

THE INTERNATIONAL CRIMINAL TRIBUNAL
FOR THE FORMER YUGOSLAVIA

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

IN TRIAL CHAMBER III

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

Acting Registrar: Mr. John Hocking

Date Filed: 12 May 2009

THE PROSECUTOR

v.

MILAN LUKIĆ
SREDOJE LUKIĆ

PUBLIC REDACTED VERSION

SREDOJE LUKIĆ'S DEFENCE FINAL BRIEF

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SREDOJE LUKIĆ'S DEFENCE FINAL BRIEF

1. INTRODUCTION

1. Pursuant to the Trial Chamber's Scheduling Order dated 22 April 2009,¹ the Defence of the Accused Sredoje Lukić ("Defence") hereby files its final brief.

2. The Defence submits that the Prosecution has failed to prove the individual criminal responsibility of Sredoje Lukić ("the Accused") under Article 7(1) of the Statute of the International Criminal Tribunal for the Former Yugoslavia ("the Statute"). The evidence presented by the Prosecution does not establish that he committed or aided and abetted the crimes charged in Counts 1, 8-17 and/or 20-21 of the Second Amended Indictment.² The Prosecution has not proved that he committed those crimes, either alone and/or in concert with others. Nor has the

¹*Prosecutor v. Milan Lukić & Sredoje Lukić*, Case No.98-32-T, Decision on the Defence of Milan Lukić Request on for Additional Time for Final Brief and Closing Argument and Notice on of Non-Availability, and on the Defence of Sredoje Lukić Request for Variation of Word Limit with Incorporated Scheduling Order, 22 April 2009.

² Second Amended Indictment, para.29.

Prosecution proved that the Accused provided substantial assistance to the perpetrators of those crimes, while knowing or aware of the substantial likelihood that the principal or principals would commit the crimes.³

2. PROCEDURAL BACKGROUND

3. The initial indictment against the Accused, Milan Lukić and Mitar Vasiljević was confirmed on 26 October 1998, and unsealed on 30 October 2000.⁴
4. On 12 July 2001, the Prosecution filed its proposed Amended Indictment and on 20 July 2001, the Prosecution was orally granted leave to amend that indictment.⁵
5. On 1 February 2005, the Prosecution filed an application under Rule 11*bis* of the Rules of Procedure and Evidence (“the Rules”) seeking to refer the prosecution of the case against Milan Lukić and Sredoje Lukić to a local court in the former Yugoslavia.⁶
6. On 15 September 2005, the Accused voluntarily surrendered to the authorities of the Republika Srpska in Bosnia and Herzegovina and was transferred to the seat of the Tribunal on 16 September 2005.
7. On 17 November 2005, the Prosecution filed a motion to amend the indictment.⁷ On 1 February 2006, the Trial Chamber granted the Prosecution’s motion to

³ Second Amended Indictment, para. 32.

⁴ *Prosecutor v. Milan Lukić & Sredoje Lukić*, Case No. 98-32/1-PT, Indictment, 26 October 1998.

⁵ *Prosecutor v. Milan Lukić & Sredoje Lukić*, Case No. 98-32/1-PT, Amended Indictment, 12 July 2001.

⁶ *Prosecutor v. Milan Lukić & Sredoje Lukić*, Case No. 98-32/1-PT, Request by the Prosecutor under Rule 11*bis*, 1 February 2005.

⁷ *Prosecutor v. Milan Lukić & Sredoje Lukić*, Case No. 98-32/1-PT, Prosecution’s Motion to Amend Indictment, 17 November 2005.

- amend the indictment in this case with respect to the Accused.⁸ The Prosecution filed the Second Amended Indictment on 27 February 2006.
8. On 5 April 2007, the Trial Chamber issued its decision referring the case to the the authorities of Bosnia and Herzegovina.⁹ On 19 April 2007, the Co-Accused Milan Lukić filed a notice of appeal against the Trial Chamber decision.¹⁰ The Accused Sredoje Lukić did not file an appeal against the Trial Chamber decision for referral.
 9. On 11 July 2007, the Appeals Chamber issued its decision, which required that this case be tried before the ICTY.¹¹
 10. On 14 March 2008, the Prosecution filed the “Prosecution’s Pre-Trial Brief pursuant to Rule 65ter(E)(i)”. In compliance with the work-plan issued by Honourable Judge Thelin on 4 September 2007, the Accused submitted its Defence Pre-Trial Brief on 25 April 2008.¹²
 11. During, the trial proceedings, the Prosecution called 46 witnesses, the Defence for Sredoje Lukić called 3 witnesses and the Defence for Milan Lukić called 26 witnesses. There were three Chamber witnesses.

⁸ *Prosecutor v. Milan Lukić & Sredoje Lukić*, Case No.98-32/1-PT, Decision Granting Prosecution’s Motion to Amend Indictment and Scheduling Further Appearance, 1 February 2006.

⁹ *Prosecutor v. Milan Lukić & Sredoje Lukić*, Case No.98-32/1-PT, Decision on Referral of Case Pursuant to Rule 11bis with Confidential Annex A and Annex B, 5 April 2007.

¹⁰ *Prosecutor v. Milan Lukić & Sredoje Lukić*, Case No.98-32/1-PT, Notice of Appeal of Milan Lukić from 5 April 2007 Decision on Referral of Case Pursuant to Rule 11bis, 19 April 2007.

¹¹ *Prosecutor v. Milan Lukić & Sredoje Lukić*, Case No.98-32/1-AR11bis.1, Decision on Milan Lukić’s Appeal Regarding Referral, 11 July 2007.

¹² *Prosecutor v. Milan Lukić & Sredoje Lukić*, Case No.98-32/1-PT, Sredoje Lukić’s Defence Pre-Trial Brief pursuant to Rule 65ter(F), 25 April 2008.

3. PRINCIPLES OF EVIDENCE

12. In cases where more than one Accused is standing trial, the Trial Chamber should evaluate charges against each of the Accused. The guilt of each of the Accused should be considered in the light of all the evidence presented by the Prosecution and by each Defendant, “not just the evidence of the Prosecution and the Defendant under consideration”.¹³
13. The burden is on the Prosecution to establish the guilt of the Accused beyond reasonable doubt for each separate charge in the Indictment, regardless of whether or not the Defence has challenged this evidence.¹⁴ If the Defence fails to recall evidence to prove that the Prosecution has not discharged its burden, the Trial Chamber must consider that evidence on its own initiative.¹⁵

3.1 Burden of Proof

14. Under Article 21(3) of the Statute of this Tribunal, the Accused is entitled to a presumption of innocence. The burden is on the Prosecution to prove the guilt of the Accused “beyond reasonable doubt.” That is, it is for the Prosecution to prove every material fact, which goes towards the guilt of the Accused. The burden does not shift to the Defence under any circumstances.¹⁶ In accordance with Rule 87(A) of the Rules of Procedure and Evidence, the Trial Chamber should determine whether the ultimate result of the whole evidence is weighted and convincing enough to establish beyond reasonable doubt the facts alleged, and ultimately the guilt of the Accused.

¹³ *Prosecutor v. Simić*, Case No.IT-95-9-T, Judgment, 17 October 2003 (“*Simić Trial Judgement*”), para.18.

¹⁴ Rule 87(A) Rules of Procedure and Evidence, Rule 87(A; see also *Prosecutor v. Halilović*, IT-01-48-T, Judgment, November 2005 (“*Halilović Trial Judgement*”), para.12.

¹⁵ *Halilović Trial Judgement*, para.12, footnote 24 (citing *Krnojelac Trial Judgement*, para.66 and *Criminal Evidence* (4th Ed.), Richard May, London: Sweet & Maxwell Ltd., London, 1999, pp.64-65).

¹⁶ *Prosecutor v. Vasiljević*, Case No.IT-98-32-A, Appeals Judgement, February 2004, para.120.

15. In determining whether the guilt of the accused has been established to this standard regarding each particular count in the indictment, the Tribunal has been careful to consider whether there is any reasonable explanation for it other than the guilt of the accused.¹⁷ It has been further articulated that “[i]t is not sufficient that it is a reasonable conclusion available from that evidence. It must be the *only* reasonable conclusion available. If there is another conclusion which is consistent with the innocence of the Accused, he must be acquitted”.¹⁸ This is in accordance with the principle of in *dubio pro reo*, according to which, any doubt must be resolved in favour of the Accused.¹⁹
16. Where the Defence raises a special defence of alibi, the burden remains on the Prosecution to “eliminate any reasonable possibility that the evidence of alibi is true”.²⁰ In the present case, if the Trial Chamber is satisfied that there is a reasonable possibility that the Accused was at a place other than Pionirska Street and Bikavac, then the Prosecution has failed to establish beyond reasonable doubt that he participated in the Pionirska Street and Bikavac incidents.²¹
17. Article 21(4)(g) of the Statute, provides that no Accused shall be compelled to testify against himself. It has been acknowledged that “silence by the Accused may not be used as evidence to prove guilt and may not be interpreted as an admission”.²² Thus, Sredoje Lukić’s choice not to give evidence has no bearing on the burden of proof.

¹⁷ *Prosecutor v. Brđanin*, Case No.IT-99-36-T, Judgement, 1 September 2004 (“*Brđanin* Trial Judgement”), para.23.

¹⁸ *Prosecutor v. Delalić et al.*, Case No.IT-96-21-A, Judgement, 20 February 2001 (“*Čelebići* Appeals Judgement”), para.458.

¹⁹ Rule 89(B) Rules of Procedure and Evidence.

²⁰ *Vasiljević* Trial Judgement, para.15; citing *Čelebići* Appeals Judgement, para.581; *Prosecutor v. Kunarac et al.*, Case No.IT-96-32-T & IT-96-23/1-T, Judgement, 22 February 2001, (“*Kunarac* Trial Judgement”), para.625.

²¹ See also *Vasiljević* Trial Judgement, para.15.

²² *Brđanin* Trial Judgement, para.24.

3.2 Reliability and Credibility of Evidence

18. Evidence must be reliable and credible to be given any weight whatsoever, but difficulties lie in determining whether this is the case.
19. Reliability should be assessed on a case-by-case basis. Factors that should be considered are; the circumstances under which the evidence arose, the content of the evidence, whether and how the evidence is corroborated, as well as the truthfulness, voluntariness, and trustworthiness of the evidence.²³

3.3 Credibility of Witnesses

20. When evaluating the evidence given by witnesses, *viva voce*, the Trial Chamber shall consider their demeanor, conduct, and character as far as possible.²⁴ Regarding all witnesses, the Chamber shall also consider the probability, consistency, and other features of their evidence. It has been conscious that “the credibility of witnesses depends upon their knowledge of the facts upon which they give evidence, their disinterestedness, their integrity, their veracity, and the fact that they are bound to speak the truth in terms of the solemn declaration taken by them”.²⁵
21. The fact that a witness gives evidence honestly is not enough to establish the reliability of that evidence. The issue is not solely whether a witness’s evidence is given honestly; it is also whether the evidence is objectively reliable.²⁶ In general, discrepancies regarding issues that are peripheral to the charges in the indictment are issues that undermine the credibility of the relevant witness.²⁷

²³ *Prosecutor v. Tadic*, Case No.94-1-T, Decision on Defence Motion on Hearsay, 5 August 1996, para.19

²⁴ *Brđanin* Trial Judgement, para.25.

²⁵ *Ibid.*

²⁶ *Ibid.*

²⁷ *Simić* Trial Judgement, para.22; *Prosecutor v. Krnojelac*, Case No.IT-97-25-T, Judgment, 15 March 2002 (“*Krnojelac* Trial Judgement”), para.69.

22. Where witnesses have followed the Trial proceedings of the case, in which they subsequently give evidence, the Trial Chamber should assess the weight to be given to their testimony “on the basis of the circumstances surrounding the testimony as a whole, and in light of the testimony of the earlier witnesses”.²⁸

3.4 Corroboration

23. Although there is no rule which prevents the uncorroborated evidence of a single witness from being admitted at trial, the Trial Chamber should scrutinize the “evidence of a Prosecution witness with great care before accepting it as sufficient to make a finding of guilt against the Accused”.²⁹ A witness’ evidence will be strengthened from corroborating evidence and vice versa.³⁰ However, corroboration does not necessarily guarantee credibility.

3.5 Hearsay Evidence

24. It is well settled in the jurisprudence of this Tribunal that hearsay evidence is admissible.³¹ However, such evidence should only be admitted if it has sufficient indicia of reliability.³² It has further been considered that the probative value of a hearsay statement will depend upon the context and character of the evidence in question.³³ The Appeals Chamber also stated that the absence of the opportunity to cross-examine the person who made the statements, and whether the hearsay is

²⁸ *Simić* Trial Judgement, para.26.

²⁹ *Krnjelac* Trial Judgement, para.71.

³⁰ *Prosecutor v. Tadić*, Case No.IT-94-1-T, Judgment on Allegation on Contempt Against Prior Counsel Milan Vujinm, 31 January 2000, para.92.

³¹ *Prosecutor v. Tadić*, Case No.94-1-T, Decision on Defence Motion on Hearsay, 5 August 1996, paras.15-19.

