan LUKIĆ** has led considerable evidence regarding Vlatko TRIFKOVIĆ, a colleague of **Sredoje LUKIĆ** who burned to death in a fire just before the *Pionirska-Fire*. At the outbreak of hostilities **Sredoje LUKIĆ** was taken captive by Muslim forces and held for an extended period of time during which he was abused by having lit cigarettes pushed into his back. The Chamber watched a video taken shortly after his release showing his wounds.⁶¹⁵ Both men were members of a group Sredoje had given the name of the "Avengers".

⁶¹³ **VG-018:Exh.P082**,VT1607(o.s.);**Exh.P083**p.6(u.s.).

See also, **VG-078:T1405-06**(o.s.).

⁶¹⁴ There is a full discussion of the Defence experts in section 6.

⁶¹⁵ See, **Exh.P203**.

242. Upon their arrival in Greben some members of the *Kurspahić-Family* realised that there were no plans to evacuate them and that more sinister plans were in the making. VASILJEVIĆ's visit to the Memić-house made clear that some evil was intended for the group and it was being planned by people with a relationship to VASILJEVIĆ. His insistence that the people not disperse but remain together as a group – 70 people in a one-family house – providing them with a single certificate to “ensure their safety” leads to the inescapable conclusion that plans were already underway of which VASILJEVIĆ was aware and was a part.

243. Shortly after VASILJEVIĆ left, **Milan LUKIĆ**, **Sredoje LUKIĆ** and others arrived to rob the group. The *Lukić-Group*, like VASILJEVIĆ, gave them false assurances that they would be placed on a bus to safety the next morning.

244. While the group believed some harm toward them was intended, the gravity of their situation was made clear when four men returned from burying corpses nearby. It is likely that the corpses were also KURSPAHIĆs, their elderly relatives Šeco and Rasema KURSPAHIĆ who were killed by **Milan LUKIĆ** and VASILJEVIĆ days earlier in their home on Pionirska Street.⁶¹⁶ The men who buried the corpses drew the unavoidable inference that if the defenceless KURSPAHIĆ couple had been left dead on their threshold, the *Lukić-Group* was planning to kill the remainder of the *Kurspahić-Family* now all gathered together. One remarked, “Nothing will save us now. We'll never get back home. We'll never get back anywhere”.⁶¹⁷

245. The systematic robbery of the *Kurspahić-Family's* property is also a clear indication of what was planned. In the *Drina-Killings* and the *Varda-Killings* the systematic robbery of victims was the penultimate step before perpetrating murder. The few hours that intervened between the robbery and the fire resulted from the *Lukić-Group* preparing to immolate the *Kurspahić-Family*.

246. The preparatory acts necessary to achieve the type of crime contemplated by **Sredoje** and **Milan LUKIĆ** included getting the sticky flammable substance from one of the factories in town, perhaps the Terpentin factory, bringing it to the Omeragić house where it was spread over the floor, preparing the explosive devices, securing the hand-held torches to light the path.

⁶¹⁶ **VG-101**:T1464(o.s.);**Exh.1D037**,VT1163(o.s.).**VG-115**:T673-74,676-77(c.s.).

⁶¹⁷ **VG-013**:T1030-31(o.s.).

247. The Prosecution has set out in Section 5 how the *actus reus* of extermination is satisfied by an act or omission which contributes directly or indirectly to the killing of a large number of individuals. His conduct during the afternoon, taken in isolation, establishes the *actus reus* of extermination. **Sredoje LUKIĆ** was clearly identified escorting the group from the centre of town to the Memić-house, preventing people from escaping the Memić-house and returning in the evening to move the *Kurspahić-Family* into the Omeragić-house.

248. His act of forcing the group into the Omeragić house is simply a culmination of his contribution to the *actus reus* earlier in the day. These actions, regardless of whether he was actually seen throwing a grenade into the Omeragić-house, satisfy the *actus reus* of extermination. All of the above compels only one inference – that these acts were intended to result in the death of the *Kurspahić-Family*.

249. During the transfer of victims between houses, he knew what was intended for them. As a police officer he appreciated the imminent harm about to happen. He realised that his presence as a police officer, and someone that the *Kurspahić-Family* knew well, offered false assurance that they would be safe.

250. **Milan LUKIĆ**, after escorting the *Kurspahić-Family* to Mahala, forcing them into the Memić-house, robbing them, raping several women, and finally forcing them into the Omeragić house, personally ignited the fire. **Milan LUKIĆ** also shot people as they desperately attempted escape. His actions satisfy the *actus reus* requirement for extermination.

251. **Sredoje** and **Milan LUKIĆ** perpetrated acts deliberately and purposefully; they intended to kill the *Kurspahić-Family* because they were Muslims. **Milan LUKIĆ's** intent is most clearly evident when he told CW-001 several weeks earlier that there would not be an ear of the Kurspahić family left standing.⁶¹⁸

252. After the fire, the injured Hasib KURSPAHIĆ hid in the outskirts of the town for 2-3 days. When members of the *Lukić-Group* heard he had survived, they came looking for him, clearly intending to leave no survivors, but he managed to flee.⁶¹⁹ Again, this is evidence of their intent.

253. **Sredoje** and **Milan LUKIĆ** caused serious mental and in some cases physical harm to the survivors of the Pionirska fire: VG-013, VG-038, VG-018, VG-084,

⁶¹⁸ **CW-001**:T5547-48(p.s.).

Hasib and Edhem KURSPAHIĆ, VG-078 and VG-101. They suffered severe physical pain caused by shrapnel, gun-shots and subsequent infections. VG-013 and VG-038, mother and son, lived four years believing the other had died. All of the survivors listened to the suffering of their beloved relatives as they succumbed to the flames, powerless to help them. The psychological trauma of having survived an ordeal in which many family members died tests our ability to conceptualise the magnitude of such suffering. **Sredoje** and **Milan LUKIĆ**'s decision to kill the *Kurspahić-Family* by burning them alive is clear evidence of their intent to cause this kind of suffering.

Section 3(d) The Killing of Approximately 70 People in the *Bikavac-Fire*.

254. On or about 27 June 1992 **Sredoje** and **Milan LUKIĆ** killed approximately 70 civilians and severely injured one person by barricading these people into a house and setting it on fire.

Summary of the Prosecution case

255. On the day of the fire, Zehra TURJAČANIN, a young Muslim woman, spent an uneventful morning in her home with some family and neighbours.⁶²⁰ The family had two adjacent homes on the side of a precipitous hill overlooking the town. Next to the family's original home was a newer three-storey structure with rear balconies facing town and the Drina below. Since the outbreak of conflict, the family had been living in fear, and TURJAČANIN herself witnessed some crimes perpetrated in the streets below earlier in the month. They had hidden her younger brother and cousin behind a false concrete block wall in the lower floor of the new house in response to the frequent disappearance of males.⁶²¹ Earlier in the day, a Serb friend of TURJAČANIN, Mile LUČIĆ, came to see her. He was upset and concerned that she was still in the town, exclaiming "What are you waiting for? Why haven't you left yet, because surely bad things are going to happen."⁶²² His ominous warning worried her.

256. At some point, TURJAČANIN crossed the lane to see her neighbour, Sena SUBAŠIĆ.⁶²³ TURJAČANIN recalls that it was sometime in the evening when she returned home.⁶²⁴ **Sredoje** and **Milan LUKIĆ** arrived in Bikavac to prepare the crime

⁶¹⁹ **Huso KURSPAHIĆ:Exh.P037,VT794-95(o.s.).**

⁶²⁰ **TURJAČANIN:T2301-02(o.s.).Exh.P137.**

⁶²¹ **TURJAČANIN:T2294(o.s.);Exh.1D084,para.6;Exh.1D086,p.2.**

⁶²² **TURJAČANIN:T2307(o.s.).**

⁶²³ **TURJAČANIN:T2306(o.s.).**

⁶²⁴ **TURJAČANIN:T2307(o.s.).**

sometime in the late afternoon.⁶²⁵ One of the first places they went was to the home of VG-035. Her house was on one of the narrow circuitous lanes through Bikavac. Her

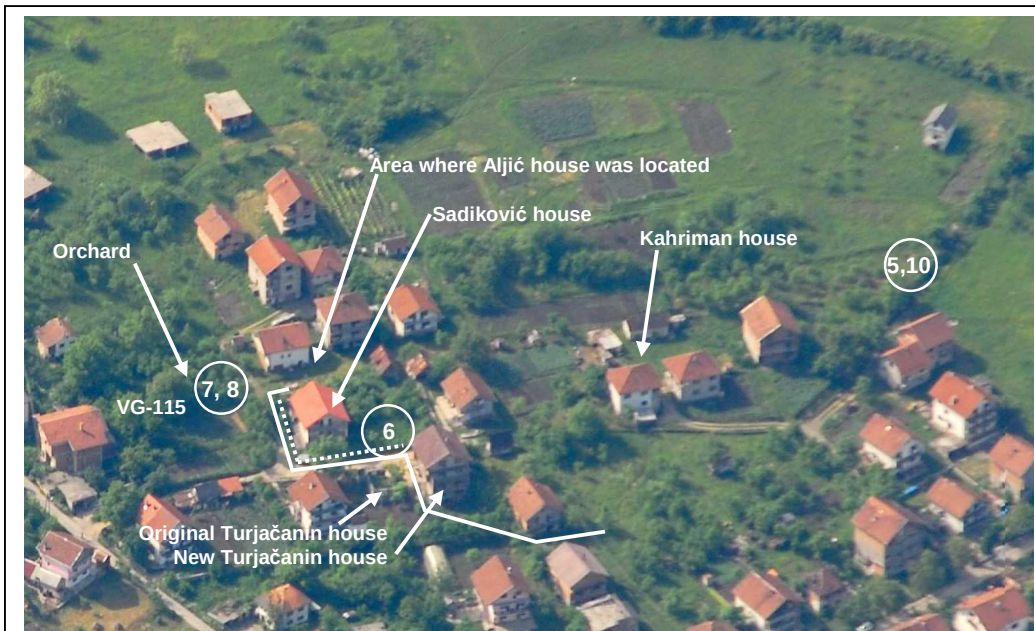


Figure 3. This figure is a compilation of the several exhibits marked by witnesses and sets out the chronology of events of the *Bikavac-Fire*.

1. The **LUKIĆs** arrive at VG-035's house at 5am.
2. **Milan LUKIĆ** returns to VG-035's house several hours later and abducts her. He returns her approximately three hours later.
3. **Sredoje** and **Milan LUKIĆ** return to VG-035's home in the late afternoon and systematically rob its occupants.
4. The **LUKIĆs** leave VG-035 and drive a short distance to the end of the *cul-de-sac*.
5. The **LUKIĆs** go to the house where VG-094 and VG-119 have taken refuge. They are unsure of where precisely the house was.
6. **Sredoje** and **Milan LUKIĆ** go to the lane where the Turjačanin homes are located. **TURJAČANIN** sees **Milan LUKIĆ** in front of the house and another **LUKIĆ** she knows to be a police officer on the steps of the original house.
7. **Sredoje** and **Milan LUKIĆ** force the group gathered on the street up the lane and into the Aljić house(dashed white line). VG-115 watches from the orchard across the lane.
8. **Sredoje** and **Milan LUKIĆ** barricade the entrance of the Aljić house before setting it on fire. **TURJAČANIN** escapes and flees to Megdan(solid white line).
9. VG-035 and CW-002 watch the Aljić house burn from the upper floor of their home.
10. Approximately one hour after VG-119 becomes aware of the fire **Sredoje** and **Milan LUKIĆ** return. They are sweaty and have ash on them.
11. In the early morning hours of the next day Zehra **TURJAČANIN** returns to the area to warn residents to flee. She warns among others, VG-035, CW-002, VG-119 and VG-094.

See Exhibits P032, P101, P133, P134 and P135 and testimony of witnesses summarised herein. This confidential version indicates the homes of protected witnesses.

⁶²⁵ **VG-035:**T1674-1675(o.s.).

particular lane was a cul-de-sac ending just a few metres past her home. The **LUKIĆs** had been to the house in the early morning forcing their way in and waking VG-035 and others. **Milan LUKIĆ** returned a second time that morning to take VG-035 away to perpetrate other crimes not charged in this Indictment.⁶²⁶

257. When they returned this third time they were accompanied by a man whom VG-035 did not recognise. Upon entering the house **Milan LUKIĆ** referred to his earlier treatment of VG-035 when he laughingly said, “What are you crying for?” The **LUKIĆs** then proceeded to take money and jewellery belonging to the household. **Sredoje LUKIĆ**, whom VG-035 knew well, left after robbing them of their possessions. **Milan LUKIĆ** stayed longer; as he left, he placed the unknown man at the front door of the house for reasons unknown to VG-035.⁶²⁷

258. VG-035 watched **Milan LUKIĆ** drive away in her friend Behija ZUKIĆ’s red Passat.⁶²⁸ Loud music blared from its sound system and was readily heard inside the house.⁶²⁹ Looking out of her front door she watched **LUKIĆ** drive to the left, toward the end of the cul-de-sac; only a few houses remained before the road ended.⁶³⁰ Although VG-035 could no longer see the car she could hear its continuous music signalling that it was now stationary and still on her lane.⁶³¹ It could also be heard by VG-119, who had taken refuge in a house nearby, and TURJAČANIN, who lived on an adjacent lane connected to the cul-de-sac by short dirt footpath through a neighbour’s garden.⁶³²

259. Sometime after leaving VG-035’s house **Sredoje** and **Milan LUKIĆ** knocked at the door of the house where VG-119 and VG-094 had taken refuge.⁶³³ Prior to their arrival VG-119 could hear their loud music.⁶³⁴ When the women opened the door

⁶²⁶ Evidence of these crimes was introduced to rebut the alibi defence proffered by **Milan LUKIĆ**. This evidence is discussed below.

⁶²⁷ **VG-035:T1675-76(o.s.)** VG-035 knew **Sredoje LUKIĆ** by name and knew he was a policeman. Her husband knew him as a regular patron at the café where he worked.

⁶²⁸ **VG-035:T1677(o.s.)**.

⁶²⁹ **VG-035:T1677(o.s.)**.

⁶³⁰ **VG-035:T1681(o.s.);Exh.P102**.

⁶³¹ **VG-035:T1681(o.s.)**.

⁶³² VG-119 testified that she took refuge in a house at the top of Bikavac, which she later found out was Veljan’s house **VG-119:T2402(o.s.)**;VG-119 also testified that **Milan LUKIĆ** and others came to the house and she could hear music coming from the cars outside **VG-119:T2403(o.s.)**. **TURJAČANIN:T2308(o.s.)**.**Exh.P134** shows TURJAČANIN house. **Exh.1D056** shows the house where VG-119 believes she took refuge.

⁶³³ **VG-119:T2403(o.s.)**.VG-119 recalled the time as being about 8pm.

⁶³⁴ **VG-119:T2403-04(o.s.)**.

members of the *Lukić-Group* forced their way inside.⁶³⁵ VG-119 and VG-094 immediately recognised **Milan LUKIĆ** – it would be several weeks before VG-119 would realise that the name of one of the others was **Sredoje LUKIĆ**.⁶³⁶

260. The men were searching for women from the Župa area(the north-eastern quadrant of the municipality which included Koritnik and Rujište). They demanded to know if any women in the house came from Župa.⁶³⁷ The residents told them there were none. Before leaving, they said they would return.⁶³⁸ After they left, VG-119 could still hear loud music from the car.⁶³⁹ The frightened women talked about the soldiers who had been there. VG-119 and her mother-in-law talked specifically about **Milan LUKIĆ**.⁶⁴⁰

261. Some time after arriving home from the SUBAŠIĆ house TURJAČANIN went out on the rear balcony of her home to smoke a cigarette.⁶⁴¹ From there she heard the loud nationalist music from the lane below.⁶⁴² Not long after, someone began knocking on the door of the house.⁶⁴³

262. When one of the women opened the door all were ordered out of the house and into the street.⁶⁴⁴ TURJAČANIN and everyone in the house emptied into the lane in front of the house with the exception of her brother and cousin, who remained hidden.⁶⁴⁵

263. As she walked down the stairs from the new house TURJAČANIN saw a schoolmate of her brother Dževad, **Milan LUKIĆ**, in front of the house.⁶⁴⁶ As she looked left she saw another person she recognised coming down the steps of her old

⁶³⁵ VG-119:T2403(o.s.).

⁶³⁶ VG-119:T2403(o.s.).VG-119 did not know **Sredoje LUKIĆ** prior to this night. Several weeks after the event she heard ZehraTURJAČANIN give a physical description of the perpetrators to a journalist in Mededa. WhenTURJAČANIN gave a physical description of **Sredoje LUKIĆ** VG-119 realised that this was the name of one of the men who entered the house on the night of the fire. VG-119:T2417, 2463(o.s.).

⁶³⁷ VG-119:T2403(o.s.).That **Milan LUKIĆ** and his group were looking for people from Župa – and that VG-119 had been joined by a woman from Župa -- is reinforced by VG-035's statement that there were Muslim refugees from Župa staying in the area.VG-035:T1678(o.s.).

⁶³⁸ VG-119:T2403-04(o.s.).

⁶³⁹ VG-119:T2404(o.s.).

⁶⁴⁰ VG-119:T2404-05(o.s.).

⁶⁴¹ TURJAČANIN:T2307(o.s.).

⁶⁴² TURJAČANIN:T2308(o.s.).

⁶⁴³ TURJAČANIN:T2308(o.s.).

⁶⁴⁴ TURJAČANIN:T2308(o.s.).

⁶⁴⁵ TURJAČANIN:T2308(o.s.).

⁶⁴⁶ TURJAČANIN:T2309(o.s.).She recognised **Milan LUKIĆ** in front of her house. TURJAČANIN:T2291-92(o.s.).

house.⁶⁴⁷ Although she knew his first name at the time, she was unable to recall it during her testimony. She did recount what she could about this man. TURJAČANIN described him as policeman in Višegrad who was related to **Milan LUKIĆ** and shared the same family name.⁶⁴⁸ All of the men were in uniforms and were armed.⁶⁴⁹

264. Once out in the street TURJAČANIN could see that her neighbours and others who had taken refuge along the lane had all been forced into the street as well. The men coaxed the women down the lane telling them they had organised a convoy to take them to Bajina Bašta – TURJAČANIN could see no buses or other vehicles capable of transporting the large group now gathered.⁶⁵⁰

265. The **LUKIĆs** and others from the *Lukić-Group* marched the Bosniaks up a small path that was perpendicular to the lane and intersected it just beyond the TURJAČANIN property.⁶⁵¹ The men repeated their statements that the women were being taken to safety – a ruse designed to overcome resistance and discourage any attempt to flee. It is probable that the sight of **Sredoje LUKIĆ**, a well known policeman in the town, gave some in the group false assurance that they were in fact being taken to safety. The **LUKIĆs** and the rest of their group brought these people to the house of a neighbour, Meho Aljić.⁶⁵²

266. The house was approximately 100 metres from the TURJAČANIN home.⁶⁵³ Directly across the lane from the TURJAČANIN home was a house that belonged to Nedžib SADIKOVIĆ – the Aljić house was directly behind this home.⁶⁵⁴ A small path in front of the Aljić house ran from TURJAČANIN's street to houses further up the hill of the Bikavac settlement. Across from the Aljić house was a grass knoll planted with fruit trees. At this time of year the trees would have been full with leaves and young fruit. The Bikavac residents that had been forced up the path were directed into the Aljić house. The TURJAČANIN family was the last of the many family groups

⁶⁴⁷ TURJAČANIN:T2309-10(o.s.).

⁶⁴⁸ TURJAČANIN:T2309-10(o.s.).TURJAČANIN recalled that this other **LUKIĆ** was either a cousin or uncle of **Milan LUKIĆ**.

⁶⁴⁹ TURJAČANIN:T2310-11(o.s.).

⁶⁵⁰ TURJAČANIN:T2309(o.s.).

⁶⁵¹ Exh.P054(360⁰PhotoProgram).

⁶⁵² TURJAČANIN:T2311(o.s.).

⁶⁵³ TURJAČANIN:T2311(o.s.).

⁶⁵⁴ TURJAČANIN: 2330-2335(o.s.);Exh.P136. TURJAČANIN believes this was about 8pm.
TURJAČANIN:T2315(o.s.).

forced into the house through the veranda door.⁶⁵⁵ Please refer to paragraphs 13-15 in Annex E for other evidence related to this location.

267. TURJAČANIN was the last person pushed into the crowded house. As she passed **Milan LUKIĆ** near the door, he snatched a gold chain she had around her neck.⁶⁵⁶ Once inside, she looked around the Aljić home and could see many people crowded into the main room of the house. It was a large open area that encompassed a kitchen and sitting area – it was now crowded with people.⁶⁵⁷ The group comprised mostly young mothers with small children.⁶⁵⁸ The youngest child in the house was less than two years old.⁶⁵⁹ There were also a few elderly women and men.⁶⁶⁰ She could see doorways leading to adjoining rooms, but was unable to see whether these rooms were also filled with people. Among the people gathered there were Mina VILIĆ and her three children, Nihada, Zihneta and Nihad.⁶⁶¹

268. TURJAČANIN stayed close to the door. The door adjoined a large window typical of homes in the region.⁶⁶² Her 10-year-old mentally disabled sister, Aida clung to her side.⁶⁶³ An atmosphere of fear gripped the room now filled with approximately 70 people.⁶⁶⁴ Wardrobes and other furniture were pushed in front of the windows and doors evidencing the earlier preparations for the fire.⁶⁶⁵ TURJAČANIN tried to reassure her mother that Dževad's school friend would not hurt them.⁶⁶⁶

269. The *Lukić-Group*, as they had done before, “demanded money and German marks.”⁶⁶⁷ With the group captive inside **Sredoje** and **Milan LUKIĆ** began their final preparations outside. See paragraph 16 in Annex E.

270. TURJAČANIN remembered how not long after the group was forced into the house rocks were thrown by the men to break the windows.⁶⁶⁸ These were followed

⁶⁵⁵ TURJAČANIN:T2311-2313(o.s.).

⁶⁵⁶ TURJAČANIN:T2312(o.s.).

⁶⁵⁷ TURJAČANIN:T2312(o.s.).

⁶⁵⁸ TURJAČANIN:T2314(o.s.).

⁶⁵⁹ TURJAČANIN:T2314(o.s.).

⁶⁶⁰ TURJAČANIN:T2314(o.s.).

⁶⁶¹ **VG-035:Exh.1D044**, VG-035 remembers Mina VILIĆ with her three children, one of whose name was Mirzeta. Hamdija VILIĆ testified that his wife and children perished in the fire. They were Mina VILIĆ(b.1955), his two daughters Nihada(b.1981), Zihneta(b.1984) and his son Nihad(b.1985).

VILIĆ:T3456.Exh.P195.

⁶⁶² TURJAČANIN:T2313(o.s.).

⁶⁶³ TURJAČANIN:T2303,T2313,T2316(o.s.).

⁶⁶⁴ TURJAČANIN:T2315(o.s.);**Exh.2D036**,p.1(u.s.).

⁶⁶⁵ TURJAČANIN:**Exh.2D036**,p.1.

⁶⁶⁶ TURJAČANIN:**Exh.1D083**,p.3.

⁶⁶⁷ TURJAČANIN:**Exh.2D036**,p.1.

by shooting and grenades, one of which injured TURJAČANIN's left leg.⁶⁶⁹ Shortly thereafter a white powder was thrown in and a voracious fire spread quickly throughout the house.⁶⁷⁰ As TURJAČANIN's clothes caught fire others in the room became engulfed in the flames fuelled by the accelerants hurled through the windows.⁶⁷¹

271. TURJAČANIN recalled for the Chamber: "[t]he people inside were burning alive. They were wailing, screaming. It's just not describable what I heard."⁶⁷² The shrieks and screams were so "terribly loud" that VG-035 could hear them as well as the shooting from her home a few hundred metres away.⁶⁷³ Looking from the bathroom window on the upper floor of her home she could see a huge flame devouring Meho Aljić's house.⁶⁷⁴

272. TURJAČANIN tried unsuccessfully to escape with Aida through the glass door through which she had entered.⁶⁷⁵ It was then that she noticed it had been barricaded with a metal garage door.⁶⁷⁶ By this time the metal door had become 'red-hot' and TURJAČANIN severely burned her hands as she attempted to wrest it away from the entrance. Failing to dislodge the barricade she forced herself through a 65 centimetres space in the garage door itself.⁶⁷⁷ She was unable to save her 10 year old sister.⁶⁷⁸

273. Breaking free from the house TURJAČANIN ran back down the path they had come up, running past the perpetrators now lying in the same grass knoll where VG-115 had been.⁶⁷⁹ They yelled for her to stop but she kept running, tearing off her burning clothes as she fled. She ran down past the back of her house, through her neighbours' yards finally stopping in another settlement called Megdan.⁶⁸⁰ She spent

⁶⁶⁸ TURJAČANIN:T2315(o.s.).Exh.P139,p.14(o.s.).

⁶⁶⁹ TURJAČANIN:T2315(o.s.).See,Exh.1D084.

⁶⁷⁰ TURJAČANIN:T2315(o.s.);Exh.1D183,p.3.

⁶⁷¹ TURJAČANIN:T2315(o.s.);VG-115:T712(p.s.).

⁶⁷² TURJAČANIN:T2315-16(o.s.).Exh.1D183,p.3.

⁶⁷³ VG-035:T1681(o.s.).CW-002:Exh.P336;p.38(u.s.).

⁶⁷⁴ VG-035:T1682(o.s.).CW-002:Exh.P336;p.38(u.s.).

⁶⁷⁵ TURJAČANIN:T2316(o.s.).

⁶⁷⁶ TURJAČANIN:T2316(o.s.);T3347(o.s.).Exh.P139,p.15(o.s.).

⁶⁷⁷ TURJAČANIN:T2317(o.s.).Exh.P138.Exh.1D183,p.3. In one statement TURJAČANIN said she got out underneath the garage door. See:Exh.2D036,p.1.

⁶⁷⁸ TURJAČANIN:Exh.1D083,p.3.

⁶⁷⁹ TURJAČANIN:T2317(o.s.);Exh.P134&Exh.P135.

⁶⁸⁰ TURJAČANIN:T2317(o.s.).Exh.P134&Exh.P135.

part of the night there and was by now feeling the full effect of her serious burns. Her face was rapidly swelling and she was feeling increasingly ill.⁶⁸¹

274. About an hour after the fire started **Sredoje** and **Milan LUKIĆ** and some of the other men returned as they said they would to the home where VG-119 and VG-094 were.⁶⁸² The house was lit and VG-119 and VG-094 could see that the soldiers looked different from before, they were now very dirty and dripping with sweat.⁶⁸³ **Milan LUKIĆ** told VG-119, VG-094, and Zumra RAMOVIĆ that these young women would have to come with him.⁶⁸⁴ VG-119 pretended to faint and he left without her.⁶⁸⁵ VG-094 made other observations that are summarised in paragraph 17 in Annex E.

275. TURJAČANIN lying in Megdan decided that despite her grievous injuries and pain she would go back to Bikavac to warn other Muslims to flee.⁶⁸⁶ With this selfless act of courage, she warned numerous people hiding in several houses. Sometime in the early morning hours of the next day TURJAČANIN returned to Bikavac and called out to her neighbour Ismeta KASAPOVIĆ and told her what happened.⁶⁸⁷ She in turn went to the TURJAČANIN house to release her brother and cousin from their hiding place.⁶⁸⁸ She told her brother Dževad, when she first saw him that a group led by **Milan LUKIĆ** barricaded her and others into a house and set it on fire.⁶⁸⁹ She also went to VG-035's home to warn her.⁶⁹⁰ When VG-035's mother-in-law opened the door TURJAČANIN exclaimed that **Milan LUKIĆ** had set them on fire. She described how she tried to save her little sister but could not and how her mother, her sisters and her sister's children perished in the fire.⁶⁹¹ The women were afraid to turn on the light and were unable to see TURJAČANIN's injuries clearly but VG-035 recognised her good friend's voice.⁶⁹² TURJAČANIN said "Run away. They'll set you on fire too."⁶⁹³ She then left to warn others.⁶⁹⁴

⁶⁸¹ TURJAČANIN:T2329(o.s.).

⁶⁸² VG-119:T2405(o.s.).VG-119 recalls that it was approximately 10pm when the men returned.

⁶⁸³ VG-119:T2405-2407(o.s.).

⁶⁸⁴ VG-119:T2405(o.s.).VG-094:Exh.P335,para.45-46(u.s.).

⁶⁸⁵ VG-119:T2406-07(o.s.).

⁶⁸⁶ TURJAČANIN:T2332(o.s.).

⁶⁸⁷ TURJAČANIN:Exh.1D183,p.3.Exh.P139,p.16(o.s.).

⁶⁸⁸ Exh.1D084,par.8.

⁶⁸⁹ Exh.1D084,par.9.

⁶⁹⁰ VG-035:T1682-83(o.s.).VG-035 estimated that TURJAČANIN came to her home sometime after midnight.

⁶⁹¹ VG-035:T1683,T1706(o.s.).

⁶⁹² VG-035:T1705-06(o.s.).

⁶⁹³ VG-035:T1683-84(o.s.).CW-002:Exh.P336;p.40(u.s.).

276. TURJAČANIN then went to where VG-119 and VG-094 were staying.⁶⁹⁵ VG-119 recalled how sometime after 2am they were awakened by a knock at the door.⁶⁹⁶ Her mother-in-law went to the door, opened it, and let out a loud scream.⁶⁹⁷ The other women, terrified, went to the door where they saw TURJAČANIN.⁶⁹⁸ Although VG-119 did not know TURJAČANIN, two of the women did. VG-119 described what she saw:

[W]e found Zehra there in a horrendous condition. Most of her upper body was burned to cinder, and so was her hair. It was, like, dry as a thistle. And then her arms up to her elbows, she was all burnt up, and she was a sorry sight, awful.⁶⁹⁹

277. The women implored TURJAČANIN to come inside, but she refused.⁷⁰⁰ TURJAČANIN explained that in a house nearby, over 70 people had been burned to death.⁷⁰¹ She told them how she had jumped out in time to save her life⁷⁰² and that **Milan LUKIĆ** was one of the men who had burned these people.⁷⁰³

278. Following TURJAČANIN's visit, the women in the house with VG-119 decided to flee.⁷⁰⁴ As they left, they passed the Aljić house where the victims were burned. VG-119 told the Chamber,

This was something horrendous. It was the ugliest thing I'd ever seen. ... I was filled with fear and hatred at the same time. ... The house was still smoking, and there was this dreadful stench coming out of human flesh burnt alive.⁷⁰⁵

279. VG-035 also heeded TURJAČANIN's warning and attempted to flee with her children and sister-in-law after daybreak.⁷⁰⁶ As they passed the Aljić house they too smelled the stench of burnt hair and flesh.⁷⁰⁷ They were unable to flee the town and returned to Bikavac until VG-035 was ultimately able to flee the area.⁷⁰⁸

⁶⁹⁴ VG-035:T1683-84(o.s.).

⁶⁹⁵ TURJAČANIN:2332-33(o.s.).

⁶⁹⁶ VG-119:T2408(o.s.).

⁶⁹⁷ VG-119:T2408(o.s.).

⁶⁹⁸ VG-119:T2408(o.s.). VG-119 recalled that TURJAČANIN was accompanied by another woman.

⁶⁹⁹ VG-119:T2408(o.s.);T2455-56(o.s.).

⁷⁰⁰ VG-119:T2408(o.s.).

⁷⁰¹ VG-119:T2408(o.s.).

⁷⁰² VG-119:T2408(o.s.).

⁷⁰³ VG-119:T2408(o.s.).

⁷⁰⁴ VG-119:T2409-10(o.s.).

⁷⁰⁵ VG-119:T2409-2410(o.s.).

⁷⁰⁶ VG-035:T1684(o.s.).

⁷⁰⁷ VG-035:T1684(o.s.).

⁷⁰⁸ VG-035:T1684(o.s.).

280. The last house TURJAČANIN visited in the early morning hours after the fire was the Salić house –she remained there for 11 days.⁷⁰⁹ On the 11th day a soldier came to the house and told her that **Milan LUKIĆ** had learned she was there and was coming to kill her.⁷¹⁰

The Date

281. The Indictment charges that the *Bikavac-Fire* occurred “[o]n or about 27 June 1992”.⁷¹¹ There is evidence in this case that the *Bikavac-Fire* did in fact occur on 27 June 1992; however, there is also notable evidence indicating that the fire may have taken place on the following day, i.e. 28 June 1992.

282. Three of the key witnesses for the *Bikavac-Fire* provide evidence that the fire may have occurred on the 28th of June instead of the 27th. VG-119 testified that the fire occurred on 27 June 1992, but she also testified that she remembered that date because it was St. Vitus’s Day(Vidovdan).⁷¹² VG-119’s memory that the fire occurred on St. Vitus’s Day may be more reliable than her memory that it occurred on 27 June 1992, since the holiday would be more memorable than a bare date. Please refer to paragraph 18 of Annex E for the evidence of VG-094 on this point.

283. VG-119’s memory that the fire occurred on St. Vitus’s Day is corroborated by the evidence of TURJAČANIN. Although TURJAČANIN recalls the date of the fire as 27 June 1992(and recalls it being a Saturday, as 27 June was), she also says that it was Vidovdan.⁷¹³ She also testified that her Serb neighbours left the Bikavac neighbourhood on that day and went to the nearby mountains.⁷¹⁴ The Indictment alleges that his crime occurred “on or about” 27 June 1992. The determination of whether the crime occurred during the night between the 27th and the 28th or between the 28th and 29th is a matter for the Chamber to decide after considering all of the evidence. Figure 3 is a demonstrative exhibit and combines the markings and testimony of eyewitnesses to illustrate the relationship between the events surrounding the Bikavac fire.

The victims

284. The known victims of the *Bikavac-Fire* are:

⁷⁰⁹ TURJAČANIN:T2336(o.s.).

⁷¹⁰ TURJAČANIN:T2336(o.s.).

⁷¹¹ Indictment, para.11.

⁷¹² VG-119:T2403(o.s.).

⁷¹³ TURJAČANIN:T2302(o.s.).

⁷¹⁴ TURJAČANIN:T2302(o.s.).

1. A boy whose name is unknown, approx. 11;
2. FNU ALJIĆ, father of Suhra ALJIĆ, approx. 65;
3. FNU ALJIĆ, mother of Suhra ALJIĆ. Approx. 65;
4. FNU ALJIĆ, son of Suhra ALJIĆ. Approx. 1;
5. Suhra ALJIĆ approx. 25;
6. FNU JELAČIĆ, age unknown;
7. Džehva TURJAČANIN, approx. 28;⁷¹⁵
8. Elma TUFEKČIĆ, approx. 5;⁷¹⁶
9. Ensar TUFEKČIĆ, approx 1.5;
10. Đulka TURJAČANIN, approx. 51;⁷¹⁷
11. Sada TURJAČANIN, approx. 29;⁷¹⁸
12. °Selmir TURJAČANIN, approx. 9;
13. °Nihada VILIĆ,(daughter of Mina VILIĆ);
14. °Nihad VILIĆ,(son of Mina VILIĆ);
15. °Mina VILIĆ, approx. 32;
16. Mirzeta VILIĆ, approx. 8.⁷¹⁹

Over 50 other unidentified persons died in the fire that night.

285. There were additional victims who died in the Bikavac fire who were not named in the Indictment but for which evidence was provided by witnesses they include:

1. Esad TURJAČANIN⁷²⁰
2. Aida TURJAČANIN⁷²¹
3. Selmir TURJAČANIN⁷²²

Evidence of Identification(Milan LUKIĆ)

286. Each of the Prosecution witnesses who testified about the *Bikavac-Fire* had a good opportunity to observe **Milan LUKIĆ** on the day in question. They also each had previous encounters with **Milan LUKIĆ**, and thus were fully familiar with him and could recognise him during the crime.

Recognition witnesses.

287. TURJAČANIN, the sole survivor of the fire had extensive prior knowledge of **Milan LUKIĆ**. She attended the same secondary school that he attended.⁷²³ She was

⁷¹⁵ TURJAČANIN:Exh.1D083,p.3.

⁷¹⁶ TURJAČANIN:Exh.1D083,p.3.

⁷¹⁷ TURJAČANIN:Exh.1D083,p.3.

⁷¹⁸ TURJAČANIN: Exh.1D083,p.3.Exh.P300,p.21.

⁷¹⁹ Correct name of victim should have been listed as Zihneta, BAZ number 109999-02, daughter of Mina and Hamdija Vilić, sister of Nihada and Nihad. There was a very close match for a Mirzeta VILIĆ who survived the war and was registered as an IDP, and it was this person who was recorded in Exh.P119. See,Exh.P300,p.10,ftnt11.VG-138:T3456(o.s.).

⁷²⁰ TURJAČANIN:Exh.1D083,p.3.

⁷²¹ TURJAČANIN:Exh.1D083,p.3.

⁷²² TURJAČANIN:Exh.1D083,p.3.

⁷²³ TURJAČANIN:T2291(o.s.).

older than he, and consequently was in her fourth year when he entered.⁷²⁴ TURJAČANIN's brother, Dževad, was in the same class as **Milan LUKIĆ**.⁷²⁵ In fact, Dževad sat at the same school table as him.⁷²⁶ He would say: "I knew **Milan LUKIĆ** very well, we attended the same class for 3 years."⁷²⁷ During their school days, TURJAČANIN saw **Milan LUKIĆ** during the breaks between classes at school.⁷²⁸

288. TURJAČANIN also had at least four opportunities to observe **LUKIĆ** in person after his return to Višegrad in 1992 and shortly before the *Bikavac-Fire*. The first of these opportunities occurred on an afternoon in June 1992. TURJAČANIN was at the house of her neighbour Džemila KAHRIMAN, 100 metres from the TURJAČANIN's home.⁷²⁹ She was having coffee with KAHRIMAN and a few neighbours.⁷³⁰ **Milan LUKIĆ** showed up at the house, politely greeted the ladies, and told them that he would protect them.⁷³¹ He stood only a metre away from TURJAČANIN in the midday sun.⁷³² She immediately recognised him as **Milan LUKIĆ**, her brother's classmate and her own schoolmate.⁷³³

289. On another afternoon in June, after seeing him at the KAHRIMAN home, **LUKIĆ** came to the clothing factory where she worked.⁷³⁴ He was looking for one of his neighbours, a woman who also worked there.⁷³⁵ The factory was well lit and TURJAČANIN had ample opportunity to observe him.⁷³⁶ She recalls that he wore a black suit and black coat.⁷³⁷

290. TURJAČANIN's third opportunity to observe **LUKIĆ** occurred in late June 1992. The day before the *Bikavac-Fire*, she watched as a group of men led by **Milan LUKIĆ** burn two men to death. They doused the two men with gasoline and set them on fire on the hill behind the settlement.⁷³⁸

⁷²⁴ TURJAČANIN:T2291(o.s.).

⁷²⁵ TURJAČANIN:T2291-92(o.s.).Her brother was born in 1968. TURJAČANIN:T2358(o.s.).See also,Exh.1D084,par.1.(class of 20-26 students).

⁷²⁶ TURJAČANIN:T2291-92(o.s.).

⁷²⁷ Exh.1D086,p.1.

⁷²⁸ TURJAČANIN:T2292-93(o.s.).

⁷²⁹ TURJAČANIN:T2294-95(o.s.).

⁷³⁰ TURJAČANIN:T2295(o.s.).

⁷³¹ TURJAČANIN:T2295(o.s.).

⁷³² TURJAČANIN:T2297(o.s.).

⁷³³ TURJAČANIN:T2297,T2368(o.s.).She described **Milan LUKIĆ** as tall with brown hair.

⁷³⁴ TURJAČANIN:T2297-2298(o.s.).

⁷³⁵ TURJAČANIN:T2298(o.s.).

⁷³⁶ TURJAČANIN:T2298(o.s.).

⁷³⁷ TURJAČANIN:T2298(o.s.).

⁷³⁸ TURJAČANIN:T2300-2301(o.s.).

291. Her brother Dževad mentions a fourth opportunity in his statement. He recalls that, during the time he was hiding, TURJAČANIN told him **Milan LUKIĆ** had come to the house to ask for fuel(petrol).⁷³⁹

292. TURJAČANIN knew **Milan LUKIĆ**, saw him several times in June 1992 and readily recognised him during the crime.⁷⁴⁰ Her identification of **Milan LUKIĆ** is corroborated by her many contemporaneous statements to others that **Milan LUKIĆ** was a perpetrator, by him placing a bounty on her and by the fact that a Serb soldier came after the fire to warn her that **Milan LUKIĆ** knew she had survived the fire, knew her present location and was going to come and “finish [her] off.”⁷⁴¹ She is properly characterised as a *recognition* witness.

293. VG-119 was also familiar with **Milan LUKIĆ** by the time of the *Bikavac-Fire*. She had two contemporaneous opportunities to observe him at close range for extended periods of time.

294. VG-119’s first opportunity to observe **Milan LUKIĆ** came in late May 1992.⁷⁴² VG-119 and her family attempted to flee to Belgrade, but were turned back in Serbia.⁷⁴³ When they returned to Višegrad, the taxi that they were in was stopped at the Old Bridge by three cars filled with armed soldiers.⁷⁴⁴ All three were red.⁷⁴⁵ One was the red Passat VG-119 recognised as belonging to a shopkeeper in town.⁷⁴⁶

295. Approximately six soldiers got out of these cars.⁷⁴⁷ One of them was **Milan LUKIĆ**.⁷⁴⁸ Although VG-119 did not know **LUKIĆ** previously, her husband did⁷⁴⁹ and he identified him for her.⁷⁵⁰

296. **Milan LUKIĆ** asked the Serb taxi driver, “Why are you driving these balija around?”⁷⁵¹ He checked the ID’s of the passengers and stole jewellery from them.⁷⁵² It

⁷³⁹ DževadTURJAČANIN:Exh.1D084,par.7.