³² *Prosecutor v. Aleksovski*, Case No.IT-95-17/1-AR73, Decision on the Prosecutor’s Appeal on Admissibility of Evidence, 16 February 1999, para.15.

³³ *Prosecutor v. Tadić*, Case No.IT-94-1, Separate Opinion of Judge Stephen on the Motion Requesting Protective Measures for Victims and Witnesses, 10 August 1995 (“*Tadić* Separate Opinion of Judge Stephen on Tadić Protective Measures Motion”), p.3.

“first-hand” or more removed, are relevant to the probative value of the evidence.³⁴

25. The approach adopted by the Tribunal has been to consider that the fact that a piece of evidence is hearsay does not necessarily deprive it of probative value, however, it is acknowledged that “the weight or probative value to be afforded to that evidence will usually be less than that given to the testimony of a witness who has given it under a form of oath and who has been cross examined, even though this will depend upon the infinitely variable circumstances which surround hearsay evidence”.³⁵

4. THE ALLEGED RESPONSIBILITY OF SREDOJE LUKIĆ

4.1 Introduction

26. The Second Amended Indictment alleges Sredoje Lukić’s responsibility for the offences outlined in Counts 1, 8-17 and 20-21 in the Indictment pursuant to Article 7(1) of the ICTY Statute. The first subsection below (Part 4.2.1) will consider Sredoje Lukić’s alleged involvement and Article 7(1) liability in the house burning on Pionirska Street (Counts 8-12). It will go on (in Part 4.2.2) to consider Sredoje Lukić’s alleged liability pursuant to Article 7(1) for the Bikavac fire (Counts 13-17). It will then turn to Counts 20 and 21 (in Part 4.2.3), focusing on the witnesses upon which the Prosecution relied upon in seeking to establish Sredoje Lukić’s Article 7(1) liability in relation to those two counts. Finally, it will consider (in Part 4.2.4) Sredoje Lukić’s liability for persecutions (Count 1) detailed in paragraph 4 of the Second Amended Indictment.

³⁴ *Prosecutor v. Blaškić*, Case No.IT-95-14-T, Decision on the Standing Objection of the Defence to the Admission of Hearsay with no Inquiry as to its reliability, 21 January 1998, para.12.

³⁵ *Tadić* Separate Opinion of Judge Stephen on Tadić Protective Measures Motion, pp.2-3.

4.2 Sredoje Lukić's Alleged Responsibility under Article 7(1) of the ICTY Statute

27. In the Second Amended Indictment, the Prosecution alleges that Sredoje Lukić “committed and aided and abetted in the execution” of the counts set forth in the indictment. For the reasons set forth below, it is submitted that the Prosecution has failed to establish the requisite standard of proof required for any of the allegations.

4.2.1 House Burning on Pionirska Street (Counts 8-12)

28. Sredoje Lukić is alleged to have committed and aided and abetted in the execution of the crimes of extermination, murder, inhumane acts and cruel treatment of up to 70 civilians in a house burning on Pionirska Street on or about 14 June 1992. The names of the allegedly killed individuals are detailed in Annex A to the Second Amended Indictment.
29. Consequently, the Trial Chamber must determine whether the Prosecution proved beyond reasonable doubt the following charges:
- (a) COUNT 8: Extermination, a Crime against Humanity, punishable under Articles 5(b) and 7(1) of the Statute of the Tribunal;
 - (b) COUNT 9: Murder, a Crime against Humanity, punishable under Articles 5(a) and 7(1) of the Statute of the Tribunal;
 - (c) COUNT 10: Murder, a Violation of the Laws or Customs of War, as recognised by Common Article 3(1) (a) of the Geneva Conventions of 1949, punishable under Articles 3 and 7(1) of the Statute of the Tribunal;
 - (d) COUNT 11: Inhumane acts, a Crime against Humanity, punishable under Articles 5(i) and 7(1) of the Statute of the Tribunal;
 - (e) COUNT 12: Cruel treatment, a Violation of the Laws or Customs of War, as recognised by Common Article 3(1) (a) of the Geneva Conventions of 1949, punishable under Articles 3 and 7(1) of the Statute of the Tribunal.

30. In seeking to prove Sredoje Lukić's guilt for these Counts, the Prosecution has called various witnesses. Specifically, it relies upon:

- (a) VG-013 (02/09/2008 – 03/09/2008); (alleged victim)
- (b) VG-038 (01/09/2008 – 02/09/2008); (alleged victim)
- (c) VG-018 (05/08/2008 and 08/08/2008); (alleged victim)
- (d) VG-084 (04/08/2008 – 05/09/2008); (alleged victim)
- (e) VG-078 (08/09/2008); (alleged victim)
- (f) VG-101 (09/09/2008); (alleged victim)
- (g) Huso Kurspahić (01/09/2008); (hearsay; son of alleged victim)
- (h) VG-115 (27/08/2008 – 29/08/2008); (alleged eyewitness)

31. Some of the witnesses named above purported to have identified Sredoje Lukić at Pionirska Street on or about 14 June 1992. No evidence alleging Sredoje Lukić's Article 7(1) responsibility for the crimes alleged in Counts 8-12 of the Second Amended Indictment comes from any other source. It is submitted that none of these witnesses can be safely relied upon to establish Sredoje Lukić's guilt under Article 7(1) of the Statute.

32. The Defence submits that Sredoje Lukić spent the nights from 13 to 14 June and from 14 to 15 June 1992 in Krtinska, Obrenovac. On 14 June 1992, he celebrated Holy Trinity, the village feast day, together with his family at the house of Mr. Popadić at Krtinska No. 61. That evening, he went to the nearby "Posavina" shop in the Krtinska village. Sredoje Lukić was at no time present in Višegrad on Pionirska Street on 14 June 1992.

33. In support of his position, the Defence for the Accused Sredoje Lukić has produced the following witnesses:

- (a) Veroljub Živković (01/12/2008); (lived in Obrenovac all his life; has known Sredoje Lukić for approximately 20 years; met Sredoje Lukić in Obrenovac in the evening of 14 June 1992);
- (b) Branimir Bugarski (02/12/2008); (lived in Obrenovac all his life; has known Sredoje Lukić since the early 1980's; met Sredoje Lukić in Obrenovac in the evening of 14 June 1992).

34. A review of the entirety of evidence presented by the Prosecution, as it relates to the criminal liability of Sredoje Lukić, fails to prove his guilt beyond reasonable doubt of the crimes charged against him in the Second Amended Indictment. He was not present in Višegrad on the day of the house burning on Pionirska Street. Therefore, the Trial Chamber must acquit him of Counts 8-12.

4.2.1.1 Evidence presented by the Prosecution

4.2.1.1.1 Witness VG-013

4.2.1.1.1.1 Witness VG-013 Allegations

35. According to Witness VG-013, it was around 6 p.m. on 14 June 1992 when Milan Lukić (armed with a rifle) and several other men including Milan Šušnjar, Boško Djurić and Mitar Vasiljević, arrived and gathered the group of civilians into one room on the upper floor of Jusuf Memić's house.³⁶ She claims that Sredoje Lukić was allegedly seen somewhere around the house.³⁷ Milan Lukić ordered the people to put all their money and jewellery on a rag, which he had placed on the table in the middle of the room and threatened to kill them if they did not comply.³⁸

³⁶ T.1031-1032. For the date see T.1015.

³⁷ T.1031.

³⁸ T.1031-1032.

36. Witness VG-013 testified that later that evening, at about 11p.m., Milan Lukić, Mitar Vasiljević, Sredoje Lukić and others came back.³⁹ Milan Lukić allegedly ordered the group from Koritnik to move to a different house since they were not safe in the house of Jusuf Memić.⁴⁰ She claims that on their way to Adem Omeragić's house Edhem Kurspahić shouted that they were followed by Sredoje Lukić.⁴¹ VG-013 did not see Sredoje Lukić herself and only heard of Sredoje Lukić's alleged presence on Pionirska Street through Edhem Kurspahić.⁴²
37. It is VG-013's testimony that the whole group was placed in a room with two windows located on the ground floor of Adem Omeragić's house;⁴³ there were already a couple of other people inside.⁴⁴ In that room the carpets were stained with some sort of liquid that exuded a smell and stuck to their footwear.⁴⁵ Milan Lukić threw a device through the door of the room and after its explosion the carpets immediately caught fire.⁴⁶ VG-013 saw Witness VG-018 breaking the window by shattering the window pane⁴⁷ [REDACTED].⁴⁸ [REDACTED],⁴⁹ [REDACTED].⁵⁰ At this point VG-013 was injured by shrapnel in one of her legs but she still managed to also jump out of the window.⁵¹ Outside the house, she was then hit by a bullet in her left arm. Milan Lukić was shooting at both windows while Mitar Vasiljević was providing light with a flashlight.⁵²

³⁹ T.1037.

⁴⁰ T.1038.

⁴¹ T.1039;T.1042;T.1099.

⁴² T.1099;T.1121.*See also* T.1039;T.1058.

⁴³ T.1043.

⁴⁴ T.1044.

⁴⁵ T.1043.

⁴⁶ T.1047,T.1050.

⁴⁷ T.1050.

⁴⁸ T.1047.

⁴⁹ T.1121.

⁵⁰ T.1047.

⁵¹ T.1047;P58.

⁵² T.1047,T.1052.

6.2.1.1.1.2 Witness VG-013 Credibility and Reliance

38. The Defence submits that VG-013 did not see Sredoje Lukić at the Pionirska Street Incident on 14 June 1992; neither in the afternoon nor in the evening. This was unambiguously affirmed by VG-013 in her testimony before this Honourable Trial Chamber.
39. Further, it must be noted that there are several notable inconsistencies between her testimony and prior statements that she gave to the OTP-ICTY or other investigation authorities, as well as between her testimony and the testimonies of other Prosecution witnesses. Since VG-013 was not able to provide any sufficient explanation for these inconsistencies, VG-013's testimony is unreliable and as such should not be relied upon by the Tribunal.

VG-013's oral testimony on 2 and 3 September 2008

40. VG-013 first claimed that Sredoje Lukić was present in Pionirska Street in the afternoon⁵³ as well as in the evening of 14 June 1992.⁵⁴ Being questioned by the Honorable Presiding Judge Robinson, however, VG-013 clearly testified that she did not see Sredoje Lukić on 14 June 1992:

13 JUDGE ROBINSON: Did you see Sredoje, Witness?

14 THE WITNESS: [Interpretation] Sredoje was around the house and

15 Edhem Kurspahic saw him.

16 JUDGE ROBINSON: You did not see him?

17 THE WITNESS: [Interpretation] I did not.⁵⁵

41. According to her evidence, there were four men in the Memić House during the afternoon, at about 5 p.m., searching and robbing gold amongst other things from the people from Koritnik. She stated these men were: Milan Lukić, Mitar

⁵³ T.1031.

⁵⁴ T.1037.

⁵⁵ T.1099.

Vasiljević, Boško Djurić and Milan Šušnjar.⁵⁶ She did not identify Sredoje Lukić as one of these four men. This is of exceptional importance since this witness had [REDACTED].⁵⁷

42. VG-013 testified that she did not see Sredoje Lukić on that day, and she only heard of Sredoje Lukić's alleged presence on Pionirska Street through Edhem Kurspahić.⁵⁸ VG-013 claimed that she and Edhem Kurspahić stayed in the same room in the Memić house.⁵⁹ This contention, however, is not plausible considering that VG-018, who was together with VG-013 throughout the incident,⁶⁰ testified that the men were in a separate room from the women and children in the Memić house.⁶¹ In the light of this testimony, it is not credible that VG-013 heard a comment made by Edhem Kurspahić about a person "Sredoje Lukić" being outside the Memić house, since Edhem Kurspahić was in fact in a different room at this time according to the evidence of VG-018. The latter clarifies the fact that during cross-examination VG-013 could neither 'remember' whether Edhem Kurspahić was staying close to a window nor even provide any indication as to his location in the house, at the time Edhem Kurspahić allegedly claimed to have seen Sredoje Lukić outside the house.⁶²
43. In addition, according to VG-013, when the group was moved to Adem Omeragić's house in the evening, Edhem Kurspahić had shouted that Sredoje Lukić was following them.⁶³ VG-013 claimed that Edhem Kurspahić was behind her when he allegedly shouted that he saw Sredoje Lukić.⁶⁴ The Prosecution, however, failed to provide any evidence indicating that Edhem Kurspahić, a person who is not a witness in this case, knew Sredoje Lukić, much less that he saw him on 14 June 1992. [REDACTED] It is clear from VG-013's testimony

⁵⁶ T.1034,T.1035.

⁵⁷ T.1000.

⁵⁸ T.1099;T.1121.*See also*,T.1039;T.1058.

⁵⁹ T.1122.

⁶⁰ T.1359-1360.

⁶¹ T.1369.

⁶² T.1122.

⁶³ T.1039.