⁷⁴⁰ TURJAČANIN:T2292-93;T2397(o.s.).

⁷⁴¹ VG-063:T1864(o.s.). TURJAČANIN:T2336(o.s.).

⁷⁴² VG-119:T2390;T2392-93;T2397(o.s.).

⁷⁴³ VG-119:T2390-91(o.s.).VG-094:T6986-88(c.s.).

⁷⁴⁴ VG-119:T2392(o.s.).

⁷⁴⁵ VG-119:T2392(o.s.).

⁷⁴⁶ VG-119:T2392-93(o.s.).

⁷⁴⁷ VG-119:T2393(o.s.).

⁷⁴⁸ VG-119:T2392(o.s.).

⁷⁴⁹ VG-119:T2392(o.s.).

⁷⁵⁰ VG-119:T2429(o.s.).Her husband told her that he knew **MilanLUKIĆ** personally.(T2392)(o.s.).

⁷⁵¹ VG-119:T2393(o.s.).

⁷⁵² VG-119:T2393(o.s.).

was while he was checking their ID's that VG-119's husband identified him.⁷⁵³ During this time, VG-119 was within a metre and a half from **Milan LUKIĆ**.⁷⁵⁴ VG-119 estimated that he was approximately her husband's age; her husband was born in 1969.⁷⁵⁵

297. Finally, **LUKIĆ** ordered VG-119's family to get back into the taxi and go to their home in Dušće.⁷⁵⁶ He and the others followed the taxi to VG-119's home.⁷⁵⁷ When they arrived home, **LUKIĆ** ordered the women to go inside.⁷⁵⁸ He took VG-119's husband away in his car, while VG-119's father-in-law was taken away in another car.⁷⁵⁹ Neither was ever seen alive again.⁷⁶⁰

298. VG-119's second opportunity to observe **Milan LUKIĆ** occurred later that same day, at about 8pm.⁷⁶¹ He arrived at her house and asked for the wife of the man he had taken away earlier.⁷⁶² He took VG-119 and another woman and put them in the same red Passat he used earlier in the day.⁷⁶³

299. **LUKIĆ** drove the two women to Vilina Vlas.⁷⁶⁴ When they arrived, **Milan LUKIĆ** took the other woman into one room, while VG-119 was put into another room with a man named Saša.⁷⁶⁵ While VG-119 was in the room with Saša, she heard a scream at one point.⁷⁶⁶

300. About half an hour later, **LUKIĆ** came into the room where VG-119 and Saša were and told Saša to leave.⁷⁶⁷ VG-119 asked him where her husband was, and he told her that she would find out.⁷⁶⁸ He then asked VG-119 whether her husband had any weapons and where they were.⁷⁶⁹ As he continued questioning her, VG-119 told **LUKIĆ** that she was pregnant, because she was afraid that he would abuse her.⁷⁷⁰

⁷⁵³ VG-119:T2429(o.s.).

⁷⁵⁴ VG-119:T2393-94(o.s.).

⁷⁵⁵ VG-119:T2429-30(o.s.).

⁷⁵⁶ VG-119:T2394-95(o.s.).

⁷⁵⁷ VG-119:T2395(o.s.).

⁷⁵⁸ VG-119:T2395(o.s.).

⁷⁵⁹ VG-119:T2395(o.s.).

⁷⁶⁰ VG-119:T2396(o.s.).

⁷⁶¹ VG-119:T2397(o.s.).

⁷⁶² VG-119:T2397(o.s.).

⁷⁶³ VG-119:T2397(o.s.).

⁷⁶⁴ VG-119:T2397(o.s.).

⁷⁶⁵ VG-119:T2398(o.s.).

⁷⁶⁶ VG-119:T2398(o.s.).

⁷⁶⁷ VG-119:T2398(o.s.).

⁷⁶⁸ VG-119:T2398(o.s.).

⁷⁶⁹ VG-119:T2398(o.s.).

⁷⁷⁰ VG-119:T2399(o.s.).

Eventually, Saša reappeared with the other woman, who was crying and shaking.⁷⁷¹ **Milan LUKIĆ** ordered Saša to take them back home to Dušće, which he did.⁷⁷²

301. That night, VG-119 and the other women left Dušće because they were afraid **LUKIĆ** would return.⁷⁷³ They left the house in Dušće for Bikavac,⁷⁷⁴ where they were on the night of the *Bikavac-Fire*.⁷⁷⁵ Prior to the night of the *Bikavac-Fire*, VG-119 had the opportunity to observe **Milan LUKIĆ** at very close range for a relatively long period of time on two occasions and had a conversation with him at the Vilina Vlas hotel. VG-119 is a *recognition witness*.

302. Although VG-119 did not know **Milan LUKIĆ** prior to the day of her family's thwarted attempt to leave, her husband did. Her husband's statement identifying **Milan LUKIĆ** was made as an excited utterance upon being accosted by the group in the centre of town. His identification of **Milan LUKIĆ** has evidential weight. VG-119's husband is also a *recognition witness*.

303. The Defence for **Milan LUKIĆ** attempted to impugn VG-119's credibility by pointing out that she could not locate Meho Aljić's house on a map of Bikavac.⁷⁷⁶ However, this exchange serves to demonstrate the power of her recollection and the care with which she proffered her evidence. VG-119 was candid in not being able to circle the Aljić house on the aerial photograph presented to her by the Defence. In fact, the Aljić house was knocked down and removed after the fire and before the photograph was taken. There was no Aljić house to circle, VG-119's candid statement demonstrates that the Chamber can confidently rely on her evidence.⁷⁷⁷

VG-094

304. VG-094's evidence was heard in closed session and is summarised in paragraphs 19-27 in Annex E.

305. VG-115, a Serb from Višegrad, is also a *recognition witness*. She had significant prior knowledge of **Milan LUKIĆ**. As discussed above, VG-115 was also a witness to the *Pionirska-Fire*; her opportunities to observe **Milan LUKIĆ** during that crime are thus an additional basis upon which she was able to recognise him

⁷⁷¹ VG-119:T2398-99(o.s.).

⁷⁷² VG-119:T2399(o.s.).

⁷⁷³ VG-119:T2399;T2401(o.s.).

⁷⁷⁴ VG-119:T2399(o.s.).

⁷⁷⁵ VG-119:T2402-03(o.s.).

⁷⁷⁶ VG-119:T2447(o.s.).

⁷⁷⁷ VG-119:T2447-48(o.s.). See, VG-119:T2451-52,2454(o.s.).

during the course of the *Bikavac-Fire*. The basis of her familiarity with **Milan LUKIĆ** is summarised in paragraphs 10-13 of Annex E.

306. VG-035 also had a strong basis for recognising **Milan LUKIĆ** on 27 June 1992. VG-035's contact with **Milan LUKIĆ** began the day before, on 26 June 1992. On that day, **LUKIĆ** appeared outside VG-035's house with a Serb boy during the afternoon.⁷⁷⁸ He introduced himself and told VG-035 his name. She recognised the name and was frightened. **LUKIĆ** asked VG-035 about her husband, did they own their house, and where she was working. As they were discussing these matters, they also discussed their ages, and **LUKIĆ** told VG-035 that he was born in 1967.⁷⁷⁹ When VG-035 told **Milan LUKIĆ** that she did not know where her husband was, **Milan LUKIĆ** said, "I'll check and I'll be back to tell you. If you're lying to me, I'll kill you." During the course of this conversation, VG-035 and **LUKIĆ** were no more than 10-20 centimetres apart in the afternoon – she could see his face clearly. At the end of the conversation, he told VG-035 that he would return that evening.⁷⁸⁰

307. Although he did not return that evening he did the following day. The next time VG-035 saw **Milan LUKIĆ**, he was standing over her as she lay in bed with her children. It was 5am the following morning, 27 June 1992. **Sredoje** and **Milan LUKIĆ** had been banging on the door of the house where VG-035 was staying with her family.⁷⁸¹ When her mother-in-law answered the door, the **LUKIĆs** barged into the house and entered the bedroom where she was sleeping with her children. **LUKIĆ** pulled the bed covers off, and made vulgar sexual references to **Sredoje**. He was standing immediately beside her bed, with nothing obstructing his face. **Sredoje LUKIĆ** stood beside him. VG-035 recognised **Milan LUKIĆ** as the person who introduced himself the day before. Both **LUKIĆs** remained in the bedroom with VG-035 for between fifteen minutes and half an hour, and then left.⁷⁸²

308. **Milan LUKIĆ** returned several hours later. Again, he banged on the door; VG-035's mother-in-law opened the door.⁷⁸³ **LUKIĆ** said to VG-035, "You have five minutes to get ready to come with me."⁷⁸⁴ He took her out of the house and put her

⁷⁷⁸ VG-035:T1653-54(o.s.).

⁷⁷⁹ VG-035:T1654(o.s.).

⁷⁸⁰ VG-035:T1653-56(o.s.).CW-002:Exh.P336,p.37(u.s.).

⁷⁸¹ VG-035:T1660(o.s.).

⁷⁸² VG-035:T1660-64(o.s.).CW-002:Exh.P336,p.32(u.s.).

⁷⁸³ VG-035:T1662-65(o.s.).

⁷⁸⁴ VG-035:T1665(o.s.).

into the back of a car that had been owned by Ekrem DŽAFIĆ⁷⁸⁵ – the same car used earlier in the month during the *Drina-Killings*. He drove to a house in Megdan.⁷⁸⁶ **LUKIĆ** took VG-035 into the house where he committed crimes against her for approximately three hours during which VG-035 had ample opportunities to see him in daylight.⁷⁸⁷ These crimes are summarised beginning at paragraphs 28-30 in Confidential Annex E.

309. The traumatic events described in Annex E happened to VG-035 a mere six or seven hours before she saw **Milan LUKIĆ** in her house just before the *Bikavac-Fire*.⁷⁸⁸ As VG-035 testified:

When somebody inflicts on you such grief and destroys all you pride and self-confidence, you can never forget the face. You can never forget the person who inflicted such evil on you.⁷⁸⁹

She is a *recognition witness*.

310. CW-002 is also a *recognition witness*; her evidence is summarised in paragraph 31 of Annex E.

Evidence of Identification(Sredoje LUKIĆ)

Recognition Witnesses

311. Zehra TURJAČANIN had the same opportunity as many of the Višegrad witnesses who lived and worked in the town to regularly see **Sredoje LUKIĆ** as he patrolled the streets. In her evidence she described how she immediately recognised him as he stood on the steps leading from the older section of the home when she first walked into the street, and that he was a police officer and relative of **Milan LUKIĆ**. Although she could only recall his family name at the time she testified, there has been ample evidence that in the hours and days after the fire she told several people the first and last name of this person who set fire to the people in Bikavac.

312. VG-035 also had a solid basis for recognising **Sredoje LUKIĆ** when she saw him in her home on 27 June. VG-035 knew that **Sredoje LUKIĆ** worked in the police.⁷⁹⁰ She saw **Sredoje LUKIĆ** around the community for many years,⁷⁹¹ and

⁷⁸⁵ VG-035:T1665-66(o.s.).

⁷⁸⁶ VG-035:T1666-67(o.s.).

⁷⁸⁷ VG-035 saw that **Milan LUKIĆ** had some bandages. VG-035:T1671-72(p.s.). She was in his presence for approximately three hours. VG-035:T1673(p.s.).

⁷⁸⁸ VG-035:T1673-75(p.s.).

⁷⁸⁹ VG-035:T1688(o.s.).

⁷⁹⁰ VG-035:T1661, T1700&T1723(o.s.).

⁷⁹¹ VG-035:T1700(o.s.).

they used to greet each other before the war.⁷⁹² VG-035's husband also knew **Sredoje LUKIĆ** well, because he frequented the café where her husband worked as a waiter.⁷⁹³ She is a *recognition witness*. VG-115 is a *recognition witness*, whose basis for knowing **Sredoje LUKIĆ** is summarised in Annex E. Her opportunity to observe him at the *Pionirska-Fire* creates an additional basis for her ability to recognise him at the *Bikavac-Fire*.

Identification Witnesses

313. At the time soldiers came into her house, VG-119 did not recognise **Sredoje LUKIĆ** as one of them. However, several weeks later, when she and TURJAČANIN had fled Višegrad and ended up in Mededa, she listened as TURJAČANIN gave an interview to a journalist.⁷⁹⁴ In that interview, TURJAČANIN said that she had seen **Sredoje LUKIĆ** on that night, and gave a description of him. When VG-119 heard her description, she realised that **Sredoje LUKIĆ** had been one of the other soldiers in her house.⁷⁹⁵ She is an *identification witness*.

Observations of witnesses during the *Bikavac-Fire*.

314. In the hours leading up to the fire both **Sredoje** and **Milan LUKIĆ** arrived in the Bikavac area to prepare the crime. VG-119 saw them both when they entered her home and stayed for approximately 10 to 15 minutes. It was still daylight at this time and she had no difficulty seeing them both.

315. After leaving VG-119's house, **Sredoje** and **Milan LUKIĆ** returned to VG-035's house and robbed everyone there.⁷⁹⁶ Again this was in full daylight and VG-035 had no difficulty recognising them. Neither Accused made any attempt to obstruct his face or conceal his identity.

316. VG-035 is certain that she saw **Sredoje LUKIĆ** on the day of the *Bikavac-Fire*. When the Defence put to her that Sredoje was not present in Bikavac on that day, she said, "**Sredoje LUKIĆ** was present. You can keep telling me he wasn't present. You can do whatever you like, but I know he was there."⁷⁹⁷

⁷⁹² VG-035:T1724(o.s.).

⁷⁹³ VG-035:T1662(o.s.).

⁷⁹⁴ VG-119:T2417(o.s.).VG-119:2405(o.s.).

⁷⁹⁵ VG-119:T2416-17(o.s.).TURJAČANIN described **Sredoje** as shorter than **Milan** – also as older.VG-119 realised the other man at her house had to be **Sredoje** based on the physical description as well as the fact that the other soldiers were younger. VG-119:T2417(o.s.).VG-119 made it clear that she recalled that **Sredoje LUKIĆ** was shorter than **Milan**.VG-119:T2464(o.s.).

⁷⁹⁶ VG-035:T1675(o.s.);Exh.1D044,pp.2-4(u.s.).

⁷⁹⁷ VG-035:T1723(o.s.).

317. On the night in question, TURJAČANIN had an excellent opportunity to observe **Sredoje** and **Milan LUKIĆ** during the period just prior to the setting of the



Figure 4. Exhibit 135 shows the location of the two **LUKIĆs** when Zehra TURJAČANIN first saw them. “ML” indicates where **Milan LUKIĆ** was in the lane and “X” shows where she recalls the other **LUKIĆ** who was a police officer stood on the stairs to the original house.

The white labels and arrows have been added for clarity – see original exhibit.

fire. TURJAČANIN was called onto the street.⁷⁹⁸ She saw **Milan LUKIĆ** standing immediately in front of her,⁷⁹⁹ a few metres away. There was nothing obstructing his face. She also saw someone else she immediately recognised on the other steps to her house. Again this person had nothing obstructing his face and was only a few metres from her. She described this person as a relative of **Milan LUKIĆ** who was older and worked as a policeman in the town.⁸⁰⁰ Despite being unable to recall his first name during trial there has been ample evidence that shortly after the fire TURJAČANIN identified this person by first and last name as **Sredoje LUKIĆ**.⁸⁰¹

I remember a second man, his cousin or his uncle whose name is also **LUKIĆ**...I knew him. He used to be a police officer in the town.⁸⁰²

318. Shortly after she arrived in Mededa, TURJAČANIN told Huso KURSPAHIĆ that she was the only survivor of a house fire in Bikavac in which approximately 72

⁷⁹⁸ TURJAČANIN:T2308(o.s.).

⁷⁹⁹ TURJAČANIN:T2309-10(o.s.).

⁸⁰⁰ TURJAČANIN:T2309-10(o.s.).

⁸⁰¹ VG-119:T2416-17(o.s.).HusoKURSPAHIĆ:T881(o.s.).

⁸⁰² TURJAČANIN:T2309,T2310(o.s.).

people had died.⁸⁰³ She also said that **Sredoje** and **Milan LUKIĆ** were some of the men who had set the fire.⁸⁰⁴ Payroll records from the relevant time period demonstrate conclusively that **Sredoje LUKIĆ** was the only person with that family name working as a police officer.⁸⁰⁵

319. TURJAČANIN had a second opportunity to see **Milan LUKIĆ** just before he forced her into the Aljić home when he snatched her gold chain from her neck as she was walking into the Aljić house.⁸⁰⁶ On this second viewing, **LUKIĆ** was standing next to the same door that would later be barricaded.⁸⁰⁷ He was necessarily close enough to touch TURJAČANIN at this point – she clearly observed him on this occasion.

320. VG-115 was just a few metres in front of the Aljić house as events leading up to the fire unfolded. She recognised both victims and perpetrators among the crowd there. She saw her good friends, the TURJAČANIN family, being forced into the house. Hidden, she watched for a few moments while **Sredoje** and **Milan LUKIĆ** made the final preparations to kill those inside.

321. VG-115 had an unobstructed view of **Milan LUKIĆ**'s face. She recognised **Sredoje LUKIĆ** despite the fact that by this point he had covered his face. This did not prevent her from recognising him as she recognised not only his eyes but also his voice. It is reasonable to infer that her recognition was also based on other traits such as his height and weight that comported with her memory of him. While her description of **Sredoje LUKIĆ** wearing a covering on his face differs from TURJAČANIN's recollection that there was nothing obstructing his face, this difference is explained by the context of how the crime unfolded. At the time TURJAČANIN made her observations of **Sredoje LUKIĆ**, he was attempting to coax the victims toward the Aljić house by telling them that they had prepared a convoy to take them to safety. Seeing a familiar police officer would have helped gain their cooperation – certainly had he been wearing a balaclava at the time he would not have been believed and they may have dispersed into the woods. By the time VG-115 saw **Sredoje LUKIĆ** the victims had all been successfully gathered in the Aljić house save the TURJAČANIN family, and she saw **Sredoje LUKIĆ** just as they were being

⁸⁰³ HusoKURSPAHIĆ:T881(o.s.).

⁸⁰⁴ HusoKURSPAHIĆ:T881,(o.s.).

⁸⁰⁵ Exhs.P209;P210;P211;P212;P213&P214.

⁸⁰⁶ TURJAČANIN:T2312(o.s.).

placed in the house. At this point, **Sredoje LUKIĆ**'s intentions were no longer to deceive his victims but to conceal his identity from other Serb and Muslim inhabitants of Bikavac who might look upon the scene and recognise him. The strength of VG-115's recognition of both **Sredoje** and **Milan LUKIĆ** at the fire is corroborated by her recognition of other perpetrators of this crime whom she also knew.⁸⁰⁸ See paragraph 32 of Annex E for additional evidence.

322. At approximately 10pm, sometime after the fire had been set, **Sredoje** and **Milan LUKIĆ** returned to the house where VG-119 and VG-094 were staying. They were dirty and sweaty and attempted to take them away.⁸⁰⁹

323. **Milan LUKIĆ**'s presence in Bikavac is corroborated by VG-042 who also took refuge there and having seen him take her husband and kill men during the *Varda-Killings* recognised him when she saw him walking around Bikavac during this period.⁸¹⁰ As with the *Pionirska-Fire* the presence of one of the Accused at the *Bikavac-Fire* reinforces and corroborates the presence of the other as they were members of the same unit.⁸¹¹

The Prosecution has Established the Accused's Guilt for the *Bikavac-Fire*

324. **Sredoje** and **Milan LUKIĆ** returned on the afternoon of the *Bikavac-Fire* and began going to the homes of Muslims in the area. The intrusions into these homes were intended to find women from Župa and other victims that night and to systematically rob them prior to killing them.⁸¹² There were more Muslims in Bikavac than could be forced into the Aljić house. Their intrusions into other houses, sometimes counting the occupants, indicate a deliberate and purposeful selection of the number of victims they believed they could kill in the Aljić house.

325. **Sredoje LUKIĆ** was not wearing a mask when he coaxed people out of their homes. He used his position as a police officer to help overcome any resistance to the crime. At this point, his acts indicated his *mens rea* as he, **Milan LUKIĆ**, and the other members of the *Lukić-Group* made the final preparations to kill these people.

⁸⁰⁷ **TURJAČANIN**:T2312(o.s.).

⁸⁰⁸ VG-115 also saw Jovo LIPOVAC; Gojko LUKIĆ; Slobodan RONČEVIĆ; Mitar VASILJEVIĆ ("I saw the old Mitar VASILJEVIĆ who died a natural death"); PLANINČIĆ (aka Razonoda); ČARUGA, Zoran ŠIMŠIĆ (or possibly VASILJEVIĆ) and Radoje ŠIMŠIĆ. **VG-115**:T684(o.s.).

⁸⁰⁹ VG-119 recalls that all of the same men returned later that night. **VG-119**:T2405-06,T2417(o.s.).

⁸¹⁰ **VG-042:Exh.1D069**,par.8.

⁸¹¹ **SL-Record-of-Interview**,p.2,4.**Duga-Article**,p.7.

⁸¹² **VG-119**:T2403(o.s.). **VG-094**:T7001-02(c.s.); **Exh.P335**(u.s.),para.43.

This act of pulling the mask over his face is strong evidence that he fully appreciated what he was about to do.

326. The fact that VG-115 saw the Molotov cocktails immediately after the Aljić-house was barricaded indicates that they were prepared in advance and both **Sredoje** and **Milan LUKIĆ**, even if they did not personally prepare them, would have been aware of their existence. With this awareness, both **Sredoje** and **Milan LUKIĆ** took the garage door of the Aljić house and barricaded the victims inside. This act, in light of prior events and the preparation of materials needed to set the house ablaze leads to the inescapable and compelling conclusion that the sole object of their actions was to cause the death of those trapped inside. The *actus reus* and *mens rea* requirements of extermination are proven with respect to each Accused: **Sredoje** and **Milan LUKIĆ** had total involvement in the events leading up to the *Bikavac-Fire* and the fire itself was total.

327. **Milan LUKIĆ**'s plan to kill TURJAČANIN after the fire⁸¹³ is further evidence that he was responsible for the fire and he knew that in order to avoid criminal responsibility for the crime he would have to kill its sole survivor.⁸¹⁴

Actus reus and mens rea of inhumane acts and cruel treatment

328. TURJAČANIN has suffered mentally and physically.⁸¹⁵ On a single night she lost all the female members of her family in a deliberate fire and herself sustained terrible injuries escaping it. Similar to the *Pionirska-Fire*, **Sredoje** and **Milan LUKIĆ**'s choice of this method to kill a large group of people evidences their intent to cause extraordinary human suffering by burning them alive.

329. Each of these witnesses testified about these events from a slightly different perspective: VG-035 saw **Sredoje** and **Milan LUKIĆ** immediately before they went to gather their victims; VG-119 saw them both immediately before and after the crimes; VG-115 watched **Sredoje** and **Milan LUKIĆ** barricade the victims in the house; and finally, TURJAČANIN was inside the Aljić house and survived the fire.

330. Each of these women experienced this event from a different perspective. Despite not having spoken to each other over the 16 years their collective testimony

⁸¹³ VG-063:T1864(o.s.).TURJAČANIN:T2336(o.s.).

⁸¹⁴ See, VG-063,T1864(c.s.).

⁸¹⁵ VG-032:T1188-89;Exh.P067(u.s.).

tells a remarkably consistent and coherent story and proves beyond reasonable doubt that **Sredoje** and **Milan LUKIĆ** committed this crime.

Section 3(e) The Killing of Hajra KORIC

331. Between 1 and 5 July 1992 **Milan LUKIĆ** shot and killed a Bosnian Muslim woman by the name of Hajra KORIC.

Summary of the Prosecution case

332. After unsuccessfully trying to leave Višegrad after the *Bikavac-Fire*, VG-035 moved to a house near the bus station in an area known as “Potok”. She believed she and her children would be safer there and have a better chance of boarding a bus out of Višegrad.⁸¹⁶ There were 10-15 women and children hiding in the house, including Hajra KORIC – most seeking to escape.⁸¹⁷

333. Sometime between 1 and 5 July 1992, a group of soldiers entered the house. Hajra KORIC hid under a table. The soldiers forced everyone out of the house, including KORIC.⁸¹⁸ The soldiers did not remain long – shortly afterward the *Lukić-Group* appeared.⁸¹⁹

334. **Milan LUKIĆ** called to the women, “Stop. You are surrounded.”⁸²⁰ He lined them up; KORIC was the last person in that line. **LUKIĆ** and another man went from person to person looking for KORIC. She had confided in the group that **LUKIĆ** had come to her door earlier looking for her son and husband who were hiding under some zinc sheeting in their backyard.⁸²¹

335. **LUKIĆ** recognised KORIC immediately and pulled her out of the line.⁸²² “Where is your husband?,” he asked. KORIC replied, “**Milan**, I told you the truth. I don’t know. He left for Belgrade. That’s all I know”. **LUKIĆ** laughed aloud, and KORIC continued, “**Milan**, son, you know very well that my husband is gone. I’m telling you the truth.” **LUKIĆ** raised his gun and shot KORIC squarely in the chest. As she fell to the ground **LUKIĆ** laughed and asked the group rhetorically, “What is she doing”? **LUKIĆ** used his foot to flip her onto her stomach before firing again into

⁸¹⁶ VG-035:T1685(o.s.).

⁸¹⁷ VG-035:T1685-86&1700(o.s.).CW-002:Exh.P336;p.41(u.s.).

⁸¹⁸ VG-035:T1685-86(o.s.).CW-002:Exh.P336;p.42(u.s.).

⁸¹⁹ VG-035:T1686(o.s.).

⁸²⁰ VG-035:T1686(o.s.).CW-002:Exh.P336;p.42(u.s.).

⁸²¹ VG-035:T1687(o.s.).CW-002:Exh.P336;p.43(u.s.).

her back. After this, she gave no signs of life and VG-035 looked at the corpse several times later in the day.⁸²³ VG-035 stated: “**Milan LUKIĆ** shot Hajra KORIĆ. No one else.”⁸²⁴ Her evidence in all respects was corroborated by that of CW-002 who was also present and witnessed these events.⁸²⁵

336. The evidence establishes that **Milan LUKIĆ** specifically targeted and sought out KORIĆ to kill her, and when he found her, he shot her in cold blood in front of other women and children. The evidence establishes beyond reasonable doubt that **Milan LUKIĆ** is guilty of the murder of Hajrija KORIĆ.⁸²⁶

337. The Prosecution relies on the identification evidence of VG-035 and CW-002 to establish **Milan LUKIĆ**’s commission of this crime. Their ability to recognise **Milan LUKIĆ** has already been discussed above.

Section 3(f) Inhumane Treatment at the Uzamnica Detention Camp

338. Uzamnica detention camp was a former army barracks⁸²⁷ located near the hydroelectric dam.⁸²⁸ Between 1992-1994⁸²⁹ local Serbs used Uzamnica as a detention centre for Muslims.⁸³⁰ The Prosecution led evidence from three of these men (Nurko DERVIŠEVIĆ, Islam KUSTURA, and Adem BERBEROVIĆ) in court. The Chamber admitted the evidence of Witness VG-025 in writing pursuant to Rule 92*quater*. Taken as a whole, this evidence proves beyond a reasonable doubt that **Milan** and **Sredoje LUKIĆ** are guilty of the crimes charged.

Summary of the Prosecution case

339. Nurko DERVIŠEVIĆ was arrested on 19 June 1992 by two Serb soldiers who took him to the police station.⁸³¹ DERVIŠEVIĆ encountered **Milan LUKIĆ** at the police station immediately after his arrest though he did not know who **LUKIĆ**

⁸²² VG-035:T1687(o.s.).

⁸²³ VG-035:T1687(o.s.).

⁸²⁴ VG-035:T1705(o.s.).

⁸²⁵ CW-002:T7066-67,T7070(o.s.);Exh.P336,p.43-44(u.s.).

⁸²⁶ VG-035:T1685,T1687-88&T1701(o.s.).

⁸²⁷ VG-016:T1960(o.s.).VG-008:T2177(o.s.).See Exh.P142,p.6.

⁸²⁸ VG-003:Exh.1D061p.4&Exh.P142,p.6.

⁸²⁹ VG-016:T1958&T1980(o.s.).VG-003:T2532,T2540&T2542(o.s.).KUSTURA:T2196-97(o.s.).

⁸³⁰ VG-016:T1959-60(o.s.).

⁸³¹ DERVIŠEVIĆ:T1952-53(o.s.);Exh.P111,p.2.

was.⁸³² There **LUKIĆ** slapped him hard enough to cause permanent hearing loss.⁸³³ **DERVIŠEVIĆ** was eventually taken to Uzamnica barracks.⁸³⁴

340. **DERVIŠEVIĆ** described how **Milan LUKIĆ** came most frequently to mistreat detainees.⁸³⁵ Once, he pressed **DERVIŠEVIĆ** up against a pillar and kicked him from behind.⁸³⁶ On another occasion, **LUKIĆ** chased him across the warehouse and beat him.⁸³⁷ Once, **LUKIĆ** threatened to kill him. **DERVIŠEVIĆ** saw **Sredoje LUKIĆ** at the Uzamnica camp on one occasion. **Sredoje** and **Milan LUKIĆ** came to the camp together and brought Šemso POLJO, a Muslim. Both **LUKIĆs** beat POLJO.⁸³⁸

341. When he was finally released from Uzamnica, **DERVIŠEVIĆ** weighed 42 kilos, down from 62.⁸³⁹ As a result of this abuse, **DERVIŠEVIĆ** has persistent pain,⁸⁴⁰ suffers from nervousness and has trouble sleeping.⁸⁴¹ He has been assessed as having a disability of 70%.⁸⁴²

342. Adem **BERBEROVIĆ** also gave evidence about the abuses that **Milan** and **Sredoje LUKIĆ** subjected prisoners to.⁸⁴³ **BERBEROVIĆ** first saw the **LUKIĆs** shortly after arriving.⁸⁴⁴ They both came into the hangar where the prisoners were and beat them.⁸⁴⁵

343. **Milan LUKIĆ** beat **BERBEROVIĆ** many times.⁸⁴⁶ During some periods, **LUKIĆ** would come every two or three days to beat prisoners.⁸⁴⁷ He would then be absent for a while and then reappear.⁸⁴⁸ **LUKIĆ** kicked **BERBEROVIĆ** with his boots and hit him with his fists.⁸⁴⁹ Once, **LUKIĆ** beat **BERBEROVIĆ** so hard with an

⁸³² **DERVIŠEVIĆ**:T1955&T1984(o.s.);Exh.P111,p.2.

⁸³³ **DERVIŠEVIĆ**:T1955&T1984(o.s.);Exh.P111,p.2.

⁸³⁴ Exh.P111,p.2.

⁸³⁵ **DERVIŠEVIĆ**:T1953(o.s.);Exh.P111,p.5.

⁸³⁶ **DERVIŠEVIĆ**:T1962(o.s.).

⁸³⁷ **DERVIŠEVIĆ**:T1962(o.s.).

⁸³⁸ **DERVIŠEVIĆ**:T1963&T1999-2000(o.s.);Exh.P111,p.5;Exh.P112,p.2.

⁸³⁹ **DERVIŠEVIĆ**:T1961(o.s.).

⁸⁴⁰ Exh.P111,p.7.

⁸⁴¹ Exh.P111,p.7.

⁸⁴² **DERVIŠEVIĆ**:T1970-71(o.s.).

⁸⁴³ **BERBEROVIĆ**:T2511,T2515&T2536(o.s.).

⁸⁴⁴ **BERBEROVIĆ**:T2506(o.s.).

⁸⁴⁵ **BERBEROVIĆ**:T2507(o.s.).

⁸⁴⁶ **BERBEROVIĆ**:T2513(o.s.).

⁸⁴⁷ **BERBEROVIĆ**:T2511&T2536(o.s.).

⁸⁴⁸ **BERBEROVIĆ**:T2511(o.s.).

⁸⁴⁹ **BERBEROVIĆ**:T2511(o.s.).

electric baton that it broke.⁸⁵⁰ **LUKIĆ** blamed **BERBEROVIĆ** for costing him 500 marks.⁸⁵¹ **LUKIĆ** also beat **BERBEROVIĆ** when he took him to do forced labour.⁸⁵² **Sredoje LUKIĆ** was present on the first occasion when he and **Milan LUKIĆ** beat all the prisoners.⁸⁵³ **Sredoje LUKIĆ** also came on another occasion and mistreated detainees.⁸⁵⁴

344. Following one beating, **BERBEROVIĆ** was immobile for 65 days.⁸⁵⁵ As a result of this abuse, **BERBEROVIĆ** is blind in one eye, has chronic headaches and difficulty sleeping, and has pain in his arms, left leg, back and spine.⁸⁵⁶

345. Islam **KUSTURA** also gave evidence about abuses perpetrated by **Milan** and **Sredoje LUKIĆ**. **KUSTURA** first saw the **LUKIĆs** at Uzamnica several days after he arrived.⁸⁵⁷ **Milan LUKIĆ** kicked and beat detainees with his fists and a rifle butt until they fell over.⁸⁵⁸ **Sredoje LUKIĆ** came with his cousin during this first incident⁸⁵⁹ and beat **KUSTURA** on this and other occasions.⁸⁶⁰ As **Milan LUKIĆ** was beating the detainees, **Milan LUKIĆ** said, "Hit the balija!"⁸⁶¹ Following this first beating **KUSTURA** was unable to move.⁸⁶²

346. The second time that **Milan** and **Sredoje LUKIĆ** beat **KUSTURA**, they beat him so severely that he could not move for 18 days.⁸⁶³ **Milan LUKIĆ** mistreated him and the other detainees either every day or every other day.⁸⁶⁴ **Milan LUKIĆ** would arrive with two or three cars filled with people, including **Sredoje LUKIĆ**, all of whom would beat the detainees.⁸⁶⁵ **Sredoje LUKIĆ** beat **KUSTURA** as often as **Milan LUKIĆ**.⁸⁶⁶ **Milan LUKIĆ** never came alone to Uzamnica; **Sredoje LUKIĆ**

⁸⁵⁰ **BERBEROVIĆ**:T2511-12(o.s.).

⁸⁵¹ **BERBEROVIĆ**:T2511-12(o.s.).

⁸⁵² **BERBEROVIĆ**:T2513(o.s.).

⁸⁵³ **BERBEROVIĆ**:T2507(o.s.).

⁸⁵⁴ **BERBEROVIĆ**:T2515-16(o.s.).

⁸⁵⁵ **BERBEROVIĆ**:Exh.P142,p.7.

⁸⁵⁶ **BERBEROVIĆ**:T2517(o.s.).

⁸⁵⁷ **KUSTURA**:T2181(o.s.).

⁸⁵⁸ **KUSTURA**:T2181-82(o.s.).

⁸⁵⁹ **KUSTURA**:T2181-2182(o.s.).

⁸⁶⁰ **KUSTURA**:T2182-83&T2187(o.s.).

⁸⁶¹ **KUSTURA**:T2181-82(o.s.).

⁸⁶² **KUSTURA**:T2184(o.s.).

⁸⁶³ **KUSTURA**:T2184(o.s.).

⁸⁶⁴ **KUSTURA**:T2186(o.s.).

⁸⁶⁵ **KUSTURA**:T2186(o.s.).

⁸⁶⁶ **KUSTURA**:T2187(o.s.).

always accompanied him.⁸⁶⁷ **Milan** and **Sredoje LUKIĆ** beat all the other detainees as well.⁸⁶⁸

347. Due to the ill health of VG-025 his evidence was introduced pursuant to Rule 92*quarter* please refer to paragraphs 33-34 in Annex E.

Evidence of Identification

348. All the witnesses knew either **Milan** or **Sredoje LUKIĆ** prior to their imprisonment in Uzamnica, or had the opportunity to observe them on several occasions during their imprisonment. They are all *recognition witnesses*.

349. DERVIŠEVIĆ first encountered **Milan LUKIĆ** at the police station.⁸⁶⁹ He did not learn his name until he arrived in Uzamnica where he was told by other prisoners including Šaban MURATAGIĆ.⁸⁷⁰ MURATAGIĆ knew **Milan LUKIĆ** because he came from a village near Rujište.⁸⁷¹ During his imprisonment, DERVIŠEVIĆ saw **Milan LUKIĆ** on multiple occasions.⁸⁷² DERVIŠEVIĆ recognised **Milan LUKIĆ** in the courtroom during his testimony.⁸⁷³

350. Like DERVIŠEVIĆ, BERBEROVIĆ did not know **Milan LUKIĆ** before Uzamnica.⁸⁷⁴ When BERBEROVIĆ arrived at the Uzamnica camp, there were only two other prisoners there: DERVIŠEVIĆ and MURATAGIĆ.⁸⁷⁵ Shortly after arriving, **Milan** and **Sredoje LUKIĆ** came and beat BERBEROVIĆ.⁸⁷⁶ Following this incident, BERBEROVIĆ asked DERVIŠEVIĆ who the men were.⁸⁷⁷ DERVIŠEVIĆ told BERBEROVIĆ that they were **Milan** and **Sredoje LUKIĆ**.⁸⁷⁸ DERVIŠEVIĆ told BERBEROVIĆ that he had learned this from MURATAGIĆ, who had gone to school with **Milan LUKIĆ**.⁸⁷⁹ MURATAGIĆ later confirmed **Milan LUKIĆ**'s identity directly to BERBEROVIĆ.⁸⁸⁰

⁸⁶⁷ KUSTURA:T2187&T2189(o.s.)

⁸⁶⁸ KUSTURA:T2189(p.s.).

⁸⁶⁹ DERVIŠEVIĆ:T1955;VT1984(o.s.);Exh.P111,p.2.

⁸⁷⁰ DERVIŠEVIĆ:Exh.P112,p.2.

⁸⁷¹ DERVIŠEVIĆ:T1962(o.s.).

⁸⁷² DERVIŠEVIĆ:T1961(o.s.);Exh.P111,p.2.

⁸⁷³ DERVIŠEVIĆ:T1969-70(o.s.).

⁸⁷⁴ BERBEROVIĆ:T2506(o.s.).

⁸⁷⁵ BERBEROVIĆ:T2509(o.s.).

⁸⁷⁶ BERBEROVIĆ:T2507(o.s.).

⁸⁷⁷ BERBEROVIĆ:T2507-08(o.s.).

⁸⁷⁸ BERBEROVIĆ:T2507-08(o.s.).

⁸⁷⁹ BERBEROVIĆ:T2508(o.s.).

⁸⁸⁰ BERBEROVIĆ:T2535(o.s.).

351. After his initial encounter with **Milan LUKIĆ**, BERBEROVIĆ saw him many more times when he beat him.⁸⁸¹ During certain periods, **Milan LUKIĆ** came every two or three days.⁸⁸² Over time BERBEROVIĆ was even able to recognise **Milan LUKIĆ**'s voice.⁸⁸³ Because of this familiarity with **Milan LUKIĆ**, BERBEROVIĆ was able to recognise him and confirm his presence in the courtroom, saying, "One hundred per cent certain it's **Milan**."⁸⁸⁴

352. Islam KUSTURA arrived in the Uzamnica in October 1992. He did not know **Milan LUKIĆ** prior to his arrival, but he learned his identity from the others.⁸⁸⁵ KUSTURA describes **Milan LUKIĆ** as wearing a military uniform and carrying a weapon.⁸⁸⁶ The evidence of VG-025 is summarised in paragraph 35 in Annex E.

353. The Prosecution adduced evidence from the same four witnesses regarding **Sredoje LUKIĆ**'s crimes in Uzamnica. Some of these witnesses knew **Sredoje LUKIĆ** prior to their imprisonment in Uzamnica.

354. DERVIŠEVIĆ knew **Sredoje LUKIĆ** as a police officer in Višegrad for approximately 10 years before the war.⁸⁸⁷ Although DERVIŠEVIĆ saw **Sredoje LUKIĆ** only once in Uzamnica,⁸⁸⁸ his prior familiarity with **Sredoje LUKIĆ** gave him a solid basis for recognising him. DERVIŠEVIĆ recognised **Sredoje LUKIĆ** in the courtroom during his testimony.⁸⁸⁹

355. BERBEROVIĆ did not know **Sredoje LUKIĆ** prior to his imprisonment at Uzamnica.⁸⁹⁰ As discussed above, he learned **Sredoje LUKIĆ**'s name from DERVIŠEVIĆ after the first time that the **LUKIĆ**s came to beat the detainees at Uzamnica.⁸⁹¹ BERBEROVIĆ did not see **Sredoje LUKIĆ** at Uzamnica as often as he saw **Milan LUKIĆ**: he saw **Sredoje LUKIĆ** only four times.⁸⁹² He described

⁸⁸¹ BERBEROVIĆ:T2535(o.s.).

⁸⁸² BERBEROVIĆ:T2513(o.s.).

⁸⁸³ BERBEROVIĆ:T2510(o.s.).

⁸⁸⁴ BERBEROVIĆ:T2520-21(o.s.).

⁸⁸⁵ KUSTURA:T2181(o.s.).

⁸⁸⁶ KUSTURA:T2187(o.s.).

⁸⁸⁷ DERVIŠEVIĆ:T1963(o.s.);Exh.P112,p.2.

⁸⁸⁸ DERVIŠEVIĆ:T1963(o.s.).

⁸⁸⁹ DERVIŠEVIĆ:T1969-70(o.s.).

⁸⁹⁰ BERBEROVIĆ:T2506(o.s.).

⁸⁹¹ BERBEROVIĆ:T2507-08(o.s.).

⁸⁹² BERBEROVIĆ:T2536(o.s.).

Sredoje LUKIĆ as being approximately 30-35 years of age.⁸⁹³ **BERBEROVIĆ** was able to *recognise Sredoje LUKIĆ*,⁸⁹⁴ and confirmed his presence in the court.⁸⁹⁵

356. **KUSTURA** knew that **Sredoje LUKIĆ** was a police officer in town.⁸⁹⁶

The Prosecution has Established the Accuseds' Guilt for *Uzamnica*.

357. The evidence of these four men taken as a whole proves that **Milan LUKIĆ** and **Sredoje LUKIĆ** are guilty of the crimes charged in Counts 20 and 21 of the Indictment. **Sredoje** and **Milan LUKIĆ** personally committed the repeated beatings at *Uzamnica*. The evidence has established the severity and cruelty of these beatings, and that the victims were not combatants.

358. As far as *Uzamnica* is concerned, beatings and other acts of violence also fall within the definition of inhumane acts and cruel treatment. Striking the detainees with fists, rifle butts and wooden sticks, and kicking them over extended periods of time caused the victims serious mental and physical pain and suffering so as to reach the required level of severity.⁸⁹⁷

⁸⁹³ **BERBEROVIĆ**:T2551(o.s.).

⁸⁹⁴ **BERBEROVIĆ**:T2510(o.s.).

⁸⁹⁵ **BERBEROVIĆ**:T2520-21(o.s.).

⁸⁹⁶ **KUSTURA**:T2181&T2271(o.s.).

⁸⁹⁷ *Tadić*TJ,para.730;*Kvočka*TJ,para.208;*Krojelać*TJ,para.320;*Orić*TJ,para.352;referring to *Jelisić*TJ,paras.42-45.

Section 4: The *Chapeau* Elements of Articles 3 and 5

Chapeau Elements Common to Crimes Charged Under Articles 3 and 5

359. The Accused have been charged with crimes under Article 3 (violations of the laws or customs of war) and Article 5 (crimes against humanity). While each crime has its own specific elements, there are certain elements that the Prosecution must establish for all Article 3 charges – these are commonly referred to as “*chapeau*” or “general” elements. Similarly, all Article 5 crimes share several *chapeau* elements that must be satisfied in addition to the unique requirements of the underlying crimes. Crimes under Articles 3⁸⁹⁸ and 5⁸⁹⁹ both require the existence of an armed conflict and relationship between that conflict and the underlying crimes.

At all times relevant to this Indictment a state of armed conflict existed in Višegrad.

360. The Appeals Chamber defined the test for armed conflict as follows:

An armed conflict exists whenever there is a resort to armed force between States or protracted armed violence between governmental authorities and organised armed groups or between such groups within a State.⁹⁰⁰

There was an armed conflict on the territory of Višegrad Municipality during the Indictment period.

361. The armed conflict in Višegrad began in early April 1992.⁹⁰¹ It was part of a larger armed conflict throughout BiH that also began in April and continued unabated until the fall of 1995.⁹⁰² In Eastern Bosnia, this conflict involved frequent armed clashes near Žepa, Goražde, Višegrad, and Rogatica.⁹⁰³

362. The first shots were fired around 4 April 1992 at Dobrun, a stone quarry outside the town.⁹⁰⁴ Soon after, both sides erected barricades and intermittent fighting ensued.⁹⁰⁵ Witnesses, including many for the Defence, testified that there was “a state of war.”⁹⁰⁶ The conflict escalated with the artillery bombardment of several Muslim

⁸⁹⁸ *Stakić* AJ, para. 342; *Kunarac* AJ, para. 55; *Tadić* Jurisdiction AD, paras. 67 & 70.

⁸⁹⁹ Article 5, Statute; *Tadić* AJ, para. 249.

⁹⁰⁰ *Tadić* Jurisdiction AD, para. 70. See *Kunarac* AJ, para. 56; *Kordić* AJ, para. 341.

⁹⁰¹ **VILIĆ**: T3479 (o.s.); **VG-022**: T485 (o.s.); **VG-038**: T962 (o.s.); **VG-024**: **Exh. 2D034**, p. 2.

⁹⁰² **VG-013**: T1079-80 (o.s.); **DERIĆ**: T4120 (o.s.).

⁹⁰³ **DERIĆ**: T4120-21 (o.s.).

⁹⁰⁴ **Exh. P014**, VT137 (o.s.); **Exh. P116**, p. 3 (u.s.). Risto PERIŠIĆ would write on 13/07/1992 “Three months following the outbreak of war in this area, around 80% of the territory of the Serbian municipality of Višegrad has been liberated in fighting with the enemy.” **Exh. P317**, p. 1.

⁹⁰⁵ *Lukić* AFD, no. 8. **Exh. P015**, VT351 (o.s.).

⁹⁰⁶ **MLD-001**: T4331 (o.s.); **VG-138**: T3479 (o.s.).

villages.⁹⁰⁷ In response, Muslim forces led by Murat ŠABANOVIĆ took over the hydroelectric dam and threatened to flood the town.⁹⁰⁸ This group released water on 13 April 1992.⁹⁰⁹ ŠABANOVIĆ and his men also captured 12 armed Serbs, including police officers, one of whom was **Sredoje LUKIĆ**.⁹¹⁰ These prisoners were held at a police station, the hydroelectric dam, and in Mededa, where the Muslim authorities of Višegrad established their headquarters.⁹¹¹ Local Muslim and Serb leaders negotiated for their release.⁹¹²

363. The Užice Corps of the Yugoslav National Army("JNA") intervened, took control of the dam and entered Višegrad on 14 April.⁹¹³ Serbs and Muslims who fled Višegrad returned after hearing announcements on television and radio that the JNA would guarantee everyone's security.⁹¹⁴ Residents were also warned that they would lose their jobs if they failed to report for work.⁹¹⁵ Upon returning, many Muslims discovered their homes vandalised.⁹¹⁶

364. Shortly after the JNA occupied Višegrad, thousands of Muslims were taken to the football stadium and searched for weapons.⁹¹⁷ At the stadium, Colonel JOVANOVIĆ of the JNA told the Muslims gathered there that he commanded both the JNA and paramilitaries known as the White Eagles.⁹¹⁸

365. The JNA withdrew on 19 May 1992.⁹¹⁹ The paramilitaries remained, and were joined by others who arrived shortly afterward – some local Serbs also joined.⁹²⁰ The White Eagles and the *Lukić-Group* were the most infamous of these groups that engaged in intimidation, persecution, and murder of the Muslim population.⁹²¹

⁹⁰⁷ **VG-022:Exh.P014**,VT137-38(o.s.).**Exh.P034**,para.6.

⁹⁰⁸ **Exh.P168**,p.2(u.s.);**Exh.1D023**,pp.2-3.**Exh.P116**,pp.4&8(u.s.).

⁹⁰⁹ *LukićAFD*,no.10;**Exh.P014**,VT140(o.s.).

⁹¹⁰ **VG-022**:T495-97&507(o.s.);**Exh.P203**;**Exh.P197**;**Exh.P014**,VT137-38(o.s.).

⁹¹¹ **VG-022**:T511(o.s.).

⁹¹² **VG-022**:T512-13(o.s.);**Exh.P014**,VT143(o.s.).

⁹¹³ *LukićAFD*,nos.9&10.

⁹¹⁴ **VG-014**:T289(o.s.).

⁹¹⁵ **VG-014**:T289(o.s.).**VG-032**:T1143-44(o.s.).

⁹¹⁶ **VG-014**:T291-92(o.s.).**VG-032**:T1145(o.s.).

⁹¹⁷ *LukićAFD*,no.12.

⁹¹⁸ **VG-022**:T477(o.s.).

⁹¹⁹ *LukićAFD*,no.14.

⁹²⁰ *LukićAFD*,no.14.

⁹²¹ **VG022**:T476(o.s.).

***Chapeau* Elements of Article 3**

There was a nexus between the acts of the Accused and the armed conflict

366. Article 3 requires a nexus between the armed conflict and the crimes charged.⁹²² It is clear that the required nexus between the conflict and the acts of the Accused exists. The Prosecution has established that the conflict played a substantial part in the Accuseds' ability to commit the crimes charged, their decision to commit those crimes, and the manner in which the crimes were committed. The purpose with which the Accused committed the crimes bears an inextricable link to the armed conflict.

367. The armed conflict in Višegrad heralded the breakdown of the lawful institutions that had previously ensured the security of all citizens.⁹²³ The Accused would have been unable to commit their crimes - including large-scale murder - under the circumstances normally existing in Višegrad. The armed conflict created the conditions which made the crimes possible.



Figure 5. Exhibits P216 and P230 show **Milan LUKIĆ** in military uniform. Exhibit P230 on the right shows him wearing a fur cap with a two-headed eagle – characteristic of paramilitaries believed to be affiliated with the “White Eagles”. Exhibit P230 also shows an emblem depicting a skull and cross bones and bearing the slogan, “Serbian Chetnik Movement”.

368. The fact that the Accused wore military clothing and carried military weapons in itself is evidence of the required nexus. Witnesses consistently describe both Accused as wearing military clothing,⁹²⁴ and consistently described **Milan LUKIĆ** as

⁹²² *Kunarac*AJ,para.58-59.*See also, Stakić*AJ,para.342.There is no requirement that the perpetrators be active combatants in the hostilities.*Musema*TJ,para.274-75;*Rutaganda*AJ,para.570;*Akayesu*AJ, paras.443-44(*See also* paras.433-445).

⁹²³ **VG-022**:T484&486-877(o.s.).

⁹²⁴ *See for example, VG-097*:T 655(o.s.)(describing both Accused wearing military uniforms). **VG-084**:T1261(o.s.)(describing **Sredoje LUKIĆ** as wearing “some sort of camouflage uniform”).

carrying a sniper-rifle.⁹²⁵ Their dress mirrored that worn by soldiers at checkpoints.⁹²⁶ Figure 5 shows two photographs of **Milan LUKIĆ** taken during this period showing him in military uniform.

369. The manner in which the crimes were prepared and perpetrated was intertwined with the armed conflict.⁹²⁷ The crimes involved gathering and moving large groups of civilians – impossible absent the conflict. The conflict was also the reason given the *Kurspahić-Family* to force them from Koritnik, and the reason houses on Pionirska Street were abandoned. Similarly, many Muslims had fled the conflict in their villages and gathered in Bikavac facilitating the Accused's ability to gather them for large-scale murder. As discussed above the Accused used ruses to overcome the resistance of their victims, and each of these ruses was related to the conflict.

370. The Accused's decision to commit the crimes was also influenced by the conflict. The coincidence of their crimes with the armed conflict makes clear their appreciation of the relationship between the two. Finally, the purpose of their crimes was related to the armed conflict.

***Chapeau* Elements of Article 5**

The Accused committed crimes against humanity in the geographic and temporal context of an armed conflict.

371. As discussed above, the first *chapeau* or general element of a crime against humanity under Article 5 is the existence of armed conflict. The Prosecution incorporates its discussion of the evidence establishing this above. The nexus requirements of Articles 3 and 5 are distinctly different. Article 5 of the ICTY Statute unlike its counterpart in the ICTR Statute, states that a crime against humanity must have been committed "in armed conflict".⁹²⁸ This requires the Prosecution to establish that at the time of the crimes charged there was an armed conflict.⁹²⁹ Unlike the case of war crimes there is no requirement of a substantive relationship between the conflict and the crimes charged – the requirement under Article 5 is simply a

VG-032:T1161(o.s.).**VG-014:**T392(o.s.).**VG-014:**T392(o.s.).**DERVIŠEVIĆ:**T1988(o.s.).**VG-013:**T1098-99(o.s.).**VG-089:**T1749(o.s.)(describing **Milan LUKIĆ** wearing camouflage uniform).
⁹²⁵ **VG-089:**T1749(o.s.).**VG-032:**T1163(o.s.).**VG-014:**T299-300(o.s.).**MLD-025:**T1506(c.s.);**VG-063:**T1835(c.s.).**Exh.P249.**

⁹²⁶ **VG-014:**T291(o.s.).

⁹²⁷ As stated in the *Kunarac*AJ at para.58 "[A] war crime is shaped by or dependent upon the environment – the armed conflict – in which it is committed". See, *Rutaganda*AJ, paras.569-70.

⁹²⁸ Statute, Article 5.

⁹²⁹ *Tadić*AJ, paras.249,251; *Kupreškić*TJ, para.545; and *Kunarac*TJ, para.413.

jurisdictional boundary limiting the criminal acts that can be adjudicated by the ICTY.⁹³⁰

372. In this case, the Prosecution has established a clear nexus between the armed conflict and the crimes charged for the purposes of Article 3 and in doing so has also established the temporal and geographic relationship required under Article 5.

The other chapeau elements of Article 5

373. The remaining *chapeau* elements of Article 5 crimes are:

- i. The existence of a widespread or systematic attack directed against a civilian population;
- ii. The Accused's conduct was part of the widespread or systematic attack directed against a civilian population; and
- iii. The Accused had knowledge of the attack on the civilian population and that their conduct formed a part of that attack.

(i) There was a widespread or systematic attack directed against the Bosnian Muslim civilian population of Višegrad.

374. "It is well established in the jurisprudence of the International Tribunal that in order to constitute a crime against humanity, the acts of an accused must be part of a widespread or systematic attack directed against any civilian population."⁹³¹ An attack is defined as a "course of conduct involving the commission of acts of violence."⁹³² Although an attack may occur as part of the armed conflict, it may precede or outlast that conflict.⁹³³ The attack can "encompass any mistreatment of the civilian population."⁹³⁴

375. The Prosecution must show that an attack was either "widespread" or "systematic"⁹³⁵ – it does not bear the burden of proving both.⁹³⁶ However, the fact that an attack was widespread could itself be indicative of the systematic nature of the attack.⁹³⁷ Only the attack, and "not the individual acts of the accused, must be

⁹³⁰ See, Guénaél Mettraux, *International Crimes and the Ad Hoc Tribunals*, Oxford: Oxford University Press, 2005, p.43.

⁹³¹ *Blaškić* AJ, para.98.

⁹³² *Naletilić* TJ, para.233.

⁹³³ *Kunarac* AJ, para.86.

⁹³⁴ *Kunarac* AJ, para.86.

⁹³⁵ *Blaškić* AJ, para.101.

⁹³⁶ *Nahimana* AJ, para.920.

⁹³⁷ *Tadić* TJ, para.653; *Jelišić* TJ, para.53.

widespread or systematic.”⁹³⁸ As such, there is no minimum number of criminal acts that an accused must perpetrate to commit crimes against humanity.⁹³⁹

376. “[W]idespread’ refers to the large-scale nature of the attack and the number of victims.”⁹⁴⁰ A “crime may be widespread or committed on a large scale by the cumulative effect of a series of inhumane acts or the singular effect of an inhumane act of extraordinary magnitude.”⁹⁴¹ This requirement is intended to ensure that collective crimes are penalised where an individual is victimised “because of his membership of a targeted civilian population.”⁹⁴²

377. The alternative requirement to “widespread” is that the attack is “systematic.” “[S]ystematic’ refers to the organised nature of the acts of violence and the improbability of their random occurrence.”⁹⁴³ “Patterns of crimes, in the sense of the non-accidental repetition of similar criminal conduct on a regular basis, are a common expression of such systematic occurrence.”⁹⁴⁴

378. In addition to demonstrating that the attack is widespread or systematic, the Prosecution must establish that the attack was directed against a civilian population.⁹⁴⁵ The evidence indicates that, at all times relevant to the Indictment, there existed a widespread or systematic attack directed at the Bosnian Muslim civilian population of Višegrad.

379. Some of the most dramatic evidence demonstrating the results of this attack is the almost complete disappearance of the Muslim population from Višegrad. In 1991, approximately 63% of the population of Višegrad Municipality was of Muslim ethnicity, while about 33% was of Serb ethnicity.⁹⁴⁶ After the war, Višegrad was 95.9% Serb – Muslims “had entirely disappeared from Višegrad.”⁹⁴⁷ By contrast, 96.9% of the Serbs who had been in Višegrad before the war remained after the

⁹³⁸ *Blaškić*AJ,para.101;*Kunarac*AJ,para.96.

⁹³⁹ *Tadić*AJ,fn.311.*Kordić*AJ,para.94.

⁹⁴⁰ *Nahimana*AJ, para.920(citing *Kordić*AJ, para.94).

⁹⁴¹ *Kordić*TJ,para.179.

⁹⁴² *Tadić*TJ,para.644.

⁹⁴³ *Kordić*AJ,para.94.

⁹⁴⁴ *Kordić*AJ,para.94.*See also*,*Tadić*TJ,para.648, citing ILC Draft Code.

⁹⁴⁵ *Kunarac*AJ,para.90;*Martić*AJ,para.305;*Bagilishema*TJ,para.80.

⁹⁴⁶ *Lukić*AFD,no.2;**Exh.P118**,p.1.

⁹⁴⁷ **Exh.P118**,p.1;**TABEAU:T2085-87**(o.s.).In fact, 99.9% of the pre-war Muslim population in Višegrad was no longer in Višegrad, due either to disappearance, death, or flight.

conflict.⁹⁴⁸ This stark demographic shift is, by itself, powerful evidence of the attack on the Bosnian Muslim civilian population of Višegrad.

380. Other evidence in this case fills in the details of the attack. Those Muslims who remained in Višegrad found themselves trapped, disarmed and vulnerable to attack by local Serbs, police and paramilitaries who operated with impunity and the complicity of local and regional Serb authorities.⁹⁴⁹ From early April 1992 onwards, Muslim citizens began to disappear.⁹⁵⁰ For the next few months, hundreds of Muslim men and women, children and elderly people, were killed.⁹⁵¹ Many of those who were killed were simply thrown into the Drina.⁹⁵² Muslims were taken from their workplaces, never to be seen again.⁹⁵³ Killings happened in the villages surrounding Višegrad town as well as in the town itself.⁹⁵⁴ The bodies of hundreds of other Muslim civilians were exhumed from communal graves in and around the Višegrad municipality.⁹⁵⁵ Muslim civilians were subjected to other forms of mistreatment and humiliation, such as rapes or beatings.⁹⁵⁶ The police were particularly active in the arrest of Muslims.⁹⁵⁷

381. The number of disappearances peaked in June and July 1992.⁹⁵⁸ Sixty-two percent of those who went missing in 1992 disappeared during these two months.⁹⁵⁹ The pattern and intensity of disappearances in Višegrad paralleled that of neighbouring municipalities in eastern Bosnia which now form part of Republika Srpska.⁹⁶⁰

382. The results of this attack were apparent even kilometres away from Višegrad. In the village of Slap, near Žepa (downstream from Višegrad), witness Mevsud POLJO and others pulled over 170 bodies out of the Drina.⁹⁶¹ He recognised some corpses as people from Višegrad.⁹⁶² Others wore uniforms from businesses located in

⁹⁴⁸ **TABEAU:T2086**(o.s.).

⁹⁴⁹ *LukićAFD*,no.15.

⁹⁵⁰ *LukićAFD*,no.16.

⁹⁵¹ *LukićAFD*,no.16.

⁹⁵² *LukićAFD*,no.17.

⁹⁵³ **VG-014:T293**(o.s.).

⁹⁵⁴ **Exh.P015**,pp.357-61.

⁹⁵⁵ *LukićAFD*,no.19.

⁹⁵⁶ *LukićAFD*,no.21.

⁹⁵⁷ **VG-017:T2730**(o.s.).

⁹⁵⁸ *LukićAFD*,no.20;**TABEAU:T2089-90**(o.s.).

⁹⁵⁹ *LukićAFD*,no.20.

⁹⁶⁰ *LukićAFD*,no.20.

⁹⁶¹ **POLJO:T574**(o.s.).**Exh.P023**,VT619(o.s.).**Exh.P024**,VT630(o.s.).**Exh.P026**.

⁹⁶² **POLJO:T574-75**(o.s.).

Višegrad.⁹⁶³ A total of 131 bodies of Muslims from Višegrad have been recovered from the shallow graves along the riverbank.⁹⁶⁴ Based on the fact that none of the corpses had military clothing or weapons⁹⁶⁵ and based on the kinds of wounds observed,⁹⁶⁶ it can be concluded that they were civilians. Most of the bodies(114) were male.⁹⁶⁷ In most cases these victims came from Višegrad.⁹⁶⁸

383. Seventy-two per cent of the 131 individuals died as a result of gunshot wounds.⁹⁶⁹ Many of the victims died from close-range shots to the head and trunk.⁹⁷⁰ Others showed signs of blunt-force trauma⁹⁷¹ – there was evidence some victims were bound with ligatures.⁹⁷²

384. Muslims who did not flee were systematically expelled.⁹⁷³ Convoys of buses were organised to remove them, and sometimes escorted by the police.⁹⁷⁴ Identification documents and valuables were often taken away.⁹⁷⁵ Some were exchanged, whilst others were killed.⁹⁷⁶

385. By the end of 1992, there were very few Muslims left in Višegrad. Hundreds had been killed, while thousands of others had been expelled or forcibly transferred through violence and fear.⁹⁷⁷ The number of disappearances in Višegrad was greater than in any surrounding municipality.⁹⁷⁸

386. In addition to these killings and disappearances, the attack also targeted Muslim private and communal property. Life became increasingly unbearable as electricity was cut off to Muslim villages and hamlets.⁹⁷⁹ During May and June, many Muslim houses were burned, making them uninhabitable, and the town's two mosques were razed.⁹⁸⁰

⁹⁶³ **POLJO:T575**(o.s.).

⁹⁶⁴ **Exh.P122**,p.5.

⁹⁶⁵ **Exh.P122**,pp.6-7;**CLARK:T2121-22**(o.s.).

⁹⁶⁶ **Exh.P122**:pp.7-11.

⁹⁶⁷ See **Exh.P122**,p.15.

⁹⁶⁸ **Exh.P122**,p.5.**POLJO:T574-75**(o.s.).**Exh.P023**,VT618(o.s.).

⁹⁶⁹ See **Exh.P122**,p.15.**Exh.P023**,VT620(o.s.).

⁹⁷⁰ See,**Exh.P122**,pp.8-10.

⁹⁷¹ See,**Exh.P122**,pp.11-12.

⁹⁷² See,**Exh.P122**,p.7,figure3;**CLARK:Exh.P011**,VT1545-46(o.s.).

⁹⁷³ *LukićAFD*,no.24.

⁹⁷⁴ *LukićAFD*,no.24.

⁹⁷⁵ **VG-024:T3247**(o.s.).

⁹⁷⁶ *LukićAFD*,no.25.

⁹⁷⁷ *LukićAFD*no.27.See,**Exh.P128**;**Exh.P129**,VT2136-38.**Exh.P034**,para.44.

⁹⁷⁸ **Exh.P118**,p.1.

⁹⁷⁹ **Exh.P015:VT361**(o.s.).

⁹⁸⁰ *LukićAFD*,no.26.**VG-032:T1145**(o.s.).**VG-035:T1651**(o.s.).

(ii) *The Accuseds' crimes formed part of the widespread or systematic attack directed against a civilian population*

387. The acts of the Accused must form a part of the widespread or systematic attack.⁹⁸¹ This has also been articulated as the requirement of a nexus between the acts of the Accused and the widespread or systematic attack.⁹⁸²

388. Evidence establishes that the Accuseds' conduct "compris[ed] part of a pattern of widespread or systematic crimes directed against" the Muslim "civilian population" of Višegrad⁹⁸³ and that it was, by its nature and consequences, part of the attack. First, **Sredoje LUKIĆ** explicitly stated that the unit he and **Milan LUKIĆ** belonged to "organised an operation to cleanse the Višegrad area of Muslims."⁹⁸⁴ Second, the Accused's conduct occurred throughout June, which was the height of the attack against the Muslim population of Višegrad. In fact, on the same day as the *Pionirska-Fire* 700 to 800⁹⁸⁵ Muslims were expelled by convoy.⁹⁸⁶ The next day, approximately 50 of them were murdered.⁹⁸⁷

389. Through the *Pionirska* and *Bikavac-Fires* alone, **Milan LUKIĆ** and **Sredoje LUKIĆ** were responsible for over a hundred deaths and disappearances. **Milan LUKIĆ** boasted about his "liquidating" Muslims when he was interviewed by Serbian officials after his arrest in October 1992:

I personally liquidated many Muslims-extremists in the Višegrad area, who were known to have mistreated the Serbian population. I am uncompromising in opposing Muslim soldiers, and in contrast to the Serbs from Višegrad, when I came there, I came ready to kill anyone who was threatening Serbdom. I dispensed with tolerance in advance, and so did the whole group which I lead.⁹⁸⁸

390. The officials of Serbia also took an interest in **Sredoje LUKIĆ** because of his role in the crimes perpetrated in Višegrad. In a report of a preliminary interview with one of its sources, an official reported that a group led by Niko VUJIČIĆ and **Sredoje LUKIĆ** had "liquidated by slaughter between 270 and 300 individuals of Muslim nationality," in the period up to 4 June 1992.⁹⁸⁹ VG-115, a Serb who remained in Višegrad throughout the attack, gave compelling evidence in private session about the

⁹⁸¹ *DeronjićSAJ*, para.109; *KunaracAJ*, para.99.

⁹⁸² *TadićAJ*, para.251.

⁹⁸³ *See, TadićAJ*, para.248.

⁹⁸⁴ *SL-Record-of-Interview*, p.2.

⁹⁸⁵ **Exh.P015**, VT374(o.s.).

⁹⁸⁶ **Exh.P015**, VT365-404(o.s.).

⁹⁸⁷ **Exh.P015**, VT376-404. **Exh.P016**. **Exh.P017**. **Exh.P127**, VT846-47(o.s.).

⁹⁸⁸ **Exh.P148**, p.2. **Exh.P144**, para.7(u.s.).

LUKIĆs' relationship to the overall campaign against Muslims. Please refer to paragraph 36 in Annex E.

(iii) *The Accused had knowledge of the attack on the civilian population and that their conduct formed a part of that attack*

391. The Appeals Chamber has held that “the *mens rea* of crimes against humanity is satisfied when a person knows that there is an attack on the civilian population and also knows that his acts comprise part of that attack,” or at least that he took the risk that his acts were part of the attack.⁹⁹⁰ The Accused’s motives “for taking part in the attack are irrelevant and a crime against humanity may be committed for purely personal reasons.”⁹⁹¹

392. It is simply inconceivable that anyone present in Višegrad in the month of June 1992 could have been unaware that a massive attack against the Muslim civilian population was underway given the decimation of its population. Numerous witnesses described a public campaign of murder in which the Accused were prominent participants. Victims were frequently taken to the two bridges over the Drina and shot – their bodies thrown into the water below.⁹⁹² On one occasion **Milan LUKIĆ** drove up to a group of about 150 Muslims attempting to leave looking for someone on a list he had in his hand.⁹⁹³ In addition to the killings, the public destruction of Muslim private and communal property would have been obvious to anyone in Višegrad.⁹⁹⁴

393. Most importantly, though, the Accused must have been aware of the widespread and systematic attack for the simple reason that their own conduct formed the most notorious part of that attack.

⁹⁸⁹ **Exh.P197**,p.2.

⁹⁹⁰ *KordićAJ*,para.99;*KunaracAJ*,paras.102,105.

⁹⁹¹ *KordićAJ*,para.99.

⁹⁹² See, **VG-115**:T697(p.s.).

⁹⁹³ **VG-089**:T1740-44(o.s.).

⁹⁹⁴ *LukićAFD*,no.26.

Section 5: The Crimes of Persecution and Extermination

Persecution

394. The Accused are liable under Article 7(1) for the crime of persecution(Count 1). The elements of the crime of persecution under Article 5(h) of the Statute are:

Actus reus:

(i) Acts or omissions which discriminate in fact and which deny or infringe upon a fundamental right laid down in international customary or treaty law; and

Mens rea:

(ii) Are carried out deliberately with the intention to discriminate on one of the listed grounds, specifically race, religion or politics.⁹⁹⁵

395. The Tribunal's case-law has specified that persecutory acts include: (i) acts which satisfy the definition of war crimes, genocide or another separate crime against humanity; and (ii) acts not enumerated in the Statute but which may entail the denial of other fundamental human rights, provided that the acts are of the same gravity as the other crimes listed in Article 5.⁹⁹⁶

396. The requirement of gravity applies to the persecutory acts taken as a whole. It is the cumulative effect of the underlying acts that must reach a gravity equivalent to that of other crimes against humanity.⁹⁹⁷ Discriminatory acts constituting persecution should be considered in the context of their cumulative effect.

397. The *mens rea* for persecution "is the specific intent to cause injury to a human being because he belongs to a particular community or group."⁹⁹⁸ The Appeals Chamber has defined the *mens rea* as carrying out the *actus reus* with "the intention to discriminate on one of the listed grounds, specifically race, religion or politics."⁹⁹⁹ Circumstances which may be considered include (but are not limited to) the systematic

⁹⁹⁵ See, *Nahimana* AJ, para.985, *Krnojelac* AJ, para.185 (citing with approval *Krnojelac* TJ, para.431), reiterated in *Simić* AJ, para.177; *Stakić* AJ, paras.327-28; *Kvočka* AJ, para.320; *Kordić* AJ, para.101; *Blaškić* AJ, para.131; *Vasiljević*, AJ, para.113.

⁹⁹⁶ *Nahimana* AJ, para.985; *Simić* AJ, para.177, *Brdanin* AJ, para.296; *Naletilić* AJ, para.574; *Kordić* AJ, para.102; *Krnojelac* AJ, paras.199, 221.

⁹⁹⁷ *Brdanin* AJ, para.296; *Kvočka* AJ, para.323. *Nahimana* AJ, para.987. See: *Krnojelac* AJ, Sep.Op.of Judge Shahabuddeen, para.7.

⁹⁹⁸ *Kordić* AJ, para.111.

⁹⁹⁹ *Kvočka* AJ, para.320.

nature of the crimes committed against a racial or religious group and the general attitude of the Accused as seen through their behaviour.¹⁰⁰⁰

398. The Accused are charged with persecution under Article 5(h) for the following underlying acts committed against Bosnian Muslims and other non-Serb civilians: (a) murder; (b) cruel and inhumane treatment (severe beating); (c) unlawful detention and confinement; (d) harassment, humiliation, terrorisation and psychological abuse; and (e) theft and destruction of property.¹⁰⁰¹

(a) Murder

399. Murder is explicitly listed under sub-clause (a) of Article 5 of the Statute and constitutes a persecutory act if committed with discriminatory intent.

(b) Severe beatings(cruel and inhumane treatment)

400. Beatings are not explicitly listed in the Statute, nor is cruel and inhumane treatment. Based on the material elements of cruel treatment(under Article 3) and inhumane treatment(under Article 2), cruel and inhumane treatment can be defined as an intentional act or omission which causes serious mental harm, physical suffering or injury, or which constitutes a serious attack on human dignity.¹⁰⁰²

401. Beatings constitute cruel and inhuman treatment if the following elements can be proved:

- i. The beatings caused serious mental or physical suffering or injury or constituted a serious attack on human dignity, and
- ii. The beatings were performed deliberately.¹⁰⁰³

ICTY jurisprudence has clarified that cruel and inhumane treatment in the form of severe beatings can constitute persecutory acts.¹⁰⁰⁴

(c) Unlawful detention and confinement

402. Unlawful detention and confinement are encompassed within the term “imprisonment,” which is explicitly listed under sub-clause(e) of Article 5 of the Statute and thus constitutes a persecutory act if committed on discriminatory grounds. The Appeals Chamber found “that the term imprisonment in Article 5(e) of the Statute

¹⁰⁰⁰ KvočkaAJ,para.460;KrnojelacAJ,para.184.

¹⁰⁰¹ Indictment paras.3-4.

¹⁰⁰² BlagojevićTJ,para.586.

¹⁰⁰³ SimićTJ,para.78;BlagojevićTJ, paras.605-10,620.

¹⁰⁰⁴ SimićTJ, para.83.See also,NikolićSJ,para.31;TodorovićSJ,para.12;NaletilićTJ,para.712; BanovićSJpara.41&KrnojelacAJ,para.188.

should be understood as arbitrary imprisonment, that is to say, the deprivation of liberty of the individual without due process of law”.¹⁰⁰⁵

(d) Theft and destruction of property

403. The crime of persecution also encompasses acts targeting property so long as the victims were selected on discriminatory grounds.¹⁰⁰⁶ In *Martić*, the Chamber held that the appropriation of property through force (robbery) may constitute a persecutory act if accompanied by the requisite intent.¹⁰⁰⁷ Both robbery and theft infringe upon the fundamental right to property.¹⁰⁰⁸ Moreover, in *Kvočka* and *Kordić* theft and robbery were considered as part of an overall persecutory campaign.¹⁰⁰⁹

(e) Gravity requirement

404. All the acts charged in Count 1 of the Indictment form part of the same attack against the Muslim civilian population of Višegrad and were designed to ethnically cleanse Višegrad. The victims were denied their fundamental rights to life, bodily and mental integrity, liberty, property and security. The murder; severe beatings; unlawful detention and confinement; harassment, humiliation, terrorisation, psychological abuse; the theft of personal property and the destruction of houses of Bosnian Muslims, taken together, represent a blatant attack against the human dignity of the victimised group. Those acts were discriminatory in nature because they were directed only against the Muslim inhabitants of Višegrad.

405. Even considering separately the specific incidents charged in the Indictment, in each instance the infringement of the victims’ rights reaches the level of gravity required for persecutory acts.

406. The crimes charged under Count 1 of the Indictment were all committed with a premeditated intent to create an atmosphere of violence and terror, to persecute Muslims, and to drive the Muslim population out of the Višegrad municipality.

407. There is abundant evidence in this case that the Accused acted with the discriminatory intent required for the crime of persecution in that they intentionally directed their attacks exclusively at Bosnian Muslims.¹⁰¹⁰ Perhaps the starkest piece of

¹⁰⁰⁵ *Kordić* AJ, para. 116.

¹⁰⁰⁶ *Kordić*, AJ, para. 108; *Blaškić* AJ, para. 149.

¹⁰⁰⁷ *Martić* TJ, para. 119 and fn. 226.

¹⁰⁰⁸ See, *Blaškić* AJ, para. 145; *Blagojević* TJ, paras. 593-594; *Naletelić* TJ, para. 699 (and authorities cited therein); *Kordić* AJ, para. 81.

¹⁰⁰⁹ See, *Kvočka* TJ, para. 496. See, *Kvočka* TJ, para. 731; *Kordić* TJ, paras. 514-20.

¹⁰¹⁰ See, e.g., *Kvočka* TJ, para. 196; *Tadić* TJ, para. 714; *Blaškić* TJ, para. 236; *Jelisić* TJ, para. 71.

evidence in this regard is **Sredoje LUKIĆ**'s statement that the unit that he and **Milan LUKIĆ** belonged to "organised an operation to cleanse the Višegrad area of Muslims."¹⁰¹¹ In addition, every one of the victims with respect to whom evidence was produced at trial was a Bosnian Muslim. Under these circumstances, the inescapable inference is that the Accused targeted Bosnian Muslims *because* they were Bosnian Muslims.¹⁰¹²

408. In addition to this strong inferential evidence, there is other evidence that the Accused acted with discriminatory intent. Before the war, **Sredoje LUKIĆ** would regularly say to VG-042, "[y]ou Muslims should be killed like flies" and "[y]ou Muslims should be done away with."¹⁰¹³ At the time, she interpreted these comments as jokes, but testified that "eventually he ended up doing what he'd been promising all these years."¹⁰¹⁴

409. **Milan LUKIĆ** regularly referred to the victims of his crimes and to other Muslims using the derogatory term "balija." Before killing his victims in the *Drina-Killings*, **Milan LUKIĆ** bragged that he had "hunted himself a number of balijas."¹⁰¹⁵ He cursed Adem BERBEROVIĆ's "balija mother" as he was beating him¹⁰¹⁶ and said, "hit the balija" as he was beating Islam KUSTURA.¹⁰¹⁷ When he saw CW-001 waiting to get a pass to leave Višegrad, he said, "The balijas have come to look for a pass from us."¹⁰¹⁸ He asked a Serb taxi driver who was driving Muslims, "Why are you driving these balija around?"¹⁰¹⁹ On the morning of the *Pionirska-Fire*, he quipped to a colleague while driving through the town, "I almost killed that man [a pedestrian] 'cause I didn't know he was a Serb."¹⁰²⁰

410. **Milan LUKIĆ**'s discriminatory intent is also evidenced by his signed statement made to Serbian officials in October 1992. In his statement, he says that he "never thought highly of [name redacted] as a man and a Serb, because he was helping the Muslims."¹⁰²¹ He is reported as saying a number of things clearly

¹⁰¹¹ **SL-Record-of-Interview**,p.2.

¹⁰¹² *Kvočka*TJ,para.195.

¹⁰¹³ **VG-042**:T2836-37(o.s.).

¹⁰¹⁴ **VG-042**:T2837(o.s.).

¹⁰¹⁵ **VG-014**:T313(o.s.).

¹⁰¹⁶ **BERBEROVIĆ**:T2511-12(o.s.).

¹⁰¹⁷ **KUSTURA**:T2181-82(o.s.).

¹⁰¹⁸ **CW-001**:T5607-08(o.s.).

¹⁰¹⁹ **VG-119**:T2393(o.s.).

¹⁰²⁰ **VG-089**:T1759(o.s.).

¹⁰²¹ **Exh.P150**,p.2.

evidencing his attitude toward Muslims.¹⁰²² The only reasonable inference based on the evidence in this case is that the Accused acted with the discriminatory intent required for persecution.

Extermination

411. The Accused are liable under Article 7(1) of the Statute for extermination, a crime against humanity, for their participation in the *Pionirska* and *Bikavac-Fires*. The crime of extermination as a crime against humanity is the act of killing on a mass scale.¹⁰²³ The substantive elements for extermination (in addition to the common elements described above) are:

Actus reus:

- i. Any act, omission, or combination thereof which contributes directly or indirectly to the killing of a large number of individuals.¹⁰²⁴

Mens rea:

- ii. The intention to kill persons on a massive scale or to create conditions of life that led to the death of a large number of people.¹⁰²⁵

412. The Accused's underlying conduct must contribute, immediately or eventually, to the unlawful physical elimination of a large number of individuals. *Ndindabahizi* held that "Extermination may be committed less directly than murder, as by participation in measures intended to bring about the deaths of a large number of individuals, but without actually committing a killing of any person."¹⁰²⁶ The Appeals Chamber clarified that the expression "without actually committing a killing" must be interpreted in the sense of "indirectly causing death," consistent with ICTY and ICTR previous case law.¹⁰²⁷ Similarly, in *Seromba* the Appeals Chamber, applied the *Gacumbitsi* dictum regarding "committing" genocide to the *actus reus* of extermination.¹⁰²⁸ Thus, the *actus reus* of the crime of extermination is not restricted only to the physical killing of individuals. As will be shown below, it includes other

¹⁰²² **Exh.P148**,p.2-3.

¹⁰²³ *Seromba*AJ,para.189;*Ntakirutimana*AJ,para.516.

¹⁰²⁴ *Seromba*AJ,para.189.

¹⁰²⁵ *Brdanin*TJ,para.395,quoting *Stakić*TJ,paras.638,641. (endorsed on appeal,*Brdanin*AJ,para.476).

¹⁰²⁶ *Ndindabahizi*TJ,para.479.

¹⁰²⁷ *Ndindabahizi*AJ,para.123 and fn.268.*See,Ndindabahizi*TJ,para.479;*Krstić*TJ,para498;*Vasiljević*TJ,para.227;*Kayishema*TJ,paras.143,146.

¹⁰²⁸ "In the context of genocide, however, 'direct and physical perpetration' need not mean physical killing; other acts can constitute direct participation in the *actus reus* of the crime." *See,Gacumbitsi*AJ, para.60.

acts such as being present, supervising and directing a massacre, and selecting the victims so that they can be killed. By the same token, the *actus reus* of extermination also includes “subjecting a widespread number of people or systematically subjecting a number of people to conditions of living that would inevitably lead to death”.¹⁰²⁹

413. Extermination is a crime directed against a group of individuals, as opposed to any specific or named individuals within it. Extermination requires a mass killing – the taking of a distinctly large number of lives.¹⁰³⁰ This element of “mass killings” or killings on a “massive scale” distinguishes extermination from murder.¹⁰³¹

414. The massiveness of the killings can be cumulatively evaluated.¹⁰³² Looking at the specific incidents on a case by case basis instead, factors such as the time and place of the killings, the selection of the victims, and the manner in which they were targeted must be taken into consideration.¹⁰³³

415. The minimum number of deaths to constitute a *mass killing* cannot be defined in concrete numerical terms. In fact, there is no minimum number.¹⁰³⁴ The killing of 16 civilians was considered a crime of extermination in *Akayesu* while the killings of several thousands of people were found to be crimes of extermination in *Musema* and *Krstić* for example.¹⁰³⁵ In *Brdanin* the Appeals Chamber held that “with respect to those specific incidents ... which involved the killing of between 68 and 300 people in each of the five locations, the Appeals Chamber is satisfied that the *actus reus* of the crime of extermination was made out.”¹⁰³⁶

416. The *mens rea* for extermination is the same as that required for murder with the difference that “extermination can be said to be murder on a massive scale.”¹⁰³⁷ Intent encompasses both direct intent and indirect intent. The perpetrator’s awareness of the massiveness of the killings can be inferred from the circumstances of the case(e.g. from the time frame of the killings), the selection of the victims as well as

¹⁰²⁹ *Stakić*AJ,para.259,quoting,*Ntakirutimana*AJ,para.552.