⁶⁴ T.1122.

that she did not know for sure whether Edhem Kurspahić knew Sredoje Lukić in order to recognize him beyond reasonable doubt. She merely assumed that Edhem Kurspahić knew Sredoje Lukić:

17 Q. You cannot tell us, I suppose, whether the two of them knew each
18 other, Edhem and Sredoje, I suppose.
19 A. Well, since Edhem recognised him, he must have known him, I
20 suppose.⁶⁵

She further assumed that Edhem knew Sredoje Lukić since Edhem was an elderly man who knew the whole surroundings of Višegrad.⁶⁶ Those explanations, however, are not convincing. They are mere assumptions and as such cannot be said to have any evidentiary value.

44. In this context, it has to be taken into account that after the incident, VG-018 was a refugee in Srebrenica together with her son VG-084 and Edhem Kurspahić.⁶⁷ VG-018 clearly stated in her testimony – being asked by the Honorable Presiding Judge Robinson – that Edhem Kurspahić did not know Sredoje Lukić:

25 JUDGE ROBINSON: Witness, can you answer the question whether
1 Edhem Kurspahic and your son didn't know who before the incident?
2 THE WITNESS: [Interpretation] They didn't know them before. They
3 got to know them, just as I did, when they came to Mujo Memić's house and
4 introduced themselves to us.⁶⁸

VG-018 further confirmed that Edhem Kurspahić only knew Lalco:

14 Q. I understand. Edhem Kurspahic and your son didn't know who is
15 who before this incident, before these men introduced themselves?
16 A. Edhem knew only Lalco, that he was...he told us that this was him. He said,
17 how come that thug joined ranks with them. He used to plough his land....⁶⁹

⁶⁵ T.1121.

⁶⁶ T.1132.

⁶⁷ T.1360.

⁶⁸ T.1361-1362.

Moreover, VG-018 stated that Edhem Kurspahić in fact only recognized and mentioned Lalco and that while she heard from Jasmina Vila that one of the men was Milan Lukić, she did not hear anything about Sredoje Lukić:

5 Q. Thank you, Witness. When you were in the room at this time did
6 any of the people talk about what had happened with the men who were
7 there at the house earlier?

8 A. Yes, Edhem said and I heard him say that, "Imagine these
9 bastards who came among their people." I heard him saying the full name
10 of this young man, who his parents were. I wasn't paying attention. I
11 just remember that he mentioned his nickname, Lalco. That's all I know.

12 Q. Was there any discussion about Milan and Sredoje Lukic during
13 this time?

14 A. No, no. People were afraid. Well, they said nicely, "We are not
15 going touch you. The following day you will be given buses to leave."
16 If they had been treating us fairly, maybe we would have gone our ways.
17 We wouldn't have had to go through what we did. We didn't want to
18 disperse, because there were people who were feeble and infirm. They
19 didn't maltreat us at all.

20 Q. Yes. Thank you, Witness. My question is, though, do you know if
21 anyone in the room with you recognised Milan and Sredoje and by
22 knowing -- did anybody tell you that they knew who these men were?

23 A. Yes. Jasmina told me that it was Milan Lukic but not -- I didn't
24 hear anything about Sredoje.⁷⁰

This testimony is further corroborated by VG-101 who also testified in direct examination that the people in the Memić house did not discuss the identities of the four men who came to this house during the afternoon.⁷¹

45. The testimony of VG-013 is of paramount importance. She testified under oath that she knew Sredoje Lukić for a long time before the war. She would therefore

⁶⁹ T.1360.

⁷⁰ T.1310.

⁷¹ T.1442.

have been able to identify him, had he been there. In the light of the undisputed suffering this witness has gone through, it is very telling that she did not show a hostile attitude towards Sredoje Lukić. Instead she underlined that he was a nice man and that they did not have any problems before the war.⁷²

VG-013's testimony in the Vasiljević case

46. [REDACTED].⁷³

[REDACTED]⁷⁴

The questions were put to the witness in an unambiguous manner. VG-013 was to name all the perpetrators of this incident and she omitted to mention Sredoje Lukić as one of those perpetrators. Given the fact that this witness knew Sredoje Lukić and knew him as a nice man,⁷⁵ had she seen or even heard about his presence, one could expect that she would have been surprised at least and would have mentioned him. Her omission to mention him is therefore very telling.

47. [REDACTED].⁷⁶

Three important points must be made with regard to the witness' testimony in the *Vasiljević* case: (i) she never mentioned Sredoje Lukić as one of the perpetrators in direct examination, (ii) in the above statement she assumes that Sredoje Lukić was present merely based on the fact that he was a policeman and (iii) in her entire testimony in that case she never mentioned hearing anything about Sredoje Lukić from Edhem Kurspahić. These three points clearly demonstrate significant and yet unexplained inconsistencies and therefore the unreliability of her testimony in the present case.

⁷² T.1006.

⁷³ 2D8,T.1438.

⁷⁴ 2D8,T.1443.

⁷⁵ T.1006.

⁷⁶ 2D8,T.1495.

Inconsistencies between VG-013's oral testimony, her prior statements and her testimony in the Vasiljević case

48. The widespread inconsistencies in VG-013's statements decisively affect the reliability of her testimony in the present case. VG-013's testimony given on 2 and 3 September 2008 is even more remarkable as she no longer stood by her allegations made in her prior statements and changed her testimony in substance.

49. [REDACTED].⁷⁷ There are other significant inconsistencies between this statement from 1998 and her later testimony. [REDACTED].⁷⁸ [REDACTED].⁷⁹

It was only in her testimony on 3 September 2008 that she suddenly claimed that Edhem Kurspahić allegedly shouted that Sredoje Lukić was behind the column.⁸⁰

50. [REDACTED].⁸¹ [REDACTED].⁸² In this statement, she again did not name Sredoje Lukić as one of the alleged perpetrators of the Pionirska Street incident. In fact, she did not mention him at all.

51. [REDACTED].⁸³ Yet again, she did not even mention Sredoje Lukić's name as one of the alleged perpetrators.

52. There is one evident consistency between her previous testimony in the *Vasiljević* case, the statement in the case against Milorad Lipovac and the interview in OTISCI: VG-013 did not mention Sredoje Lukić as one of the perpetrators in the Pionirska Street Incident. Had she seen Sredoje Lukić, a man whom she knew

⁷⁷ P60,pp.4 and 5.

⁷⁸ P60,p.5,para.3.

⁷⁹ 2D8,T.1504.

⁸⁰ T.1042.

⁸¹ P62.

⁸² T.1071-1072.

⁸³ 2D5 and 2D6.

from before, or even heard of his presence, she would have certainly named him on these occasions.

53. Furthermore, due to her inability to recollect important details, the testimony of VG-013 contains numerous important discrepancies and thus lacks reliability in several decisive aspects. First of all, the witness claimed that Mitar Vasiljević was also present at the Memić House in the afternoon.⁸⁴ This testimony is highly unreliable given that the *Vasiljević* Trial Chamber found that Mitar Vasiljević broke his leg during the afternoon of the 14 June 1992 and was brought to the Užice Hospital where he had to spend several days receiving medical treatment.⁸⁵ Secondly, she stated that she visited the crime scene one year after the Pionirska Street Incident⁸⁶ and explaining that one could see that the house was burnt down completely, carbonized and that there were traces of charcoal.⁸⁷ The Prosecution itself was compelled to correct her by clarifying that in fact the mission with her took place in 2000; 8 years after the incident.⁸⁸ It is not convincing that 8 years after the incident there could have been such traces as described by the witness.

Inconsistencies between VG-013's testimony and the testimony of other Prosecution witnesses

54. The Defence of Sredoje Lukić further invites the Trial Chamber to evaluate with extreme caution the widespread inconsistencies between the testimony of VG-013 and other witnesses regarding the Pionirska Street Incident.
55. VG-013 claimed that there were no lights on in Jusuf Memić's house when they left it⁸⁹ and that there was only street lighting and light from the neighbouring houses.⁹⁰ It is noteworthy that VG-013's son, Witness VG-038, stated that there

⁸⁴ T.1030.

⁸⁵ *Vasiljević* Trial Judgement, paras.142,143.

⁸⁶ T.1079.

⁸⁷ T.1076.

⁸⁸ T.1080.

⁸⁹ T.1039-1040.

⁹⁰ T.1040;T.1042.

were no streetlights⁹¹ and that lights were turned on both inside and outside of Jusuf Memić's house.⁹²

56. In striking contradiction to VG-084,⁹³ VG-013 testified that it was Mitar Vasiljević rather than Sredoje Lukić who waited for the column at the door of the Omeragić house.⁹⁴ Yet again, VG-013's testimony regarding the alleged presence of Mitar Vasiljević in Pionirska Street during the evening of 14 June 1992 is in striking contradiction to the findings of the Trial Chamber in the *Vasiljević* Trial Judgement, holding that Mitar Vasiljević has been hospitalised in the Užice Hospital since the afternoon of the 14 June 1992.⁹⁵

Other misrepresentations of facts in VG-013's testimony

57. [REDACTED].⁹⁶ [REDACTED].⁹⁷

As is alleged in the Second Amended Indictment⁹⁸ and confirmed by many Prosecution witnesses,⁹⁹ the incident in Bikavac occurred on 27 June 1992. It is therefore impossible that VG-013 could, as she so vividly stated, hear the same screams or smell the smell coming from Bikavac on 15 June 1992.

58. [REDACTED].¹⁰⁰ [REDACTED],¹⁰¹ [REDACTED]¹⁰² During her testimony on 3 September 2008, the witness again confirmed this list of victims and the statement from 1998 was tendered by the Prosecution as a record of the victims who

⁹¹ T.980.

⁹² T.979-980.

⁹³ T.1284.

⁹⁴ T.1042.

⁹⁵ *Vasiljević* Trial Judgement, paras.142,143.

⁹⁶ P60,p.7,para.5.

⁹⁷ *Ibid.*

⁹⁸ Second Amended Indictment,para.11.

⁹⁹ T.2343;T.2408.

¹⁰⁰ P60,pp.7-9.

¹⁰¹ See also 1D29,p.3.

¹⁰² P60,p.8.

perished in the fire and as such was admitted into evidence.¹⁰³ [REDACTED]¹⁰⁴ [REDACTED]¹⁰⁵ [REDACTED]¹⁰⁶, [REDACTED]¹⁰⁷ [REDACTED]¹⁰⁸ [REDACTED]¹⁰⁹ [REDACTED]¹¹⁰ [REDACTED]¹¹¹ [REDACTED]¹¹² Saha Kurspahić died in Sarajevo and was buried at the city cemetery.¹¹³ Witness Huso Kurspahić expressly confirmed that Latifa Kurspahić¹¹⁴ and her two daughters,¹¹⁵ Hasan and Meva Kurspahić¹¹⁶ [REDACTED]¹¹⁷ did not perish in the Pionirska street fire. Therefore, due consideration should be given to these striking inconsistencies in the evidence provided by VG-013's when assessing her credibility and reliability.

Conclusion

59. The Defence underscores that VG-013 did not personally see Sredoje Lukić at any time during the incident. She did not even mention him in most of her statements or previous testimony. VG-013's testimony regarding Sredoje Lukić's presence during the incident is based solely on an allegation that she had heard of his presence from Edhem Kurspahić and her speculative assumption that Edhem Kurspahić knew Sredoje Lukić. This contention, however, is highly unreliable, for three clear reasons. First of all, both VG-101 and VG-018 stated that there had not been any discussion about the identities of the men or specifically Sredoje Lukić. Secondly, VG-018 stated under oath that Edhem Kurspahić did not know Sredoje

¹⁰³ T.1067-1068.

¹⁰⁴ T.5538;C2.

¹⁰⁵ 1D156.

¹⁰⁶ 1D157.

¹⁰⁷ T.5541.

¹⁰⁸ T.5546.

¹⁰⁹ T.5555-5556.

¹¹⁰ T.5556.

¹¹¹ T.5567.

¹¹² T.5572.

¹¹³ T.6958.

¹¹⁴ T.6873.

¹¹⁵ T.6873,6953.

¹¹⁶ T.6875,6879.

¹¹⁷ T.6890-6892 ;6957.

Lukić. And finally, VG-018, who was with VG-013 throughout the incident, stated that Edhem Kurspahić only recognized Lalco.

60. Those testimonies in combination with the fact that VG-013 did not see Sredoje Lukić personally render VG-013's allegations entirely unfounded and unreliable with regard to Sredoje Lukić.
61. For the above reasons, the Defence of Sredoje Lukić respectfully submits that the Trial Chamber dismiss the evidence of VG-013 as unreliable and not credible concerning Sredoje Lukić.

4.2.1.1.2 Witness VG-038

4.2.1.1.2.1 Witness VG-038 Allegations

62. [REDACTED]¹¹⁸ [REDACTED]¹¹⁹ VG-038 testified that after their arrival in Višegrad on 14 June 1992, he stayed in the house of Mujo Memić together with VG-013 and six other people of the Koritnik group, while the others of the group stayed at Jusuf Memić's house.¹²⁰ At around 5 p.m. Milan Lukić, Sredoje Lukić, Mitar Vasiljević and Milan Šusnjar came to the houses.¹²¹ The group from Koritnik was transferred to Jusuf Memić's house where Milan and Sredoje Lukić asked for their money and gold.¹²² They were then searched by Sredoje Lukić and Milan Šusnjar, who were in the house, while Milan Lukić and Mitar Vasiljević were in front of the house.¹²³
63. VG-038 claimed that later on Mitar Vasiljević, Sredoje Lukić, Milan Lukić and Milan Šusnjar transferred the group to Adem Omeragić's house¹²⁴ where some

¹¹⁸ P43.T.1045.

¹¹⁹ P43.T.982.

¹²⁰ T.945-946.

¹²¹ T.977.

¹²² T.946.

¹²³ T.946.

¹²⁴ T.985.

other people had already been brought from Pionirska Street.¹²⁵ They carried a flashlight while escorting the group to the Omeragić house.¹²⁶ The group was not allowed to look closely at any of the men.¹²⁷ At around 10.30 p.m. the men then set the entire group in the house on fire and shot at the house.¹²⁸

4.2.1.1.2.2 VG-038 Credibility and Reliance

64. The Defence submits that witness VG-038 did not see Sredoje Lukić present on the 14 June 1992 at the Pionirska Street Incident; neither in the afternoon nor in the evening. During the cross examination the Defence revealed dramatic discrepancies and decisive inconsistencies in VG-038's testimony, several notable inconsistencies between his testimony and prior statements which he had given to the OTP-ICTY or other investigation authorities, as well as inconsistencies with the testimony of other witnesses. Therefore, serious doubt was cast on his reliability and credibility through cross-examination. Since VG-038 was not able to give any sufficient explanation for these notable inconsistencies, VG-038's testimony is unreliable and as such should not be relied upon by the Tribunal.

VG-038's alleged prior knowledge of Sredoje Lukić

65. On 1 September 2008, in his response to the question raised by the Honorable Judge Robinson in the examination-in-chief, VG-038 expressly claimed that he knew Sredoje Lukić from before the war:

17 JUDGE ROBINSON: And your evidence is that you -- you knew them

18 before?

19 THE WITNESS: [Interpretation] Yes, Sredoje.

20 [Trial Chamber confers]

21 JUDGE ROBINSON: Yes. You knew Sredoje before but not Milan?

22 THE WITNESS: [Interpretation] Yes.

¹²⁵ T.954.

¹²⁶ T.980.

¹²⁷ T.980.

¹²⁸ T.955.

23 JUDGE ROBINSON: Just remind us how long you knew Sredoje before.

24 THE WITNESS: [Interpretation] While I was in primary school, the
25 5th grade and I used to see him at that time.

1 JUDGE ROBINSON: Over what period of time was that?

2 THE WITNESS: [Interpretation] Three years before the events took
3 place.

4 JUDGE ROBINSON: Yes but over what period were you seeing him
5 while you were at school?

6 THE WITNESS: [Interpretation] Not exactly every day. Maybe every
7 other day. Depends when he was on duty. I used to go to school every
8 day except on Saturdays and Sundays.

9 JUDGE ROBINSON: How long were you at school?

10 THE WITNESS: [Interpretation] Until the beginning of the war.

11 JUDGE ROBINSON: How many years?

12 THE WITNESS: [Interpretation] When I started my 7th year, 7th
13 grade.

14 JUDGE ROBINSON: But how many years did that amount to? Was it
15 two years, three years, or four years, or what it was?

16 THE WITNESS: [Interpretation] Seven years.

17 JUDGE ROBINSON: Seven years. So during that period of seven
18 years, you saw Sredoje Lukic.

19 THE WITNESS: [Interpretation] Yes.¹²⁹

66. The next day, however, in cross-examination, VG-038 admitted that in fact he did not know Sredoje Lukić from before the war and that indeed all he knew about Sredoje Lukić was from the night of the 14 June 1992:

22 Q. But you will agree with me that you named them on the basis of
23 what you heard that night, not what you had known before?

24 A. There were people there who knew him. Not only him but each of
25 them.

1 Q. I'm asking about your knowledge.

2 A. And I am replying to you. There were people there who knew him
3 well.

(...)

16 Q. This knowledge of Sredoje Lukic and other men but let us

¹²⁹ T.952-953. See also T.977.

17 concentrate on my client, that's the knowledge that you acquired that
 18 night about Sredoje Lukic? It doesn't pre-date that night?
 19 A. Can you repeat that?
 20 Q. What you know about my client, Sredoje Lukic, is only from that
 21 night, not from before?
 22 A. Right.¹³⁰

67. This latter statement, i.e. that the witness did not know Sredoje Lukić from before, is in line with the witness' previous testimony. [REDACTED]¹³¹ During his testimony before this Honorable Trial Chamber the witness confirmed the authenticity of this witness statement.¹³²

68. [REDACTED].¹³³

Inconsistencies between VG-038's testimony and the testimony of other Prosecution witnesses

69. Further, his testimony is remarkably inconsistent with the testimony of his mother, VG-013. According to VG-013's testimony, VG-038, her thirteen and a half years old son, was by her side throughout the incident.¹³⁴ VG-038 stated that Sredoje Lukić was in the Memić house during the afternoon of the day of the Pionirska Street fire.¹³⁵ As already outlined, VG-013 did not see Sredoje Lukić during the afternoon¹³⁶ in the Memić House nor did she see him in the evening.¹³⁷ Her testimony under oath has decisively more weight since she knew Sredoje Lukić long before the war and would have been in a position to recognize Sredoje Lukić, if he had been present at the incident and certainly if he had been in the house in the afternoon. Having consideration to the suffering VG-013 went through, she did not have any motive to lie in favour of Sredoje Lukić.

¹³⁰ T.985-986.

¹³¹ 2D4,p.3,para.2.

¹³² T.993.

¹³³ P44,T.1409.

¹³⁴ T.1121.

¹³⁵ T.978.

¹³⁶ T.1099.

¹³⁷ T.1039.

- Considering the fact that VG-038 was next to his mother the entire time and the fact that she did not see Sredoje Lukić, his claim to have seen and recognized Sredoje Lukić is not reliable.
70. [REDACTED]¹³⁸ He further admitted that he was not allowed to look at the men closely.¹³⁹ His mother, VG-013, who was beside him the entire time¹⁴⁰ [REDACTED]¹⁴¹ did not see Sredoje Lukić during the events in Pionirska street on 14 June 1992.¹⁴² Under these circumstances, VG-038 could also not have possibly seen Sredoje Lukić during those events.
 71. This conclusion is further in line with the testimony of VG-101 and VG-078, who were in the same house but neither mentioned Sredoje Lukić as one of the perpetrators of the incident nor as one of the men present at the Memić house.¹⁴³
 72. Moreover, VG-038's description of Sredoje Lukić does not match the description of any of the men as provided by VG-101. VG-038 agreed with the physical description his mother gave in a statement regarding Sredoje Lukić, which has been admitted into evidence as Exhibit P60.¹⁴⁴ [REDACTED].¹⁴⁵ VG-038 additionally confirmed that Sredoje Lukić did not have a moustache.¹⁴⁶
 73. VG-038 further testified that the same four men who had come in the afternoon returned in the evening and ordered the transfer of the people from Koritinik to the Omeragić house.¹⁴⁷ VG-101 also testified that in the evening she recognized the same four persons that had previously come to the Memić house. VG-101, however, provided a detailed description of the physical appearance of the three

¹³⁸ P44,T.1378.

¹³⁹ T.980.

¹⁴⁰ T.1121.

¹⁴¹ T.1000.

¹⁴² T.1121-1122;T.1099.

¹⁴³ T.1435-1436;T.1381,1382.

¹⁴⁴ T.983-984.

¹⁴⁵ P60,p.4,para.3.

¹⁴⁶ T.984.

¹⁴⁷ T.954.

men who accompanied Milan Lukić which is incompatible with VG-038's description: VG-101 gave evidence that one of the Serbs had a black moustache and black curly hair, another had blondish hair and the third was only about 18 years or younger.¹⁴⁸

74. Thus, not only does VG-038's description of Sredoje Lukić not match the physical appearance of the Accused Sredoje Lukić, it also does not correspond to the description of the perpetrators provided by VG-101. [REDACTED]¹⁴⁹
[REDACTED]

75. Also, in cross-examination, VG-038 confessed that he followed the events surrounding the start of the trial against Sredoje Lukić in the media including on TV programmes.¹⁵⁰ This is an important factor with regard to the alleged in-court identification of Sredoje Lukić in the courtroom by this witness on 1 September 2008.¹⁵¹ In this context the Defence directs the Chamber's attention to the Defence's position regarding in-court identification in general and notes that in the light of this position this witness' in-court identification of Sredoje Lukić does not carry any weight.¹⁵² This witness has stated he did not know Sredoje Lukić from before, but no proper identification procedure had been made prior to the attempted in-court identification. Furthermore, although he did not know Sredoje Lukić from before, VG-038 admitted that he had been monitoring the Trial in the media.¹⁵³ An in-court identification under those circumstances can not be held to have any weight.

¹⁴⁸ T.1432.

¹⁴⁹ P44,T.1378.

¹⁵⁰ T.981.

¹⁵¹ T.952.

¹⁵² The Defence's position on in-court identification is provided in Chapter 7.2.2 of this Brief.

¹⁵³ T.981.

Inconsistencies between VG-038's testimony and his prior statements

██████████ [REDACTED].¹⁵⁴ [REDACTED].¹⁵⁵ This statement stands in direct contradiction with not only his mother's, VG-013's, testimony but also with other witnesses. Both VG-013 and VG-018 have testified that it was Milan Lukić who took these women out of the house¹⁵⁶ and both witnesses stated that when the girls came back they said nothing.¹⁵⁷ [REDACTED],¹⁵⁸ [REDACTED].

77. Furthermore, the witness confirmed that in his statement from 11 August 1995, admitted as exhibit 1D26, he stated that Sredoje Lukić "worked in the Unis wire factory" before the war.¹⁵⁹ This information is erroneous and again confirms the conclusion to be drawn from all his other statements prior to his testimony in the present case; that this witness did not know Sredoje Lukić at all before the night of the incident.

78. [REDACTED].¹⁶⁰ [REDACTED]¹⁶¹ This account of events is again in direct contradiction with the testimonies of other witnesses and even his own testimony before this Honorable Trial Chamber. VG-018,¹⁶² [REDACTED]¹⁶³ and VG-084¹⁶⁴ all stated that it was VG-018 who broke the window pane and jumped out first and that the others then followed. VG-038 himself stated during his testimony on 1 September 2008 that it was VG-018 who broke the window and jumped out and then the others followed.¹⁶⁵ Furthermore, during her testimony,

¹⁵⁴ 1D26,p.3,para.1.

¹⁵⁵ 1D26,p.3,paras.2 and 3.

¹⁵⁶ T.1035;T.1308-1309.

¹⁵⁷ T.1036;T.1309.

¹⁵⁸ P43;T.982.

¹⁵⁹ T.992.

¹⁶⁰ 1D26,p.5,para.5.

¹⁶¹ Ibid. See also P51, where the witness marked the window from which he allegedly jumped out.

¹⁶² T.1318.

¹⁶³ T.1047.

¹⁶⁴ T.1255-1256.

¹⁶⁵ T.955.

VG-013 in fact marked the other window, i.e. the window closest to the door, as the one from which she and her son VG-038 had jumped out.¹⁶⁶

79. VG-038 did not provide any convincing explanation for the striking discrepancies in his own testimony, or for those between his testimony and the evidence given by other Prosecution witnesses. Likewise, the Prosecution failed to present any evidence which explained the inconsistencies in the evidence provided by VG-038. Those significant inconsistencies render his testimony unreliable.

VG-038's testimony regarding the events at the Omeragić house

80. The description of the events on the night of 14 June 1992 is again inconsistent with statements of other witnesses who survived the fire. VG-038 stated that there was electricity and light in the Memić House, when he left that house for the Omeragić house.¹⁶⁷ It is his testimony that it was already dark at this time¹⁶⁸ and there were no streetlights where they were located.¹⁶⁹ He further claims that, however, at Jusuf Memić's House there was also light outside the house.¹⁷⁰ In contrast, according to the testimony of VG-013, there were no lights on in the Jusuf Memić's house when they left.¹⁷¹ There was only street lighting and lights from the neighboring houses.¹⁷² [REDACTED]¹⁷³ [REDACTED]¹⁷⁴ [REDACTED].¹⁷⁵ The above discussion shows on the one hand that VG-038's assertion that there was light in and outside the Memić house was not corroborated by any other Prosecution witness which raises serious doubts as to VG-038's credibility and reliability. On the other hand the discussion demonstrates that the Prosecution failed to establish the actual lighting conditions

¹⁶⁶ P58.

¹⁶⁷ T.978.

¹⁶⁸ T.978.

¹⁶⁹ T.979.

¹⁷⁰ T.979.

¹⁷¹ T.1039-1040.

¹⁷² T.1040;T.1042.

¹⁷³ P82,T.1592.

¹⁷⁴ P82,T.1593.

¹⁷⁵ 1D34,p.3.

in the Memić house in the evening of 14 June 1992, which makes it impossible to duly assess the witnesses' ability to identify or recognize any of the alleged perpetrators.