¹⁰³⁰ *Vasiljević*TJ,paras.224,229,232;*Blagojević*TJ,para.571.

¹⁰³¹ *Akayesu*TJ,para.591;*Krstić*TJ,para.501;*Kajeleli*TJ,paras.891-893;*Kamuhanda*TJ,paras.691,693;*Blagojević*TJ,para.571(“Extermination is to be interpreted as murder on a larger scale - mass murder.”).

¹⁰³² In *Brdanin* the Trial Chamber considered all the killings occurred in the territory of the ARK as a whole(1669 murders), rather than distinguishing between them by location and incident.*Brdanin*TJpara.465. The Appeals Chamber found that there was no error in the Trial Chamber’s finding. *Brdanin*AJ,paras.472-73&479-83.

¹⁰³³ See *Krajišnik*TJ,para.716;*Stakić*TJ,para.640;*Blagojević*TJ,para.573;*Nahimana*TJ,para.1061.

¹⁰³⁴ *Brdanin*AJ,para.471;*Ntakirutimana*AJ,para.516;*Blagojević*TJ,para.573.

¹⁰³⁵ *Akayesu*TJ,para.744;*Krstić*TJ,paras.504-505.

¹⁰³⁶ *Brdanin*AJ,para.472.

¹⁰³⁷ *Brdanin*TJ,para.395, quoting *Stakić*TJ,para.638.See also,*Brdanin*AJ,para.477.

the manner in which the victims were targeted.¹⁰³⁸ Contrary to the holding of the *Vasiljević* Trial Judgment,¹⁰³⁹ knowledge of a “vast scheme of collective murder” is not a subjective element required for extermination as a crime against humanity.¹⁰⁴⁰ In addition, extermination does not require discriminatory intent,¹⁰⁴¹ nor does it require a plan or policy.¹⁰⁴²

The distinction between commission of and aiding and abetting of extermination

417. One of the key distinctions between extermination and other crimes charged in the Indictment is that *indirectly* contributing to the death of a large number of people is sufficient to hold alleged offenders responsible for the *commission* of extermination as a principal perpetrator, and does not merely constitute aiding and abetting extermination. In *Ndindabahizi* the Chamber found that “the Accused himself *committed* the crime of extermination”¹⁰⁴³ even if the evidence did not establish that he had himself killed anyone. His indirect contribution to the mass killing of Tutsis that occurred on Gitwa Hill on 26 April 1994 resulted in “creating, and contributing to, the conditions for the mass killing by distributing weapons, transporting attackers, and speaking words of encouragement that would have reasonably appeared to give official approval for an attack.”¹⁰⁴⁴ This finding was upheld by the Appeals Chamber.¹⁰⁴⁵ In line with the *Ndindabahizi* Appeals Judgment, the Appeals Chamber in *Seromba* held that acts of the Accused (more particularly, his direction and supervision of the bulldozing of the Nyange church, which inevitably led to the killing of the approximately 1,500 Tutsis sheltered therein) were sufficient to constitute direct participation in the crime of extermination (even though the Accused did not personally drive the bulldozer that destroyed the church).¹⁰⁴⁶

418. Thus, when the acts of the accused are as much an integral part of the crime as the killings themselves, the accused has “crossed the line separating aiding and

¹⁰³⁸ *Brdanin* AJ, para. 482.

¹⁰³⁹ *Vasiljević* TJ, paras. 224, 228.

¹⁰⁴⁰ *Stakić* AJ, para. 259.

¹⁰⁴¹ *Krstić* TJ, para. 500.

¹⁰⁴² *Krstić* AJ, para. 225.

¹⁰⁴³ *Ndindabahizi* TJ, para. 485 (emphasis added).

¹⁰⁴⁴ *Ndindabahizi* TJ, para. 485. The Trial Chamber also found that by his deeds and words the Accused aided and abetted and instigated the crime of extermination committed by the attackers. *Ndindabahizi* TJ, para. 485. If the Chamber finds the Accuseds’ actions in this case constitute both commission and aiding and abetting of extermination, it should consider making explicit findings with respect to each of these modes of liability.

¹⁰⁴⁵ *Ndindabahizi* AJ, para. 123.

¹⁰⁴⁶ *Seromba* AJ, para. 190.

abetting from committing”,¹⁰⁴⁷ and should thus be held accountable for commission of extermination – provided that he has the requisite state of mind.¹⁰⁴⁸

419. The *actus reus* of aiding and abetting extermination is established by acts specifically directed to assist, encourage or lend moral support to the perpetration of that crime. This support must have a substantial effect upon the perpetration of the crime.¹⁰⁴⁹ The *mens rea* for aiding and abetting extermination is knowledge that the acts performed by the aider and abettor assist in the commission of the crime of extermination committed by the principal perpetrator(s).¹⁰⁵⁰ Thus, the aider and abettor needs to be aware of the “essential elements” of the crime of extermination. The latter include awareness that large-scale killings occurred or would occur, and that the principal perpetrators had the requisite state of mind (namely, the intention to kill on a mass scale).¹⁰⁵¹ In addition, the aider and abettor needs to be aware that his acts assist in the commission of killings on a massive scale. As long as the aider and abettor knows that his acts assisted in the commission of crimes, it is irrelevant whether he became aware of the principal perpetrators’ acts before, during or after their commission.¹⁰⁵²

420. As discussed in Section 3 above, the actions of **Sredoje** and **Milan LUKIĆ** with respect to the *Pionirska-Fire* and the *Bikavac-Fire* clearly “crossed the line separating aiding and abetting from committing.”¹⁰⁵³ In addition, the number of victims in each of these incidents satisfies the *actus reus* requirement of killing on a massive scale. Both **Milan LUKIĆ** and **Sredoje LUKIĆ** should be convicted of committing extermination for the *Pionirska-Fire* and *Bikavac-Fire*.

¹⁰⁴⁷ *Seromba*AJ, para.182.

¹⁰⁴⁸ *Seromba*AJ, paras.171-72.

¹⁰⁴⁹ *Seromba*AJ, para.139; *Ntakirutimana*AJ, para.530. On the *actus reus* of aiding and abetting see generally, *Nahimana*AJ, para.482; *Ntagerura*AJ, para.370. See also, *Blagojević*AJ, para.127; *Vasiljević*AJ, para.102; *Blaškić*AJ, para.45.

¹⁰⁵⁰ *Seromba*AJ, para.146.

¹⁰⁵¹ *Brdanin*AJ, para.487.

¹⁰⁵² *Brdanin*AJ, para.488.

¹⁰⁵³ *Seromba*AJ, para.182.

Section 6: The Defence Case

421. The Accused raise defences falling into two broad categories: first, those generally applicable to all charges, and second others applicable to specific incidents.

General Defences for Both Accused

Notoriety of the Accused and Rumours

422. The Defence have argued that **Sredoje** and **Milan LUKIĆ** were accused of crimes because of rumours circulating about them. Defence witnesses contradict this theory when they say that they did not hear any such rumours.¹⁰⁵⁴ The fact that the crimes have since brought notoriety to both Accused does not discredit the witnesses' identifications of the **LUKIĆs** based on their own observations of them.

The *Vasiljević* Judgment

423. The acquittal of Mitar VASILJEVIĆ of charges related to the *Pionirska-Fire* has no impact on the witnesses' reliability with respect to their identification of **Sredoje** and **Milan LUKIĆ**. First, the *Vasiljević* Chamber made it clear in paragraph 23 of its judgement that its findings related to **Sredoje** and **Milan LUKIĆ** were not intended for use in their trial. The *Vasiljević* Chamber contemplated that the *Lukić* Chamber would consider the evidence afresh.

424. Second, the fundamental questions of witness credibility and reliability are to be addressed by the Chamber before which a witness gives evidence.¹⁰⁵⁵ A Chamber may not abdicate this essential judicial function to another Chamber which heard a different(albeit overlapping) body of evidence. The Chamber has taken judicial notice of particular findings in the *Vasiljević* case after giving careful scrutiny to discrete individual facts. This Chamber has accepted that it has the fundamental responsibility of assessing the evidence presented against the **LUKIĆs** when it declined to recognise a proposed adjudicated fact on the basis that it was "in the nature of an assessment of Mitar VASILJEVIĆ's credibility as a witness in the *Vasiljević* case, as opposed to a finding of fact."¹⁰⁵⁶

425. The *Vasiljević* Chamber credited a great deal of evidence that the Defence is expected to suggest should be treated with caution. The *Vasiljević* Chamber found that Prosecution witnesses had correctly identified VASILJEVIĆ as having been present

¹⁰⁵⁴ See e.g., **MLD-015**:T4190-91&T4210.**MLD-007**:T4278.**MLD-001**:T4387(o.s.).

¹⁰⁵⁵ *Aleksovski*AJ,para.63. *Kvočka*AJ,para.659.

during the day of the *Pionirska-Fire* and providing the *Kurspahić-Family* with a certificate guaranteeing their safety knowing that “some evil was to befall” them.¹⁰⁵⁷ The witnesses spent much less time in the presence of VASILJEVIĆ than in the presence of the LUKIĆs. VASILJEVIĆ testified in his own trial and confirmed his presence at the Memić-house and confirmed many of the acts Prosecution witnesses attributed to him. The *Vasiljević* Chamber also accepted the evidence of Dr. RABY that the x-ray from VASILJEVIĆ’s medical file, bearing his name and the date of “14 June 1992”, was an x-ray of someone else’s leg.¹⁰⁵⁸ This Trial Chamber has a different corpus of evidence before it and it is for this Chamber to consider afresh which evidence it credits and which evidence it finds unreliable.

Association of Women Victims of War

426. Both Accused have raised the spectre that the Association of Women Victims of War has exercised undue influence on witnesses in this case. In response to these allegations, the Prosecution disclosed information in its possession about the organisation and, pursuant to an order of the Chamber, disclosed contact information of several senior members so that the Defence could fully investigate these allegations. The **Milan LUKIĆ** Defence listed several members of the organisation on its witness list, but ultimately did not call them to testify. Defence allegations are unsupported.

Preliminary Observations on Inadequate Alibi Notice

427. Alibi is the primary defence of both Accused. Once alibi is raised, the Prosecution must “eliminate any reasonable possibility that the evidence of alibi is true.”¹⁰⁵⁹ In this case, **Milan LUKIĆ** has provided four distinctly different alibis and **Sredoje LUKIĆ** has provided two. While proper alibi notice was provided with respect to several witnesses, the notice provided with respect to other witnesses was late, changed over time, and was otherwise inadequate. The Chamber should take this into account when assessing this evidence.

428. The unique nature of alibi evidence is summarised in a legal treatise on the topic quoted by the Supreme Court of Canada.

¹⁰⁵⁶ *Lukić*AFD,para.28.

¹⁰⁵⁷ *Vasiljević*TJ,para.187.

¹⁰⁵⁸ **Exh.P343;Exh.P344;Exh.P345.**

¹⁰⁵⁹ *Vasiljević*TJ,para.15.*See also,Delalić*AJ,par.581&*Kunarac*TJ,para.625.

It must be conceded that there is good reason to look at alibi evidence with care. It is a defence entirely divorced from the main factual issue surrounding the *corpus delicti*, as it rests upon extraneous facts, not arising from the *res gestae*. The essential facts of the alleged crime may well be to a large extent incontrovertible, leaving but limited room for manoeuvre whether the defendant be innocent or guilty. Alibi evidence, by its very nature, takes the focus right away from the area of the main facts, and gives the defence a fresh and untrammelled start. It is easy to prepare perjured evidence to support it in advance.¹⁰⁶⁰

429. The concerns expressed in this passage have been exacerbated in this case by late and inadequate notice. The Chamber was generous in allowing both Accused great flexibility in providing notice of their alibis; in some cases the alibis changed significantly after and in response to Prosecution evidence. There has also been evidence that some former members of **Milan LUKIĆ's** Defence team sought to prepare perjured evidence in support of his alibi.

430. The Chamber should consider excluding late and inadequately noticed alibi evidence. In the alternative, it should consider such evidence with heightened caution as to its reliability. Excluding alibi evidence for inadequate notice is supported by the law of the Tribunal and national jurisdictions.¹⁰⁶¹

431. The Rules governing alibi notice are different in the two *ad hoc* Tribunals. While ICTR Rule 67(B) provides, "Failure of the Defence to provide [alibi notice] under this Rule shall not limit the right of the accused to rely on the above defences [including the defence of alibi],"¹⁰⁶² ICTY Rule 67(C) provides, "Failure of the Defence to provide notice under this Rule shall not limit the right of the accused to testify on the above defences [including the defence of alibi]."¹⁰⁶³

432. The ICTY Plenum, which must be assumed to be cognizant of the ICTR Rules, last amended ICTY Rule 67 in February 2008. The difference between the ICTR Rule and the ICTY Rule should therefore be regarded as intentional. As written, ICTY Rule 67 gives a Chamber the discretion to exclude alibi evidence. The *Kupreškić* Chamber held, "if counsel does not file an appropriate alibi notice under

¹⁰⁶⁰ *Alibi*, Richard Gooderson, Heineman Educational Books Ltd., London, 1977, pp.29-30, *quoted in R.v.Cleghorn*, 100 CCC(3d) 393(Sup.Ct.Canada)(hereinafter, "*Cleghorn*"), para.23(Major, J., dissenting).

¹⁰⁶¹ *See*: Fed.R.Crim.P.R.12.1(c)[U.S.].

¹⁰⁶² Emphasis added.

¹⁰⁶³ Emphasis added.

Rule 67(A)(ii)(a) of the Rules, the evidence of other witnesses as to alibi is liable to be excluded by the Trial Chamber.”¹⁰⁶⁴

433. If the Chamber decides that the remedy of exclusion is not appropriate, it should take the deficiencies in notice into account in determining the weight to be given to the Defence alibi evidence. This is the approach followed by the ICTR and several other jurisdictions that decline to exclude evidence as a remedy for inadequate notice.¹⁰⁶⁵

The Defence case of Sredoje LUKIĆ

The *Pionirska-Fire*

434. **Sredoje LUKIĆ** has asserted alibi for the *Pionirska-Fire*. His alibi, even if believed, is not necessarily inconsistent with the Prosecution case. The *Pionirska-Fire* happened *on or about* 14 June. While it is clear that the Prosecution witnesses are talking about the same fire, the precise date of the fire is less clear(see a full discussion of this in Section 3 above). If the Chamber finds that the fire occurred on the night between 13th and 14th, then **Sredoje LUKIĆ**’s alibi that he was outside of Višegrad on 14 June 1992, does not necessarily contradict Prosecution evidence that he was involved in the the *Pionirska-Fire*. However, there are also significant reasons to find that the alibi evidence cannot be believed.

435. **Sredoje LUKIĆ** claims that in 1992, the Holy Trinity Day of the Serbian Orthodox faith fell on 14 June 1992 and that he celebrated that holiday with friends and family in Krtinska, Obrenovac, Serbia. During this celebration, he claims, he had a dispute with a shopkeeper over an unpaid deposit on a crate of beer bottles. In support of this claim, **LUKIĆ** called two witnesses, Veroljub ŽIVKOVIĆ, who was allegedly present during the dispute, and Branimir BUGARSKI, whom **LUKIĆ** and another man(Milojko POPADIĆ) told about the dispute. Evidence of these witnesses was adduced *via* Rule 92ter – terse two-page statements for each (the full transcript of the ŽIVKOVIĆ interview was admitted after his testimony from the bar table). This evidence cannot raise the reasonable possibility that **Sredoje LUKIĆ** was in Krtinska during the *Pionirska-Fire*. The evidence is insufficient because of:

- i. The bias of these witnesses in favour of **Sredoje LUKIĆ**;

¹⁰⁶⁴ *Kupreškić* Alibi Notice Decision,p.4.*See also*, President Robinson’s comments at T4037(p.s.).

¹⁰⁶⁵ *Kayishema*TJ,para.235-38;*Musema*TJ,para.107;*Semanza*TJ,para.82.*See also*, *Cleghorn*,para.4.&U.K.Criminal Procedure and Investigations Act 1996, Section 11(3).

- ii. Circumstances suggesting the evidence cannot be relied upon;
- iii. The implausible proposition that these witnesses remember the date of an insignificant event; and
- iv. ŽIVKOVIĆ's lack of truthfulness before other courts.

436. This evidence does not raise a reasonable doubt as to **Sredoje LUKIĆ's** presence at the *Pionirska-Fire*. When considered with Prosecution evidence it is a poorly constructed fabrication concocted to help an old friend.

437. The close relationship between these witnesses and **Sredoje LUKIĆ** provides a compelling motive for them to testify falsely. ŽIVKOVIĆ and BUGARSKI are connected to **LUKIĆ** through POPADIĆ, **Sredoje LUKIĆ's** brother-in-law,¹⁰⁶⁶ who was also scheduled to testify. POPADIĆ is the architect of this alibi; he recruited the witnesses, coached them as to the date and presented them to the Defence team as legitimate witnesses capable of belief. This alibi is a construct of POPADIĆ to assist his wife's brother and is permeated with indicia demonstrating its unreliability.

438. ŽIVKOVIĆ described POPADIĆ as his neighbour,¹⁰⁶⁷ his good friend, and someone he has worked with for years.¹⁰⁶⁸ ŽIVKOVIĆ regularly receives work from POPADIĆ: "In 90 percent of cases, I repaired his trucks, and I still do that."¹⁰⁶⁹ ŽIVKOVIĆ has known **Sredoje LUKIĆ** for over 20 years and first met him while visiting POPADIĆ.¹⁰⁷⁰ **Sredoje** would sometimes help him repair POPADIĆ's trucks.¹⁰⁷¹

439. BUGARSKI, POPADIĆ's brother-in-law,¹⁰⁷² has known **Sredoje LUKIĆ** for over 24 years and celebrates holidays at POPADIĆ's house.¹⁰⁷³ **LUKIĆ** lived with POPADIĆ during the war and then moved, with his help, to BUGARSKI's parents' apartment where he lived rent-free.¹⁰⁷⁴

¹⁰⁶⁶ According to ŽIVKOVIĆ, **Sredoje LUKIĆ** is married to POPADIĆ's sister.

ŽIVKOVIĆ:T3619(o.s.).According to BUGARSKI, **Sredoje LUKIĆ's** wife and POPADIĆ's wife are sisters. **BUGARSKI:Exh.2D047,para.2.**

¹⁰⁶⁷ ŽIVKOVIĆ:Exh.2D041,para.2;T3611(o.s.).

¹⁰⁶⁸ ŽIVKOVIĆ:T3621(o.s.).

¹⁰⁶⁹ ŽIVKOVIĆ:T3621(o.s.).

¹⁰⁷⁰ ŽIVKOVIĆ:Exh.2D041,para.2.Exh.P198.

¹⁰⁷¹ ŽIVKOVIĆ:T3618-19(o.s.).

¹⁰⁷² **BUGARSKI:T3731(o.s.).**

¹⁰⁷³ **BUGARSKI:Exh.2D047,para.2.**

¹⁰⁷⁴ ŽIVKOVIĆ:T3622(o.s.).**BUGARSKI:T3732-33(o.s.);Exh.2D047,para.5.**

440. ŽIVKOVIĆ and BUGARSKI are neighbours¹⁰⁷⁵ and have known each other all their lives.¹⁰⁷⁶ ŽIVKOVIĆ also repaired trucks belonging to BUGARSKI.¹⁰⁷⁷ The witnesses are a group of friends and relatives helping one of their own in need by recounting a tale, that, if true, certainly did not occur on the same day as *Pionirska-Fire*.

441. The suspicion raised by these close inter-relationships is only heightened by knowledge of how the alibi defence was constructed. POPADIĆ, its architect, was present during the first meetings the witnesses had with Defence counsel¹⁰⁷⁸ and accompanied ŽIVKOVIĆ and Defence counsel to the store where the incident was discussed. POPADIĆ said to ŽIVKOVIĆ:

Milojko [POPADIĆ] asked me if I remembered that incident on that Holy Trinity, and I asked him, Which Holy Trinity, there have been many. And then *he recalled to me the day*, the first Holy Trinity after the war and the incident with Milan Kozlica in the shop, and that was it. That was my first contact with Mr. Čepić.¹⁰⁷⁹

POPADIĆ directly supplied the keystone of the alibi by telling ŽIVKOVIĆ the date. ŽIVKOVIĆ was not given the opportunity to query his own recollection and possibly arrive at a different holiday.

442. BUGARSKI also repeatedly spoke with POPADIĆ about the case, although his answers to this line of questioning proved evasive:

Q. And would you discuss with him your account of these events from June of 1992?

A. Maybe -- I don't know. Maybe we talked. I asked him if he remembered that Sredoje had come. I mean, it was recently, and he said -- I don't know. Who can remember all these things?¹⁰⁸⁰

443. Even absent a finding that this alibi is the product of an intentional plan, POPADIĆ has inappropriately and unduly influenced the witnesses as to the key aspect of the alibi. No notes were taken of these meetings, no investigators were present, and a last-minute decision to withdraw POPADIĆ denies the Chamber an opportunity to fully explore the authenticity of the alibi.

¹⁰⁷⁵ ŽIVKOVIĆ:T3621-22(o.s.).BUGARSKI:T3731(o.s.).

¹⁰⁷⁶ BUGARSKI:T3731(o.s.).

¹⁰⁷⁷ BUGARSKI:T3732(o.s.).

¹⁰⁷⁸ BUGARSKI:T3759-60(o.s.).ŽIVKOVIĆ:T3659-60(o.s.).

¹⁰⁷⁹ ŽIVKOVIĆ:T3660(o.s.)(emphasis added).

¹⁰⁸⁰ BUGARSKI:T3764(o.s.).

444. **Sredoje LUKIĆ** has no burden to produce any evidence and his decision to withdraw POPADIĆ cannot itself give rise to a negative inference. However, given the absence of POPADIĆ the Chamber must analyse the alibi with less than all the available evidence. The evidence highlights the improbability of witnesses remembering with such certainty an event that would clearly be unlikely to generate such deeply embedded memories.

445. The alibi rests on the premise that this particular day was memorable because **LUKIĆ** and a shopkeeper had a “verbal clash” over a bottle deposit.¹⁰⁸¹ The only eyewitness to the alleged event who testified, **ŽIVKOVIĆ**, described it as a minor incident, “more like persuasion, Why aren’t you letting me do this, and so on”.¹⁰⁸² This description contrasts sharply with **BUGARSKI**’s hyperbolic description that **LUKIĆ** and POPADIĆ became very upset.¹⁰⁸³

446. The described event itself provides no reason for it being the particular feast day of Holy Trinity. The Chamber must rely on the witnesses’ statement that it happened on the village feast day and on a certificate tendered by the local orthodox priest that the village feast day was on 14 June 1992.¹⁰⁸⁴ **BUGARSKI** testified that he celebrated holidays with **Sredoje LUKIĆ**’s family mostly at POPADIĆ’s and that it was “usually around St. George’s Day because my brother-in-law [POPADIĆ] celebrates that holiday.”¹⁰⁸⁵

447. When **BUGARSKI** was asked about the NATO bombardment close to his home, he had difficulty in fixing the date of this more recent and patently more memorable event – in fact when he did venture a date he was incorrect by some months.¹⁰⁸⁶

448. When asked how he remembered that the incident happened on Holy Trinity and not another feast, he tied the feast to a death in the family earlier in the year.¹⁰⁸⁷

¹⁰⁸¹ **ŽIVKOVIĆ:Exh.2D041,para.5;Exh.2D047,para.7.**

¹⁰⁸² **ŽIVKOVIĆ:T3656(o.s.).**

¹⁰⁸³ **BUGARSKI:T3742(o.s.).**

¹⁰⁸⁴ It is notable that this certificate was tendered through **BUGARSKI** rather than the priest who is supposed to have drafted it. His Honour President Robinson queried whether the priest could be called and observed that the priest would be the best person to give this evidence.(T3721). The priest was not ultimately called.

¹⁰⁸⁵ **BUGARSKI:T3724(o.s.).**

¹⁰⁸⁶ **BUGARSKI:T3746-47(o.s.).**

¹⁰⁸⁷ **BUGARSKI:T3738(o.s.).**

The fact is that St. George's Day, celebrated on 6 May,¹⁰⁸⁸ would have been the first feast following his nephew's death.

449. The Chamber need not find that BUGARSKI intentionally lied in order to disbelieve him. It may conclude that he is simply mistaken about the day of the dispute and his recollection was unduly influenced by POPADIĆ's suggestion. Given his pre-existing disposition toward LUKIĆ he would have been susceptible to such suggestion.

450. BUGARSKI and ŽIVKOVIĆ mention many other persons, some with no apparent bias, that were present throughout the day. The Chamber must assess the strength of this alibi evidence with nothing more than the two interested witnesses who were presented by the Defence.¹⁰⁸⁹

451. The Chamber was also denied the opportunity to form an impression of POPADIĆ, a person central to both alibis. Just prior to POPADIĆ's testimony while he was already in The Hague - the Defence team informed the Chamber that POPADIĆ was too ill to testify. The Prosecution suggested that he be accommodated and allowed to testify when he felt better. Without waiting to hear whether the Chamber would agree to rescheduling his evidence he was abruptly withdrawn.¹⁰⁹⁰

452. Independent of this, ŽIVKOVIĆ's credibility was called into serious question during cross-examination. In April 2001, ŽIVKOVIĆ was convicted by the municipal court in Obrenovac based on an incident which took place in May 2000 in which he knocked down his neighbour's fence and then assaulted him.¹⁰⁹¹ On appeal, his sentence was increased to six months.¹⁰⁹² The municipal court judgement included findings that it was "common knowledge" that ŽIVKOVIĆ beats up his own parents and had struck his wife when she was eight months pregnant.¹⁰⁹³

453. When first asked to look at a table relating to all the charges and cases brought against him, ŽIVKOVIĆ stated: "I can't remember in the last ten years that I have ever appeared in court. Maybe if you told me again about some of these cases, I would remember, but maybe not."¹⁰⁹⁴ ŽIVKOVIĆ did appear in court and was interviewed

¹⁰⁸⁸ BUGARSKI:T3744(o.s.).

¹⁰⁸⁹ BUGARSKI:T3645,57(o.s.).ŽIVKOVIĆ:T3621(o.s.).Exh.2D041,para.2.

¹⁰⁹⁰ T3769.

¹⁰⁹¹ Exh.P199,p.3.

¹⁰⁹² Exh.P201,pp.2-5.

¹⁰⁹³ Exh.P199,p.4

¹⁰⁹⁴ ŽIVKOVIĆ:T3629(o.s.).Exh.P202;Exh.P205.

by the judge in his case.¹⁰⁹⁵ When asked if he had been convicted, ŽIVKOVIĆ responded, “I can’t remember exactly. I remember very vaguely some sort of incident, but I don’t know if I was convicted or if I was sentenced or fined.”¹⁰⁹⁶

454. Later, when asked if he accepted responsibility for the crime, ŽIVKOVIĆ stated “Well I simply don’t remember”.¹⁰⁹⁷ In fact, ŽIVKOVIĆ answered questions related to his criminal case by claiming he did not “remember” on eleven different occasions.

455. It is plainly unbelievable that ŽIVKOVIĆ can be so certain about a date 16 years ago regarding a minor disagreement but flounders on the details of his own conviction and sentence of 6 months incarceration. If he cannot honestly recall these dates, his “certainty” about 14 June 1992 is demonstrably unreliable.

456. The Chamber also has before it the record of ŽIVKOVIĆ’s interview with the judge where he stated that he did not hit the other victim, and did not break the fence.¹⁰⁹⁸ Yet ŽIVKOVIĆ admitted to this Chamber that he had.¹⁰⁹⁹ The only reasonable conclusion is that he lied to the Obrenovac judge in a failed attempt to avoid conviction. In light of this evidence any reliance on the uncorroborated assertions of ŽIVKOVIĆ would be an error given this evidence.

457. The weak alibi evidence must be contrasted with the totality of the evidence of the seven survivors of the *Pionirska-Fire*. In addition, the Chamber has before it evidence of VG-115, who saw **Sredoje LUKIĆ** earlier in the day. Some of these witnesses knew **Sredoje LUKIĆ** longer than the Defence witnesses. They knew him, his family, his early years and his long career as a police officer and had every reason to recall the day he tried to kill them.

458. Finally, the Chamber has heard evidence from other Prosecution witnesses who saw **Sredoje LUKIĆ** in Višegrad on the day of the fire. Mirsada KAHRIMAN testified that she knew **Sredoje LUKIĆ** before the war, and saw him around town two or three times a day.¹¹⁰⁰ She made three round trips over the old Višegrad bridge each day from 10-14 June 1992. On each occasion, she would see **Sredoje** and **Milan**

¹⁰⁹⁵ Exh.P200.

¹⁰⁹⁶ ŽIVKOVIĆ:T3629-30(o.s.).

¹⁰⁹⁷ ŽIVKOVIĆ:T3632(o.s.).

¹⁰⁹⁸ Exh.P200.

¹⁰⁹⁹ ŽIVKOVIĆ:T3635(o.s.).

¹¹⁰⁰ KAHRIMAN:T805(o.s.).

LUKIĆ, as well as the red Passat.¹¹⁰¹ She testified that 14 June was the last time she saw **Sredoje LUKIĆ**.¹¹⁰²

459. VG-097 testified that he knew **Sredoje LUKIĆ** for at least ten years as a police officer.¹¹⁰³ He knew **LUKIĆ** drove an Aleko car(corroborated by BUGARSKI)¹¹⁰⁴ but would also see him in the red Passat with **Milan LUKIĆ**.¹¹⁰⁵

460. VG-097 described three different occasions in June 1992 when he saw **Milan LUKIĆ**, **Sredoje LUKIĆ** and Mitar VASILJEVIĆ taking people away.¹¹⁰⁶ The third of these incidents was when the three men took Rasim TOROHAN away. He recalls that this occurred 4 or 5 days prior to 19 June 1992(when he fled), thereby putting it directly at the time the two Defence witnesses claim **Sredoje LUKIĆ** was not in Višegrad.¹¹⁰⁷

The Bikavac-Fire

461. **Sredoje LUKIĆ** also asserts an alibi for the *Bikavac-Fire*. Two witnesses were called in support of his *Bikavac-Alibi*. This alibi is deficient, partisan, highly suspect and late. The Prosecution has eliminated any reasonable possibility that the *Bikavac-Alibi* is true.

462. Branimir BUGARSKI testified that in the late afternoon of 27 June 1992, **Sredoje LUKIĆ** visited his home with his friend and colleague Niko VUJIČIĆ.¹¹⁰⁸ According to him, **Sredoje** had previously arranged to pick up some meat stored in his freezer, but wanted to advise BUGARSKI that he couldn't take it with him. Zorka LUKIĆ, who is married to **Sredoje LUKIĆ's** brother Slavko,¹¹⁰⁹ testified that **Sredoje** with his wife Vidjenka and their two children visited her and Slavko at their home in Belgrade, Serbia at around noon on 27 June.¹¹¹⁰ She said it was the day following her discharge from hospital after giving birth to her daughter.¹¹¹¹

¹¹⁰¹ KAHRIMAN:T810(o.s.).

¹¹⁰² KAHRIMAN:T812(o.s.).

¹¹⁰³ VG-097:T593;T645(o.s.).See,Exh.P028,p.3(u.s.).

¹¹⁰⁴ VG-097:T593(o.s.);Exh.P028,p.3(u.s.).BUGARSKI:T3740(o.s.).

¹¹⁰⁵ VG-097:T595(o.s.).

¹¹⁰⁶ VG-097's testimony regarding the use of a megaphone to inform people to turn over their valuables or else burn in their homes is supported by **Sredoje LUKIĆ's** statement about going to Višegrad command to get batteries for his megaphone.SL-Record-of-Interview,p.3.See, VG-097:T619(o.s.).

¹¹⁰⁷ VG-097:Exh.P028,p.4(u.s.).

¹¹⁰⁸ BUGARSKI:T3748-50(o.s.);Exh.2D047,para.9.

¹¹⁰⁹ Z.LUKIĆ:T3675(o.s.);Exh.2D044,p.2.

¹¹¹⁰ Z.LUKIĆ:T3678(o.s.);Exh.2D044,pp.8,9.

¹¹¹¹ Z.LUKIĆ:T3669(o.s.);Exh.2D044,p.7-10.

463. While the alibi was initially proffered in January 2008, in June 2008 (five weeks before trial and after the Prosecution filed its pre-trial brief setting out its case) **Sredoje LUKIĆ** notified the Prosecution that he was now claiming to be in a different location on the day of the *Bikavac-Fire*.¹¹¹² Until 2 June 2008, as far as the Prosecution was aware, BUGARSKI was the only Defence witness and would testify that **Sredoje LUKIĆ** was in Obrenovac the entire day of the 27th. Because of the very late addition of Zorka LUKIĆ, a close family member, the evidence of both LUKIĆ and BUGARSKI must be treated with considerable suspicion and rejected as unworthy of belief.

464. Despite being in contact with **Sredoje LUKIĆ** and the Defence around the time alibi notice was initially filed (i.e., January 2008) and having advised the Defence of her evidence, Zorka LUKIĆ is not mentioned as relevant to the Accused's alibi.¹¹¹³ This late notice gives rise to the inference that her evidence was developed just before the trial began.

465. This attempt to weave another witness and another location into the alibi creates difficulties for **Sredoje LUKIĆ**. When the alibi testimony of BUGARSKI and LUKIĆ are combined with the details contained in **Sredoje LUKIĆ's** 2 June 2008 Alibi Notice,¹¹¹⁴ an unlikely sequence of events is revealed for 27 June 1992. On this day, **Sredoje LUKIĆ** claims to have made two trips from Obrenovac to Belgrade (Belgrade being in the opposite direction from Višegrad¹¹¹⁵) and then to have driven all the way from Belgrade to Višegrad after the second trip. The sequence of events put forth by the Defence is thus as follows:

Obrenovac→Belgrade. **Sredoje LUKIĆ** is at home at Krtinska, Obrenovac. He drives with his family from Obrenovac to Belgrade to visit Zorka LUKIĆ and her new baby, arriving about noon.¹¹¹⁶

Belgrade→Obrenovac. They return to Obrenovac where **LUKIĆ** joins Niko VUJIČIĆ for a visit to BUGARSKI about 6 pm.¹¹¹⁷ During this

¹¹¹² The opening statement of the Prosecution was 9/07/2008.

¹¹¹³ S.Lukić-Alibi-Notice, 08/01/2008. **Z.LUKIĆ**:T3683(o.s.).

¹¹¹⁴ S.Lukić-Alibi-Notice 02/06/2008, para.16.(u.s.).

¹¹¹⁵ Belgrade is approximately 33 kilometres from Obrenovac, and in the opposite direction from Višegrad.

¹¹¹⁶ **Z.LUKIĆ**:T3678(o.s.);Exh.2D044, pp.8-9.

¹¹¹⁷ **BUGARSKI**:T3750(o.s.),Exh.2D047, para.9.

visit **LUKIĆ** makes no mention to **BUGARSKI** about his trip to Belgrade to see his brother's baby.¹¹¹⁸

Obrenovac→Belgrade→Višegrad. **LUKIĆ** makes a second trip to Belgrade that day, this time with Niko **VUJIČIĆ**.¹¹¹⁹ From Belgrade they depart for Višegrad with Slavko **KNEŽEVIĆ** later that evening.¹¹²⁰

466. While **Sredoje LUKIĆ** allegedly spent a great deal of time in the company of **KNEŽEVIĆ** and **VUJIČIĆ** on the relevant day, the Chamber has not had the benefit of their evidence. While the Accused has no burden of proof and no negative inference can be drawn from his failure to call these witnesses, the Chamber can appropriately be cognisant that its evaluation is restricted to only a small portion of the overall evidence available and that other more reliable evidence may exist.

467. How many passengers were in **LUKIĆ's** car for the trip to Višegrad is unclear. **BUGARSKI** said **LUKIĆ** visited him on 27 June to tell him he couldn't take the frozen pork because they:

[C]ould not carry this with them now because they did not have enough space. Sredoje explained to me that they were setting out for Višegrad early in the morning with another two of their acquaintances[in addition to **VUJIČIĆ**].¹¹²¹

468. By contrast, the Alibi Clarification Notice clearly describes how, after leaving **BUGARSKI's** address in Obrenovac, it was only one person, Slavko **KNEŽEVIĆ**, who joined **Sredoje LUKIĆ** and Niko **VUJIČIĆ** at the Hotel Palas in Belgrade and then travelled with them to Višegrad.¹¹²² Whether there were three or four passengers in the car, it is simply unconvincing that there was not sufficient room for the frozen meat in the car.

469. **BUGARSKI's** credibility has been fully discussed above, and will not be repeated. **BUGARSKI's** motives are further called into question by his failure to come forward with this evidence sooner. Despite his longstanding close personal

¹¹¹⁸ **BUGARSKI:T3756-57(o.s.)**.

¹¹¹⁹ S.Lukić-Alibi-Notice,02/06/2008,para.16.**BUGARSKI:T3749-50(o.s.)**.

¹¹²⁰ S.Lukić-Alibi-Notice,02/06/2008,para.16,**Exh.2D047**,para.9 , **BUGARSKI:T3754-55,T3748-50(o.s.)**.

¹¹²¹ **Exh.2D047**,para.9.

¹¹²² S.Lukić-Alibi-Notice,02/06/2008,para.16.

relationship with **LUKIĆ**, BUGARSKI did not come forward on his own initiative when he learned of the accusations against **LUKIĆ**.¹¹²³

470. BUGARSKI's recollection of insignificant details so long after a relatively brief visit from **Sredoje LUKIĆ** also defies credulity. There is nothing significant about a brief conversation regarding meat that would form a lasting memory as to the date the conversation took place. BUGARSKI's clear memory of this insignificant event is characteristic of fabricated testimony.

471. Zorka LUKIĆ has a strong interest in helping **Sredoje LUKIĆ** - she is his brother's wife. Their families regularly visited one another in Višegrad and Belgrade.¹¹²⁴ Zorka LUKIĆ's close family ties and late inclusion on the witness list necessitate caution in evaluating her evidence.

472. The approximate date of the *Bikavac-Fire* is clearly set out in the Indictment, and **Sredoje LUKIĆ** has been on notice since 2001. It is implausible that **Sredoje LUKIĆ** did not remember his visit to his newborn niece until the eve of trial. Moreover why, if the **Sredoje LUKIĆ** Defence contacted Zorka LUKIĆ at the beginning of 2008, did they not list her as a witness at that time? These circumstances are consistent with recently fabricated evidence. Questions regarding her credibility were heightened when she was cross-examined about what she knew about **Sredoje LUKIĆ** being a fugitive and the charges he was facing. Bearing in mind their close relationship,¹¹²⁵ she testified that before the Defence contacted her, she had no idea about the importance of her evidence.¹¹²⁶

473. A transcript of the audiotape interview of Zorka LUKIĆ by the Prosecution at the office of the Defence on 4 June 2008 is the only record of the evidence of Zorka LUKIĆ prior to her appearance at this Trial.¹¹²⁷

474. The transcript reveals a significant error on the part of LUKIĆ, which goes to the very heart of her evidence. When asked how she was contacted, she replied:

Well, Sredoje remembered *the exact date when I gave birth and that he visited me the next day*, so he has informed the attorney to contact me and that is how we got in touch...¹¹²⁸

¹¹²³ BUGARSKI:T3763(o.s.).

¹¹²⁴ Z.LUKIĆ:T3675-76&T3680(o.s.);Exh.2D044,p.7.

¹¹²⁵ Z.LUKIĆ:T3686(o.s.).

¹¹²⁶ Z.LUKIĆ:T3683(o.s.).

¹¹²⁷ Exh.2D044.

¹¹²⁸ Exh.2D044,pp.1&2.

475. This completely contradicts the core of her alibi testimony, which is that Sredoje LUKIĆ visited her *at her home the day after she was discharged from hospital*, and that her discharge date was 26 June 1992. In the passage above she is clearly stating that Sredoje visited her *the day after she gave birth*, i.e. on 23 June 1992. The birth certificate of Dragana LUKIĆ states she was born on 22 June 1992.¹¹²⁹

476. Although Zorka LUKIĆ attempted to recover from this error during questions from the Defence, her earlier unprompted assertion proves this alibi is fabricated.¹¹³⁰

The Defence case of Milan LUKIĆ

General Defences

477. The Defence of **Milan LUKIĆ** had a number of tendrils which are discussed below, beginning with general defences applicable to all charges.

*Confusion with another person named **Milan LUKIĆ***

478. The **Milan LUKIĆ** Defence has argued that **Milan LUKIĆ** was a common name and therefore the Accused **Milan LUKIĆ** could have been confused with another **Milan LUKIĆ**. During the course of the trial, the Defence led evidence of one other man named **Milan LUKIĆ** from Rujište. This man died in 1993 and was about 58 years old in June 1992.¹¹³¹ Defence witnesses who knew this man clearly stated that it was not possible to confuse him with the **Milan LUKIĆ** on trial.¹¹³²

*Ability to Identify **Milan LUKIĆ** in Photos*

479. The Defence in this case has attempted to use photographs of **Milan LUKIĆ** in order to disprove the identification of him by Prosecution witnesses. In reality, the use of these photographs has strengthened the identification evidence. These photos are family photos depicting **Milan LUKIĆ** at different ages.¹¹³³ Both Prosecution and Defence witnesses have identified **Milan LUKIĆ** in the series of photos.¹¹³⁴

¹¹²⁹ **Exh.2D045.**

¹¹³⁰ **Z.LUKIĆ:Exh.2D044**,pp.2,7&8;T3669(o.s.).

¹¹³¹ **MLD-004:T4544(o.s.).MLD-020:T4486&T4528(p.s.).**

¹¹³² **MLD-004:T4566(o.s.).**

¹¹³³ See submissions of Mr.Alarid on 26/01/2009:T4482.

¹¹³⁴ VG-097 identified MilanLUKIĆ in the following photos: **VG-097:Exh.1D010**,T629(o.s.); **Exh.1D012**,T630(o.s.);**Exh.1D013**,T630(o.s.);**Exh.1D014**,T630-31(o.s.);**Exh.1D015**,T631(o.s.); **Exh.1D016**,T635(o.s.);**Exh.1D017**,T636(o.s.). VG-035 recognised him in **Exh.1D045**; **VG-035:T1720** (o.s.)&**Exh.1D046**;T1721(o.s.). VG-063 said that she believed that **VG-063:Exh.1D050** was a photo of MilanLUKIĆ.**VG-063:T1898(o.s.).MLD-010** recognised MilanLUKIĆ in **Exh.1D011**;(T3946-47)(p.s.).

480. The Defence challenged several Prosecution witnesses on the basis that they had previously stated that **Milan LUKIĆ** had a mole. However, when asked whether the man they saw in court also had a mole, they said yes. Several still shots were taken of **Milan LUKIĆ** in which witnesses clearly identified what they considered to be a mole.¹¹³⁵ See paragraph 37 in Annex E for additional evidence.

Milan LUKIĆ's status as a policeman

481. The Defence has also asserted, in part, that **Milan LUKIĆ** was a reserve police officer, a status that precluded him from leading a paramilitary group. This assertion, however, is not a defence at all. An individual's status as a police officer is not a defence to criminal liability; in fact, under the circumstances of this case, it may be an aggravating factor. If the Chamber finds that **Milan LUKIĆ** was a perpetrator of the crimes charged in the Indictment, then he must be convicted. His status as a policeman, paramilitary soldier, or otherwise is irrelevant.

The Drina/Varda-Alibi

482. **Milan LUKIĆ's** Defence case for the *Drina-Killings* consists of three parts: first, he asserts that the shots that killed the victims of the *Drina-Killings* were fired by a Muslim sniper shooting from the other side of the river;¹¹³⁶ second, he asserts that MLD-025's memory of the events is unreliable due to his use of alcohol at the time; and third, he asserts a defence of alibi.¹¹³⁷

Defence that shots were fired by Muslim snipers from the other side of the river

483. **Milan LUKIĆ** first raised the argument that the fatal shots were fired by a Muslim sniper from across the river in his 9 January 2008 alibi notice.¹¹³⁸ Defence gave notice that two witnesses would give evidence in support of this defence. In the end, these two witnesses did not testify in support of this Defence theory; instead, there was evidence that one of them had been paid to sign a false statement in support of this defence.¹¹³⁹ As a result, there is no evidence in the record to suggest that the shooting was done by anyone other than **Milan LUKIĆ** and the *Lukić-Group* members he was with.

¹¹³⁵ See testimony of **VG-014** regarding **Exh.P009** and **Exh.P010**, and testimony of **VG-097** regarding **Exh.1D009** and **Exh.P029.VG-097:T635(o.s.)**.

¹¹³⁶ M.Lukić-Alibi-Notice,9/01/2008,para.21.D.

¹¹³⁷ M.Lukić-Alibi-Notice,9/01/2008,para.21.D;M.Lukić-Alibi-Notice,18/07/2008, para.11.1.

¹¹³⁸ M.Lukić-Alibi-Notice,9/01/2008,para.21.D.

¹¹³⁹ **Exh.1D223**(u.s.);19/11/2008 65^{ter} Submission, Annex A, witness no.67.

The evidence of Linda LaGrange

484. Linda LaGrange's evidence is summarised in paragraph 38 of Annex E.

Alibi Defence

485. **Milan LUKIĆ**'s alibi for the *Drina/Varda-Alibi* is a single, integrated story that can be summarised as follows: at some point on 7 June 1992, **Milan LUKIĆ** left Višegrad for Belgrade with his mother, MLD-001, and MLD-001's fiancée, arriving in Belgrade that evening.¹¹⁴⁰ That night, **LUKIĆ** went to an engagement party hosted by MLD-015 at a restaurant in the Zemun neighbourhood of Belgrade.¹¹⁴¹ The next morning, he met Željko MARKOVIĆ at a café to ask if it was safe to take Muslims to Novi Pazar.¹¹⁴² On 9 June 1992, he met MLD-015 for a game of billiards in a café in Zemun.¹¹⁴³ During his stay in Belgrade, he had brief encounters with MLD-017 between 7-10 June 1992.¹¹⁴⁴ On 10 June 1992, he left Belgrade for Novi Pazar, again accompanied by his mother, MLD-001, and MLD-001's fiancée.¹¹⁴⁵ They arrived in Novi Pazar that evening around 8:00 p.m., where **Milan LUKIĆ** had a brief meeting with MLD-010.¹¹⁴⁶ Additional evidence is summarised in paragraphs 39-41 of Annex E.

486. The evidence of five witnesses was led in support of this alibi: MLD-001, MLD-010, MARKOVIĆ, MLD-015, and MLD-017. All of this evidence is untrustworthy and should be rejected. One of these witnesses – MLD-010 – was involved in the attempted bribery of two other witnesses (Hamdija VILIĆ and MLD-002). MLD-001's evidence was a fabrication prepared in consultation with a former member of the Defence team.¹¹⁴⁷ The Defence's alibi notice with respect to two of the other witnesses – MLD-015 and MLD-017 – was so late and inadequate as to raise serious concerns about the truthfulness of their evidence.

487. In addition, the testimony of these witnesses is contradictory, illogical, and inconsistent viewed individually or as a whole. Finally, the foundational premise of the *Drina/Varda-Alibi* is that **Milan LUKIĆ** would have undertaken significant risk

¹¹⁴⁰ **MLD-001**:T4336-38(o.s.).

¹¹⁴¹ **MLD-015**:T4091-95(o.s.).

¹¹⁴² **MARKOVIĆ**:T3858-59(o.s.).

¹¹⁴³ **MLD-015**:T4095-96(o.s.).

¹¹⁴⁴ **MLD-017**:T4702-06(o.s.).

¹¹⁴⁵ **MLD-001**:T4340-41(o.s.).

¹¹⁴⁶ **MLD-010**:T3953-58(o.s.).

¹¹⁴⁷ The Chamber witnessed another example of dishonesty when MLD-021 testified that his acute recollection of events and names from 1992 were simply a function of his good memory. He was later

to help Muslims escape Višegrad. Yet in a statement taken during this period, he expressed this view about someone who did help Muslims, “I never thought highly of [name redacted] as a man and a Serb, because he was helping Muslims”¹¹⁴⁸ The very premise of this alibi is undermined by the Accused’s own contemporaneous words.

Interdependence of Witness Testimony

488. In considering **Milan LUKIĆ**’s *Drina/Varda-Alibi*, the interdependent and inter-connected nature of the witnesses’ evidence is an important consideration. The evidence of these alibi witnesses is so inextricably intertwined that it must stand or fall together. For example, if the Chamber concludes that MLD-001 has lied about being rescued by **LUKIĆ**,¹¹⁴⁹ then **LUKIĆ** would have no reason to go to Novi Pazar. He would have no reason to meet with **MARKOVIĆ** to ask him whether it was safe to transport Muslims.¹¹⁵⁰ He would not have met with MLD-010 in Novi Pazar.¹¹⁵¹ He would not have told MLD-017 that “some friends” were staying with him in his flat.¹¹⁵² The same logic applies to each of the *Drina/Varda-Alibi* witnesses – if the Chamber disbelieves MLD-010, that in itself is compelling evidence that the remainder of these witnesses have given false evidence – if any of these witnesses is lying, the others must be as well.

489. When this alibi is weighed against the Prosecution evidence that, for example, **Milan LUKIĆ** was present at the *Drina-Killings*, then the entire *Drina/Varda-Alibi* must fall. MLD-001 was the first witnesses nominated by the Defence for the *Drina/Varda-Alibi*. He met with Jelena RAŠIĆ who helped prepare his statement.¹¹⁵³ (RAŠIĆ’s name also appears on the statement of VG-146,¹¹⁵⁴ who testified that he was paid to sign a statement he never read.¹¹⁵⁵)

490. MLD-001 claims that he asked **Milan LUKIĆ** to help him escape from Višegrad upon meeting him for the first time.¹¹⁵⁶ Not only is it implausible that a

observed reading from notes on hotel stationary which included all essential aspects of his testimony.

MLD-021:T4776-78,Exh.P244(o.s.).

¹¹⁴⁸ **Exh.P150**,p.2.

¹¹⁴⁹ See,**MLD-001:T4336-46**(o.s.).

¹¹⁵⁰ **MARKOVIĆ:T3859-60**(o.s.).

¹¹⁵¹ **MLD-010:T3953-58**(o.s.).

¹¹⁵² **MLD-017:T4703**(o.s.).

¹¹⁵³ **MLD-001:T4349-54**(o.s.);**Exh.P226**(u.s.);**MLD-001:Exh.P227**.

¹¹⁵⁴ **VG-146:Exh.P325**(u.s.).

¹¹⁵⁵ **VG-146:T6713-21**(o.s.);**Exh.1D222**(u.s.).

¹¹⁵⁶ **MLD-001:T4388-89**(o.s.).

Muslim civilian who had already suffered abuse at the hands of Serb forces¹¹⁵⁷ would entrust his life to an unknown Serb in the environment then prevailing in Višegrad; it is equally implausible that **LUKIĆ**, acting as a police officer, would have a lengthy chat with MLD-001 and his fiancée covering such topics as their personal history and Kata **LUKIĆ**'s health.¹¹⁵⁸ MLD-001, like MLD-015 and MLD-017, testified that **Milan LUKIĆ**'s apartment was in the Bezanijska Kosa neighbourhood of Belgrade.¹¹⁵⁹ **Milan LUKIĆ**'s statement to Serb officials in October 1992 that his Belgrade address was Slobodana Penezića Street No. 5 in the Savski Venac municipality across the river from Bežanijska Kosa contradicts this evidence.¹¹⁶⁰

491. MLD-001 testified that **Milan LUKIĆ** went to considerable trouble to help him and his fiancée. Not only is this tale inconsistent with the majority of the evidence, there is also no plausible reason that **Milan LUKIĆ** would jeopardize himself to help Muslims he had no relationship with, while committing crimes against Muslims he had longstanding good relationships with. Equally implausible is MLD-001's return to Višegrad after spending only a few nights in safety – leaving behind his betrothed, never to see her again.¹¹⁶¹

492. MLD-001 also has unrealistically perfect recall of the dates he was with **LUKIĆ**, yet cannot remember the date he got engaged¹¹⁶² or the dates he was arrested and released from the police station.¹¹⁶³

493. MLD-001's testimony is also inconsistent with **MARKOVIĆ**'s. MLD-001 testified that he made the decision to go to Novi Pazar after the morning of 8 June 1992.¹¹⁶⁴ **MARKOVIĆ**, on the other hand, said that **Milan LUKIĆ** was already making enquiries about the possibility of transporting Muslims to Pazar the morning of the 8th.¹¹⁶⁵

¹¹⁵⁷ MLD-001 had previously been detained and beaten in the Višegrad Police Station. **MLD-001:T4372-76**(o.s.). He had also been among the group of civilians forcibly gathered at the football stadium. **MLD-001:T4371-72**(o.s.).

¹¹⁵⁸ **MLD-001:T4386-87**(o.s.).

¹¹⁵⁹ **MLD-001:T4338**(o.s.).

¹¹⁶⁰ **Exh.P150**,p.1;**Exh.P148**,p.2.

¹¹⁶¹ **MLD-001:T4397**(o.s.).

¹¹⁶² **MLD-001:T4381**(o.s.).

¹¹⁶³ **MLD-001:T4384**(o.s.).

¹¹⁶⁴ **MLD-001:T4396**(o.s.).

¹¹⁶⁵ **MARKOVIĆ:T3858-59**(o.s.).

494. Most critically, MLD-001's evidence is strongly contradicted by the rebuttal evidence of VG-148. MLD-001 and VG-148 have a close relationship that is discussed further in Annex E at paragraph 42.

495. The very foundation of MLD-001's evidence is that he was engaged to a waitress from Dušće and was in her apartment when he first met **LUKIĆ**.¹¹⁶⁶ VG-148 knows MLD-001 very well. They would regularly discuss things like relationships and girlfriends.¹¹⁶⁷ Despite this, MLD-001 never told VG-148 about any fiancée in Dušće.¹¹⁶⁸ VG-148, who lived close to MLD-001 prior to the war and saw him daily, was never aware he had moved to Dušće.¹¹⁶⁹ Instead, VG-148 testified that MLD-001 had a serious relationship with a girlfriend who lived in Rogatica during this period.¹¹⁷⁰

496. MLD-001 never told VG-148 that **Milan LUKIĆ** saved his life or that he travelled with **LUKIĆ** to Belgrade – these are precisely the types of things VG-148 is certain MLD-001 would have told him if true.¹¹⁷¹

497. The second Defence witness for the *Drina/Varda-Alibi* was MLD-010. Hamdija VILIĆ testified that MLD-010 was involved in the attempted bribery of two witnesses – himself and MLD-010's brother, MLD-002. VILIĆ testified that his first contact with MLD-010 related to this case was via a phone call with MLD-010's husband in early June 2008.¹¹⁷² During that phone call, MLD-010's husband asked VILIĆ's for permission to give **Milan LUKIĆ** his number.¹¹⁷³ A few days later, VILIĆ received a call from **LUKIĆ**. **LUKIĆ** told VILIĆ that some of his "people" would arrive and that VILIĆ should negotiate with them through MLD-010.¹¹⁷⁴ Approximately 10 days later, VILIĆ received another call from MLD-010 and her husband. They told him to come to their house on 22 June to meet with some of

¹¹⁶⁶ **MLD-001**:T4332(o.s.);T4370(o.s.).

¹¹⁶⁷ **VG-148**:T6844(o.s.).

¹¹⁶⁸ **VG-148**:T6844(o.s.).

¹¹⁶⁹ **VG-148**:T6844-45(o.s.);**MLD-001**:T4370(o.s.).

¹¹⁷⁰ **VG-148**:T6845(o.s.). Given the close relationship between the two families it would be expected that someone in MLD-001's family would have said something to VG-148.

¹¹⁷¹ **VG-148**:T6843-6844(o.s.).

¹¹⁷² **VILIĆ**:T3457(o.s.).

¹¹⁷³ **VILIĆ**:T3458(o.s.).

¹¹⁷⁴ **VILIĆ**:T3460(o.s.).

LUKIĆ's attorneys.¹¹⁷⁵ **Milan LUKIĆ** again called **VILIĆ** the day before the meeting to confirm that **VILIĆ** would attend.¹¹⁷⁶

498. On 22 June 2008, **VILIĆ** travelled to MLD-010's house, arriving before **LUKIĆ**'s attorneys. As **VILIĆ**, MLD-010, and her husband talked, MLD-010 produced a sheet of paper. On one side was a letter addressed to **VILIĆ**. The paper outlined the testimony that **VILIĆ** was asked to give. He was to testify that, as a commander of Muslim forces, he had been involved in combat near Kopito that resulted in Serb forces including **LUKIĆ** being surrounded from 13 to 15 June 1992.¹¹⁷⁷ MLD-010 told **VILIĆ** that **LUKIĆ** had written the letter.¹¹⁷⁸ **VILIĆ** noticed that the other side of the piece of paper was addressed to MLD-010 as "sister," but MLD-010 would not allow **VILIĆ** to read her instructions.¹¹⁷⁹

499. As they waited, MLD-010, her husband, and **VILIĆ** discussed how **VILIĆ** would be provided with everything he needed in life, including money.¹¹⁸⁰ MLD-010 told **VILIĆ** how **LUKIĆ** had sent 5,000 euros which she had given to her brother, MLD-002, for his testimony regarding another fabricated alibi for **LUKIĆ**.¹¹⁸¹

500. When the lawyers arrived, they met briefly with MLD-010 in a separate room. After a short time, MLD-010 returned to the living room and **VILIĆ** was called to meet the lawyers. They told **VILIĆ**, "**Milan** is going to give you everything you need in life," and offered him 100,000 euros to confirm the statement. **VILIĆ** told them the statement was false and refused their offer – the meeting ended.¹¹⁸²

501. **VILIĆ**'s evidence indicates that MLD-010 is a deeply dishonest person, willing to deceive the Tribunal for personal gain. Her testimony should be rejected. The Defence put to **VILIĆ** the implausibility of the amount of money he was offered, but this overlooks **VILIĆ**'s value to the Defence. Hamdija **VILIĆ**'s entire family burned to death in the *Bikavac-Fire*. It is reasonable to believe that alibi evidence from such a person would compel belief as such a person would not lie in defence of the person who killed his wife and three children.

¹¹⁷⁵ **VILIĆ**:T3461(o.s.).

¹¹⁷⁶ **VILIĆ**:T3462(o.s.).

¹¹⁷⁷ **VILIĆ**:T3463-65(o.s.).

¹¹⁷⁸ **VILIĆ**:T3464(o.s.).

¹¹⁷⁹ **VILIĆ**:T3464(o.s.).

¹¹⁸⁰ **VILIĆ**:T3466-7(o.s.).

¹¹⁸¹ **VILIĆ**:T3467(o.s.).

¹¹⁸² **VILIĆ**:T3470-72(o.s.).

502. MLD-010 corroborates much of VILIĆ's account. She concedes that she approached VILIĆ about the possibility of being a witness.¹¹⁸³ She concedes she spoke with **Milan LUKIĆ** on the phone.¹¹⁸⁴ She acknowledges that VILIĆ came to her house to meet the **LUKIĆ** Defence.¹¹⁸⁵ She agrees that VILIĆ spoke with two members of the Defence team, Vladimir RAŠIĆ and someone named Mihajlo.¹¹⁸⁶

503. MLD-010 fails to explain why she would approach someone she knew (as she claims) to be a fervent Muslim nationalist and personally hostile to her and ask him to testify for **Milan LUKIĆ**.

504. Her assertion that her lack of contact with her brother is related to VILIĆ also makes no sense. She claims that she has not spoken to her brother in a year,¹¹⁸⁷ but she also claims that her lack of contact with her brother was related to her meeting with VILIĆ,¹¹⁸⁸ which took place only six months before her testimony.¹¹⁸⁹ VILIĆ, to the contrary, predicted that MLD-002 would not ultimately provide evidence for **Milan LUKIĆ** (a prediction that came true) because MLD-002 was not in Višegrad in 1992 and did not know anything relevant to this case.

505. MLD-010's story also raises the issue of how VILIĆ could have known the details of **Milan LUKIĆ**'s alibi for the *Pionirska-Fire*. She claimed that VILIĆ demanded 100,000 euros from the Defence team as soon as they started speaking and that the conversation ended immediately after this demand.¹¹⁹⁰ If her account is correct, VILIĆ would have no way of knowing details about the *Pionirska-Alibi*. Yet, when he testified, he knew the precise details of the Kopito story before that evidence was led during the Defence case.¹¹⁹¹ The Chamber should accept VILIĆ's evidence on this point and disregard MLD-010's evidence entirely.

506. The Defence's third witness for this alibi was MLD-015. As with MLD-010, MLD-015's evidence may have been subject to improper influence. MLD-015 testified that he had spoken to **Milan LUKIĆ** two or three times while he was in the

¹¹⁸³ **MLD-010:T4023;T4057(o.s.).**

¹¹⁸⁴ **MLD-010:T4054(o.s.).**

¹¹⁸⁵ **MLD-010:T4053-60(o.s.).**

¹¹⁸⁶ **MLD-010:T4059-60(o.s.).Exh.P215**(MLD-10's statement includes the name Mihajlo LAKČEVIĆ).

¹¹⁸⁷ **MLD-010:T4020(o.s.).**

¹¹⁸⁸ **MLD-010:T4053(o.s.).**

¹¹⁸⁹ **MLD-010:T4049(o.s.)**(giving date of meeting with VILIĆ as 22/06/2008).

¹¹⁹⁰ **MLD-010:T4059(o.s.).**

¹¹⁹¹ **VILIĆ:T3463-3465(o.s.).**

UNDU.¹¹⁹² The last time he spoke to **Milan LUKIĆ** was before he gave his statement to the Defence team.¹¹⁹³ According to VILIĆ, **Milan LUKIĆ** was personally involved in procuring false testimony. Contact with **Milan LUKIĆ** is an important factor in assessing MLD-015's credibility.

507. The Defence failed to provide any meaningful notice for MLD-015's alibi evidence. The Defence gave notice of MLD-015's evidence only after the Prosecution had completed all of its case-in-chief, which, pursuant to an earlier Chamber decision, included a substantial part of the Prosecution rebuttal case.

508. MLD-015 was not mentioned in the Defence's 18 July 2008 Alibi Notice. In fact, the Defence first gave notice of MLD-015's evidence more than four months after the deadline for alibi notice expired. No explanation was given for the delay, nor were the contact details required by Rule 67 ever provided.

509. The late, changing, and inadequate notice for MLD-015's evidence renders it inherently suspicious and provides ample reason to summarily disregard it. MLD-015's evidence also contains internal contradictions that make it unworthy of credit. Like MLD-010, MLD-015 also testified that the purpose of **Milan LUKIĆ**'s visit to Belgrade was to bring his mother for medical tests.¹¹⁹⁴ MLD-024, who was in Rujište during the period guarding its citizens testified that **LUKIĆ**'s parents never left Rujište during the first part of June 1992 thereby contradicting this evidence.¹¹⁹⁵

510. MLD-015's evidence regarding where **LUKIĆ** lived was contradicted by **Milan LUKIĆ** himself.¹¹⁹⁶ **Milan LUKIĆ** told Serb officials that he bought a different apartment before the war and continued to live there in October 1992¹¹⁹⁷ – it would have been his Belgrade residence in June 1992.

511. MLD-017 is the fourth Defence witness for this alibi. The alibi notice for her evidence was also late and inadequate rendering her evidence inherently unreliable. As with MLD-015, the Defence first mentioned MLD-017 more than four months after the deadline expired.

¹¹⁹² **MLD-015:T4664(o.s.)**.

¹¹⁹³ **MLD-015:T4665(o.s.)**.

¹¹⁹⁴ **MLD-015:T4093(o.s.)**.

¹¹⁹⁵ **MLD-024:T5101(o.s.)**. MLD-024 was originally identified in the M.Lukić-Alibi-Notice, 18/07/2008 as MLD-006.

¹¹⁹⁶ **MLD-015:T4663(o.s.)**. **Exh.P150**, p.1; **Exh.P148**, p.2.

¹¹⁹⁷ **Exh.P148**, p.2.

512. MLD-017 testified that **Milan LUKIĆ** brought his sick mother to Belgrade.¹¹⁹⁸ As noted above, MLD-024 testified that **Milan LUKIĆ**'s parents did not leave Rujiste.¹¹⁹⁹

513. The Defence's fifth witness for the *Drina/Varda-Alibi* was Željko MARKOVIĆ. His alibi evidence depends wholly on the truthfulness of MLD-001's and MLD-010's testimony. Given the clear evidence of dishonesty on the part of MLD-010 and the fundamental implausibility of MLD-001's story, it is probable that MARKOVIĆ's testimony is also false.

514. MARKOVIĆ's testimony is also rife with contradictions and inconsistencies. Like other alibi witnesses, MARKOVIĆ has an implausibly acute memory for dates important to the case and very little memory of any other important dates. He precisely recalls every date on which he saw **Milan LUKIĆ** in 1992, but does not even know the month of the infamous Zvezda-Dinamo football game in Zagreb in 1991¹²⁰⁰ or when the war engulfed his region.¹²⁰¹

515. MARKOVIĆ's evidence is contradicted by **Milan LUKIĆ**'s statement to the Serbian officials in October 1992. While MARKOVIĆ says **LUKIĆ** arrived from Switzerland just a few days before 6 May 1992,¹²⁰² **LUKIĆ**'s own statement indicates that he returned to Višegrad on 10 April 1992.¹²⁰³ MARKOVIĆ's account of **LUKIĆ**'s involuntary mobilization is contradicted by **LUKIĆ**'s own statement that he was a volunteer who returned to Bosnia immediately after war broke out.¹²⁰⁴

516. Most of the witnesses who testified as *Drina/Varda-Alibi* witnesses also testified as character witnesses for **Milan LUKIĆ**. For example, MLD-010 described **Milan LUKIĆ** as "extremely humane and gracious person. Noble, even, I would say, a very positive character."¹²⁰⁵ MARKOVIĆ describes him as a "paragon of gentleman-like behaviour."¹²⁰⁶ The extreme nature of these platitudes is evidence of a lack of objectivity when assessing **LUKIĆ**'s character.

¹¹⁹⁸ MLD-017:T4703(o.s.).

¹¹⁹⁹ MLD-024:T5101(o.s.).

¹²⁰⁰ MARKOVIĆ:T3871-72(o.s.).

¹²⁰¹ MARKOVIĆ:T3872(o.s.).

¹²⁰² MARKOVIĆ:T3931(o.s.).

¹²⁰³ Exh.P150,p.1.

¹²⁰⁴ Duga-Article,p.3.

¹²⁰⁵ MLD-010:T3952(o.s.).MLD-015:T4090(o.s.).

¹²⁰⁶ MARKOVIĆ:T3844(o.s.).

517. These witnesses' bias is also demonstrated by their consistent statements that **Milan LUKIĆ** never discriminated against anyone.¹²⁰⁷ **MARKOVIĆ** also testified that he "never saw any traces of intolerance in [**Milan LUKIĆ**] towards any people of other ethnic backgrounds, religion, or race."¹²⁰⁸ These statements are so inconsistent with the other evidence in this case (including **Milan LUKIĆ**'s own statements about killing Muslims in Exhibits P150 and P148) as to indicate bias.

518. The Chamber must consider the flawed evidence of **Milan LUKIĆ**'s *Drina/Varda-Alibi* witnesses in conjunction with the overwhelming evidence in the Prosecution case, which establishes that the *Drina/Varda-Alibi* is a fabrication. The evidence of VG-131 is summarised in paragraph 43 of Annex E.

519. VG-133 and VG-141 also provide credible rebuttal evidence for the *Drina/Varda-Alibi*. On 10 June 1992,¹²⁰⁹ **Milan LUKIĆ** came to the apartment building where VG-141 lived with her family and where VG-133 was staying with her in-laws who were VG-141's neighbours. Both women testified consistently that **LUKIĆ** gathered four men, took them to the old bridge and murdered them.¹²¹⁰ When **LUKIĆ** arrived at the building, he went to VG-141's apartment where she stood face-to-face with him for several minutes.¹²¹¹ Next, he went to VG-133's apartment and she too stood face-to-face with him.¹²¹²

520. VG-133 and VG-141 watched the horrible events unfold from their respective upper-floor balconies.¹²¹³ They saw the young neighbour's father come over when he saw his son.¹²¹⁴ The father offered himself instead to which **LUKIĆ** responded "You old man, you are coming with us too".¹²¹⁵ Both watched **Milan LUKIĆ** load the fathers and their sons into **ZUKIĆ**'s red Passat,¹²¹⁶ and watched as he took the men to the old bridge and executed them.¹²¹⁷

¹²⁰⁷ MLD-017:T4701(p.s.).

¹²⁰⁸ **MARKOVIĆ**:T3845(o.s.).

¹²⁰⁹ **VG-141**:T6745(o.s.);**Exh.1D224.1**,p.2;**Exh.1D224.2**,p.9;**Exh.1D224.3**,p.3;**Exh.1D224.4**,p.2;**VG-133**:T2947(o.s.);**VG-133**: **Exh.P161**,p.5-6,para.20(u.s.);T2972-75(o.s.).

¹²¹⁰ **VG-141**:T6745-6795;**Exh.1D224.1**,p.2-3;**Exh.1D224.2**,p.9-11;**Exh.1D224.3**,p.3;**Exh.1D224.4**,p.2-3;**VG-133**:T2972-73&2975-77(o.s.);**Exh.P161**, paras.17-20(u.s.).

¹²¹¹ **VG-141**:T6767(o.s.).

¹²¹² **VG-133**:T2977(o.s.).*See*, **VG-141**:T6750(o.s.).

¹²¹³ **VG-141**:T6748(o.s.);**VG-133**:T2972(o.s.).

¹²¹⁴ **VG-141**:T6747(o.s.);**Exh.1D224.2**,p.10;**Exh.1D224.4**,p.2;**VG-133**:T2977(o.s.).

¹²¹⁵ **VG-141**:T6747(o.s.);*see also* **Exh.1D224.2**,p.10;**Exh.1D224.4**,p.2.

¹²¹⁶ **VG-133**:T2951-55,T2975&77(o.s.);**VG-141**:T6747-48(o.s.).*See*, **VG-133**:**Exh.P161**, para.19(u.s.);**VG-141**:**Exh.1D224.1**,p.2-3;**Exh.1D224.2**,p.10;**Exh.1D224.4**,p.3.

¹²¹⁷ **VG-133**:T2972(o.s.);**VG-141**:6748-6749(o.s.);**Exh.1D224.1**,p.3;**Exh.1D224.2**,p.11;**Exh.1D224.4**,p.3.

521. There is no doubt that the man VG-141 describes was **Milan LUKIĆ**,¹²¹⁸ but she candidly acknowledges that she only came to know who he was after speaking with her neighbours and VG-133 afterward.¹²¹⁹

522. VG-141 remembers the precise date and the day of the week because of the trauma it caused ever since.¹²²⁰

It was a difficult day for me. I will never forget it. I can even tell you it was a Wednesday. I know that on the 11th of June it was the day of Kurban Bajram. Since my religion is Islam, I observed that holiday. I am positive it was the 10th of June, 1992 ... As a child I used to say that Wednesdays are my happy days; but however, as of that day, Wednesdays are no longer my happy days.¹²²¹

523. VG-141 consistently referred to this date in at least four prior statements.¹²²² In addition, in 1994, VG-141's aunt reported these murders as occurring on 10 June 1992.¹²²³

524. VG-133 readily recognised **LUKIĆ** because she encountered him at the Višegrad Health Centre, where she worked,¹²²⁴ and she recognised him in court during her testimony.¹²²⁵ As set out above, VG-133 is a *recognition* witness. VG-133 remembers the date because 10 June 1992 was the day on which she located her mother, who had been missing,¹²²⁶ and because she spoke to her husband who mentioned there had been killings at Varda that day.¹²²⁷

525. The *Drina/Varda-Alibi* is also contradicted by strong documentary evidence. VG-032 identified a protocol book from the Višegrad Health Centre where he worked before the war.¹²²⁸ The book was a record of the patients treated at the clinic.¹²²⁹ **Milan LUKIĆ** is recorded as attending the clinic on 7 June 1992.¹²³⁰ VG-032

¹²¹⁸ **VG-141:T6745(o.s.);T6767(o.s.);Exh.1D224.4,p.2.**

¹²¹⁹ **VG-141:T6750(o.s.). See also Exh.1D224. 2,p.9-10;Exh.1D224.4,p.3.**

¹²²⁰ **VG-141:T6788-89(p.s.).**

¹²²¹ **VG-141:6764(o.s.).**

¹²²² See **Exh.1D224.1;Exh.1D224.2;Exh.1D224.3,Exh.1D224.4.** VG-141 testified that she also provided a statement in Visoko in 1992, in which she described the incident as having occurred on 10 June, and identified **Milan LUKIĆ** in a photo.

¹²²³ **Exh.P327,p.5(u.s.);VG-141:T6763(o.s.).**

¹²²⁴ **VG-133:T2954-55(o.s.).** See, VG-141's corroborating evidence that VG-133 told her in 1992 that she knew **Milan LUKIĆ** from the Višegrad Health Centre: **VG-141:T6751(o.s.); Exh.1D224.2,p.10; Exh.1D224.4,p.3.**

¹²²⁵ **VG-133:T2981-82(o.s.).**

¹²²⁶ **VG-133:T2972-74(o.s.).**

¹²²⁷ **VG-133:T2974-75(o.s.).**

¹²²⁸ **VG-032:T1189(o.s.);Exh.P068(u.s.).**

¹²²⁹ **VG-032:T1189(o.s.).**

¹²³⁰ **VG-032:T1191-92(o.s.);Exh.P068(u.s.).VG-032:T1192(o.s.);Exh.P068(u.s.).**

testified that shifts began at 7 am, that most appointments would last between 15 and 20 minutes, and that **LUKIĆ** was the 15th patient on that day.¹²³¹ He estimated that **LUKIĆ** could not have left the Health Centre much before 11am, but likely not before 12pm.

526. Furthermore, the book describes the medication that Milan **LUKIĆ** received as having been administered intravenously.¹²³² This comports exactly with the type and placement of the bandage which both VG-014 and VG-032 observed on **Milan LUKIĆ**'s inside elbow during the *Drina/Varda-Killings* on 7 June 1992.¹²³³

527. **Milan LUKIĆ**'s *Drina/Varda-Alibi* is implausible, illogical, and tainted by corruption and dishonesty. It is also contradicted by overwhelming Prosecution evidence. **Milan LUKIĆ**'s participation in the *Drina/Varda-Killings* has been proven beyond a reasonable doubt.

The Pionirska-Fire

528. **Milan LUKIĆ** raises two defences with respect to the *Pionirska-Fire*. First, he asserts that a fire of the magnitude described by the Prosecution witnesses did not happen, and second, he presents an alibi.

Substantive Defence

529. The first part of **Milan LUKIĆ**'s Defence case for the *Pionirska-Fire* is that a fire of the magnitude described by witnesses never occurred. **Milan LUKIĆ** supports his claim with the testimony and reports of three experts, Stephen O'DONNELL, Benjamin DIMAS, and Martin McCOY.

530. Their evidence, however does not support this claim. Most critically, DIMAS conceded that, considering all of the evidence, a fully involved room fire may have taken place at the *Pionirska-Fire* site. The following exchange took place during DIMAS's cross-examination after he was confronted with embedded wood that had been recently recovered from the room and was clearly charred:

Q. Okay. So you now agree that it is possible that there was a fully involved fire in that room?

A. Possibly at some point, yes.¹²³⁴

¹²³¹ **VG-032:T1193-94(o.s.);Exh.P068(u.s.).**

¹²³² **VG-032:T1192(o.s.);Exh.P068(u.s.).**

¹²³³ **VG-014:T299(o.s.).Exh.P005,p.5(u.s.).VG-032:T1162(o.s.).**

¹²³⁴ **DIMAS:T6050(o.s.).**

531. In light of this concession, **Milan LUKIĆ's** contention that a fire of the magnitude described by survivors never occurred must fail. The most compelling possible testimony of the magnitude of the the fire came from the eight witnesses who described this terrible tragedy.

532. Much of the remainder of the Defence expert testimony concerned an obvious point – that as time passes the forensic value of a crime scene is diminished.¹²³⁵ The value is diminished in a number of ways due to the simple passage of time, subsequent use of the site, and the possibility of efforts to conceal evidence. In the case of the Omeragić house it was obvious that its deterioration has been accelerated by both the natural elements and human activity.¹²³⁶ In addition to prevalent moisture and mould, O'DONNELL acknowledged that if animals had been boarded in the room the distinctive pattern of charring known as “alligatoring” may have been destroyed.¹²³⁷ The passage of time inevitably results in the destruction of trace evidence(residual chemical compounds that may indicate the presence of accelerants, corpses, etc.). The Defence experts are in agreement that on-site exploitation of a fire scene should begin as soon as possible.¹²³⁸ Defence expert Cliff JENKINS was of the view that collection of physical and trace evidence was impossible after 1994.¹²³⁹

533. JENKINS's criticism of the investigation demonstrates his experience with investigating war crimes cases by overlooking the fact that from the time of the alleged crimes in June 1992 and at least until the time of the Dayton Accord in December 1995, Višegrad was an active war zone, and even long after the Dayton Accords peace and security were tenuous. He overlooks the fact that the first Prosecutor of the ICTY was not appointed until 1994.¹²⁴⁰ O'DONNELL, who has had some experience in wartime exploitation of sites stated that his first consideration is always security of the personnel responsible for examining a site.¹²⁴¹

¹²³⁵ **DIMAS:Exh.1D183**,p.1;T5945(o.s.).

¹²³⁶ **DIMAS:T5972-73,T5979;T6006(o.s.).O'DONNELL:Exh.1D135**,p.2;T5424,T5478-79,T5488(o.s.). See:**DIMAS:T5969(o.s.).MCCOY:T5757(o.s.);Exhs.P275,P276.**

¹²³⁷ **MCCOY:T5698;T5773-76(o.s.).Exh.P283.**

¹²³⁸ See,**MCCOY:T5725(o.s.).**

¹²³⁹ **JENKINS:Exh 1D218**p.8.

¹²⁴⁰ By the time JENKINS testified however, he claimed that he was aware of these matters.

JENKINS:T6548-49(o.s.).

¹²⁴¹ **O'DONNELL:T5455-57(o.s.).**

534. Despite the impediments to conducting timely forensic examination of the Omeragić house, JENKINS agreed in principle that even with an imperfect investigation sufficient evidence to establish guilt may exist.¹²⁴²

535. Despite the passage of time, evidence of a significant fire of the type described by Prosecution witnesses remains. DIMAS testified that he discovered a chunk of charred wood in a hole in one of the walls of the room.¹²⁴³ DIMAS had a good chance to observe this chunk of wood, since he took it out of the wall and held it in his hands.¹²⁴⁴ He testified that a fire reaching 1000 degrees would be required to char the wood in this way, and that a fire of that intensity would certainly have killed any people trapped there.¹²⁴⁵ DIMAS also acknowledged other wood recovered from the room was charred,¹²⁴⁶ the insulation of electrical wires in the room had melted,¹²⁴⁷ there was some spalling on the ceiling of the room,¹²⁴⁸ and there were burn patterns on some of the floorboards.¹²⁴⁹ Finally, DIMAS acknowledged that “everyone is in agreement” that there was a fully involved fire on the upper floors of the structure.¹²⁵⁰

536. There are issues related DIMAS’s credibility, such as his failure to note in his report the melted electrical wire and charred wood he observed during his inspection and his subsequent destruction of his notes where he recorded this information.¹²⁵¹

537. Although the Chamber designated McCOY an expert, no court in the United States has ever so recognised him.¹²⁵² He has no experience in examining fire scenes after a substantial lapse of time: he candidly admitted that in his experience, the longest interval of time between a fire and his examination was less than a week.¹²⁵³ Although McCOY did not make it clear during his evidence, DIMAS characterized

¹²⁴² JENKINS:T6574(o.s.).

¹²⁴³ DIMAS:T5996(o.s.).

¹²⁴⁴ DIMAS:T6018-19(o.s.).

¹²⁴⁵ DIMAS:T6041(o.s.).

¹²⁴⁶ DIMAS:T6049(o.s.).

¹²⁴⁷ DIMAS:T6031-32(o.s.).

¹²⁴⁸ DIMAS:T6070(o.s.). “Spalling” is the term used to describe the mottling of concrete caused by exposure to high heat or flame.

¹²⁴⁹ DIMAS:T5967(o.s.).

¹²⁵⁰ DIMAS:T6059,T6075-77(o.s.). **Exh.P308.**

¹²⁵¹ DIMAS:T5997-98;T6004;T6031-32;T6065-66(o.s.). Dimas testified he destroyed his notes in keeping with policies of the Albuquerque Fire Department but was unable to find that policy when presented with a copy of his department’s Standard Operating Guidelines.

¹²⁵² MCCOY:T5679(o.s.).

¹²⁵³ MCCOY:T5734(o.s.).

himself as the lead investigator and McCOY as someone to take pictures and serve as a sounding board for DIMAS's observations.¹²⁵⁴

538. The Chamber should place no weight on the central conclusion in the McCOY and DIMAS reports that no significant fire occurred in the Omeragić house, since this conclusion is based on two demonstrably erroneous assumptions. The first is that a significant fire would have left smoke plume damage above the windows and doors which would still be visible. McCOY asserted that the lack of smoke or soot near the openings in the room was a "very significant" factor underlying his conclusion.¹²⁵⁵ However, when shown pictures of the upper floor of the house he recognised that its charred floor beams evidenced a serious fire.¹²⁵⁶ When confronted by the utter absence of smoke damage to the walls on that floor he first acknowledged that weather may have caused them to diminish,¹²⁵⁷ but he later claimed that he *could* see smoke damage on the upper floor, and marked these locations on two exhibits.¹²⁵⁸ These signs of smoke damage were not apparent to others in the courtroom,¹²⁵⁹ nor are they apparent on the exhibits. In short, there is reason to believe that in the case of these Defence experts their pre-determined conclusions informed and influenced their observations rather than *vice-versa*.

539. The second central pillar of McCOY's opinion was the absence of fire damage to the door. This conclusion too rests on the clearly erroneous assumption that the door currently at the site is the same door that was there in 1992.¹²⁶⁰ Photographic evidence(taken by the Defence experts) demonstrates clearly that the current door is installed backwards.¹²⁶¹ In addition, this assumption cannot explain why what McCOY claimed was mould damage to the doorframe occurred only on the sides, and not on the cut ends of the doorframe.¹²⁶² McCOY's assumption is also contradicted by DIMAS. McCOY claimed that DIMAS agreed with him that the door was the

¹²⁵⁴ DIMAS:T6006(o.s.).