81. [REDACTED].¹⁷⁶ During his testimony before this Honorable Trial Chamber, VG-038 again declared that he was not allowed to look closely to any of the men present.¹⁷⁷

Conclusion

82. VG-038's allegation that Sredoje Lukić was present during the incident is based on the following contentions. First of all, VG-038 claimed to have known Sredoje Lukić from before. This was a false statement as VG-038 personally confessed that his knowledge of Sredoje Lukić does not pre-date 14 June 1992. Further, he claimed to have seen Sredoje Lukić during the afternoon in the Memić house. Yet, his mother, VG-013, who was with him throughout the incident and knew Sredoje Lukić from before, did not see Sredoje Lukić at any time during the incident. Neither did VG-101 and VG-078. Finally, VG-038 also claimed that Sredoje Lukić was present in the evening. But again VG-013, VG-101 and VG-078 did not see Sredoje Lukić at this time. Most importantly, VG-038 himself admitted that he in fact could not recognize the men because it was night time and he did not dare to look at the men. In the light of the foregoing, VG-038's allegations against Sredoje Lukić are entirely unfounded and unreliable. The only reasonable conclusion to be reached is that VG-038 did not identify Sredoje Lukić as one of the perpetrators of the Pionirska street incident.
83. For the above reasons, the Defence of Sredoje Lukić respectfully submits that the Trial Chamber dismiss the evidence of VG-038 as unreliable and not credible concerning Sredoje Lukić.

¹⁷⁶ P44,T.1378.

¹⁷⁷ T.980.

4.2.1.1.3 Witness VG-018

4.2.1.1.3.1 Witness VG-018 Allegations

84. VG-018 testified that after the arrival of the Koritnik group in Višegrad on the morning of the fourth day of the Kurban Bajram holiday,¹⁷⁸ [REDACTED]¹⁷⁹ or in Mejo Memić's house on Pionirska Street,¹⁸⁰ [REDACTED].¹⁸¹
85. [REDACTED].¹⁸² VG-018 testified that Milan Lukić said that his name was Milan Lukić and that another man introduced himself, saying that he was Sredoje Lukić.¹⁸³ Neither her son nor herself knew these two men before the incident.¹⁸⁴ She only heard the men's voices when they introduced themselves but did not see them at this point.¹⁸⁵ A neighbour of VG-018 recognized a third man, Lalco.¹⁸⁶ [REDACTED].¹⁸⁷ [REDACTED].¹⁸⁸
86. Milan Lukić ordered the group to hand over all their money and gold and threatened them with a knife, which he took out of his boot.¹⁸⁹ After the group had put all their money, gold and jewellery on a table, Milan Lukić told the group to go to another room in twos and threes where they had to strip naked.¹⁹⁰ The men then collected the money and jewellery and Milan Lukić ordered Jasmina Vila and another young woman to go with them.¹⁹¹ [REDACTED].¹⁹²

¹⁷⁸ T.1302.

¹⁷⁹ P82,T.1580;P83,p.7.

¹⁸⁰ T.1297.

¹⁸¹ P83,p.7.

¹⁸² P82,T.1580-1581.

¹⁸³ T.1303.

¹⁸⁴ T.1360-1361.

¹⁸⁵ T.1304;T.1367.

¹⁸⁶ T.1303.

¹⁸⁷ P82,T.1582.

¹⁸⁸ P82,T.1582.

¹⁸⁹ T.1306.

¹⁹⁰ T.1306.

¹⁹¹ T.1309.

¹⁹² P82,T.1623-1625.

87. [REDACTED].¹⁹³ VG-018 testified that she knew by the sound of their voice that it was the same persons who had been at the house before, namely Milan Lukić and Sredoje Lukić.¹⁹⁴ [REDACTED].¹⁹⁵ While the lights of the men's car were switched on, she could see a little bit. [REDACTED].¹⁹⁶ [REDACTED].¹⁹⁷ [REDACTED].¹⁹⁸ [REDACTED].¹⁹⁹ [REDACTED].²⁰⁰

4.2.1.1.3.2 VG-018 Credibility and Reliance

88. The Defence submits that VG-018 did not see Sredoje Lukić on 14 June 1992 at the Pionirska Street Incident, neither in the afternoon nor in the evening. During cross-examination, the Defence revealed that at the time VG-018 did not identify or recognize Sredoje Lukić beyond a reasonable doubt. Further she was unable to identify Sredoje Lukić in the courtroom. Therefore, doubt is cast on the reliability and credibility of her testimony, which was made clear through cross examination. For these reasons, VG-018's testimony should not be relied upon by the Tribunal.
89. This witness confirmed that she personally did not know Sredoje Lukić from before the war.²⁰¹ She did not see him during the Pionirska Street incident either.²⁰² The *sole* alleged source of information for this witness about Sredoje Lukić was the alleged introduction whereby one of the men allegedly introduced himself as "Sredoje Lukić".²⁰³ VG-018, however, did not see the man who allegedly introduced himself,²⁰⁴ nor did she hear any further information from others in the group that that person really was Sredoje Lukić. In addition, the

¹⁹³ T.1312.P82,T.1591.

¹⁹⁴ T.1313.

¹⁹⁵ T.1314. P82,T.1593;T.1625.P83,p.8.

¹⁹⁶ P82,T.1592.

¹⁹⁷ P82,T.1593.

¹⁹⁸ P82,T.1591;T.1593.

¹⁹⁹ T.1314-1315.P82,T.1593.

²⁰⁰ T.1315,T.1318;P82,T.1627.

²⁰¹ T.1360.

²⁰² T.1303;T.1367;T. 1369-1370.

²⁰³ T.1303.

²⁰⁴ T.1303;T.1367,1369-1370.

witness repeatedly admitted throughout her testimony that she did not look at the perpetrators.²⁰⁵ VG-018 was therefore not able to positively and beyond reasonable doubt identify that person as the Accused Sredoje Lukić. Furthermore, she was unable to identify Sredoje Lukić in the courtroom.

VG-018's claim that a person introduced himself as "Sredoje Lukić" in the Memić house

90. VG-018 did not know Sredoje Lukić before the incident on 14 June 1992,²⁰⁶ nor did her son VG-084. VG-018 also stated that Edhem Kurspahić had not known Sredoje Lukić before that day. Rather, a man allegedly introduced himself as "Sredoje Lukić" and that is how she knew who this person was:

25 JUDGE ROBINSON: Witness, can you answer the question whether

1 Edhem Kurspahic and your son didn't know who before the incident?

2 THE WITNESS: [Interpretation] They didn't know them before. They

3 got to know them, just as I did, when they came to Mujo Memić's house and

4 introduced themselves to us.²⁰⁷

91. On 5 September 2008, VG-018 testified that three men whom she did not know came to the Memić house and then "Milan Lukić said that his name was Milan Lukić and the other one said he was Sredoje Lukić"²⁰⁸ and that is how she discovered the identity of the men. VG-018 heard the men's voices when they introduced themselves but admits that she did not see them at that time because she was in another room with her child, VG-084 and with VG-013 and VG-038.²⁰⁹ The witness explained the following with respect to her inability to see and thus recognize the man who allegedly introduced himself as Sredoje Lukić:

2 Q. [Interpretation] Lines 4 and 5. You said that you weren't

²⁰⁵ T.1304,lines 4-7;T.1315,lines 9-11 and 23-24;T.1316,lines 5-9;T.1318,lines 4-5;T.1345,lines 12-13;T.1348,lines 16 and 18;T.1349,line 5 and 17-18;T.1350,line 23;T.1365,line 5;T.1366,line 10;T.1367,line 6;T.1369,line 15;T.1371,line 12.

²⁰⁶ T.1360.

²⁰⁷ T.1360,1361.

²⁰⁸ T.1303.

²⁰⁹ T.1367,1369-1370,1359-1360.

3 looking towards Sredoje and Milan, weren't looking at them. May I then
 4 conclude that you weren't looking towards that man when he introduced
 5 himself?

6 A. Perhaps I would have looked had I been nearby, but I was in the
 7 room. They went into the general sitting area first. I just heard it.

8 Q. So you didn't actually see him when he introduced himself. Isn't
 9 that right?

10 A. No, I didn't see him, but when we went into another room, we all
 11 had to go to this other room, then I saw them, but I didn't know who was
 12 who.²¹⁰

When the men entered the room she did not look at them.²¹¹ She did not remember whether, when she finally got to see the men, they were speaking to each other.²¹² In fact, she was not able to assign the voices she heard to any individual person. She merely inferred from the fact that one of the men introduced himself as "Sredoje Lukić" that one of the men present must in fact have been the Accused.

92. [REDACTED].²¹³

[REDACTED].²¹⁴

[REDACTED].²¹⁵

Being confronted with these significant inconsistencies and confusing accounts during cross-examination VG-018 was unable to provide any valid explanation for these discrepancies.²¹⁶ Besides that, VG-018's claim that someone introduced himself as "Sredoje Lukić" has not been corroborated by evidence of any other witness. VG-013 and VG-038 were with VG-018 the entire time of the incident.²¹⁷ Yet nothing in VG-038's or VG-013's testimony suggests that any

²¹⁰ T.1367.

²¹¹ T.1303;T.1304;T.1305;T.1345;T.1348;T.1367;T.1369.

²¹² T.1305.

²¹³ P83,p.7,para.3.

²¹⁴ P82,T.1581.

²¹⁵ P82,T.1622.

²¹⁶ T.1364.

²¹⁷ T.1359-1360.

person introduced himself as “Sredoje Lukić”. If VG-018’s testimony reflected the truth, i.e. if the Accused Sredoje Lukić had indeed introduced himself in the Memić house, VG-013 would have recognized Sredoje Lukić whom she had known for many years before the war. VG-018’s evidence is even inconsistent with the testimony of her son, VG-084, who testified before this Honorable Trial Chamber that he did not hear a man introduce himself as Sredoje Lukić.²¹⁸

93. Given the inconsistencies in her own testimony regarding the allegation that Sredoje Lukić introduced himself, as well as the lack of corroboration by any other witness, VG-018’s allegations cannot be upheld.
94. [REDACTED].²¹⁹ [REDACTED].²²⁰ This description of the events is in striking contradiction with the accounts provided by other witnesses. VG-078 and VG-101, who both did not see or identify Sredoje Lukić as one of the perpetrators at all, both testified that it was Milan Lukić, who ordered them to surrender their valuables.²²¹ Indeed VG-013 who knew Sredoje Lukić from before the war, stated she did not see him and that it was Milan Lukić who asked for their valuables.²²²
95. [REDACTED]²²³ [REDACTED] During direct examination by the Prosecution on 5 September 2008, witness VG-018 stated the following with regard to those events:

17 Q. Thank you. Thank you, Witness. My question -- my next question
18 is, though, after giving them the valuables, did other things happen in
19 the house?
20 A. As far as I can remember, I think it was Milan who said that we
21 will go to a room in twos and threes, that they would strip us naked. I
22 was the first next to the door and I entered the room. This man whose

²¹⁸ T.1274-1275.

²¹⁹ 1D33,p.6,para.1.

²²⁰ 1D33,p.6,para.1.

²²¹ T.1383;T.1434.

²²² T.1031.

²²³ 1D33,p.6,para.1.

23 name I don't know was sitting on a chair.²²⁴

With regard to the taking of Jasmina Vila and the other girls, VG-018 stated:

24 Q. And who is -- who is he? You said, "He said, 'You, Vila and you

25 in the leather jacket, come out.'" Who said that if you can recall?

1 A. Milan said that.²²⁵

VG-018 did not see the man who introduced himself

96. VG-018 stated that she did not look at the men who allegedly introduced themselves.²²⁶ VG-018 was in the room when the men allegedly introduced themselves, while they were in the general sitting area first, therefore the witness allegedly only heard them introducing themselves.²²⁷ She was therefore unable to provide a reliable description of the man who allegedly introduced himself as Sredoje Lukić. This man therefore could have been anyone. The confusing testimony of this witness with regard to who allegedly introduced himself as "Sredoje Lukić" and the fact that she did not see the person, renders this allegation entirely unreliable with respect to the Accused.

97. In her statement from 17 May 1993, which VG-018 confirmed to be authentic,²²⁸ [REDACTED].²²⁹ [REDACTED].²³⁰ [REDACTED]. During her testimony on 8 September 2008, the witness again was not able to provide a valid explanation for this significant discrepancy.²³¹ A 31 year old person cannot be mistaken for a retired person; this is therefore a clear case of a misidentification.

²²⁴ T.1306.

²²⁵ T.1308-1309.

²²⁶ T.1365.

²²⁷ T.1365,1367.

²²⁸ T.1367-1368.

²²⁹ 1D33,p.5,para.3.

²³⁰ 1D232.

²³¹ T.1368-1369.

98. [REDACTED].²³² And yet during her testimony before this Honorable Trial Chamber, VG-018 gave a completely different description. Being questioned by the Milan Lukić Defence, VG-018 stated:

2 Q. Now you say there was a man at the door in a uniform. Can you
3 describe the uniform?

4 A. It was a camouflage uniform, I think but I really don't know, I
5 can't say for sure.²³³

(...)