¹²⁵⁵ MCCOY:T5715(o.s.).MCCOY did agree that a wall covering could, in general, reduce the signs of smoke or soot.MCCOY:T5739-41(o.s.).

¹²⁵⁶ MCCOY:T5718(o.s.).

¹²⁵⁷ MCCOY:T5720-21(o.s.).

¹²⁵⁸ Exhs.1D175;1D176.

¹²⁵⁹ MCCOY:T5825-27(o.s.).

¹²⁶⁰ MCCOY:T 5704-05,T5758-57, T5760&63(o.s.).

¹²⁶¹ See Exhs.P277,P281,P282.

¹²⁶² MCCOY:T5768-71(o.s.);Exh.P280.

same,¹²⁶³ but this is untrue. DIMAS said they never discussed this issue, and readily acknowledged that the door may have been changed.¹²⁶⁴

540. VG-013 testified that she had been told that shortly after the *Pionirska-Fire* efforts had been undertaken to conceal the crime, including using a cistern truck to wash out the interior of the room.¹²⁶⁵ While the room in its present condition clearly indicates that explosions and fire both occurred, the possibility remains that other evidence of the fire has been removed. MAŠOVIĆ testified that it would be implausible to conclude that these crimes did not occur in light of the hundreds of people who came to the institute to report the victims of *Pionirska-Fire* as missing as of 14 June 1992.¹²⁶⁶ A furring strip located under one of the windows in the room indicate the possibility of additional material affixed to the concrete substructure which is no longer there.¹²⁶⁷ Charred wood recovered from just outside the room under the portico reveals significant damage to the side of the finished wall facing the fire and remarkably little damage to the reverse side and the wall underneath.¹²⁶⁸

Alibi Defence

541. **Milan LUKIĆ's** alibi for the *Pionirska-Fire* is, in summary, that he was trapped in the village of Kopito during a military operation at the time of the fire and that the road between Kopito and Višegrad was impassable from 13-15 June 1992. The Defence led the evidence of four witnesses in support of this alibi: MLD-004, MLD-007, MLD-024, and Goran ĐERIĆ.

542. There is no reasonable possibility **Milan LUKIĆ's** *Pionirska-Alibi* is factually true. Like the *Drina/Varda-Alibi*, the *Pionirska-Alibi* rests upon a demonstrably false premise: that the road between Višegrad and Kopito was physically impassable between 13 and 15 June 1992. The road between Kopito and Višegrad was open and passable on 14 June, as demonstrated by the fact that a convoy of buses carrying 700-800 Bosniaks travelled on that road that day. VG-136 and Ferid SPAHIĆ were both passengers on this convoy.¹²⁶⁹ VG-136 testified that she will remember the date until

¹²⁶³ MCCOY:T5759-60(o.s.).

¹²⁶⁴ DIMAS:T6006(o.s.).

¹²⁶⁵ VG-013:T1075-76(p.s.).It should be remembered that the crime scene was under the control of the Bosnian Serbs at the time and is currently in the *Republika Srpska*.

¹²⁶⁶ MAŠOVIĆ:T3185(o.s.).

¹²⁶⁷ O'DONNELL:T5502(o.s.), *See*,Exh.P270.

¹²⁶⁸ O'DONNELL:T5498-99&T5500(o.s.) testifying about Exh.P268.Exh.P299.

¹²⁶⁹ VG-136:T6797(o.s.);Exh.P330,p2(u.s.);Exh.P331,p5(u.s.);SPAHIĆ:T527(o.s.);Exh.P015, VT366;Exh.P021,para.17;Exh.P020,p4;Exh.1D007,pp2-3;Exh.1D006,p1.

the day she dies,¹²⁷⁰ while SPAHIĆ said that the date is “eternally etched” in his mind.¹²⁷¹ Both VG-136 and SPAHIĆ have been consistent in the date 14 June since their first statements in 1996 and 1992 respectively,¹²⁷² more than a decade before **Milan LUKIĆ** gave notice of his *Pionirska-Alibi*. Their memory of this date is corroborated by VG-133, who saw the convoy forming up on the main square of Višegrad,¹²⁷³ and by Mirsada KAHRIMAN, who tried unsuccessfully to get on the same convoy.¹²⁷⁴

543. The route followed by the convoy is important to the rebuttal of **Milan LUKIĆ**'s *Pionirska-Alibi*. Both VG-136 and SPAHIĆ gave evidence that, after leaving the main square of Višegrad, the convoy passed over the new bridge and continued on to Lijeska.¹²⁷⁵ VG-136 testified that Serb soldiers were deployed all along the road from Višegrad town to Lijeska, the same road that she marked on Exhibit P329.¹²⁷⁶ This clearly demonstrates that the road that the Defence claims was impassable was in fact open, passable, and under firm Serb control.¹²⁷⁷

544. When the convoy arrived in Lijeska, it stopped for 10 to 20 minutes, and Serb soldiers escorting the convoy got sandwiches in the village.¹²⁷⁸ Lijeska is *precisely* the point at which the Defence claims that the road was blockaded because of the ambush of Vlatko TRIFKOVIĆ the previous day.¹²⁷⁹

545. From Lijeska, the convoy continued on directly through Kopito, the village in which **Milan LUKIĆ** claims he was “trapped.”¹²⁸⁰ From there, it travelled in the direction of Rogatica,¹²⁸¹ and then to its final destination, near Olovo.¹²⁸² Defence witness MLD-007 confirmed that convoys from Višegrad followed this route.¹²⁸³

¹²⁷⁰ VG-136:T6797(o.s.).

¹²⁷¹ SPAHIĆ:T528(o.s.).

¹²⁷² VG-136:T6831-6832(o.s.);Exh.P330,p.2(u.s.);SPAHIĆ:Exh.1D006,p.1.

¹²⁷³ VG-133:T2977-78(o.s.).

¹²⁷⁴ KAHRIMAN:Exh.P035,paras.9-10;T850-51(o.s.).

¹²⁷⁵ VG-136:T6806-08(o.s.);SPAHIĆ:T531(o.s.);Exh.P021,para.22.

¹²⁷⁶ VG-136:T6807&T6811-12;Exh.P329.

¹²⁷⁷ SPAHIĆ:Exh.P015,p.5.

¹²⁷⁸ VG-136:T6808(o.s.).

¹²⁷⁹ M.Lukić-Alibi-Notice,18/07/2008,para.13.1;MLD-004:T4560-61(o.s.);DERIĆ:Exh.P218; T4139-41(o.s.).

¹²⁸⁰ SPAHIĆ:Exh.P021,p.4;T531(o.s.);Exh.P022.

¹²⁸¹ SPAHIĆ:Exh.P021,p.4;T531(o.s.);Exh.P022.

¹²⁸² VG-136:T6808(o.s.);SPAHIĆ:T532(o.s.);Exh.P015,p.5.

¹²⁸³ MLD-007:T4281(o.s.).

546. The road that this convoy travelled was the only road between Kopito and Višegrad,¹²⁸⁴ and on 14 June 1992 there were no barriers or roadblocks on that road anywhere between those two places.¹²⁸⁵ Nor was there any combat.¹²⁸⁶ Exhibit P022 is a map of the area between Višegrad and Rogatica. It was marked by Ferid SPAHIĆ with a line showing the path of the convoy from Višegrad to Seljani, near Rogatica. It is clear that this route took the convoy directly through Kopito.

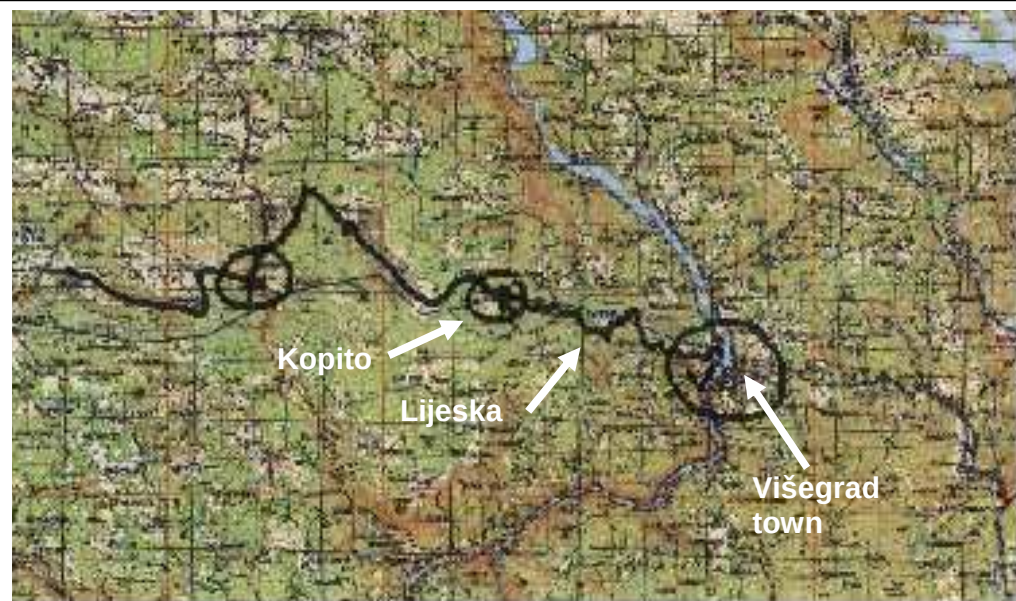


Figure 6. Exhibit P022 shows the route that the convoys out of Višegrad took on 14 June 1992 – the road **Milan LUKIĆ** claims was blocked.

The white labels and arrows have been added for clarity – see original exhibit.

547. The *Pionirska-Alibi* suffers from other problems. The systematic attempt to manufacture false evidence in support of this alibi undermines its truthfulness. Hamdija VILIĆ testified that he was offered money to give false testimony in support of this alibi, and the only document tendered by the Defence in support of this alibi (Exhibit 1D025) has been found to be a forgery. This attempt to produce false evidence gives rise to the inference that the entire alibi is fabricated. The alibi is also rebutted by the numerous witnesses who testified to having seen **Milan LUKIĆ** in various locations throughout Višegrad town during this period. Finally, the evidence of the witnesses who testified in support of this alibi is so inconsistent, illogical, and flawed as to be incapable of belief.

¹²⁸⁴ SPAHIĆ:T534(o.s.).VG-136:T6824-25(o.s.).

¹²⁸⁵ SPAHIĆ:T533(o.s.).

¹²⁸⁶ VG-136:T6825-26(o.s.).

548. Hamdija VILIĆ testified that he was offered 100,000 euros to give the following false testimony in support of **Milan LUKIĆ's** *Pionirska-Alibi*:

“[T]hat I, Hamdija Vilic, military commander of the Muslim forces intercepted a Serb military column of vehicles in the village of Kopito above Višegrad, killed three Serbian officers[.] [...] And that I kept Milan Lukic and his army for three days and three nights encircled, to be more precise from the 13th of June, 1992, to 15th of June, 1992. And that he could not have been during those three days in the town of Višegrad. And that was it.”¹²⁸⁷

When he refused **Milan LUKIĆ's** efforts to obtain this testimony from him, other witnesses were produced in his stead.

549. In addition, the Defence tendered exhibit 1D025, a list of police officers they claim were “trapped” in Kopito on 14 June 1992, as a way of supporting **Milan LUKIĆ's** alibi.¹²⁸⁸ The Prosecution proved this document is a forgery.¹²⁸⁹ VG-146 also gave evidence that he was paid to sign a statement he had never read which included references to military operations near Kopito between 12 and 15 June 1992.¹²⁹⁰ There is also substantial evidence of **Milan LUKIĆ's** presence in Višegrad and its environs during the period he claims he was trapped in Kopito.

550. VG-136 and SPAHIĆ testified that they saw **Milan LUKIĆ** on the main square of Višegrad as the convoy was assembling. VG-136 testified that, at one point as the buses were waiting on the main square, a person she did not know got on her bus looking for Esad KUSTURA.¹²⁹¹ He was wearing a blue shirt, navy blue trousers, and had a bandage on his left hand or arm.¹²⁹² VG-136 saw this person from a distance of less than two metres in good lighting conditions.¹²⁹³

551. As soon as he got on the bus, people on the bus began shouting, “**Milan LUKIĆ, Milan LUKIĆ**” indicating the identity of this man.¹²⁹⁴ There were about 70

¹²⁸⁷ VILIĆ:T3464-65(o.s.).

¹²⁸⁸ Exh.1D025.

¹²⁸⁹ Report of Wil FAGEL, dated 8/10/ 2008(FAGEL Report), exhibit number not yet assigned. See also, Exh.P337;Exhs.P320-323.

¹²⁹⁰ VG-146:T6713-21(o.s.);Exh.1D222(u.s.);Exh.P325(u.s.).

¹²⁹¹ VG-136:T6801;T6834(o.s.);Exh.P331,p.6(u.s.).

¹²⁹² VG-136:T6802(o.s.).The transcript indicates that the bandage was on **Milan LUKIĆ's** hand.However, given that the B/C/S word “ruka” can be translated as either “hand” or “arm,” the Prosecution submits that the witness may have in fact intended to indicate that the bandage was on his arm.

¹²⁹³ VG-136:T6805(o.s.).

¹²⁹⁴ VG-136:T6802(o.s.).

people on the bus, including people from **LUKIĆ's** native area of Župa.¹²⁹⁵ VG-136 believes that Esad KUSTURA, knew **Milan LUKIĆ** personally.¹²⁹⁶

552. The passengers made spontaneous excited utterances showing their fear of **Milan LUKIĆ**. They had no opportunity or motive to lie about the identity of the person they recognised. Given that some of them were from Župa and others were close in age to **Milan LUKIĆ**, they had a strong basis to recognise him.

553. After **Milan LUKIĆ** asked whether Esad KUSTURA was on the bus, KUSTURA identified himself. **Milan LUKIĆ** said, "Where are you, my school friend? Just come out and go to the SUP for five minutes to give a statement."¹²⁹⁷ Before KUSTURA reached the front of the bus, Ljupko TASIĆ got on the bus and pulled **Milan LUKIĆ** off.¹²⁹⁸

554. SPAHIĆ gives a consistent, though shorter, account of this incident. He says that, while the buses were on the main square, a person whom he did not know got on and called out the name of Esad KUSTURA, addressing him as "schoolmate."¹²⁹⁹ Like VG-136, SPAHIĆ says that a quarrel broke out between TASIĆ and **LUKIĆ**, as a result of which Esad KUSTURA did not leave the bus.¹³⁰⁰ After the buses departed SPAHIĆ asked KUSTURA who the person was, and KUSTURA told him it was **Milan LUKIĆ**.¹³⁰¹

555. VG-133 saw **Milan LUKIĆ** on the main square between 10am and noon on 14 June as the convoy formed.¹³⁰² She saw him getting on a bus on the main square of Višegrad, checking the IDs of passengers and asking some women to remove their headscarves.¹³⁰³ VG-133 heard that **LUKIĆ** was looking for a young woman named KURSPAHIĆ.¹³⁰⁴ VG-133 also saw **LUKIĆ** later that day walking around the square.¹³⁰⁵

¹²⁹⁵ VG-136:T6802(o.s.).

¹²⁹⁶ VG-136:T6803(o.s.).

¹²⁹⁷ VG-136:T6801(o.s.).

¹²⁹⁸ VG-136:T6802(o.s.).

¹²⁹⁹ SPAHIĆ:T530(o.s.). See, Exh.P015, VT368-369; Exh.P020, p4 & Exh.P021, p3.

¹³⁰⁰ SPAHIĆ:T530(o.s.).

¹³⁰¹ SPAHIĆ:T530(o.s.).

¹³⁰² VG-133:T2977-78(o.s.).

¹³⁰³ VG-133:T2978(o.s.).

¹³⁰⁴ VG-133:T2978(o.s.).

¹³⁰⁵ VG-133:T2979(o.s.).

556. KAHRIMAN saw **LUKIĆ** on the main square as the convoy was forming. She attempted to board the convoy but **Milan LUKIĆ** told her to step aside.¹³⁰⁶ KAHRIMAN ultimately left on a later convoy.¹³⁰⁷ (As discussed below, KAHRIMAN had significant prior contacts and familiarity with **Milan LUKIĆ**.)

557. Taken together, the evidence of VG-136, SPAHIĆ, VG-133, and KAHRIMAN demonstrate that **Milan LUKIĆ** was present on the main square of Višegrad on the morning of 14 June. This was not the only place outside of Kopito that **Milan LUKIĆ** was seen during the time he was supposedly “trapped” there.

558. VG-089 saw **LUKIĆ** in Višegrad town on 14 June 1992. He testified that on that day **Milan LUKIĆ** and three other soldiers took him and two young friends to the new bridge in Višegrad in a red Passat.¹³⁰⁸ When they arrived at the bridge, **LUKIĆ** ordered VG-089 and his two friends to get out of the car.¹³⁰⁹ **LUKIĆ** threw both of VG-089’s friends into the river.¹³¹⁰ Once in the river, **Milan LUKIĆ** shot one of them, while another soldier shot the other.¹³¹¹ For some reason that VG-089 does not know, **Milan LUKIĆ** spared him.¹³¹² **Milan LUKIĆ** drove VG-089 to the Višegrad police station, where he was imprisoned for the next three days.¹³¹³ VG-089 spent almost an hour and a half with **Milan LUKIĆ**.¹³¹⁴ VG-089 has been consistent about this date since his first statement in March 1995.¹³¹⁵ VG-089 also saw **LUKIĆ** in the police station the next morning (15 June 1992)¹³¹⁶

559. VG-089 had initially seen **Milan LUKIĆ** at the funeral of Behija ZUKIĆ on 21 May, although he did not know his name at that time.¹³¹⁷ He learned his name one day in early June, when he and his mother attempted to leave on a convoy. On that occasion, **LUKIĆ** had a conversation with a former schoolmate of VG-089, who addressed him as “**Milan LUKIĆ**”.¹³¹⁸ This conversation occurred about half a metre

¹³⁰⁶ KAHRIMAN:Exh.P035,para.10.

¹³⁰⁷ KAHRIMAN:Exh.P035,para.10;T850-51(o.s.).

¹³⁰⁸ VG-089:T1752-60(o.s.).

¹³⁰⁹ VG-089:T1760-61(o.s.).

¹³¹⁰ VG-089:T1761-63(o.s.).

¹³¹¹ VG-089:T1761-64(o.s.).

¹³¹² VG-089:T1765(o.s.).

¹³¹³ VG-089:T1766-77(o.s.).

¹³¹⁴ VG-089:T1754,T1766(o.s.).

¹³¹⁵ VG-089:Exh.1D047,p.6(u.s.);Exh.1D048,p.2(u.s.);T1785-87(o.s.).

¹³¹⁶ VG-089:T1768(o.s.).

¹³¹⁷ VG-089:T1735-40,(o.s.), Exh.1D047,p.4(u.s.).

¹³¹⁸ VG-089:T1743(o.s.);Exh.1D048,p.3(u.s.).

away from VG-089.¹³¹⁹ VG-089 saw **Milan LUKIĆ** again on 12 June 1992 when **LUKIĆ** abducted Kasim FEHRIĆ.¹³²⁰ **Milan LUKIĆ** came to the police station every day VG-089 was held there.¹³²¹ He saw **LUKIĆ** for the last time when he boarded the bus prior to VG-089's departure on a convoy on 17 June 1992.¹³²² VG-089 is a *recognition witness* and confirmed his recognition of **Milan LUKIĆ** in court.¹³²³

560. KAHRIMAN had a solid basis for recognising **Milan LUKIĆ**. After his return to Višegrad, **LUKIĆ** had introduced himself to KAHRIMAN at the old bridge by name, adding that he was 25-years-old and that he had come to Višegrad to kill Muslims.¹³²⁴ She had seen him several times after including immediately after he killed Behija ZUKIĆ,¹³²⁵ and on 1 June 1992, when she saw him on the old bridge.¹³²⁶ Her multiple sightings of **Milan LUKIĆ** during the period 10-14 June 1992 confirm he was not in Kopito.¹³²⁷

561. VG-097 testified to seeing **Milan LUKIĆ** in Višegrad three times on 15 June as he abducted men and took them away.¹³²⁸ He knew **LUKIĆ** very well from their days at school,¹³²⁹ and in June 1992 saw **Milan** and **Sredoje LUKIĆ** together in Višegrad on many occasions,¹³³⁰ including 18 June and 19 June 1992, and the following four weeks.¹³³¹ VG-097 is a *recognition witness* and was also able to confirm his recognition of both **Milan** and **Sredoje LUKIĆ** in court.¹³³²

562. None of the *Pionirska-Alibi* witnesses had personal knowledge of the fact that is the central premise of the alibi, i.e. that the Kopito-Višegrad road was actually blocked on 14 June 1992. MLD-004 knew only the road was *not* blocked on either 13 or 15 June,¹³³³ and did not know one way or the other on 14 June.¹³³⁴ When asked

¹³¹⁹ **VG-089:T1743(o.s.)**.

¹³²⁰ **VG-089:T1748-51,(o.s.);Exh.1D047**, p.5(u.s.).

¹³²¹ **VG-089:T1766-76(o.s.)**.

¹³²² **VG-089:T1806-07(o.s.);Exh.1D048**, pp.5-8(u.s.);**Exh.1D047**, pp.9-13(u.s.). VG-089 hid behind a seat undetected by **Milan LUKIĆ**.

¹³²³ **VG-089:T1777-78,(o.s.)**.

¹³²⁴ **KAHRIMAN:T804(o.s.);see,Exh.P034**.

¹³²⁵ **KAHRIMAN:T806-09(o.s.);Exh.P034**, paras 18-24.

¹³²⁶ **KAHRIMAN:Exh.P034**, para.30.

¹³²⁷ **KAHRIMAN:T810(o.s.)**.

¹³²⁸ **VG-097:T624(o.s.);Exh.P028**, p.4(u.s.).

¹³²⁹ **VG-097:T592(o.s.);Exh.P028**, p.3(u.s.).

¹³³⁰ **Exh.P028**, p.4(u.s.).

¹³³¹ **Exh.P028**, pp.4-5(u.s.).

¹³³² **VG-097:T593-4(o.s.)**.

¹³³³ **MLD-004:T4577-78(o.s.)**.

whether anyone in his group knew “for a fact that the road ahead towards Višegrad [was] blocked,” his response was: “No none of us knew”.¹³³⁵

563. Neither did ĐERIĆ have any personal knowledge of any blockade. ĐERIĆ never travelled the section of road alleged to be impassable.¹³³⁶ In marking an area on a map which covered approximately 10 kilometres, ĐERIĆ stated “[i]n this 10 kilometre stretch of road when somebody is killed, it is presumed that the road is blocked. Nobody wants to travel along it before it’s mopped up and cleared”.¹³³⁷ ĐERIĆ provides no evidence that the road was physically blocked, preventing **Milan LUKIĆ** from travelling to Višegrad.

564. MLD-007’s evidence was limited to describing generally dangerous conditions on the road, rather than any physical impassability. When asked specifically about the blockade, MLD-007 stated “[t]he blockade was not on the road, it was a soldier standing by the road. [...] You can only drive very slowly there, about 10 kilometres per hour. The road was blocked and one couldn’t take it until the soldiers made sure it was safe and clear again”.¹³³⁸

565. In summary, the evidence presented about the road being blocked or impassable is conjecture. Even if **LUKIĆ** had in fact gone to Kopito he could have returned to Višegrad at any time. At most, Defence evidence suggests that the road might not have been particularly safe.

566. There are also significant problems with each of the witnesses individually. At the outset, it should be noted that only two of these witnesses – MLD-004 and Goran ĐERIĆ – claim to have personal knowledge of **LUKIĆ**’s whereabouts on the evening of 14 June 1992. The other two witnesses were at different locations in Višegrad Municipality and never saw **LUKIĆ** at the relevant time.

567. The evidence of MLD-004, MLD-007, and Goran ĐERIĆ is inextricably linked. If MLD-007 is lying when he says that he contacted the Rogatica Brigade command to relay the news of Vlatko TRIFKOVIĆ’s death, then ĐERIĆ must be lying when he says that he received an order to go to Kopito from the Rogatica Command. If ĐERIĆ is lying about his trip to Kopito, then MLD-004 must be lying

¹³³⁴ MLD-004:T4575(o.s.).

¹³³⁵ MLD-004:T4575(o.s.).

¹³³⁶ ĐERIĆ:Exh.P223.

¹³³⁷ ĐERIĆ:T4156-57(o.s.).

¹³³⁸ MLD-007:T4284-85(o.s.).

about seeing ĐERIĆ there. The evidence of these witnesses must stand or fall together.

568. The evidence of MLD-007 is unworthy of credit. MLD-007 has a strong incentive to lie on behalf of **Milan LUKIĆ**. **Milan LUKIĆ** used to give him work.¹³³⁹ MLD-007 stated several times in very strong terms that he does not believe that the *Pionirska-Fire* ever occurred¹³⁴⁰ and also testified that he knows that **Milan LUKIĆ** is charged with criminal responsibility for this fire.¹³⁴¹ If MLD-007 does not believe that the *Pionirska-Fire* occurred, he must believe that **Milan LUKIĆ** has been unjustly charged with a serious crime.¹³⁴² MLD-007's incentive to lie is accompanied by the clear opportunity to do so. His statement was taken by two people from Belgrade, including "Vlado."¹³⁴³ A "Vlado" was present at the meeting where VILIĆ was offered a bribe. MLD-007 also shows evidence of bias: he incredibly claimed that no "innocent" people were killed in Višegrad and denied knowledge of civilians being murdered in the town.¹³⁴⁴

569. MLD-007's evidence has several other hallmarks of fabricated testimony. When first asked how he knew the dates of the events he described, he said that he "checked the date the late Vlatko was killed" on his gravestone.¹³⁴⁵ When it was pointed out to him that this was illogical in the context of his story of how he was approached by and gave his statement to the Defence, he changed his story in response to *the very next question* to say that "the lads [from the Defence] knew the dates" and that he only *later* confirmed them for himself.¹³⁴⁶ At the very least, this indicates that MLD-007 was happy to sign a witness statement on the strength of the representations made to him by "the lads" and without any independent recollection.

570. There is also a major contradiction between the evidence of MLD-004 and MLD-007. MLD-004 categorically stated that TRIFKOVIĆ was not at the Bikavac command centre and did *not* leave with the group departing for Kopito on the morning of 13 June 1992 – he is "a hundred percent sure".¹³⁴⁷ MLD-007, on the other hand, claims that Vlatko TRIFKOVIĆ was one of the men departing from the Bikavac

¹³³⁹ **MLD-007:T4275(o.s.).**

¹³⁴⁰ **MLD-007:T4268-70(o.s.).**

¹³⁴¹ **MLD-007:T4291(o.s.).**

¹³⁴² **MLD-007:T4274(o.s.).**

¹³⁴³ **MLD-007:T4279(o.s.).**

¹³⁴⁴ **MLD-007:T4265-66(o.s.).**

¹³⁴⁵ **MLD-007:T4280(o.s.).**

¹³⁴⁶ **MLD-007:T4280(o.s.).**

command on that morning.¹³⁴⁸ Regardless of these credibility issues, MLD-007 has no personal knowledge of where **LUKIĆ** was during the *Pionirska-Fire*.¹³⁴⁹

571. Goran ĐERIĆ's evidence necessarily depends on MLD-007's credibility, which is questionable. Furthermore, ĐERIĆ's statement was taken by Jelena RAŠIĆ,¹³⁵⁰ the same person who took the statement of VG-146,¹³⁵¹ who testified that he was given money to sign a statement he never read.¹³⁵² It was also taken the same day as MLD-004's statement, which raises the possibility of coordination between these witnesses. ĐERIĆ's was recently convicted for slander, which by its very nature involves dishonesty.¹³⁵³ ĐERIĆ's willingness to tell lies is a factor that seriously calls into question his honesty as a witness.

572. ĐERIĆ gave unsatisfactory responses to questions about reports of the Rogatica Brigade command. He gave extensive testimony about the alleged blockage of the Kopito-Višegrad road¹³⁵⁴ and about the alleged operation to clear the road on 15 June 1992.¹³⁵⁵ He acknowledged the strategic importance of this road.¹³⁵⁶

573. Neither the blockage of the road nor the operation to clear the road is mentioned in Rogatica Brigade reports of 13, 14, or 15 June 1992.¹³⁵⁷ Their absence from these reports raises a strong inference that ĐERIĆ's testimony is false. When confronted with these reports, ĐERIĆ said that these events occurred in the Višegrad Brigade's area of responsibility and therefore would not be in Rogatica Brigade reports.¹³⁵⁸ However, this explanation is contradicted by the fact that the Rogatica Brigade report of 14 June 1992 mentions the killing of TRIFKOVIĆ and his two escorts,¹³⁵⁹ which also occurred in the Višegrad Brigade's area as ĐERIĆ explained. The true explanation for the absence of any mention of a blockade or an operation to lift the blockade in the Rogatica Brigade reports is that these events never happened, and ĐERIĆ's testimony is a fabrication.

¹³⁴⁷ **MLD-004:T4568(o.s.).**

¹³⁴⁸ **MLD-007:T4297(o.s.).**

¹³⁴⁹ **MLD-007:T4281&4284(o.s.).**

¹³⁵⁰ **ĐERIĆ:Exh.P223.**

¹³⁵¹ **VG-146:Exh.P325,p.1(u.s.).**

¹³⁵² **VG-146:T6713-6721(o.s.);Exh.1D222,pp.1-67.**

¹³⁵³ **Exh.P225.T4167(o.s.).**

¹³⁵⁴ **ĐERIĆ:T4139-40(o.s.).**

¹³⁵⁵ **ĐERIĆ:T4107,T4109,T4111(o.s.).**

¹³⁵⁶ **ĐERIĆ:T4103-04,T4110,T4147(o.s.).**

¹³⁵⁷ **Exh.P220;Exh.P221;Exh.P222.**

¹³⁵⁸ **ĐERIĆ:T4158(o.s.).**

¹³⁵⁹ **Exh.P221.**

574. MLD-004 claims to have seen ĐERIĆ while he was at Kopito;¹³⁶⁰ thus, as discussed above, MLD-004's credibility depends on MLD-007 and ĐERIĆ's accounts being true. There are other reasons to find that MLD-004 is unworthy of credit.

575. First, MLD-004 did not know where Kopito was. He testified incorrectly that Kopito is located between Sjemeć and Borike,¹³⁶¹ and marked a location between Sjemeć and Borike on a map when asked to indicate where Kopito is located.¹³⁶² Exhibits P329, P022, and P218 make it perfectly clear, however, that Kopito is located between Sjemeć and Višegrad rather than between Sjemeć and Borike.¹³⁶³ Kopito is on the other side of Sjemeć from the place indicated by MLD-004.

576. MLD-004 was also mistaken about the time of TRIFKOVIĆ's death. In his statement to the Defence in 2008, he said that he was introduced to TRIFKOVIĆ "[w]hen we arrived in Kopito in the afternoon" of 13 June 1992.¹³⁶⁴ (This fact is contradicted by MLD-007's evidence that TRIFKOVIĆ was at the Bikavac command, as noted above.) MLD-007 testified that TRIFKOVIĆ was killed at "11:00 in the morning of the 13th".¹³⁶⁵ The geography of this area and TRIFKOVIĆ's death are the central facts underlying the *Pionirska-Alibi*. MLD-004's mistakes are not trivial. They rather call into question his honesty and reliability.

577. MLD-004's honesty is further undermined by the fact that the Defence provided a statement from MLD-004 dated 2 March 2008,¹³⁶⁶ despite the fact that MLD-004 testified that his first meeting with members of the Defence team occurred on approximately 7 April 2008.¹³⁶⁷ This raises the possibility that, like VILIĆ and VG-146, MLD-004 was presented with a previously-drafted statement and asked to sign it.

578. MLD-004's honesty is also impugned by his assertion that Željko TASIĆ was one of the policemen "trapped" at Kopito.¹³⁶⁸ VG-136 and Ferid SPAHIĆ gave

¹³⁶⁰ MLD-004:T4573,T4571&T4567(o.s.).

¹³⁶¹ MLD-004:T4559(o.s.).

¹³⁶² MLD-004:Exh.P234.

¹³⁶³ Exh.P329;Exh.P022;Exh.P218.

¹³⁶⁴ MLD-004:Exh.P238,p.1(u.s.).

¹³⁶⁵ MLD-004:T4572(o.s.).

¹³⁶⁶ MLD-004:Exh.P238(u.s.);Exh.P239.

¹³⁶⁷ MLD-004:T4588-91(p.s.).

¹³⁶⁸ MLD-004:T4551(o.s.).

evidence that, far from being trapped in Kopito, Željko TASIĆ travelled across a considerable portion of Bosnia escorting their convoy on 14 June 1992.¹³⁶⁹

579. MLD-004 is a biased witness. He is from the same village as **Milan LUKIĆ**, and although he left the village in 1972, he went back often when his parents lived there.¹³⁷⁰ His parent's house is 500-600 metres from **Milan LUKIĆ's**.¹³⁷¹

580. Finally, MLD-004 testified that he was involved in only one military action – the action in Kopito.¹³⁷² To believe that his sole combat duty during his entire military career happens to be the one which provides **LUKIĆ** with an alibi stretches credibility to the breaking point. Evidence of MLD-024 is summarised in paragraphs 44-47 of Annex E.

581. How MLD-024 learned of TRIFKOVIĆ's death is also implausible. He testified he learned about his death from his wife.¹³⁷³ MLD-024 claims to have learned the full names of all three victims in this way.¹³⁷⁴ ĐERIĆ, on the other hand, despite being the member of the Rogatica Brigade who was tasked with travelling to Kopito to inform the men what happened¹³⁷⁵ testified that he did not know all of the names of those killed.¹³⁷⁶ It defies logic that MLD-024's wife who had no access to communications equipment,¹³⁷⁷ was better informed than ĐERIĆ or MLD-024, who were both in the military.¹³⁷⁸

582. The *Pionirska-Alibi* is based on illogical testimony of biased, untrustworthy witnesses who tell a contradictory and illogical story. It is also contradicted by Prosecution's case-in-chief and rebuttal. There is no reasonable possibility that the *Pionirska-Alibi* is true.

¹³⁶⁹ **VG-136**:T6829,6808-09&T6831(o.s.);**Exh.P330**,p.2(u.s.);**Exh.P331**(u.s.). **SPAHIĆ**: **Exh.P020**,pp.4-5;**Exh.P015**,p.5;**Exh.1D007**,p.3.

¹³⁷⁰ **MLD-004**:T4534-35(p.s.).

¹³⁷¹ **MLD-004**:T4555(p.s.).

¹³⁷² **MLD-004**:T4542(o.s.).

¹³⁷³ **MLD-024**:T5039-40(o.s.).*Note*, TRIFKOVIĆ is sometimes referred to as "TRIPKOVIĆ". The list of Bosnian Serb War Dead lists number 15 Vlatko TRIFKOVIĆ, born 1964 as having died on 13/06/1992 in Gorna Lijeska.**Exh.P246**.

¹³⁷⁴ **MLD-024**:T5082(o.s.)("Vlatko Trifkovic, commander of the battalion;Novica Savic;and Veljko Mirkovic.").

¹³⁷⁵ **ĐERIĆ**:T4102-03;T4105(o.s.).

¹³⁷⁶ **ĐERIĆ**:T4107(o.s.).

¹³⁷⁷ **MLD-024**:T5020,T5100(p.s.).

¹³⁷⁸ **ĐERIĆ**:T4107(o.s.).**MLD-024**:T5100(p.s.).

The *Bikavac-Fire*

583. **Milan LUKIĆ** raises two defences with respect to the *Bikavac-Fire*: first, he asserts that the fire did not happen, and second, he raises the defence of alibi.

Substantive Defence

584. **Milan LUKIĆ** asserts that the *Bikavac-Fire* never happened, and that the Prosecution witnesses are lying when they claim that it did.¹³⁷⁹ In particular, based on the evidence of Anka VASILJEVIĆ, he asserts that TURJAČANIN's account of the fire is a lie, and that she actually burned herself on a gas stove while attempting to light a cigarette.

585. This theory is entirely without merit. The testimony of TURJAČANIN and the other Prosecution witnesses as to the immolation of over 60 innocent civilians in the Aljić house totally discredits any suggestion that the *Bikavac-Fire* did not happen.¹³⁸⁰

586. TURJAČANIN's evidence regarding the cause of her injuries has always been completely clear: they were caused by her escape from the burning house in Bikavac.¹³⁸¹ On the morning after the *Bikavac-Fire*, confused, hysterical and intending to ask Serb soldiers to kill her, TURJAČANIN went to the Serb command. She told them she suffered the injuries tripping over a butane bottle because she was worried that, if she told them the truth, they would torture her even more before killing her.¹³⁸² She made this statement once and acknowledged that she made it, but she says it is not true. The true story of how she was burned is that the **LUKIĆs** set her and many others on fire; and in addition to TURJAČANIN's own testimony, it is corroborated by all the witnesses who actually saw and smelled the fire that night.

587. The Defence contention rests entirely on Anka VASILJEVIĆ, who testified that her now deceased husband Radomir VASILJEVIĆ told her that when he was called to treat TURJAČANIN she told him that she was burned with a gas stove.¹³⁸³ VASILJEVIĆ said that a nurse was present when her husband related this event to

¹³⁷⁹ See Milan Lukić-Notice-of-Alleged-Survivors 9/03/ 2009, para 27 : "The defence has made no secret of the theory that the Bikavac incident never happened and that the Pionirska incident did not happen as described."

¹³⁸⁰ Including VG-119, VG-115 and VG-035 all of whom identified **Milan LUKIĆ** in the circumstances of the *Bikavac-Fire*.

¹³⁸¹ **TURJAČANIN**:T2315-17,T2329,2334(o.s.);Exh.2D036,p.1(u.s.);Exh.2D038,p.2(u.s.).

¹³⁸² **TURJAČANIN**:T3366(o.s.).

¹³⁸³ **A.VASILJEVIĆ**,T4199-200,(o.s.).

her.¹³⁸⁴ No weight should be attributed to this evidence because of the palpable bias of VASILJEVIĆ and of the inherent implausibility of the story.

588. VASILJEVIĆ is an enthusiastic supporter of **Milan LUKIĆ**. She testified that she adored **LUKIĆ**, she loved him, and considered him a saint.¹³⁸⁵ He is like a patron saint of her family, he is her son's godfather – her son cannot get married until **LUKIĆ** escorts him as his best man.¹³⁸⁶ She claimed that she never heard anything bad said about him during or after the war.¹³⁸⁷ She said her testifying for **LUKIĆ** was in memory of her deceased husband, and for the love of her 'kum' [**LUKIĆ**].¹³⁸⁸

589. These statements paint a picture of a deeply biased and untrustworthy witness. VASILJEVIĆ's bias is further confirmed by her contention that nothing untoward happened in Višegrad during May – August 1992. She could see both of the bridges in Višegrad from her home during May – August 1992, but she claimed she did not see anything unusual occur on either bridge.¹³⁸⁹

590. Her testimony is also illogical and contradictory on the absolute central point of how she learned of TURJAČANIN's statement about being burned with a gas stove. The contradiction was pointed out to her during cross-examination, namely that she had testified earlier that she heard this before her husband died in 2002, but then later said that she found out about it when TURJAČANIN testified this year.¹³⁹⁰ When challenged, she asserted that TURJAČANIN had testified at the ICTY several times and that she had read her testimony while her husband was still alive.¹³⁹¹ In fact, the first time TURJAČANIN testified was in this trial, after her husband's death – thus exposing the untruthfulness of VASILJEVIĆ's testimony. She also acknowledged that her husband never mentioned an accident with a stove during his *Vasiljević* testimony, despite giving evidence about his treatment of TURJAČANIN.¹³⁹² Dr. VASILJEVIĆ's nurse, who may have proven to be a more impartial and reliable witness, was not called in support of this point.¹³⁹³

¹³⁸⁴ A.VASILJEVIĆ:T4219-20(o.s.).

¹³⁸⁵ A.VASILJEVIĆ:T4208(o.s.).

¹³⁸⁶ A.VASILJEVIĆ:T4208(o.s.).

¹³⁸⁷ A.VASILJEVIĆ:T4192(o.s.).

¹³⁸⁸ A.VASILJEVIĆ:T4233(o.s.).

¹³⁸⁹ A.VASILJEVIĆ:T4216(o.s.).

¹³⁹⁰ A.VASILJEVIĆ:T4231(o.s.).

¹³⁹¹ A.VASILJEVIĆ:T4231(o.s.).

¹³⁹² A.VASILJEVIĆ:T4227-28(o.s.).

¹³⁹³ VASILJEVIĆ said the nurse was Slavica PAPIĆ. A.VASILJEVIĆ:T4201(o.s.). TURJAČANIN testified that her name was in fact Vesna ROSIĆ. Exh.2D036,p.1-2(u.s.);Exh.P066, p.6(u.s.).

Alibi Defence

591. In his notice of alibi, **Milan LUKIĆ** asserts that he never left the premises of his family home in Rujište during the period 26 to 29 June 1992.¹³⁹⁴ In support of this alibi, **Milan LUKIĆ** proposed to call just one witness, MLD-002.¹³⁹⁵

592. MLD-002 never testified in this case. VILIĆ offered a possible explanation for MLD-002's failure to testify. VILIĆ said that MLD-010 told him that she had given MLD-002 5,000 euros on behalf of **Milan LUKIĆ** to get MLD-002 to "confirm" certain matters, but that MLD-002 spent the money on alcohol and refused to come testify because he did not in fact know anything relevant to the case.¹³⁹⁶

593. MLD-002's failure to testify means that the record contains scant evidence relevant to **Milan LUKIĆ**'s alibi for the *Bikavac-Fire*. The only evidence of even marginal relevance was provided by MLD-010. This evidence should be rejected because MLD-010 is a dishonest witness and because it is non-noticed alibi evidence. The sudden, non-noticed hearsay about MLD-010 was given gratuitously because she knew her brother would not appear to give evidence and she was attempting to provide **Milan LUKIĆ** with what he had paid for – a false alibi for the *Bikavac-Fire*.

594. Even if the Chamber were to accept MLD-010's *Bikavac-Fire* alibi evidence, nothing in MLD-010's evidence is inconsistent with **Milan LUKIĆ** perpetrating that crime. MLD-010 testified that her brother and father told her that they spent three or four days at **Milan LUKIĆ**'s place, including St. Vitus's Day(i.e. 28 June), in 1992.¹³⁹⁷ What she did not testify to, and what would be necessary for her testimony to raise a reasonable possibility of alibi is that **Milan LUKIĆ** never left the premises during the time her father and brother were staying there. Absent this critical detail MLD-010's testimony has no alibi value. Rujište, is not far from Višegrad and **Milan LUKIĆ** could have participated in the *Bikavac-Fire* during the time MLD-010 claims her father and brother were staying in Rujište.¹³⁹⁸ There is no evidence that **Milan LUKIĆ** could not have perpetrated the *Bikavac-Fire* because he was elsewhere at the time – in other words, he has no alibi for the *Bikavac-Fire*.

¹³⁹⁴ M.Lukić-Alibi-Notice,18/07/2008,para.14.

¹³⁹⁵ M.Lukić-Alibi-Notice,18/07/2008,para.14.

¹³⁹⁶ **VILIĆ**:T3467-68(o.s.).

¹³⁹⁷ **MLD-010**:T3965(o.s.).

¹³⁹⁸ MLD-022 testified that the distance between Rujište and the town of Višegrad is 24-26 kilometres. **MLD-022**:T4829(o.s.).

Uzamnica

595. **Milan LUKIĆ** raised the Defence of alibi with respect to the charges of beatings and other abuse perpetrated at the Uzamnica barracks.

596. **Milan LUKIĆ** was incarcerated for a period of time during August 1992 and October 1994. Nurko DERVIŠEVIĆ acknowledges that **Milan LUKIĆ** did not come to Uzamnica for a period of about eight months and that he had heard that **Milan LUKIĆ** was imprisoned in Belgrade in this period.¹³⁹⁹ Islam KUSTURA testified that **Milan LUKIĆ** was absent from Uzamnica for an extended period of time due to his imprisonment in Belgrade.¹⁴⁰⁰

597. However, **Milan LUKIĆ's** imprisonment does not provide an alibi for the crimes he is charged with at Uzamnica. As the testimony of DERVIŠEVIĆ, KUSTURA, and the other Prosecution witnesses for Uzamnica makes clear, even if **Milan LUKIĆ** was imprisoned for some period of time, he had ample opportunity before and after his incarceration to commit the crimes.¹⁴⁰¹

¹³⁹⁹ DERVIŠEVIĆ:Exh.P111, p.7.

¹⁴⁰⁰ KUSTURA:T2197-99(o.s.).

¹⁴⁰¹ While the Prosecution accepts that **Milan LUKIĆ** may have been imprisoned for a longer period of time in 1993, his period of incarceration in 1992 was only nine days. **Duga-Article**, pp.12-13.

Section 7: Sentencing

598. The relevant provisions on sentencing are found in Articles 23 and 24 and Rule 101, while the enforcement of sentences is governed by Articles 27 and 28 and Rules 103 and 104. The factors to be considered by a Chamber in determining a sentence are the gravity of the crimes committed, the individual circumstances of the convicted person, the general practice regarding sentences in the former Yugoslavia, and aggravating and mitigating circumstances.¹⁴⁰² Prior sentencing practice of the ICTY may also be considered where, as here, the same offence is committed in substantially similar circumstances.¹⁴⁰³

Gravity of Crimes Committed

599. Tribunal jurisprudence makes it clear that the gravity of the crimes committed is the “primary consideration” in determining sentence.¹⁴⁰⁴ The gravity of the crimes committed has also been referred to as the “totality of the culpable conduct”.¹⁴⁰⁵ The determination regarding gravity requires a consideration of the particular circumstances of the case, as well as the form and degree of the participation of the accused in the crime.¹⁴⁰⁶

600. The Accused have perpetrated crimes that shock the conscience of humankind. The crime of persecution has been described as “particularly grave”¹⁴⁰⁷ and “an extremely serious offence”¹⁴⁰⁸ which “justif[ies] a more severe penalty” because of its distinctive features.¹⁴⁰⁹ As one Chamber put it, “It is the abhorrent discriminatory intent behind the commission of this crime against humanity that renders it particularly grave.”¹⁴¹⁰

601. That abhorrent discriminatory intent has been a central feature of this trial. The Accused’s persecutory intent towards Muslims is clear from the purposeful selection in every incident of Muslims. Perhaps the most telling confirmation of this intent is

¹⁴⁰² *Jokić*SAJ,para.6.

¹⁴⁰³ *Babić*SAJ,para.32;*D.Nikolić*SAJ,para.9;*Jelić*SAJ,para.101;*Čelebići*AJ,paras.756-57.

¹⁴⁰⁴ *Galić*AJ,para.442;*Čelebići* AJ,para.731.

¹⁴⁰⁵ *Bralo*SAJ,para.7.

¹⁴⁰⁶ *Delalić*AJ,para.731.

¹⁴⁰⁷ *Blagojević*TJ,para.834.

¹⁴⁰⁸ *Bralo*SJ,para.28.

¹⁴⁰⁹ *Banović*SJ,para.91.

¹⁴¹⁰ *Obrenović*SJ,para.65;*M.Nikolić*SJ,para.105.

when **Milan LUKIĆ** cavalierly recounted to a member of the *Lukić-Group* how he almost killed a Serb because he mistakenly thought he was a Muslim.¹⁴¹¹

602. The Chamber has heard of the slurs that **Milan LUKIĆ** uttered while raping women, as well as his sadistic comments that they would carry Serb babies. These statements demonstrate his persecutory intent and its connection to the overall attack against the Muslim population. VG-042 described comments **Sredoje LUKIĆ** had been making for years.¹⁴¹²

603. In addition to the particular crimes committed, the gravity of the Accuseds' criminal conduct can be assessed by several factors, including the number,¹⁴¹³ vulnerability,¹⁴¹⁴ youth,¹⁴¹⁵ and suffering of the victims,¹⁴¹⁶ the role and form of their participation in the crimes,¹⁴¹⁷ and their willingness and enthusiasm throughout.¹⁴¹⁸ By all measures, the gravity of the crimes committed by the Accused is of the highest order.

604. One Chamber drew the conclusion that primary consideration is to be given to the number of victims and their suffering.¹⁴¹⁹ In this case, the number of victims each personally and directly killed is staggering: **Milan LUKIĆ** murdered over 150, while **Sredoje LUKIĆ** murdered over 135. In addition to those that were murdered, the victims of the Accused include those who survived the harrowing incidents, seeing first-hand the deaths of their friends and loved ones.

605. In considering the vulnerability of the victims, one Chamber found it significant that "the victim detainees were completely at the mercy of their captors".¹⁴²⁰ The victims in this case could not have been more vulnerable. Many were women and children. Who could be more vulnerable than a two-day-old infant yet to be named by her young frightened mother? These were defenceless people who had been forced from their homes and hid in the forest hoping to avoid the rapes and murders that were so commonplace. Before being killed, the victims of the *Pionirska-*

¹⁴¹¹ **VG-089:T1759**(o.s.).

¹⁴¹² **VG-042:T2836-37**(o.s.).

¹⁴¹³ *MrdjaSJ*,para.21;*PlavšićSJ*,para.52.

¹⁴¹⁴ *KunaracAJ*,para.352.

¹⁴¹⁵ *BraloSJ*,para.31;*KrstićTJ*,para.702.

¹⁴¹⁶ See e.g.*BlagojevićTJ*,para.833;*BraloSJ*,para.40.

¹⁴¹⁷ *ČelebićiAJ*,para.731;*JokićSJ*,para.55;*StrugarTJ*,para.462.

¹⁴¹⁸ See,e.g.,*BraloSJ*,paras.30&35.

¹⁴¹⁹ *BabićSJ*,para.47.

¹⁴²⁰ *KrstićTJ*,para.703.

Fire were subjected to a humiliating strip-search and robbed of the few possessions they could bundle up before fleeing their homes.

606. **Sredoje** and **Milan LUKIĆ** not only preyed on those most vulnerable, but their considered exploitation of that vulnerability was a significant aspect of their *modus operandi*. The record is replete with the Accuseds' false promises to their intended victims, victims who had no alternative but believe them – no option other than hope that by complying they might be spared.

607. The suffering of the victims in this case was unimaginable: approximately 140 of them were burned alive. The desperation of mothers trying to save children incapable of comprehending the evil that had befallen them as sheets of flame engulfed them exceeds the bounds of what can be imagined. Many of those who jumped out of the windows half-burned were shot and lay dying in the yard hours afterward.

608. The suffering of the sole survivor of *Bikavac-Fire* defies description but was apparent to those in the courtroom. Not only were parts of her body charred and infected with maggots, not only did she exude a smell that made it difficult for others to come near her for weeks, but she was forced to leave her younger mentally disabled sister behind her as she narrowly escaped, an act that has obviously haunted her since.

I wanted to get out with my baby sister, whom I was holding in my arms. I wanted to get her out of the house. When I tried to escape, there was an obstacle that I ran into ... I had to lower ... my baby sister, put her down, leave her there inside the house near the garage door. And as soon as I was out of the house, I turned around in an attempt to see what had kept me, what sort of obstacle from escaping with my baby sister, and it was at that point that I saw the garage door blocking the way out.¹⁴²¹

609. The survivors of the *Drina-Killings* described the anguish they felt as each one thought of the daughter he would leave behind to grow up without a father. It is hard to imagine the suffering of Meliha MEMIŠEVIĆ and other family members who watched their loved ones shot before their eyes during the *Varda-Killings*.

610. Many of the victims in this case were young; the youngest was an infant born to her terrified mother Sadeta hiding in the woods outside Koritnik. Approximately seventeen children in the two house burnings were under 10; several others mere

¹⁴²¹ **TURJAČANIN:T3371(o.s.)**.

teenagers. VG-013 spoke about the last thing she remembered during the *Pionirska-Fire*:

The last thing I remember I heard Halida, a 10-year-old girl. She was crying and calling to her mother, "Mother please don't give up on me".¹⁴²²

Role and Form of Participation in Crimes

611. Before the *Lukić* trial commenced in the ICTY, the case had been referred to the BiH State Court under Rule 11*bis*. Appealing that Referral, the Accused **Milan LUKIĆ** argued *inter alia* that his alleged level of responsibility was sufficiently senior and the crimes alleged in the Indictment were sufficiently grave as to warrant trial at the ICTY. Overturning the Referral, the Appeals Chamber, basing its analysis upon the Indictment, referred to its jurisprudence defining what constitutes "most senior leader."¹⁴²³ It then went on to find **Milan LUKIĆ** to be among the most senior leaders:

The Second Amended Indictment not only alleges that the Appellant directly "committed" the crimes charged, but also suggests that he was a leader and orchestrator of these crimes -- which were part of "one of the most notorious campaigns of ethnic cleansing in the conflict"(citing indictment paras 1 and 27.)although he may have coordinated with others in carrying out a "reign of terror upon the local Muslim population,"(citing indictment para 31)it seems that within his own sphere, he was a dominant presence.¹⁴²⁴

612. Furthermore, and with respect to the gravity of the crimes, the Appeals Chamber held:

Indeed, the Prosecution has not identified any paramilitary leader indicted by the Tribunal in whose case the gravity of crimes charged and the level of responsibility of the accused are, when taken in conjunction, as significant as those in the present case.¹⁴²⁵

613. This assessment was based purely upon the Indictment taken on its face. The Prosecution has established beyond reasonable doubt the allegations in that Indictment. It follows that only the severest of sentences is appropriate in this case. In light of the 11*bis* Appeals Decision on Referral, it is clear that **Milan LUKIĆ's** role in leading the *Lukić-Group* in these crimes increases the gravity of his conduct. There has been some suggestion by the Defence of **Milan LUKIĆ** that he was following

¹⁴²² **VG-013**:T1054(o.s.).

¹⁴²³ 11*bis*Decision,para.28.

¹⁴²⁴ 11*bis*AppealsDecision,para.21.

orders, however there is no evidence of this. Even if evidence of an order existed, it cannot mitigate the Accused's actions. The evidence shows that both Accused acted enthusiastically on their own initiative to plan the crimes and personally carry them out. **Sredoje LUKIĆ** himself conceived of the idea of forming a group and initially calling it the "Obrenovac Detachment".

614. Even if evidence of an order existed, it cannot mitigate their actions. In the case of **Milan LUKIĆ**, it is also clear that he led and directed others in their participation in the crimes. As another Chamber stated: "...even if it had been proved that [the Accused] acted upon the orders of a superior, the relentless character and cruelty of his acts would preclude his benefiting from this fact as a mitigating circumstance."¹⁴²⁶ The same can be said for **Sredoje** and **Milan LUKIĆ**. Also significant is **Sredoje LUKIĆ**'s participation in these crimes *as a police officer*. Before these events he was well-known and liked in Višegrad. His presence would have encouraged compliance of the victims and led them to feel assured. **Sredoje LUKIĆ** abused his authority and the confidence it generated in the worst possible way. He used his position of trust as a tool to facilitate his murderous intent.

615. Both **LUKIĆs** were familiar with many of their victims – they were their friends, neighbours, colleagues, former schoolmates – their own community.

Aggravating Factors

616. Rule 101(B)(i) requires that aggravating circumstances be taken into account.¹⁴²⁷ The Prosecution notes that a factor that is considered in evaluation of the gravity of the crimes should not also be considered as an aggravating factor.¹⁴²⁸ Some of those factors that can be considered either in terms of the gravity of the crime, or as aggravating factors, have already been discussed.

617. There are additional factors which are appropriately considered as aggravating circumstances. In the *Jelisić* case, the Chamber in considering **JELISIĆ**'s place in the overall context of the crimes stated:

[I]t must also recall that although the crimes perpetrated during armed conflicts may be more specifically ascribed to one or other of these officials, they could not achieve their ends without the enthusiastic

¹⁴²⁵ 11bisAppealsDecision,para.21.

¹⁴²⁶ *Jelisić*TJ,para.126.

¹⁴²⁷ Rule 101(B)(i).

¹⁴²⁸ *Deronjić*SAJ,paras.106-07.

help or contribution, direct or indirect, of individuals like Goran Jelisić.¹⁴²⁹

In its assessment of aggravating factors:

The Trial Chamber points out the repugnant, bestial and sadistic nature of Goran Jelisić's behaviour. His cold-blooded commission of murders and mistreatment of people attest to a profound contempt for mankind and the right to life.¹⁴³⁰

618. Similarly, the Dragan Nikolić Chamber found the Accused's apparent depravity and enjoyment of his criminal acts to be an aggravating factor:

The acts of the Accused were of an enormous brutality and continued over a relatively long period of time. They were not isolated acts. They expressed his systematic sadism. The Accused apparently enjoyed his criminal acts.¹⁴³¹

619. There is no doubt that **Sredoje** and **Milan LUKIĆ**'s actions warrant the same conclusion. The foregoing examples demonstrate their depravity and their efforts to not only kill Muslims remaining in Višegrad but to kill them in a way calculated to cause the maximum amount of suffering.

620. Premeditation is an aggravating factor because "it necessarily reveals a higher level of criminality on the part of the participant."¹⁴³² As the evidence has shown, these crimes were not ones that occurred spontaneously. Recalling the day of the *Drina-Killings*, **Milan LUKIĆ** methodically gathered the men from their various homes and hiding places, removed their identification papers, valuables and shoes, drove them to the Drina, and led them to a location along the bank selected in advance. The *Varda-Killing* was only one of two occasions on the same day that **LUKIĆ** took Muslims from the factory.

621. Perhaps the most compelling evidence of premeditation in this case is the evidence related to **Sredoje** and **Milan LUKIĆ**'s preparation of the Omeragić house before the *Pionirska-Fire*. VG-013 described how the carpets had been soaked with some noxious liquid which caught fire immediately and spread rapidly once ignited.¹⁴³³ In fact, the killing of that particular Muslim family was conceived of on a

¹⁴²⁹ JelisićTJ,para133.

¹⁴³⁰ JelisićTJ,para.40.

¹⁴³¹ D.NikolićSJ,para.213(i).D.NikolićSAJ,paras.27-30. See also,ČelebićiTJ,para.1264.

¹⁴³² KrstićTJ,para.711 See,BrdjaninTJ,para.1109.

¹⁴³³ VG-013:T1043&1050(o.s.).

much earlier occasion. Already at the end of May, **Milan LUKIĆ** explicitly told CW-001 that not an ear of the Kurspahić family would remain.

622. By the time the Accused set the *Bikavac-Fire*, they had learned how to more effectively immolate people. This time the house was better prepared, more “inescapable”. **Sredoje LUKIĆ**’s premeditation is apparent in the fact that he had a balaclava with him, ready to use it to disguise his identity once the victims had been trapped inside.



Figure 7. During the testimony of some victims, **Milan LUKIĆ** displayed the Kuran from his desk.

623. The Appeals Chamber has noted that “factors such as conduct during trial proceedings, ascertained primarily through the Trial Judges’ perception of an accused” are also relevant considerations in aggravation or mitigation.¹⁴³⁴ The Accuseds’ conduct is relevant to a Chamber’s determination of remorse or “on the contrary, total lack of compassion.”¹⁴³⁵

624. Although **Sredoje LUKIĆ** acted appropriately during the course of the trial the Chamber will recall that **Milan LUKIĆ** frequently laughed as witnesses described the terrible things that happened to them. During the testimony of several witnesses, **Milan LUKIĆ** displayed a Koran (“Kuran” in BCS) in the courtroom in a position for

¹⁴³⁴ DelalićAJ, para. 788.

witnesses to see, a clear act of disrespect, if not intimidation, in the context of this case.

625. The Prosecution submits that none of the personal circumstances of the Accused are relevant to sentencing. The Accused are both in good health. While they both have families, in the context of crimes as grave as these, this consideration should be given negligible weight. “[M]any accused are in that same situation [having young children] and, in so serious a case, the Judges cannot accord too great a weight to considerations of this sort”.¹⁴³⁶

Mitigating Factors

626. Due to the simultaneous filing of the Final Trial Briefs, the Prosecution considers it worthwhile to make brief submissions in anticipation of potential mitigation arguments.

627. The only mitigating circumstances which Chambers are specifically required to take into consideration, as a matter of law, is cooperation with the Prosecution.¹⁴³⁷ Neither Accused has cooperated with the Prosecution. Both remained fugitives after the Indictment against them was unsealed. In addition, none of the other factors which are sometimes considered in mitigation exist.

628. There is some evidence that **Sredoje LUKIĆ** provided some assistance to a handful of Bosnian Muslim civilians during the indictment period. In fact, **Sredoje LUKIĆ** himself described his authority to release Muslim civilians who were captured as part of the “operation to cleanse the Višegrad area of Muslims.”¹⁴³⁸ Far from mitigating his guilt, this evidence further supports the proposition that **Sredoje LUKIĆ** had the power, ability and duty to help assist the Muslim constituents of Višegrad and yet chose instead to actively participate in heinous crimes against them.

629. There is also some evidence that **Sredoje LUKIĆ** was held and attacked by a group of Muslim paramilitaries, until he was released by his friend Huso KURSPAHIĆ. He responded by forming the *Avengers*, the group that would go on to kill most of the *Kurspahić* family, Huso’s relatives.

¹⁴³⁵ DelalićAJ,para.788.

¹⁴³⁶ JelisićTJ,para.124.*See, FurundžijaTJ,para.284.*

¹⁴³⁷ BraloSAJ,para.11, affirming VasiljevićAJ,para.780.*See also, D.NikolićSAJ,para.63.*

¹⁴³⁸ **SL-Record-of-Interview**,p.2.

630. In anticipation of any suggestion by **Sredoje LUKIĆ** that this could be considered as mitigation, the Prosecution notes the sentencing judgment and appeal in the *Bralo* case. Bralo appealed his sentence in part on the basis that the Chamber failed to consider the fact that his home was attacked.¹⁴³⁹ The Appeals Chamber dismissed Bralo's appeal ground finding that "[a]n individual whose house has been attacked cannot expect, on this ground alone, any mitigation of his sentence for his subsequent wrongdoings."¹⁴⁴⁰

Sentencing Practice in the Courts of the Former Yugoslavia

631. A Chamber is to take into account the general practice regarding prison sentences in the courts of the former Yugoslavia, but Chambers are not bound by that practice.¹⁴⁴¹ The Criminal Code of BiH provides that crimes against humanity and war crimes against civilians are punishable by a term of imprisonment of up to 45 years.¹⁴⁴²

Relevance of Sentences in other ICTY Cases

632. Although a Chamber has an overriding obligation to tailor the sentence it imposes to the circumstances of an accused and the gravity of the crime,¹⁴⁴³ the Appeals Chamber has repeatedly acknowledged that comparisons among cases may be undertaken where the offences are the same and were committed in substantially similar circumstances.¹⁴⁴⁴ In that regard, the sentences imposed in the cases of Mitar VASILJEVIĆ and Goran JELISIĆ may provide a useful comparison for this case.

633. The Chamber imposed a sentence of 20 years imprisonment after finding VASILJEVIĆ guilty of persecutions as a crime against humanity and murder as a violation of the laws or customs of war for the murder of the five Bosnian Muslim men and attempted murder of the two Bosnian Muslim men in the *Drina-Killings*.¹⁴⁴⁵ This sentence was based on a finding that VASILJEVIĆ was responsible as a co-perpetrator in a joint criminal enterprise.¹⁴⁴⁶ The Appeals Chamber corrected the judgement finding that VASILJEVIĆ's participation was more properly characterised

¹⁴³⁹ *Bralo*SAJ, para.15.

¹⁴⁴⁰ *Bralo*SAJ, para.18.

¹⁴⁴¹ *Jokić*SAJ, para.38.

¹⁴⁴² Criminal Code of BiH, Official Gazette of BiH No.3/03,32/03,37/03,54/04,61/04,30/05,53/06, 55/06, articles 42(2), 172, and 173.

¹⁴⁴³ *Babić*AJ, para.32; *D.Nikolić*SAJ, para.9.

¹⁴⁴⁴ *Babić*AJ, para.32; *D.Nikolić*SAJ, para.15; *Jelisić*AJ, para.101; *Delalić*AJ, paras.756-57.

¹⁴⁴⁵ *Vasiljević*TJ, paras.263&309.

¹⁴⁴⁶ *Vasiljević*TJ, paras.208-210.

as that of an aider and abettor.¹⁴⁴⁷ The Appeals Chamber reduced Mitar VASILJEVIĆ's sentence to 15 years imprisonment.¹⁴⁴⁸

634. In this case, **Milan LUKIĆ** committed the exact crime that VASILJEVIĆ aided and abetted. In addition to committing the crime, there has been substantial evidence showing **Milan LUKIĆ**'s leadership in planning and carrying out the crimes, directing others, including VASILJEVIĆ, regarding how to perpetrate these crimes. Considering the parity between the crimes, consideration of VASILJEVIĆ's sentence is warranted.

635. Considering that VASILJEVIĆ received a sentence of 15 years for aiding and abetting the crimes committed during the *Drina-Killings*, lowered from 20 years when he was considered to be a co-perpetrator, **Milan LUKIĆ** must receive a sentence of at least 20 years for those crimes *alone*. When considering that this was only the first in a grievous string of crimes planned and committed by **Milan LUKIĆ**, along with all the circumstances and aggravating factors discussed above, it is clear that only the most severe sentence would be appropriate for **Milan LUKIĆ**.

636. A comparison to the *Vasiljević* case is also relevant with respect to **Sredoje LUKIĆ**, who like VASILJEVIĆ committed crimes with the *Lukić-Group*. Unlike VASILJEVIĆ, though, **Sredoje LUKIĆ** participation as a primary perpetrator exceeds the culpability of an aider and abettor. If VASILJEVIĆ was sentenced to 15 years for aiding and abetting the *Drina-Killings*, then surely **Sredoje LUKIĆ** must receive the most severe sentence possible for his role as a primary perpetrator of the *Pionirska* and *Bikavac-Fires*, which resulted in the death of over 135 innocent Muslim civilians.

637. The Prosecution has argued in the alternative that **Sredoje LUKIĆ** is guilty of aiding and abetting these murders. In that case, a comparison with Mitar VASILJEVIĆ is again apt, as both men participated in these crimes which were committed by **Milan LUKIĆ**. In the case of **Sredoje LUKIĆ** as opposed to Mitar VASILJEVIĆ, the number of murders is substantially higher. In addition, the aggravating factors of his role as a police officer and as the man who initially formed the Avengers, ceding control to **Milan LUKIĆ** knowing what that would mean, must be taken into account. **Sredoje LUKIĆ** clearly intended the results even if he took a

¹⁴⁴⁷ *Vasiljević*AJ,para.147.

¹⁴⁴⁸ *Vasiljević*AJ,para.182.

less active role than **Milan**. After the *Pionirska-Fire* he again joined Milan in herding Muslim civilians into a house, barricading it, and setting them on fire. Thus even if **Sredoje LUKIĆ** is found to have aided and abetted rather than committed one of the fires, there are aggravating factors which make his culpability of a much higher order than that of VASILJEVIĆ.

638. The Prosecution submits that the *Jelisić* case provides a comparable example for the range of sentence to be imposed on the Accused. JELISIĆ was found guilty of sixteen violations of the laws or customs of war, twelve of which were for murder, three for cruel treatment and one for plunder. The same incidents also gave rise to fifteen convictions for crimes against humanity, encompassing twelve for murder and three for inhumane acts.¹⁴⁴⁹

639. **Milan** and **Sredoje LUKIĆ** are also direct perpetrators who are charged with particularly cruel murders both as violations of the laws and customs of war and as crimes against humanity, including extermination, as well as causing bodily harm to civilians and forcibly taking property. There is similarity between the *Jelisić* and *Lukić* cases. In a sentence affirmed on appeal JELISIĆ was ordered to be incarcerated for 40 years.¹⁴⁵⁰ He was sentenced for 12 murders. While the overall responsibility is similar in both cases, and there is similarity with respect to the gratuitous and sadistic nature of the crimes the JELISIĆ's crimes are dwarfed by the magnitude of the dozens of people killed by the two **LUKIĆs**.

640. The issue of comparison between sentences would naturally arise as between **Milan** and **Sredoje LUKIĆ**. The Prosecution submits that in this case, both Accused deserve the maximum penalty available and therefore no meaningful difference between the two can be imposed. The fact that **Sredoje LUKIĆ** has been tried alongside **Milan LUKIĆ** must not afford him a leniency that he does not deserve.

641. During the course of the trial, the attention inevitably fell more on **Milan LUKIĆ**, in part due to the fact that he was charged with more incidents. However, it must be acknowledged that the number of victims killed by **Sredoje LUKIĆ** is not much lower than those killed by **Milan LUKIĆ**. While there is more evidence of **Milan LUKIĆ's** role in organising the crimes, **Sredoje LUKIĆ's** actions in forming the *Lukić-Group*, which began as the Obrenovac Detachment, and lending it an air of

¹⁴⁴⁹ *Jelisić*TJ, para. 109.

¹⁴⁵⁰ *Jelisić*AJ.

legitimate authority by his employment with the police at the time, were instrumental to the crimes and should be viewed as an aggravating factor. Moreover, **Sredoje LUKIĆ** stated that **Milan LUKIĆ** and others were originally under his command and they “did not do anything on their own.”¹⁴⁵¹ The gravity of the crimes involving death by fire, and the extreme vulnerability and severe suffering of the victims is so significant that even if **Sredoje LUKIĆ** is considered to be less culpable than **Milan LUKIĆ** the severest of sentences is still required by his conduct and should be meted out to him.

Sentencing Recommendation

642. Given the extreme gravity of the crimes, the Prosecution submits that both Accused should be sentenced to spend the remainder of their lives incarcerated. While a sentence of life imprisonment has been handed down by this Tribunal, not enough time has passed to observe the details of the implementation thereof.

643. In order to inform itself in coming to a decision regarding the Accuseds’ sentence, the *D.Nikolić* Trial Chamber commissioned a research report from the Max Planck Institute on sentencing guidelines and practices in the former Yugoslavia as well as other countries. That report indicated that in many countries, a “life sentence” will not be fully executed. In China and Belgium, for example, the Accused may be released after only ten years, and in many other countries the Accused may be released after 25 years.¹⁴⁵²

644. As noted by the *D.Nikolić* Appeals Chamber:

Under the International Tribunal’s law, eligibility for early release is dependent on the applicable law of the State in which the convicted person is imprisoned, which State shall notify the International Tribunal of such eligibility. Ultimately, the President determines, in consultation with the members of the sentencing chamber and the Bureau, whether or not early release should be granted.¹⁴⁵³

645. For this reason, the Prosecution raises the possibility with the Chamber that a fixed term of imprisonment may be a surer way to ensure that the Accused are incarcerated for the rest of their lives. For example, the Chamber could impose a sentence of 70 years on the Accused.

¹⁴⁵¹ **SL-Record-of-Interview**,p.4.

¹⁴⁵² See Sentencing Report, particularly Section 4.2.1.4.

¹⁴⁵³ *D.Nikolić*SAJ,para.94, citing Article 28 of the Statute, Rules 123&124 of the Rules, and Practice Direction on Pardon/Commutation/Early Release.

646. Another possibility would be to impose a term of life imprisonment but also use the Chamber's discretion to recommend a minimum sentence.¹⁴⁵⁴ While providing such a recommendation occurs rarely, this may be an appropriate case to do so. In this case, however, should the Chamber agree that the most appropriate sentence is for the Accused to spend the rest of their lives in jail, then it is imperative that the Chamber set such forth clearly so that the intentions of the Chamber may be considered if and when the Accused are considered for early release according to the requirements of the national laws where they ultimately serve their sentences.

647. Lest this appear harsh, the Prosecution recalls the extreme nature of the Accuseds' crimes. In domestic jurisdictions, where it is extremely rare to encounter murder cases with the vast number of victims that are seen at the Tribunal, convicted persons often receive consecutive sentences for each crime. In that respect, the Chamber is entitled to consider that in this case it is handing down a sentence for *over one hundred murders*, in addition to the other crimes charged. The physical perpetrator of one murder already deserves a long fixed-term of imprisonment, if not a life sentence, thus it is clearly difficult to fix a period of time sufficiently long to appropriately punish those who pre-meditated the brutal murder of over a hundred innocent civilians, including children and babies. Allowing even six months per murder would result in a term of imprisonment greater than the expected lifetime of either Accused.

¹⁴⁵⁴ *D.Nikolic*SAJ,para.95;*Krstic*SAJ,para.274;*Tadic*SAJ,para.28.

THE INTERNATIONAL CRIMINAL TRIBUNAL
FOR THE FORMER YUGOSLAVIA

IT-98-32/1-T

THE PROSECUTOR
v.
MILAN LUKIĆ
and
SREDOJE LUKIĆ

Public

A N N E X A

T O

PROSECUTION FINAL TRIAL BRIEF

VICTIMS OF *PIONIRSKA-FIRE*

Annex A: Victims of the *Pionirska-Fire*.

648. The following is a list of the victims of the *Pionirska-Fire*.

1. ° ♦ ✖* Mula AJANOVIĆ, approx. 75¹⁴⁵⁵
2. ° ♦ ✖* Adis DELIJA, approx. 2¹⁴⁵⁶
3. ° ♦ ✖* Ajnija DELIJA, approx. 50¹⁴⁵⁷
4. ° ♦ ✖* Jasmina DELIJA,¹⁴⁵⁸ approx. 24¹⁴⁵⁹
5. Hasena LNU
6. Tima JAŠAREVIĆ
7. * ✖ Hajra JAŠAREVIĆ, approx. 35¹⁴⁶⁰
8. * ✖ Meho JAŠAREVIĆ, approx. 42¹⁴⁶¹
9. * ✖ Mujo JAŠAREVIĆ, approx. 47¹⁴⁶²
10. ° ♦ ✖* Aiša KURSPAHIĆ, approx. 49¹⁴⁶³
11. ° ♦ ✖* Aida KURSPAHIĆ, approx. 12¹⁴⁶⁴
12. ° ♦ ✖* Ajka KURSPAHIĆ, approx. 62¹⁴⁶⁵
13. ° ♦ ✖* Alija KURSPAHIĆ, approx. 55¹⁴⁶⁶
14. ° ♦ ✖* Almir KURSPAHIĆ, approx. 10¹⁴⁶⁷
15. ° ♦ ✖* Aner KURSPAHIĆ, approx. 6^{1468 1469}

¹⁴⁵⁵° Indicates that Exh.P119 contains data corroborating this person's existence in Višegrad before the war and/or their death or disappearance.

♦ Indicates that CW-001 confirmed the presence of this person in Višegrad prior to her departure and that to her knowledge this person did not survive.

* Indicates that HusoKURSPAHIĆ is able to confirm these persons died in the *Pionirska Fire* based on inquiries made with their relatives. **Exh.P333.**

✖ Indicates that **Exh.P184** confirms this person is recorded as a documented missing person from Višegrad.

VG-018:Exh.P083,p.5.(Mula was a neighbour of Hasib KURSPAHIĆ)

HasibKURSPAHIĆ:Exh.P041.VG-078:T1390;Exh.P090.(approximately 68 years old).

¹⁴⁵⁶ **VG-078:T1390;Exh.P090.**(She knew this two year old child of Jasmina but did not she did not know his first name).

¹⁴⁵⁷ **VG-078:T1390;Exh.P090.**(approximately 50 years old).

¹⁴⁵⁸ Née Kurspahić, **CW-001:T5559**(o.s.).

¹⁴⁵⁹ **VG-078:T1390;Exh.P090.**(She was the daughter of Bisera KURSPAHIĆ born in 1968). **Exh.P300**,p.14(o.s.).

¹⁴⁶⁰ **HusoKURSPAHIĆ:T6943-6966**(o.s.)(Confirms this person died in *Pionirska-Fire* but believes the last name to be "HALILOVIĆ"(o.s.).

¹⁴⁶¹ **HusoKURSPAHIĆ:T6943-6966**(o.s.)(Confirms this person died in *Pionirska-Fire* but believes the last name to be "HALILOVIĆ"**Exh.P300**,p.14-15.

¹⁴⁶² **HusoKURSPAHIĆ:T6943-6966**(Confirms this person died in *Pionirska-Fire* but believes the last name to be "HALILOVIĆ."

¹⁴⁶³ **VG-018:Exh.P083**,p.5.**Exh.P300**,p.15. Married to Džemail Kurspahić, **CW-001:T5563**(o.s.).

¹⁴⁶⁴ **VG-078:T1390;Exh.P090.**(She was the granddaughter of Osman and was Ismeta's son. He was about 14 years old.) Daughter of Hidajit Kurspahić, **CW-001:T5563,5588**(o.s.).

¹⁴⁶⁵ **VG-018:Exh.P083**,p.5.**VG-078:T1390;Exh.P090.**(she was the wife of Osman and was 62-63 years old.) Aida's grandmother and Ismeta's mother-in-law, **CW-001:T5563,T5588**(o.s.).

¹⁴⁶⁶ **VG-018:Exh.P083**,p.5.**VG-078:T1390;Exh.P090.**(This person was Edhem KURSPAHIĆ's brother and was about 60 years old.)

¹⁴⁶⁷ **VG-018:Exh.P083**,p.5(u.s.).VG-078 thought he was about 16 years old.**VG-078: Exh.P089 VT1314.** Son of Ismeta and brother of Vahid, **CW-001:T5564,5588**(o.s.).

¹⁴⁶⁸ HusoKURSPAHIĆ believes this person did not die. **HusoKURSPAHIĆ:T6929**(o.s.). However, CW-001 testified that the last time she saw Aner was on 29 May 1992 and that she has never seen him

16. °◊*Bećar KURSPAHIĆ, approx. 52¹⁴⁷⁰
17. °◊*Bisera KURSPAHIĆ, approx. 50¹⁴⁷¹
18. °◊*Bula KURSPAHIĆ, approx. 58¹⁴⁷²
19. °◊*Džehva KURSPAHIĆ, approx. 22¹⁴⁷³
20. °◊*Enesa KURSPAHIĆ, approx. 2¹⁴⁷⁴
21. °◊*FNU KURSPAHIĆ, approx. 2 days old.¹⁴⁷⁵
22. °◊*Hasa KURSPAHIĆ, approx. 18¹⁴⁷⁶
23. °◊*Hajrija KURSPAHIĆ, approx. 60¹⁴⁷⁷
24. °◊*Halida KURSPAHIĆ, approx. 10¹⁴⁷⁸
25. °◊*Hana KURSPAHIĆ, approx. 30¹⁴⁷⁹
26. ~~Hasan KURSPAHIĆ, approx. 50¹⁴⁸⁰~~
27. °◊Hasiba KURSPAHIĆ¹⁴⁸¹
28. °Hasnija KURSPAHIĆ, approx. 62¹⁴⁸²
29. °◊*Hata KURSPAHIĆ, approx. 68¹⁴⁸³
30. °◊*Ifeta KURSPAHIĆ, approx. 17¹⁴⁸⁴
31. °◊*Igbala KURSPAHIĆ, approx. 58¹⁴⁸⁵
32. °◊*Ismet KURSPAHIĆ, approx. 3¹⁴⁸⁶

since. She does not know how he died. **CW-001:T5564(o.s.).VG-018:Exh.P082,VT1602-03(o.s.).Exh.P085.**

¹⁴⁶⁹ P119 includes a typographical error in the age as 60 rather than 6 as listed in the Indictment.

TABEAU:T6159(o.s.).

¹⁴⁷⁰ **VG-018:Exh.P083,p.5(u.s.).VG-078:T1390;Exh.P090.**(approximately 65 years old).

¹⁴⁷¹ **VG-018:Exh.P083,p.5(u.s.).VG-078:T1390;Exh.P090.**(approximately 55 years old).Mother of Jasmina Delija, **CW-001:T5565(o.s.).**

¹⁴⁷² **VG-018:Exh.P083,p.5(u.s.).VG-078:T1390;Exh.P090.**(Bula is the mother of VG-078, born in 1932).**CW-001:T5588(o.s.).**

¹⁴⁷³ **VG-018:Exh.P083,p.5(u.s.).VG-078:T1390;Exh.P090.**(VG-078's sister-in-law, born 1964).

Daughter-in-law of Bula. Mirela and Ismet were her children.**CW-001:T5565,5589(o.s.).**

¹⁴⁷⁴ **VG-018:Exh.P083,p.5(u.s.).VG-078:T1390;Exh.P090.**(she was the daughter of Mujesira and approximately 3-4 years old).

¹⁴⁷⁵ **VG-078:T1390;Exh.P090.**(This infant was the two day old baby of Izeta, but CW-001 says this was the child of Sadeta and grandchild of Aiša, T:5565(o.s.).

¹⁴⁷⁶ **VG-018:Exh.P083,p.5(u.s.).VG-078:T1390;Exh.P090.**(This person was the daughter of Hasan and approximately 18 years old in 1992). **Exh.P300,p.15-16.**

¹⁴⁷⁷ **VG-018:Exh.P083,p.5(u.s.).VG-078:T1390;Exh.P090.**(This person was Hasan's mother and was about 65 years old.).