4 Q. No, ma'am. I just want you to go into your memory and describe
5 to me what these men were wearing. Now, you've explained Mitar
6 Vasiljevic. Now let's move on with other people.

7 A. The ones that came had automatics, nothing else. What else would
8 they have? I didn't see anything else.

9 Q. What kind of clothes did they have had on? And were they wearing
10 different clothes or were they wearing all the same clothes?

11 A. The two of them were wearing the same but Mitar Vasiljevic
12 wasn't wearing a uniform at all.²³⁴

Also with regard to the caps worn by the men, during the cross-examination by the Defence, VG-018 changed her statement entirely and held that the men actually did not wear any caps at all:

16 Q. Did he have a cap on or not?

17 A. As far as I know, both of them didn't have -- or either of them
18 didn't have any caps. I heard them introduce themselves and then when
19 they were taking valuables from us, gold and money, I saw that they
20 didn't have any caps.²³⁵

Those discrepancies in VG-018's testimony demonstrate that she is unable to provide a reliable description of the men. The discrepancies further once again confirm VG-018's testimony that she did not look at the perpetrators. Even in the

²³² 1D33,pp.5-6.

²³³ T.1349.

²³⁴ T.1350.

²³⁵ T.1371.

afternoon, she did not look at the men. This fact in the absence of any other source of information for VG-018, renders her alleged identification of the Accused entirely unfounded and unreliable.

99. VG-018 was not informed by other people if one of the men present was Sredoje Lukić. Jasmina Vila, who died later in the fire, only confirmed that one of the men was Milan Lukić. Nobody told VG-018 anything about Sredoje Lukić:

20 Q. Yes. Thank you, Witness. My question is, though, do you know if
 21 anyone in the room with you recognised Milan and Sredoje and by
 22 knowing -- did anybody tell you that they knew who these men were?
 23 A. Yes. Jasmina told me that it was Milan Lukić but not -- I didn't
 24 hear anything about Sredoje.²³⁶

VG-018's testimony regarding the events in the evening of 14 June 1992

100. VG-018 claimed to have recognized the men's voices when some of the men arrived at the Memić house in the evening. But being asked by Honorable Presiding Judge Robinson, she admitted that she was not able to distinguish the voices and was unable to state if one of the voices belongs to Sredoje Lukić or not. She stated in her testimony that she did not look at the men coming back to the house in the evening:

24 JUDGE ROBINSON: But can you say which of the two the voice
 25 belonged to? You said it was either Milan or Sredoje.
 1 THE WITNESS: [Interpretation] I can't say that. I didn't look
 2 them in the face to see which one was saying those words. One of them
 3 was following me and most probably it was the one who came to the house
 4 and that must have been Milan. But I didn't look him in the face. When
 5 they were talking, I didn't dare to look up. I just proceeded on my way.²³⁷

²³⁶ T.1310.

²³⁷ T.1317-1318.

101. VG-018 was also not able to describe in cross-examination, what the men, who came back in the evening, looked like:

19 Q. And these guys, what were they wearing? How many of them were
20 there?

21 A. The one that came to the door, of course he was in uniform. It
22 was probably one of the two of them, whether it was Milan or Sredoje.
23 Maybe I would know if I looked at them but I didn't look at them, of
24 course because I was busy waking up my child and I had problems with my
25 child who was ill.²³⁸

10 Q. I'm more interested in the soldiers that came around midnight and
11 asked you to move from one house to the other. I'm more interested in
12 how many came, how many and what they were wearing.

13 A. I've just told you. There was one person in uniform. I saw
14 that but I know nothing more. Judging by the voices, I thought it was
15 either Milan or Sredoje. Let's say Milan, that they had come. Now, how
16 many of them there were outside, I don't know, because only one of them
17 came in. I'm sure there were more of them outside because you could hear
18 them talking and laughing.²³⁹

7 Q. Do you recall him being stout or skinny? You said that he was
8 shorter than Milan.

9 A. The police officers had never been skinny, if he was on the
10 police force.

11 Q. This is your assumption. This is not your direct knowledge.

12 A. I didn't look at him to see if he was skinny or stout.

13 THE INTERPRETER: Can the microphones in the courtroom please be
14 switched off.

15 MR. CEPIC: [Interpretation]

16 Q. Did he have a cap on or not?

17 A. As far as I know, both of them didn't have -- or either of them
18 didn't have any caps. I heard them introduce themselves and then when
19 they were taking valuables from us, gold and money, I saw that they
20 didn't have any caps.

²³⁸ T.1350.

²³⁹ T.1351.

21 Q. Did any of them wear a mask over their face or a stocking or
 22 something of the sort?

23 A. Well, no, not when I saw them. As for when they got in there, I
 24 don't know about that.

25 Q. Since they didn't have a cap, either of them, do you perhaps
 1 recall what sort of hair they had?

2 A. I don't know. I don't know anything about that. You're asking
 3 me too much. Perhaps they were bald, I don't know. How should I know
 4 what sort of hair they had?²⁴⁰

102. [REDACTED].²⁴¹

Failed identification of Sredoje Lukić

103. In the light of VG-018's testimony, the Defence holds the view that VG-018, who did not know Sredoje Lukić from before, did not identify Sredoje Lukić beyond any reasonable doubt as one of the perpetrators of the Pionirska Street Incident on 14 June 1992. Since VG-018 confessed that she never actually saw the man, who allegedly introduced himself as Sredoje Lukić, the Prosecution has failed to establish that Sredoje Lukić was present during the Pionirska Street Incident. VG-018 was not able to give a detailed and reliable description nor did she explain that other reliable people assisted her in identifying Sredoje Lukić beyond reasonable doubt. It becomes clear that her allegations against Sredoje Lukić are vague and in fact based on pure speculation and assumptions. The Chamber must take into consideration that this witness, always emphasized that her ability to identify Sredoje Lukić is extremely limited, since she had never met Sredoje Lukić before the incident. Further, during the incident on the 14 June 1992, she did not dare to look at the men and she repeated this on more than ten separate

²⁴⁰ T.1371-1372.

²⁴¹ 1D34,p.3.

occasions during the testimony.²⁴² Even being asked by Honorable Presiding Judge Robinson, she was not able to assign the voice to individualized persons:

17 JUDGE ROBINSON: (...)

18 (...) Did you associate that voice with any
19 person?

20 THE WITNESS: [Interpretation] Well, yes. It was either Sredoje
21 or Milan. Who else could it have been? Yes. That was what they wanted
22 to do, to finish us off. I realised as I was coming to the house that
23 this is where we all meet our end.

24 JUDGE ROBINSON: But can you say which of the two the voice
25 belonged to? You said it was either Milan or Sredoje.²⁴³

1 THE WITNESS: [Interpretation] I can't say that. I didn't look
2 them in the face to see which one was saying those words. One of them
3 was following me and most probably it was the one who came to the house
4 and that must have been Milan. But I didn't look him in the face. When
5 they were talking, I didn't dare to look up. I just proceeded on my way.²⁴⁴

104. The fact that this witness is unable to differentiate or even specify the person purported to be Sredoje Lukić, is even further strengthened by the following statement made by the witness during examination-in-chief:

1 A. But he was one of those who -- yes. It was those people who told
2 us to move. He was with us as we set out from the other house.
3 Q. And Madam Witness, you have to tell us who "those" are. You
4 have to tell the Judges who "those" are.
5 A. Well, the Lukics, who else? I've said this so many times now.
6 Now, whether it was Milan or Sredoje, I didn't lift my head to see which
7 one was next to me. I didn't dare to. I was trying to make sure that I
8 know where I was heading rather than looking at who was it who was
9 pushing me ahead.²⁴⁵ (*emphasis added*)

²⁴² See T.1304, lines 4-7; T.1315, lines 9-11 and 23-24; T.1316, lines 5-9; T.1318, lines 4-5; T.1345, lines 12-13; T.1348, lines 16 and 18; T.1349, line 5 and 17-18; T.1350, line 23; T.1365, line 5; T.1366, line 10; T.1367, line 6; T.1369, line 15; T.1371, line 12.

²⁴³ T.1317.

²⁴⁴ T.1318.

This statement demonstrates that this witness' implication of Sredoje Lukić in this incident is based solely on an assumption. A few minutes before giving this statement, VG-018 explained that the people in the house were shouting that the Lukić's were coming:

23 A. Yes. Yes. Everybody was shouting, "The Lukics. Here. The
24 Lukics are coming again." There is one lady who said, "Here, the Lukics
25 are coming over again. We're done for."²⁴⁶

[REDACTED],²⁴⁷ [REDACTED].

105. Being asked by the Prosecution for an in-court identification, VG-018 could not tell which one of the Accused was Milan Lukić and which one was Sredoje Lukić.

5 THE WITNESS: [Interpretation] I cannot be more precise. It's
6 been so many years. Which is which? Which is Milan, which is Sredoje, I
7 can't do this. I only know that one of them is Milan and the other one
8 is Sredoje but I can't be more precise than that. I can't. My eyesight
9 is very poor.²⁴⁸

Inconsistency between VG-018's evidence and Huso Kurspahić's testimony

106. Finally, the Defence respectfully submits that further doubts are cast on VG-018's by the fact that she named persons as victims of the Pionirska Street fire who according to Huso Kurspahić in fact did not perish in the fire. [REDACTED].²⁴⁹ These two names, however, are not listed on Annex A of the Second Amended Indictment. In addition, Huso Kurspahić stated that according to his knowledge and the list of alleged victims compiled by himself and other family members of

²⁴⁵ T.1316.

²⁴⁶ T.1313.

²⁴⁷ T.968;T.1198;T.1716.

²⁴⁸ T.1323.

²⁴⁹ 1D33,p.7.

alleged victims,²⁵⁰ there are no other names of victims apart from those he had been asked about by the Prosecution during their cross-examination, i.e. apart from the ones listed in Annex A of the Second Amended Indictment.²⁵¹ Hence, VG-018's claim that Hašo and Seka Kurspahić did in the Pionirska Street fire has not been corroborated by any other evidence.

Conclusion

107. VG-018's allegation that Sredoje Lukić was present at the Pionirska Street incident is based solely on the contention that she heard someone introducing himself as Sredoje Lukić in the afternoon and that later on in the evening she heard the same voice again. This contention, however, has been dismissed by all other witnesses who were in the house with her, as none of them had heard this alleged introduction. VG-018 did not see the man when he allegedly introduced himself nor later. VG-018 underlined that she did not look at the men throughout the incident. Those facts render her allegations against Sredoje Lukić unfounded and unreliable and therefore mere assumptions which can reasonably not be said to prove his presence at the incident beyond reasonable doubt.

108. For all the above reasons, the Defence of Sredoje Lukić respectfully submits that the Trial Chamber dismiss the evidence of VG-018 as unreliable and not credible concerning Sredoje Lukić.

4.2.1.1.4 Witness VG-084

4.2.1.1.4.1 VG-084 Allegations

109. [REDACTED],²⁵² [REDACTED].²⁵³ [REDACTED].²⁵⁴ [REDACTED].²⁵⁵
[REDACTED].²⁵⁶ [REDACTED].²⁵⁷

²⁵⁰ T.6915-6916.

²⁵¹ T.6963.

²⁵² See P72,T.1655.

²⁵³ P72,T.1665-1666.

110. [REDACTED].²⁵⁸ [REDACTED].²⁵⁹ [REDACTED].²⁶⁰ [REDACTED].²⁶¹
[REDACTED].²⁶²

111. [REDACTED].²⁶³ [REDACTED].²⁶⁴ [REDACTED].²⁶⁵ [REDACTED].²⁶⁶
[REDACTED].²⁶⁷

4.2.1.1.4.2 VG-084 Credibility and Reliance

112. The Defence submits that VG-084 did not see Sredoje Lukić at the Pionirska Street Incident on 14 June 1992, neither in the afternoon nor in the evening. VG-084 could not have seen the man who allegedly introduced himself as Sredoje Lukić, because as stated by VG-018, who was with him the entire time, they were staying in a room different from the one in which the armed men allegedly introduced themselves.²⁶⁸ VG-084 admitted that he did not even hear a man introducing himself as Sredoje Lukić in the Memić house.²⁶⁹ He then stated that he only learnt about Sredoje Lukić from the people in the house who knew him but he was unable to name any of those people and according to other witnesses there was no discussion at all about a Sredoje Lukić.²⁷⁰ In the absence of personally hearing the man or about the man from others and in the absence of personally seeing the man, who allegedly was Sredoje Lukić, VG-084's allegation

²⁵⁴ T.1274;P72,T.1673;P74,p.4.

²⁵⁵ P72,T.1667;P74,p.4.

²⁵⁶ P72,T.1668-1669.

²⁵⁷ P72,T.1669.

²⁵⁸ P72,T.1671;P74,p.4.

²⁵⁹ P72,T.1673.

²⁶⁰ T.1284;P72,T.1673.

²⁶¹ P72,T.1674;P74,p.4.

²⁶² P72,T.1675.

²⁶³ P73,T.1754.

²⁶⁴ P73,T.1754-1755.

²⁶⁵ P73,T.1754.

²⁶⁶ P73,T.1755.

²⁶⁷ P73,T.1755.

²⁶⁸ T.1367.

²⁶⁹ T.1274-1275.

²⁷⁰ T.1442;T.1310.

against the Accused is without merit. Therefore VG-084 did not in fact identify Sredoje Lukić beyond any reasonable doubt. To the contrary, doubt was cast on his reliability and credibility through cross-examination. For this reason, VG-084's testimony should not be relied upon by the Tribunal.

VG-084's testimony regarding the events at the Memić house

113. The Defence respectfully draws the Trial Chamber's attention to the following numerous and notable inconsistencies in the evidence provided by VG-084 and discrepancies between his testimony and the testimony of other Prosecution witnesses in relation to the events at the Memić house.

114. VG-084 did not know Sredoje Lukić before the incident on 14 June 1992.²⁷¹ At this time he was just a child; under 13 years of age.²⁷² He spent the entire time of the incident on 14 June 1992 with his mother, VG-018,²⁷³ and VG-013.²⁷⁴

115. In his testimony, VG-084 claimed that 20 to 25 per cent of the people in the Memić house knew Sredoje Lukić before the incident and he only learned of Sredoje Lukić's name from others in the house during the incident.²⁷⁵ During cross-examination by the Defence, however, the witness did not remember any specific persons out of those 20 to 25 per cent:

5 MR. CEPIC: [Interpretation] Thank you, Your Honours.

6 Q. Do you remember the name of any of these people who told us that

7 it was Sredoje Lukic, or you're unable to tell us that?

8 A. I'm telling you again those were the people who knew him. I

9 personally didn't know him. That's what I said in my statements.

10 Q. But you don't remember any specific person telling you that?

11 A. No, I don't.²⁷⁶

²⁷¹ T.1272.

²⁷² T.1234.

²⁷³ T.1272;T.1273.

²⁷⁴ T.1278.

²⁷⁵ T.1275.

²⁷⁶ T.1286.

116. Even the Honorable Presiding Judge Robinson intervened and asked for an explanation for this vague allegation:

12 JUDGE ROBINSON: Let me see whether I understand you, Witness.
 13 You heard a number of persons saying that that was Sredoje Lukic.
 14 THE WITNESS: [Interpretation] Yes.
 15 JUDGE ROBINSON: You knew who those persons were?
 16 THE WITNESS: [Interpretation] Of course I knew.
 17 JUDGE ROBINSON: But your position now is that you don't remember
 18 their names. Is that so?
 19 THE WITNESS: [Interpretation] I don't remember their names,
 20 that's true. We were afraid of these people while we were still in our
 21 village before we moved out. We were afraid that they would come to our
 22 village, too, because they went to other villages, took men away, set
 23 houses on fire.²⁷⁷

VG-084 was not able to give any of the names of these alleged 20 to 25 percent of the people, even though he previously stated that he knew all these people.²⁷⁸ In light of VG-084 being unable to provide any name in support of his contention and therefore the Defence was unable to challenge the knowledge of these people, who allegedly identified Sredoje Lukić on 14 June 1992, this contention must be regarded as entirely unreliable. In addition, this testimony is in striking contradiction to the reliable testimony of Prosecution witness VG-101, who testified in examination in chief that the people in the Memić house did not discuss the identity of the four men who came to this house during the afternoon at all.²⁷⁹ More importantly, even his mother, VG-018, who was beside him the entire time, stated that there was no discussion about Sredoje Lukić:

²⁷⁷ T.1286.

²⁷⁸ T.1286.

²⁷⁹ T.1442.

20 Q. Yes. Thank you, Witness. My question is, though, do you know if
 21 anyone in the room with you recognised Milan and Sredoje and by
 22 knowing -- did anybody tell you that they knew who these men were?
 23 A. Yes. Jasmina told me that it was Milan Lukic but not -- I didn't
 24 hear anything about Sredoje. (...) ²⁸⁰

117. [REDACTED].²⁸¹ This statement is in direct contradiction to the testimony of VG-013 who never claimed of having heard a man introducing himself as Sredoje Lukić.

118. Upon being questioned by Honorable Presiding Judge Robinson during his testimony on 5 September 2008, VG-084 was not able, however, to describe the manner in which the person purported to be "Sredoje Lukić" allegedly introduced himself.²⁸² Eventually he confessed that in fact he did not hear the introduction at all:

16 Q. You said clearly here he came and introduced himself. So you
 17 said that he introduced himself. Did he use the following words: "My
 18 name is Sredoje Lukic. Good day to you people"?
 19 A. Yes. He said that as he got into the room and I heard other
 20 people say so later on, because this was a room full of people and they
 21 heard him say that and that's how this whole thing started.
 22 JUDGE ROBINSON: Just a minute, Witness. Are you saying that
 23 Sredoje Lukic introduced himself by saying, "My name is Sredoje Lukic.
 24 Good day to you people"?
 25 THE WITNESS: [Interpretation] No, no, no. I didn't quote his
 1 words this way. This was upstairs. There were stairs there and there
 2 were people there who knew him by name.
 3 JUDGE ROBINSON: Just a minute.
 4 THE WITNESS: [Interpretation] I don't -- that he said expressly
 5 those words --
 6 JUDGE ROBINSON: Did Sredoje Lukic say anything in your hearing

²⁸⁰ T.1310.

²⁸¹ P74,p.4,para.2.

²⁸² T.1274-1275.

7 to identify himself?

8 THE WITNESS: [Interpretation] I didn't hear.²⁸³

119. [REDACTED].²⁸⁴ [REDACTED]:

22 Q. [Interpretation] Sir, your statement today is somewhat different
23 from what you said in your written statement. You were quite explicit
24 here and said, "One of them got into the kitchen and introduced himself
25 as Sredoje Lukić. He carried a sniper rifle and a camouflage uniform."

1 A. Yes.

2 Q. These are your words.

3 A. Sir, these are details that cannot be described, because the --

4 they were not entering that house --²⁸⁵

120. By testifying in this way, VG-084 confessed that he - in fact - was not able to identify Sredoje Lukić. He was not able to assign a physical description to an individual person in his memory. In consequence, all other alleged descriptions of the physical appearance of "Sredoje Lukić" by this witness, in his various statements and in his testimonies, are without any reliability and substance.

VG-084's alleged physical description of Sredoje Lukić

121. This witness' inability to describe the person who allegedly introduced himself as Sredoje Lukić is explained by VG-018 who stated that she could not see the person who allegedly introduced himself as Sredoje Lukić, because that person was in a different room:

2 Q. [Interpretation] Lines 4 and 5. You said that you weren't
3 looking towards Sredoje and Milan, weren't looking at them. May I then
4 conclude that you weren't looking towards that man when he introduced
5 himself?

²⁸³ T.1274-1275.

²⁸⁴ P74,p.4,para.2.

²⁸⁵ T.1275-1276.

- 6 A. Perhaps I would have looked had I been nearby but I was in the
 7 room. They went into the general sitting area first. I just heard it.
 8 Q. So you didn't actually see him when he introduced himself. Isn't
 9 that right?
 10 A. No, I didn't see him but when we went into another room, we all
 11 had to go to this other room, then I saw them but I didn't know who was
 12 who.²⁸⁶

Having in mind the inability of VG-084 to describe this person and following this testimony of VG-018, who was with VG-084 at this time, it can be concluded that VG-038 could not, at any point, directly see the person who allegedly introduced himself as Sredoje Lukić.

122. [REDACTED].²⁸⁷ In contrast, in his testimony on 5 September 2008 he testified that Milan Lukić had a sniper rifle,²⁸⁸ whereas Sredoje Lukić had just an automatic weapon.²⁸⁹ It is evident that the witness is able to differentiate between a sniper rifle and an automatic weapon.²⁹⁰

Neither the witness himself nor the Prosecution provided reasonable explanations for this notable contradiction and inconsistency.

123. In line with this testimony, VG-084 could not remember whether he saw the face of the person who allegedly introduced himself as "Sredoje Lukić"; nor could he remember whether it was still daylight when this man arrived at the Memić house:

- 11 Q. [Interpretation] Was there daylight in the house at that moment,
 12 sir?
 13 A. I don't remember.
 14 Q. Were you able to see clearly the face of the person who
 15 introduced himself as Sredoje Lukic?

²⁸⁶ T.1367.

²⁸⁷ P74,p.5.

²⁸⁸ T.1261.

²⁸⁹ T.1262.

²⁹⁰ T.1281.

16 A. I don't remember that either.²⁹¹

Therefore his testimony that “Sredoje Lukić” stood at the entrance door at the Omeragić house when VG-084 arrived, lacks any credibility. Considering that he did not see the man who allegedly introduced himself as Sredoje Lukić, VG-038 could not have later positively identified the man standing at the entrance door of the Omeragić house as Sredoje Lukić. This conclusion is supported by VG-084’s confessed inability to describe Sredoje Lukić standing at the entrance of the Omeragić house.²⁹²

124. [REDACTED],²⁹³ [REDACTED] reliable statements of the Prosecution witnesses VG-078 and VG-101, who both did not see or identify Sredoje Lukić as one of the perpetrators at all and who testified that it was Milan Lukić who ordered them to surrender their valuables.²⁹⁴ His testimony is further in direct contradiction to the testimony of the two witnesses who were with him the entire time; his mother VG-018 stated that it was Milan Lukić²⁹⁵ who demanded their valuables while VG-013, who knew Sredoje Lukić from before the incident stated she did not see him and that it was Milan Lukić who asked for their valuables.²⁹⁶

VG-084’s testimony regarding the events in the evening of 14 June 1992 at the Omeragić house

125. A similar series of inconsistencies and discrepancies is prevalent in VG-084’s testimony on the alleged events in the evening at the Omeragić house. In his testimony on 5 September 2008, VG-084 testified that he did not wear “shoes” when he walked to the Omeragić house.²⁹⁷ In his testimony in the *Vasiljević* case, he testified that he could not find one shoe, so that he wore one of someone else’s

²⁹¹ T.1277.

²⁹² T.1284.

²⁹³ P74,p.4,para.2;T.1280.

²⁹⁴ T.1383;T.1434.

²⁹⁵ T.1306.

²⁹⁶ T.1031.

²⁹⁷ T.1284.

shoes. This demonstrates he is not even able to present a reliable statement regarding his own activities on this day. It can be concluded that if he is unable to give consistent evidence regarding his own activities on that day then he is hardly likely to give reliable testimony about the behavior of other persons.

126. According to VG-084's testimony, "Sredoje Lukić" was standing at the entrance door of the Omeragić house, so that the column of the people from Koritnik was moving towards him from the Memić house to the Omeragić house.²⁹⁸ [REDACTED].²⁹⁹

127. This description of the scenario stands in stark contrast to the testimony of VG-013, who was an adult on 14 June 1992 and had known Sredoje Lukić for an extended period before the war. According to her testimony, it had already become dark and no lights were on in Jusuf Memić's house when they departed.³⁰⁰ There was only street lighting and lights from the neighbouring houses.³⁰¹ According to her testimony it was Mitar Vasiljević who was standing in the doorway of Adem Omeragić's house.³⁰² On their way to Adem Omeragić's house, Edhem Kurspahić allegedly shouted that they were followed by Sredoje Lukić,³⁰³ which implies that this person could not have been standing at the entrance of the Omeragić's house, waiting for the arrival of the column. VG-013 did not see Sredoje Lukić herself and only allegedly heard of Sredoje Lukić's presence in Pionirska Street through Edhem Kurspahić.³⁰⁴ She never mentioned in any statement or testimony that Sredoje Lukić stood at the entrance of the Omeragić house, waiting for the column and locking the door after the last one had entered the house.

²⁹⁸ T.1284.

²⁹⁹ P72,T.1675.

³⁰⁰ T.1039-1040.

³⁰¹ T.1040;T.1042.

³⁰² T.1042.

³⁰³ T.1039;T.1042;T.1099.

³⁰⁴ T.1099;T.1121.*See also* T.1039;T.1058.

128. In addition, it is instructive that VG-084 was not able to give any description of the person whom he had allegedly identified as “Sredoje Lukić”. Being pressured in cross-examination on 5 September 2008, he stated that it could have also been Milan Lukić instead of “Sredoje Lukić”:

4 Q. This person who introduced himself as Sredoje, do you know where
 5 he was standing?
 6 A. In front of the house where we were set on fire.
 7 Q. Can you describe him in this particular situation?
 8 A. No, I cannot. I was a little bit late. I was among the last
 9 people who entered the house. He patted me on the shoulder. Whether it
 10 was him or Milan, there were two or three of them in front of the house.³⁰⁵

129. Neither VG-013, VG-018, VG-038, nor any other Prosecution witness testified that they witnessed Sredoje Lukić standing at the entrance door of the Omeragić house with “bombs around his belt”, when the column of people from Koritnik arrived there. [REDACTED],³⁰⁶ [REDACTED].