¹⁴⁷⁸ **VG-018:Exh.P083,p.5(u.s.).VG-078:T1390;Exh.P090.**(She was the daughter of Mujesira and about 11 years old.) Sister of Enesa, **CW-001:T5565(o.s.).**

¹⁴⁷⁹ **VG-018:Exh.P083,p.5(u.s.).VG-038** recalls this person as someone who perished in the fire. **VG-038:T945(p.s.) VG-078:T1390;Exh.P090.**(This person was Hasib KURSPAHIĆ's daughter and approximately 38 years old.) Daughter of Hata, sister of Huso, **CW-001:T5566(o.s.).**

¹⁴⁸⁰ Huso KURSPAHIĆ believes this person did not die. **HusoKURSPAHIĆ:T6943-6966(o.s.).**

¹⁴⁸¹ **VG-018: Exh.P083,p.5.(u.s.).NOTE:**There is no "Hasiba" but a "Hasib" and Sabiha. Hasiba was the sister of Huso KURSPAHIĆ, **HusoKURSPAHIĆ:Exh.P036,p.4(u.s.)** But there is still evidence of another person named Hasiba, unrelated to HusoKURSPAHIĆ and unknown to him, who perished in the fire.**Exh.P300,p.16-17.**

¹⁴⁸² **VG-078:T1390;Exh.P090.**(This woman was Edhem KURSPAHIĆ's wife and was 62-63 years old.) **Exh.P300,p.17.**

¹⁴⁸³ **VG-018:Exh.P083,p.5(u.s.).VG-038** recalls this person as someone who perished in the fire.**VG-038:T945(private).** Hana's mother, **CW-001:T5569,5588.**

¹⁴⁸⁴ **VG-018:Exh.P083,p.5(u.s.).VG-078:T1390;Exh.P090.**(Bećar's daughter-in-law).Had just married into Koritnik, **CW-001:T5569,5586(o.s.).**

¹⁴⁸⁵ **Hasib KURSPAHIĆ:Exh.P041.**

¹⁴⁸⁶ **VG-018:Exh.P083,p.5(u.s.).VG-078:T1390;Exh.P090.**(son of Džehva, born 1990).**Exh.P300,p.17.**Džehva and Fehret's son, **CW-001:T5569,5580(o.s.).**

33. °◊*◊Ismeta KURSPAHIĆ, approx. 26¹⁴⁸⁷
34. °Izeta KURSPAHIĆ, approx. 24¹⁴⁸⁸
35. °◊Kada KURSPAHIĆ, approx. 40¹⁴⁸⁹
- ~~36. °Latifa KURSPAHIĆ~~
- ~~37. °Lejla KURSPAHIĆ~~
38. °*Maida KURSPAHIĆ¹⁴⁹⁰
39. °◊*◊Medina KURSPAHIĆ, approx. 28¹⁴⁹¹
40. °◊*◊Medo KURSPAHIĆ, approx. 50¹⁴⁹²
41. °◊*◊Mejra KURSPAHIĆ, approx. 47¹⁴⁹³
- ~~42. °Meva KURSPAHIĆ, approx. 45~~
43. °Mina KURSPAHIĆ, approx. 20
44. °◊*◊Mirela KURSPAHIĆ, approx. 3¹⁴⁹⁴
45. °◊*◊Mujesira KURSPAHIĆ, approx. 35¹⁴⁹⁵
46. °◊*◊Munevera KURSPAHIĆ, approx. 20¹⁴⁹⁶
47. °Munira KURSPAHIĆ, approx. 12
48. °◊*◊Munira KURSPAHIĆ, approx. 55¹⁴⁹⁷
49. °◊*◊Osman KURSPAHIĆ, approx. 67¹⁴⁹⁸
50. °◊*◊Pašija KURSPAHIĆ, approx. 56¹⁴⁹⁹
51. °◊*◊Ramiza KURSPAHIĆ, approx. 57¹⁵⁰⁰
52. °◊*◊Sabiha KURSPAHIĆ, approx. 14¹⁵⁰¹
53. °◊*◊Sadeta KURSPAHIĆ, approx. 18¹⁵⁰²
54. °◊*◊Safa KURSPAHIĆ, approx. 50¹⁵⁰³

¹⁴⁸⁷ **VG-018: Exh.P083**,p.5(u.s.) **VG-078:T1390;Exh.P090.**(This person was was the daughter-in-law of Osman and was about 30 years old).**Exh.P300**,p.17-18. Mother of Aida, Almir, Vahid, **CW-001:T5569,T5588(o.s.)**.

¹⁴⁸⁸ **VG-078:T1390;Exh.P090.**(approximately 24 years old).

¹⁴⁸⁹ **VG-078:T1390;Exh.P090.**(This person was Hasib KURSPAHIĆ's daughter and approximately 40 years old.) Married name Šchić, Hana's sister, Hata's daughter, **CW-001:T5570**. May be same person as Kada ŠEHIC.

¹⁴⁹⁰ **VG-018:Exh.P083**,p.5(u.s.).

¹⁴⁹¹ **VG-018:Exh.P083**,p.5(u.s.) VG-038 recalls this person as someone who perished in the fire. **VG-038:T945(p.s.)**. **VG-078:T1390;Exh.P090.**(This person is the daughter of Medo, born in 1964). **CW-001:T5571(o.s.)**.

¹⁴⁹² **VG-018:Exh.P083**,p.5(u.s.).VG-038 recalls this person as someone who perished in the fire. **VG-038:T945(private)**. **VG-078:T1390;Exh.P090.**(Approximately 60 years old). Medina's father, **CW-001:T5571(o.s.)**.

¹⁴⁹³ **VG-018:Exh.P083**,p.5(u.s.).**VG-078:T1390;Exh.P090.**(This person was Hasan's wife and about 45 years old.) Wife of Hasan, **CW-001:T5571**.

¹⁴⁹⁴ **VG-078:T1390;Exh.P090.**(VG-078 says this was the daughter of Dehva, born in 1988).**CW-001:T5573,T5589(o.s.)**.

¹⁴⁹⁵ **VG-018:Exh.P083**,p.5(u.s.).**VG-078:T1390;Exh.P090.**(She was the daughter-in-law of Sumbula and was 34-35 years old.) Mother of Enesa, **CW-001:T5573,T5587(o.s.)**.

¹⁴⁹⁶ **VG-018:Exh.P083**,p.5(u.s.).**VG-078:T1390;Exh.P090.** Alija's daughter, **CW-001:T5573(o.s.)**.

¹⁴⁹⁷ **VG-018:Exh.P083**,p.5(u.s.).**VG-078:T1390;Exh.P090.**(She was Alija's wife and born approximately in 1964). Munevera's mother, **CW-001:T5573(o.s.)**.

¹⁴⁹⁸ **VG-018:Exh.P083**,p.5(u.s.).**VG-078:T1390;Exh.P090.**(He was about 65 years old.) Ismeta's father-in-law, **CW-001:T5573,5587,5588(o.s.)**.

¹⁴⁹⁹ **VG-018:Exh.P083**,p.5(u.s.).Edhem's wife, T5573(o.s.).

¹⁵⁰⁰ **VG-018:Exh.P083**,p.5(u.s.).**VG-078:T1388** testifying about **Exh.P090.**(This person was Bećar's wife and was approximately 55). Becar's wife, **CW-001:T5573,5588.Exh.P300**,p.19.

¹⁵⁰¹ **VG-018:Exh.P083**,p.5(u.s.).**VG-078:T1390;Exh.P090.**(This person was the daughter of Hasan and born in around 1978.) **CW-001:T5574(o.s.)**.

¹⁵⁰² **VG-018:Exh.P083**,p.5(u.s.).Had 2 day old baby, **CW-001:T5574(o.s.)**.

55. ° Saha KURSPAHIĆ, approx. 70¹⁵⁰⁴
56. °◇*¤Sajma KURSPAHIĆ, approx. 20¹⁵⁰⁵
57. °*Seila KURSPAHIĆ, approx. 2
58. °◇*¤Seniha KURSPAHIĆ, approx. 9¹⁵⁰⁶
59. °◇*¤Sumbula KURSPAHIĆ, approx. 62¹⁵⁰⁷
60. °◇*¤Vahid KURSPAHIĆ, approx. 8¹⁵⁰⁸
61. °◇*¤Fazila MEMIŠEVIĆ, approx. 54¹⁵⁰⁹
62. °◇*¤Redžo MEMIŠEVIĆ, approx. 57¹⁵¹⁰
63. °◇*¤Rabija SADIKOVIĆ, approx. 52¹⁵¹¹
64. °◇¤Enver ŠEHIĆ, approx. 13¹⁵¹²
65. °◇*¤Faruk ŠEHIĆ, approx. 12¹⁵¹³
66. °Haraga ŠEHIĆ
67. °◇*¤Kada ŠEHIĆ, approx. 39¹⁵¹⁴
68. °*¤Nurka VELIĆ, approx. 70¹⁵¹⁵
69. °*¤Tima VELIĆ, approx. 35¹⁵¹⁶
70. °*¤Jasmina VILA, approx. 20
71. °◇Hasan KURSPAHIĆ, approx. 49¹⁵¹⁷

649. Mujo HALILOVIĆ who was also killed in the fire is listed on schedule A of the Indictment.¹⁵¹⁸

¹⁵⁰³ **VG-018:Exh.P083**,p.5(u.s.).VG-038 recalls this person as someone who perished in the fire. **VG-038:T945(p.s.)**. **VG-078:T1390;Exh.P090**.(This person was the wife of Medo and born in 1964). **CW-001:T5574(o.s.)**.

¹⁵⁰⁴ **Exh.P300**,p.19.

¹⁵⁰⁵ **VG-018:Exh.P083**,p.5(u.s.).NOTE:There is reference to a "Samija" but no reference to "Sajma" in this document.**VG-078:T1390;Exh.P090**.(This person was the daughter of Hasan and born in 1967).**CW-001:T5574(o.s.)**.

¹⁵⁰⁶ **VG-018:Exh.P083**,p.5(u.s.) Aiša's daughter, **CW-001:T5574(o.s.)**.

¹⁵⁰⁷ **VG-018:Exh.P083**,p.5(u.s.).**VG-078:T1390;Exh.P090**.(She was approximately 65 years old).

¹⁵⁰⁸ **VG-018: Exh.P083**,p.5. **VG-078:T1390;Exh.P090**.(He was the grandson of Osman and was Ismeta's son and was 8 years old.) Hidajit's son, **CW-001:T5580(o.s.),5587(p.s.)**.

¹⁵⁰⁹ **VG-018:Exh.P083**,p.5. **Hasib KURSPAHIĆ:Exh.P041**.(Fazila was a neighbour of Hasib KURSPAHIĆ). VG-038 recalls this person as someone who perished in the fire. **VG-038:T945. VG-078:T1390;Exh.P090**.(She was the wife of Redžo and approximately 65 years old).

¹⁵¹⁰ **VG-018:Exh.P083**,p.5. **Hasib KURSPAHIĆ:Exh.P41**(Redžo was a neighbour of Hasib KURSPAHIĆ).VG-038 recalls this person as someone who perished in the fire. **VG-038:T945.VG-078:T1390;Exh.P090**.(He was about 68 years old.) Fazila's husband, **CW-001:T5575**.

¹⁵¹¹ **Exh.P300**,p.19-20. She lived on Pionirska Street, Jasmina DELIJA lived in her house, **CW-001:T5575(o.s.)**.

¹⁵¹² Enver was Kada ŠEHIĆ's son and a nephew of Huso KURSPAHIĆ, **HusoKURSPAHIĆ: Exh.P036**. Brother of Faruk, **CW-001:T5575(o.s.)**.

¹⁵¹³ Faruk lived in the village of Mušići. **HusoKURSPAHIĆ: Exh.P038**, VT883. Brother of Enver, **CW-001:T5575**. One of the two brothers' remains were identified;it is unclear from the data whether Enver or Faruk was identified. The other remains missing. **Exh.P119. Exh.P300**,p.20.

¹⁵¹⁴ **VG-018:Exh.P083**,p.5(u.s.).**HusoKURSPAHIĆ:Exh.P036**,p.4 Kada was the sister of Huso KURSPAHIĆ. Mother of Faruk and Enver;may be the same person as Kada KURSPAHIĆ. **CW-001:T5588(o.s.)**.

¹⁵¹⁵ **HusoKURSPAHIĆ:Exh.P038**,VT884(Nurka andTima VELIĆ were both from Sase).

¹⁵¹⁶ **Exh.P300**,p.20. **HusoKURSPAHIĆ:T6922-25**(Believes Tima VELIĆ may be the same person as Tima JAŠEREVIĆ).

¹⁵¹⁷ **VG-018:Exh.P083**,p.5(u.s.).**VG-078:T1390;Exh.P090**.(This person was a relative of VG-078 and was between 45-50 years old in 1992 and formerly worked in Austria.) **Exh.P300**,p.16.

¹⁵¹⁸ **Hasib KURSPAHIĆ:Exh.P041,Exh.P038**,VT894.(Mujo HALILOVIĆ, Meho HALILOVIĆ and his wife were among the victims).

THE INTERNATIONAL CRIMINAL TRIBUNAL
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IT-98-32/1-T

THE PROSECUTOR
v.
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and
SREDOJE LUKIĆ

Public

A N N E X B
T O
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THE INTERNATIONAL CRIMINAL TRIBUNAL
FOR THE FORMER YUGOSLAVIA

IT-98-32/1-T

THE PROSECUTOR
v.
MILAN LUKIĆ
and
SREDOJE LUKIĆ

Public

A N N E X C
T O
P R O S E C U T I O N F I N A L T R I A L B R I E F
G L O S S A R Y

Annex C: Glossary

Miscellaneous Abbreviations

Abbreviation	Full citation
ABiH	Army of the Republic of Bosnia and Herzegovina
BCMP	Bosnia and Herzegovina Commission for Missing Persons in Sarajevo
BiH	Bosnia and Herzegovina
c.s.	Closed session
DU	Demographic Unit of the Office of the Prosecutor
ECtHR	European Court of Human Rights(?)(See FN 46)
Exh.	Exhibit
Exhs.	Exhibits
fn.	Footnote
fns.	Footnotes
FNU	First name unknown
ICMP	The International Commission for Missing Persons in Sarajevo
ICRC	International Committee of the Red Cross
IED	Improvised Explosive Device
JNA	Yugoslav People's Army(Army of the Socialist Federal Republic of Yugoslavia)
<i>Kurspahić-Family</i>	The group of people who originated from Kortinik and were mostly comprised of the extended family of Kurspahić.
lnc	Transcript line
lns	Transcript lines
LNU	Last name unknown
<i>Lukić-Group</i>	The group led by Milan Lukić and to which Sredoje Lukić was a member.
MUP	Ministry of the Interior Police
p.	Page
p.s.	Private session
para.	Paragraph
paras	Paragraphs
PBER	Post-Blast Exploitation Report
pp.	Pages
Rules	Rules of Procedure and Evidence
SDA	Party of Democratic Action
SDS	Serbian Democratic Party of Bosnia and Herzegovina
Statute	Statute of the International Criminal Tribunal for the Former Yugoslavia established by the Security Council Resolution 827(1993)
SUP	Secretary of Internal Affairs
T###	Transcript page

u.s. Under seal
 UNDU United Nations Detention Unit
 UXO Unexploded Ordinance
 VRS Vojska Republike Srpske / Bosnian Serb Army
 VT### Vasiljević Transcript page

**Pleadings, Orders, Decisions, from Prosecutor v. Milan Lukić & Sredoje Lukić,
 Case No. IT-98-32/1-T And Prosecutor v. Mitar Vasiljević, Case No. IT-98-32-T**

Abbreviation	Full citation
Chamber	Trial Chamber in Prosecutor v. Milan Lukić and Sredoje Lukić, Case No. IT-98-32/1-T
Indictment	Second Amended Indictment, 27 April 2006
LukićAFD	<i>Prosecutor v. Milan Lukić & Sredoje Lukić</i> , Case No. IT-98-32/1-T, Decision on Prosecution's Motion for Judicial Notice of Adjudicated Facts, 22 August 2008
Sredoje LukićAFD	<i>Prosecutor v. Milan Lukić & Sredoje Lukić</i> , Case No. IT-98-32/1-T, Decision on Sredoje Lukić's Amended Motion for Judicial Notice of Adjudicated Facts with Annex A, 12 November 2008.
Prosecution AF Motion	<i>Prosecutor v. Milan Lukić & Sredoje Lukić</i> , Case No. IT-98-32/1-PT, Prosecution's Motion for Judicial Notice of Adjudicated Facts, 28 February 2008
Milan Lukić Notice of Alleged Survivors	<i>Prosecutor v. Milan Lukić & Sredoje Lukić</i> , Case No. IT-98-32/1-T, Milan Lukić's Notice of Verification of Alleged Victim Survivors and Application for Stay of Proceedings with Exhibits A through H, 9 March 2009
Tabeau Clarification	<i>Prosecutor v. Milan Lukić & Sredoje Lukić</i> , Case No. IT-98-32/1-T, Prosecution Notification of Outcome of Further Investigation Regarding Victims and Motion for Admission of Tabeau "Clarification" Regarding Victims with Public Annex A, Confidential Annex A.1, and Public Annexes B and C, 16 March 2009
M.Lukić-Alibi-Notice 09/01/2008	<i>Prosecutor v. Milan Lukić & Sredoje Lukić</i> , Case No. IT-98-32/1-T, Sredoje Lukić's Šsic: should read MilanĆ Additional Defence Notice under Rule 67(A)(i)(a). 9 January 2008
M.Lukić-Alibi-Notice 30/07/2008	<i>Prosecutor v. Milan Lukić & Sredoje Lukić</i> , Case No. IT-98-32/1-T, Milan Lukić's Further Notice of Alibi Witnesses Pursuant to ICTY Rule 67(B)(i)(a), 30 June 2008.
M.Lukić-Alibi-Notice 18/07/2008	<i>Prosecutor v. Milan Lukić & Sredoje Lukić</i> , Case No. IT-98-32/1-T, Milan Lukić's Further Submission in Regard to Defence of Alibi, 18 July 2008
S.Lukić-Alibi-Notice 08/01/2008	<i>Prosecutor v. Milan Lukić & Sredoje Lukić</i> , Case No. IT-98-32/1-T, Sredoje Lukic's Additional Defence Notice under Rule 67(A)(i)(a), 8 January 2008
S.Lukić-Alibi-Notice 02/06/2008	<i>Prosecutor v. Milan Lukić & Sredoje Lukić</i> , Case No. IT-98-32/1-T, Sredoje Lukic's Clarification of Defence Notices under Rule 67(A)(i)(a), 2 June 2008
Decision on Sredoje Lukić	<i>Prosecutor v. Milan Lukić & Sredoje Lukić</i> , Case No. IT-98-32/1-

Abbreviation	Full citation
Alibi Clarification	PT, Decision on Prosecution's Motion for an Order Requiring the Accused Sredoje Lukić to Clarify Alibi Notice Served Under Rule 67(A)(I)(A), 15 May 2008.
VG-025 92 ^{quater} Decision	<i>Prosecutor v. Milan Lukić & Sredoje Lukić</i> , Case No. IT-98-32/1-T, Decision on Prosecution Motion to Admit Statements Pursuant to Rule 92 ^{quater} (VG-025), 22 October 2008.
Lukić, Decision on Proposed Third Amended Indictment	<i>Prosecutor v. Milan Lukić & Sredoje Lukić</i> , Case No. IT-98-32/1-T, Decision on Prosecution Motion Seeking Leave to Amend the Second Amended Indictment and On Prosecution Motion to Include UN Security Council Resolution 1820(2008) as Additional Supporting Material to Proposed Third Amended Indictment as Well as on Milan Lukić's Request for Reconsideration or Certification of the Pre-Trial Judge's Order of 19 June 2008, 8 July 2008.
Lukić Decision on the Form of the Indictment	<i>Prosecutor v. Milan Lukić & Sredoje Lukić</i> , Case No. IT-98-32/1-PT, Decision on the Form of the Indictment, T.Ch., 11 May 2006
19 November 2008 65 ^{ter} Submission	<i>Prosecutor v. Milan Lukić & Sredoje Lukić</i> , Case No. IT-98-32/1-T, Milan Lukić's Submissions Pursuant to 65 ^{ter} (G), 19 November 2008.
2 December 2008 Updated Witness List	<i>Prosecutor v. Milan Lukić & Sredoje Lukić</i> , Case No. IT-98-32/1-T, Milan Lukić's Updated Witness List Pursuant to Order of the Trial Chamber, 2 December 2008.
11 December 2008 Witness Notice	<i>Prosecutor v. Milan Lukić & Sredoje Lukić</i> , Case No. IT-98-32/1-T, Milan Lukić's Witness Notice and Request for Clarification of the Trial Chamber's Order of 4 December 2008, 11 December 2008.
26 December 2008 Witness Notice	<i>Prosecutor v. Milan Lukić & Sredoje Lukić</i> , Case No. IT-98-32/1-T, Milan Lukić's Notice of First Witnesses to be Called After the Recess, 26 December 2008.
T###	<i>Prosecutor v. Milan Lukić & Sredoje Lukić</i> , Case No. IT-98-23/1-T, Transcript [page number]
VT###	<i>Prosecutor v. Mitar Vasiljević</i> , Case No. IT-98-32-T, Transcript [page number].

Jurisprudence: ICTY

Abbreviation	Full citation
<i>Aleksovski</i> AJ	<i>Prosecutor v. Zlatko Aleksovski</i> , Case No. IT-95-14/1-A, App.Ch., Judgement, 24 March 2000
<i>Aleksovski</i> Decision on Admissibility of Evidence	<i>Prosecutor v. Zlatko Aleksovski</i> , Case No. IT-95-14/1-AR73, App. Ch., Decision on Prosecutor's Appeal on Admissibility of Evidence, 16 February 1999
<i>Aleksovski</i> TJ	<i>Prosecutor v. Zlatko Aleksovski</i> , Case No. IT-95-14/1-T, T.Ch., Judgement, 25 June 1999
<i>Babić</i> SAJ	<i>Prosecutor v. Milan Babić</i> , Case No. IT-03-72-A, App.Ch. Judgement on Sentencing Appeal, 18 July 2005

Abbreviation	Full citation
<i>Babić SJ</i>	<i>Prosecutor v. Milan Babić</i> , Case No. IT-03-72-S, T.Ch., Sentencing Judgement, 29 June 2004
<i>Banović SJ</i>	<i>Prosecutor v. Predrag Banović</i> , Case No. IT-02-65/1-S, T.Ch. Sentencing Judgement, 28 October 2003
<i>Blaškić AJ</i>	<i>Prosecutor v. Tihomir Blaškić</i> , Case No. IT-95-14-A, App.Ch., Judgement, 29 July 2004
<i>Blaskić Hearsay Decision</i>	<i>Prosecutor v. Tihomir Blaškić</i> , Case No IT-95-14-T, T.Ch., Decision on Standing Objection of the Defence to the Admission of Hearsay with no Inquiry as to its Reliability, 21 January 1998.
<i>Blaškić TJ</i>	<i>Prosecutor v. Tihomir Blaškić</i> , Case No. IT-95-14-T, T. Ch., Judgement, 3 March 2000
<i>Blagojević TJ</i>	<i>Prosecutor v. Vidoje Blagojević & Dragan Jokić</i> , Case No. IT-02-60-T, T.Ch., Trial Judgement, 17 January 2005
<i>Bralo SAJ</i>	<i>Prosecutor v. Miroslav Bralo</i> , Case No.IT-95-17-A, App.Ch., Judgement on Sentencing Appeal, 2 April 2007
<i>Bralo SJ</i>	<i>Prosecutor v. Miroslav Bralo</i> , Case No.IT-95-17-S, T.Ch., Sentencing Judgement, 7 December 2005
<i>Brdanin AJ</i>	<i>Prosecutor v Radoslav Brdanin</i> , Case No. IT-99-36-A, App.Ch., Judgement, 3 April 2007
<i>Brdanin TJ</i>	<i>Prosecutor v Radoslav Brdanin</i> , Case No. IT-99-36-T, Judgement, 1 September 2004
<i>Čelebići AJ</i>	<i>Prosecutor v. Zejnil Delalić, Zdravko Mucić, a.k.a. "Pavo", Hazim Delić & Esad Landžo, a.k.a. "Zenga"</i> , Case No. IT-96-21-A, App.Ch., Judgement, 20 February 2001
<i>Čelebići TJ</i>	<i>Prosecutor v. Zejnil Delalić, Zdravko Mucić, a.k.a. "Pavo", Hazim Delić & Esad Landžo, a.k.a. "Zenga"</i> , Case No. IT-96-21-T, T.Ch., Judgement, 16 November 1998
<i>D.Nikolić SAJ</i>	<i>Prosecutor v. Dragan Nikolić</i> , Case No. IT-94-02-A, App.Ch. Judgement on Sentencing Appeal, 4 February 2005
<i>D.Nikolić SJ</i>	<i>Prosecutor v. Dragan Nikolić</i> , Case No. IT-94-02-S, T.Ch., Sentencing Judgement, 18 December 2003
<i>Delalić AJ</i>	<i>Prosecutor v. Zejnil Delalic et al.</i> , Case No, IT-96-21-A, App.Ch., Judgment, 20 February 2001
<i>Deronjić SAJ</i>	<i>The Prosecutor v. Miroslav Deronjić</i> , Case No. IT-02-61-A, App.Ch., <i>Judgement on Sentencing Appeal</i> , 20 July 2005
<i>Furundžija TJ</i>	<i>Prosecutor v. Anto Furundžija</i> , Case No. IT-95-17/1-T, T.Ch., Judgement, 10 December 1998

Abbreviation	Full citation
<i>Galić</i> AJ	<i>Prosecutor v. Stanislav Galić</i> , Case No. IT-98-29-A, App.Ch., Judgement, 30 November 2006
<i>Galić</i> TJ	<i>Prosecutor v. Stanislav Galić</i> , Case No. IT-98-29-T, T.Ch., Judgement, 5 December 2003
<i>Halilović</i> TJ	<i>Prosecutor v. Sefer Halilović</i> , Case No. IT-01-48-T, T.Ch., Judgement, 16 November 2005
<i>Haradinaj</i> TJ	<i>Prosecutor v. Ramush Haradinaj, Idriz Balaj & Lahi Brahimaj</i> , Case No. IT-04-84-T, T.Ch., 3 April 2008
<i>Jelisić</i> AJ	<i>Prosecutor v. Goran Jelisić</i> , Case No. IT-95-10-A, App.Ch., Judgement, 5 July 2001
<i>Jelisić</i> TJ	<i>Prosecutor v. Goran Jelisić</i> , Case No. IT-95-10-T, T.Ch., Judgement, 14 December 1999
<i>Jokić</i> SAJ	<i>Prosecutor v. Miodrag Jokić</i> , Case No. IT-01-42/1-A, App.Ch., Judgement on Sentencing Appeal, 30 August 2005
<i>Jokić</i> SJ	<i>Prosecutor v. Miodrag Jokić</i> , Case No. IT-01-42/1-S, T.Ch., Sentencing Judgement, 18 March 2004
<i>Kordić</i> AJ	<i>Prosecutor v. Dario Kordić & Mario Čerkez</i> , Case No. IT-95-14/2-A, App.Ch., Judgement, 17 December 2004
<i>Kordić</i> TJ	<i>Prosecutor v. Dario Kordić & Mario Čerkez</i> , Case No. IT-95-14/2-T, T.Ch., Judgement, 26 February 2001
<i>Krajišnik</i> TJ	<i>Prosecutor v. Momčilo Krajišnik</i> , Case No. IT-00-39-T, Judgement, 27 September 2006
<i>Krnjelac</i> AJ	<i>Prosecutor v. Milorad Krnjelac</i> , Case No. IT-97-25-A, App.Ch., Judgement, 17 September 2003
<i>Krnjelac</i> TJ	<i>Prosecutor v. Milorad Krnjelac</i> , Case No. IT-97-25-T, T.Ch., Judgement, 15 March 2002
<i>Krstić</i> AJ	<i>Prosecutor v. Radislav Krstić</i> , Case No. IT-98-33-A, App.Ch., Judgement, 19 April 2004
<i>Krstić</i> TJ	<i>Prosecutor v. Radislav Krstić</i> , Case No. IT-98-33-T, T.Ch., Judgement, 2 August 2001
<i>Kunarac</i> AJ	<i>Prosecutor v. Dragoljub Kunarac, Radomir Kovač & Zoran Vuković</i> , Case No. IT-96-23 & IT-96-23/1-A, App.Ch., Judgement, 12 June 2002
<i>Kunarac</i> TJ	<i>Prosecutor v. Dragoljub Kunarac, Radomir Kovač & Zoran Vuković</i> , Case No. IT-96-23 & IT-96-23/1-T, T.Ch., Judgement, 22 February 2001
<i>Kunarac 98bis</i> TD	<i>Prosecutor v. Dragoljub Kunarac, Radomir Kovač & Zoran Vuković</i> , Case No. IT-96-23-T, T.Ch., Decision on Motion for Acquittal, 3 July 2000
<i>Kupreškić</i> AJ	<i>Prosecutor v. Zoran Kupreškić, Mirjan Kupreškić, Vlatko Kupreškić, Drago Josipović & Vladimir Šantić</i> , Case No. IT-95-16-A, App.Ch., Judgement, 23 October 2001
<i>Kupreškić</i> TJ	<i>Prosecutor v. Zoran Kupreškić, Mirjan Kupreškić, Vlatko Kupreškić, Drago Josipović, Dragan Papić & Vladimir Šantić, a.k.a. "Vlado"</i> , Case No. IT-95-16-T, T.Ch., Judgement, 14 January 2000
<i>Kupreškić</i> Alibi Notice Decision	<i>Prosecutor v. Zoran Kupreškić, Mirjan Kupreškić, Vlatko Kupreškić, Drago Josipović, Dragan Papić & Vladimir Šantić, a.k.a. "Vlado"</i> , Case No. IT-95-16-T, Decision, 11 January

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	1999.
<i>Kvočka AJ</i>	<i>Prosecutor v. Miroslav Kvočka, Milojica Kos, Mlado Radić, Zoran Žigić & Dragoljub Prcać</i> , Case No. IT-98-30/1-A, App.Ch., Judgement, 28 February 2005
<i>Kvočka TJ</i>	<i>Prosecutor v. Miroslav Kvočka, Milojica Kos, Mlado Radić, Zoran Žigić & Dragoljub Prcać</i> , Case No. IT-98-30/1-T, T.Ch., Judgement, 2 November 2001
<i>Limaj AJ</i>	<i>Prosecutor v. Fatmir Limaj, Haradin Bala & Isak Musliu</i> , Case No. IT-03-66-A, App.Ch., Judgement, 27 September 2007
<i>Limaj TJ</i>	<i>Prosecutor v. Fatmir Limaj, Haradin Bala & Isak Musliu</i> , Case No. IT-03-66-T, T.Ch., Judgement, 30 November 2005
<i>Martić TJ</i>	<i>Prosecutor v. Milan Martić</i> , Case No. IT-95-11-T, T.Ch., Judgement, 12 June 2007
<i>Martić AJ</i>	<i>Prosecutor v. Milan Martić</i> , Case No. IT-95-11-A, App.Ch., Judgement, 8 October 2008
<i>Milosevuć Admissibility Decision</i>	<i>Milošević</i> , Case No. IT-02-54-AR73.2, App.Ch., Decision on Admissibility of Prosecution Investigator's Evidence, 90 September 2002.
<i>M.Nikolić SJ</i>	<i>Prosecutor v. Momir Nikolić</i> , Case No. IT-02-60/1-S, T.Ch., Sentencing Judgement, 2 December 2003
<i>Mrda SJ</i>	<i>Prosecutor v. Darko Mrda</i> , Case No. IT-02-59-S, T.Ch., Sentencing Judgement, 31 March 2004
<i>Naletilić AJ</i>	<i>Prosecutor v. Mladen Naletilić & Vinko Martinović</i> , Case No. IT-98-34-A, App.Ch., Judgement, 3 May 2006
<i>Naletilić TJ</i>	<i>Prosecutor v. Mladen Naletilić & Vinko Martinović</i> , Case No. IT-98-34-T, T.Ch., Judgement, 31 March 2003
<i>Obrenović SJ</i>	<i>Prosecutor v. Dragan Obrenović</i> , Case No. IT-02-60/2-S, T.Ch., Sentencing Judgement, 10 December 2003
<i>Orić TJ</i>	<i>Prosecutor v. Naser Orić</i> , Case No. IT-03-68-T, T.Ch., Judgement, 30 June 2006
<i>Plavšić SJ</i>	<i>Prosecutor v. Biljana Plavšić</i> , Case No. IT-00-39&40/1-S, T.Ch., Sentencing Judgement, 27 February 2003
<i>Simić AJ</i>	<i>Prosecutor v. Blagoje Simić</i> , Case No. IT-95-9-A, App.Ch., Judgement, 28 November 2006
<i>Simić TJ</i>	<i>Prosecutor v. Blagoje Simić, Miroslav Tadić, Simo Zarić</i> , Case No. IT-95-9-T, T.Ch., Judgement, 17 October 2003
<i>Stakić AJ</i>	<i>Prosecutor v. Milomir Stakić</i> , Case No. IT-97-24-A, App.Ch. Judgement, 22 March 2006
<i>Stakić TJ</i>	<i>Prosecutor v. Milomir Stakić</i> , Case No. IT-97-24-T, T.Ch., Judgement, 31 July 2003
<i>Strugar TJ</i>	<i>Prosecutor v. Pavle Strugar</i> , Case No. IT-01-42-T, T.Ch., Judgement, 31 January 2005
<i>Strugar AJ</i>	<i>Prosecutor v. Pavle Strugar</i> , Case No. IT-01-42-A, App.Ch., Judgement, 17 July 2008
<i>Tadić AJ</i>	<i>Prosecutor v. Duško Tadić a/k/a "Dule"</i> , Case No. IT-94-1-A, App.Ch., Judgement, 15 July 1999
<i>Tadić Hearsay Decision</i>	<i>Prosecutor v. Duško Tadić a/k/a "Dule"</i> , Case No. IT-94-1-T, T.Ch., Decision on the Defence Motion on Hearsay, 5 August

Abbreviation	Full citation
	1996.
<i>Tadić</i> Jurisdiction AD	<i>Prosecutor v. Duško Tadić a/k/a "Dule"</i> , Case No. IT-94-1-AR72, App.Ch., Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, 2 October 1995
<i>Tadić</i> SAJ	<i>Prosecutor v. Duško Tadić a/k/a "Dule"</i> , Case No. IT-94-1-A and IT-94-1-Abis, App.Ch., Judgement on Sentencing Appeal, 26 January 2000
<i>Tadić</i> TJ	<i>Prosecutor v. Duško Tadić a/k/a "Dule"</i> , Case No. IT-94-1-T, T.Ch., Opinion and Judgement, 7 May 1997
<i>Todorović</i> SJ	<i>Prosecutor v. Stevan Todorović</i> , Case No. IT-95-9/1-S, T.Ch., Sentencing Judgement, 31 July 2001
<i>Vasiljević</i> AJ	<i>Prosecutor v. Mitar Vasiljević</i> , Case No. IT-98-32-A, App.Ch., Judgement, 25 February 2004
<i>Vasiljević</i> TJ	<i>Prosecutor v. Mitar Vasiljević</i> , Case No. IT-98-32-T, T.Ch., Judgement, 29 November 2002

Jurisprudence: ICTR

Abbreviation	Full citation
<i>Akayesu</i> AJ	<i>Prosecutor v Jean-Paul Akayesu</i> , Case No. ICTR-96-4-A, App.Ch., Judgement, 1 June 2001.
<i>Akayesu</i> TJ	<i>Prosecutor v. Jean-Paul Akayesu</i> , Case No. ICTR-96-4-T, T.Ch., Judgement, 2 September 1998.
<i>Bagilishema</i> TJ	<i>Prosecutor v. Ignace Bagilishema</i> , Case No. ICTR-95-1A-T, T.Ch., Judgement, 7 June 2001
<i>Gacumbitsi</i> AJ	<i>Prosecutor v Sylvestre Gacumbitsi</i> , Case No. ICTR-2001-64-A, App.Ch., Judgement, 7 July 2006
<i>Kajelijeli</i> TJ	<i>Prosecutor v. Juvénal Kajelijeli</i> , Case No. ICTR-98-44A-T, T.Ch., Trial Judgement and Sentence, 1 December 2003
<i>Kamuhanda</i> AJ	<i>Prosecutor v Jean de Dieu Kamuhanda</i> , Case No. ICTR-99-54A-A, App.Ch., Appeal Judgement, 19 September 2005
<i>Kayishema</i> TJ	<i>Prosecutor v. Clément Kayishema & Obed Ruzindana</i> , Case No. ICTR-95-1-T, T.Ch., Judgement, 21 May 1999
<i>Musema</i> TJ	<i>Prosecutor v. Alfred Musema</i> , Case No. ICTR-96-13-A, T.Ch., Judgement, 27 January 2000
<i>Nahimana</i> AJ	<i>Prosecutor v. Ferdinand Nahimana, Jean-Bosco Barayagwiza & Hassan Ngeze</i> , Case No. ICTR-99-52-A, App.Ch., Judgement, 28 November 2007
<i>Ndindabahizi</i> AJ	<i>Prosecutor v. Emmanuel Ndindabahizi</i> , Case No. ICTR-01-71-A, App.Ch., Judgement, 16 January 2007
<i>Ndindabahizi</i> TJ	<i>Prosecutor v. Emmanuel Ndindabahizi</i> , Case No. ICTR-01-71-T, Judgement and Sentence, 15 July 2004
<i>Ntagerura</i> AJ	<i>Prosecutor v. André Ntagerura, Emmanuel Bagambiki & Samuel Imanishimwe</i> , Case No. ICTR-99-46-A,

Abbreviation	Full citation
	Judgement and Sentence, 7 July 2006
<i>Ntakirutimana</i> AJ	<i>Prosecutor v Ntakirutimana & Ntakirutimana</i> , Case No. ICTR-96-10-A and ICTR-96-17-A, Judgement, 13 December 2004
<i>Rutaganda</i> AJ	<i>Prosecutor v Georges Anderson Nderubumwe Rutaganda</i> , Case No. ICTR-96-3-A, App.Ch., Judgement, 26 May 2003
<i>Semanza</i> AJ	<i>Prosecutor v. Laurent Semanza</i> , Case No. ICTR-97-20-A, App.Ch., Judgement, 20 May 2003
<i>Semanza</i> TJ	<i>Prosecutor v. Laurent Semanza</i> , Case No. ICTR-97-20-T, T.Ch., Judgement and Sentence, 15 May 2003
<i>Seromba</i> AJ	<i>Prosecutor v. Athanase Seromba</i> , Case No. ICTR-2001-66-T, App.Ch., Judgement, 12 March 2008

Jurisprudence: General Sources of Law

Abbreviation	Full citation
API	Additional Protocol I to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts(Protocol I) of 8 June 1977
APII	Additional Protocol II to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts(Protocol I) of 8 June 1977
ICRC Commentary	ICRC, Commentary on the Additional Protocols of 8 June 1997 to the Geneva Conventions of 12 August 1949, ICRC, Martinus Nijhoff(1987)
Criminal Code of BiH of 1977	Criminal Code of the Socialist Republic of Bosnia and Herzegovina adopted on 10 June 1977
GCI	First Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, 12 August 1949
GCII	Second Geneva Convention for the Amelioration of the Conditions of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, 12 August 1949
GCIII	Third Geneva Convention Relative to the Treatment of Prisoners of War, 12 August 1949
GCIV	Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War, 12 August 1949
ILC Report 1996	International Law Commission, Commentary on the 1996

Abbreviation	Full citation
Practice Direction on Pardon/Commutation/Early Release	Draft Code of Crimes against the Peace and Security of Mankind, Report of the International Law Commission on the work of its 48 th Session, UN Doc. A/51/10
Sentencing Report	Practice Direction on the Procedure for the Determination of Applications for Pardon, Commutation of Sentence and Early Release of Persons Convicted by the International Tribunal(IT/146/Rev.1), 15 August 2006. “The Punishment of Serious Crimes: a comparative analysis of sentencing law and practice” provided by Prof. Dr. Ulrich Sieber from the Max Planck Institute, filed on 12 November 2003, in its final version including Country Reports(the latter on CD-Rom)

THE INTERNATIONAL CRIMINAL TRIBUNAL
FOR THE FORMER YUGOSLAVIA

IT-98-32/1-T

THE PROSECUTOR
v.
MILAN LUKIĆ
and
SREDOJE LUKIĆ

Public

A N N E X D

T O

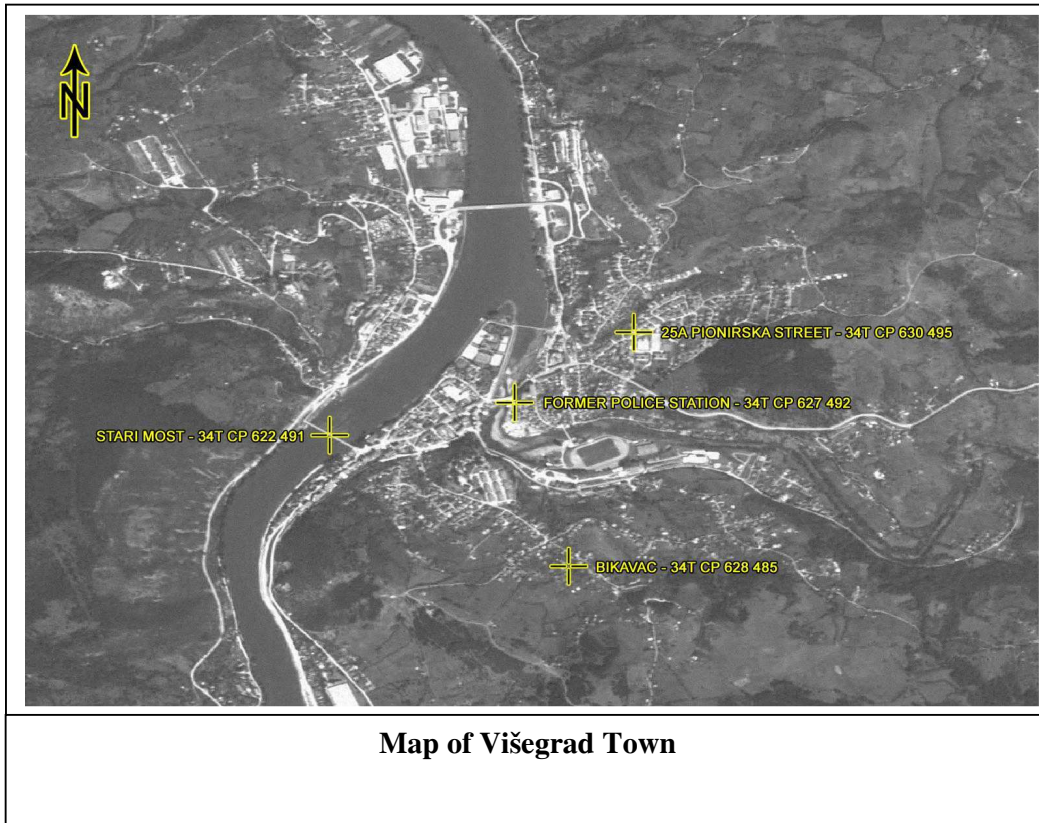
P R O S E C U T I O N F I N A L T R I A L B R I E F

M A P S A N D C A L E N D A R

Annex D: Maps and Calendar



Map of Višegrad Municipality



Calendar(June 1992)

Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30					