5 JUDGE ROBINSON: Witness, no. He's not asking you to answer on
 6 behalf of your mother. What he's asking is whether you agree with your
 7 mother's description that Sredoje was someone who had retired at that
 8 time and that he was over 40 years of age.
 9 [Trial Chamber confers]
 10 THE WITNESS: [Interpretation] I -- I can't remember that. I'm
 11 not giving any descriptions. I'll let her do that.³⁰⁷

130. Upon being questioned by Honorable Presiding Judge on 5 September 2008, VG-084 was not able to say whether Milan Lukić was taller or smaller than the person purported to be “Sredoje Lukić”:

24 Q. Can you at least remember who was taller and who was shorter?
 25 A. Sredoje was older and Milan was about seven years younger as far

³⁰⁵ T.1284.

³⁰⁶ P74,p.4,para.3.

³⁰⁷ T.1283.

1 as I could judge by their appearance.
 2 JUDGE ROBINSON: No, no. He asked about their height. Can you
 3 remember who was taller and who was shorter? He didn't ask about their
 4 age.
 5 THE WITNESS: [Interpretation] No, no, no. I don't remember. I
 6 don't remember.³⁰⁸

Conclusion

131. Based on all the foregoing the Defence hereby submits that the alleged identification of Sredoje Lukić by VG-084 is based on and can be summarized to the following three allegations:

(i) VG-084 held that 20 to 25% of the people in the Memić house knew Sredoje Lukić and that he only learnt about him from those people. However, in cross-examination VG-084 was not able to provide a single concrete name of those people who supposedly knew Sredoje Lukić. Apart from this claim, both VG-101 and VG-018 specifically stated that there was no discussion among the people in the house about a “Sredoje Lukić”.

(ii) VG-084 stated that he heard a man introducing himself as Sredoje Lukić but during his testimony he confessed that he did not in fact hear a man introducing himself as Sredoje Lukić.

(iii) As confirmed by VG-018, the man who had allegedly introduced himself as Sredoje Lukić was in a different room from herself and VG-084, who was at VG-018's side during the entire incident. Therefore she could not see him. It can thus be concluded that even if someone had introduced himself, VG-084, who was beside VG-018 the entire time, also could also not see this person at the time.

³⁰⁸ T.1281-1282.

132. The Defence submits that the abovementioned proves that the allegations made by VG-084 with regard to Sredoje Lukić are entirely unfounded and therefore unreliable in their entirety. Every reasonable Trial Chamber must conclude that VG-084 did not identify Sredoje Lukić at the incident beyond reasonable doubt.

133. For all the above reasons, the Defence of Sredoje Lukić respectfully submits that the Trial Chamber dismiss the evidence of VG-084 as unreliable and not credible concerning Sredoje Lukić.

4.2.1.1.5 Witness VG-078

4.2.1.1.5.1 VG-078 Allegations

134. [REDACTED].³⁰⁹

135. [REDACTED]One man with a moustache was standing in front of the house waiting for the people to leave the house.³¹⁰ [REDACTED].³¹¹ Apart from these two men there were other individuals escorting the group to the second house.³¹²

4.2.1.1.5.2 VG-078 Credibility and Reliance

136. [REDACTED].³¹³

137. This fact should duly be taken into account when assessing the credibility and reliance of other Prosecution witnesses, in particular Witnesses VG-018 and VG-084. [REDACTED].³¹⁴ The Defence stresses that the Prosecution could not resolve these inconsistencies between the testimonies of their own witnesses.

³⁰⁹ T.1379,T.1382;P88,T.1287-1288.

³¹⁰ T.1386.

³¹¹ P88,T.1290-1291;P89,T.1294.

³¹² T.1386.

³¹³ P88,P89,P92,1D35.

³¹⁴ T.1397.

138. The assertion made by VG-018 and VG-084 that a man introduced himself as “Sredoje Lukić” was in no way corroborated by the testimony of VG-078. At no point in time did this witness ever claim to have heard a man in the Memić house introducing himself as “Sredoje Lukić”, nor did she ever mention that people of the Koritnik group talked about the presence of a person purported to be Sredoje Lukić while staying in the Memić house. Her testimony therefore challenges the credibility of the respective contradictory testimonies of VG-018 and VG-084.

4.2.1.1.6 Witness VG-101

4.2.1.1.6.1 VG-101 Allegations

139. VG-101 testified that on 14 June 1992 at about 5 or 6 p.m. Milan Lukić and three other Serbs entered the house on Pionirska Street in which the group from Koritnik had assembled after leaving their village.³¹⁵ It is alleged that Milan Lukić ordered the group to hand over all their money and gold and threatened to kill them should they not comply.³¹⁶ The group placed all their money, gold and jewellery in a bag.³¹⁷ Then all the women and girls in the group were told by the mustached Serb with black curly hair to take their clothes off in order for him to make sure and see that they had not withheld any of the money or jewellery.³¹⁸ VG-101 claims that after the strip search Milan Lukić and the other men took a 15 year old girl and left the house with her.³¹⁹

140. It is the witness’ testimony that later in the evening, at around 11 or 12 p.m. the Serb men came back to the house.³²⁰ At that time, VG-101 and the group were staying at the second floor.³²¹ The same mustached Serb that had been there earlier shined his flashlight toward the interior of the house and told the group to

³¹⁵ T.1422,T.1432.

³¹⁶ T.1434.

³¹⁷ T.1435.

³¹⁸ T.1435-1437.

³¹⁹ T.1437.

³²⁰ T.1443.

³²¹ T.1471.

get out of the house.³²² Outside the house VG-101 also saw Mitar Vasiljević and the blonde Serb who had been present during the looting.³²³ There was light coming from the nearby houses and from torch lights.³²⁴

4.2.1.1.6.2 VG-101 Credibility and Reliance

141. [REDACTED]³²⁵ [REDACTED].³²⁶ This is of great importance for the Trial Chamber's assessment of the credibility of VG-018: [REDACTED],³²⁷ [REDACTED]. VG-101, however, did not testify as to any introduction by the alleged perpetrators occurring in front of the group in the Memić house. Further, she never indicated that a man ever introduced himself as "Sredoje Lukić" in Pionirska Street on 14 June 1992. Further, VG-101 expressly declared in examination-in-chief that the identities of the four men were not discussed by anyone present in the room:

21 Q. Okay. I'm talking about these specific four men, whether anyone

22 in the room discussed who they were.

23 A. No.³²⁸

142. This statement casts serious doubts on the credibility of other Prosecution witnesses, in particular; VG-013, VG-038, VG-084 and VG-018. As has been demonstrated above, VG-018, claimed that other people in the group allegedly identified one of the perpetrators and shared their knowledge with the group or, alternatively, that two perpetrators purportedly introduced themselves by name. These striking discrepancies in the accounts of the Prosecution witnesses go to the very heart of the issue of identification of the Accused; these discrepancies remain unexplained.

³²² T.1443.

³²³ T.1444-1446.

³²⁴ T.1449-1450; T.1461-1462.

³²⁵ 1D36.

³²⁶ 1D37.

³²⁷ T.1397.

³²⁸ T.1442.

143. Moreover, the Defence stresses that none of VG-101's descriptions of the three Serbs who came to the Memić house with Milan Lukić on 14 June 1992 fit the Accused Sredoje Lukić. She described those three men as follows:

16 Q. Now, before I ask you some questions about Mr. Lukic, I would
 17 like to ask you if you can tell us -- describe the other three persons
 18 whom you've said were Serbs, describe for the Judges.
 19 A. Yes, I can. The other Serb was somewhat short than Milan Lukic.
 20 He sported a black moustache and had black curly hair. The other Serb
 21 had blonde or light brown hair. He was a bit taller and of somewhat
 22 heavier built than Lukic and a third one seemed the youngest among them.
 23 He was 18 or perhaps even younger. He was tall, gangly and the youngest
 24 of the group.
 25 Q. Did any of these four men disguise their faces?
 1 A. No. Their faces were clearly to be seen.
 2 Q. And how many of these men did you recognise when you saw them?
 3 A. I recognised Milan Lukic.³²⁹

144. There is no evidence whatsoever that Sredoje Lukić had a black moustache and black curly hair, nor that he had blond hair, nor that he was around 18 years of age at the time. [REDACTED].³³⁰ Hence, the Prosecution has failed to prove beyond reasonable doubt that VG-101 identified Sredoje Lukić as one of the perpetrators of the Pionirska Street incident. On the contrary, the given description unambiguously demonstrates that Sredoje Lukić was not among the perpetrators.

145. [REDACTED].³³¹ VG-089 provided a comprehensive and detailed description of the men. The most striking fact is that VG-089's description of the men who were with Milan Lukić earlier that day entirely matches the physical appearance of the men who, as described by VG-101, came to the Memić house in the evening.

³²⁹ T.1432-1433.

³³⁰ 2D55, part I; 2D56.

³³¹ T.1753-1757, 1759, 1761-1764.

[REDACTED]³³² [REDACTED].³³³ The Defence submits that given the strikingly identical description of the men provided by VG-089 regarding an incident in the afternoon and VG-101 regarding the events in the evening, it is very plausible that it concerns the same individuals. In any event, none of the descriptions match the physical appearance of the Accused Sredoje Lukić.

146. In addition, VG-101 further testified that she saw the Serb with the moustache and the young blondish Serb again later in the evening when the people from Koritnik were being ordered to go to the Omeragić house. She testified that she was able to see the faces of the soldiers holding flashlights³³⁴ and that she recognized Milan Lukić and Mitar Vasiljević.³³⁵ VG-101, however, never claimed to have seen Sredoje Lukić on that evening.

147. In the light of her severe suffering in consequence of the incident on 14 June 1992, the grievous loss of family members and the evident lack of a hostile attitude towards Sredoje Lukić, it is submitted that VG-101's *viva voce* testimony is of paramount importance (i) for the Trial Chamber's assessment of the credibility and reliance of contradictory testimonies of other Prosecution witnesses such as VG-013, VG-038, VG-084 and VG-018 and (ii) for the Chamber's determination whether the Prosecution has proved Sredoje Lukić's participation in the crimes on Pionirska Street as alleged in the Second Amended Indictment beyond reasonable doubt.

4.2.1.1.7 Witness VG-115

4.2.1.1.7.1 VG-115 Allegations

148. VG-115 claims to have witnessed the Pionirska Street fire in mid-June of 1992.³³⁶ According to her testimony, she saw Sredoje Lukić in camouflage uniform and

³³² 1D48,p.3;T.1742,1769.

³³³ T.1756;1D47,p.6;1D48,p.3.

³³⁴ T.1444-1445.

³³⁵ T.1446.

³³⁶ T.681-682.

armed pushing three persons in front of him on Pionirska Street.³³⁷
 [REDACTED],³³⁸ Planinčić, a policeman nicknamed “Razinoda”, a man
 nicknamed “Čaruga”, Zoran with last name Šimšić or Vasiljević and Radoje
 Šimšić who were grouping about 60 people mostly old men, women and children
 in a column and taking them from the center of town to Pionirska Street.³³⁹
 [REDACTED].³⁴⁰

149. VG-115 claims that she was inside the younger brother’s Smajić house, when she suddenly heard a big explosion and a lot of gunfire and screaming.³⁴¹ Soon after the fire, high flames and smoke could be seen coming from the other side of Pionirska Street and one could smell human flesh burning.³⁴²

4.2.1.1.7.2 VG-115 Credibility and Reliance

150. The Defence submits that VG-115 did not see Sredoje Lukić being present on the 14 June 1992 at the Pionirska Street incident, neither in the afternoon nor in the evening. During cross-examination, the Defence revealed that VG-115 in fact did not identify Sredoje Lukić beyond reasonable doubt. On the contrary, doubt was cast on her reliability and credibility through cross-examination. For these reasons, VG-115’s testimony should not be relied upon by the Tribunal.

151. In light of VG-115’s claim that she knew Sredoje Lukić personally,³⁴³ the Defence would like to stress that the Prosecution never asked the witness in direct examination about the actual extent to which she was familiar with Sredoje Lukić at the time. It was neither enquired for how long she had known Sredoje Lukić before the incident, nor how often she used to see or meet him nor under which circumstances these encounters took place. Hence, the Prosecution has not

³³⁷ T.682;T.686.

³³⁸ T.732-734.

³³⁹ T.683.

³⁴⁰ T.763-764.

³⁴¹ T.686.

³⁴² T.686-687.

³⁴³ T.718.

established that VG-115 was in fact capable of recognizing or identifying Sredoje Lukić.

152. The sole description of Sredoje Lukić provided by VG-115 under oath does not specify any distinguishing physical features of the Accused; rather it is extremely vague and superficial in nature:

5 Q. You said also that you saw Sredoje Lukić. Could you describe --
 6 A. I can describe him. I can describe Sredoje Lukić. Sredoje Lukić
 7 was in front of the Smajic house. There is this big terrace there where
 8 I was supposed to go. I was supposed to pass that way and he was taking
 9 three people in front of himself. He was in camouflage uniform, he was
 10 armed and he had some stocking on his head.³⁴⁴ (*Emphasis added*)

153. In this respect, it must firstly be stressed that VG-115's claim that one of the perpetrators wore a stocking on his head is not corroborated by any other witness or evidence in these proceedings. To the contrary, VG-101 testified that all the men's faces were clearly to be seen and that none of them disguised their faces.³⁴⁵

154. Furthermore, in cross-examination, VG-115 was unable to provide any reasonable and satisfactory explanation as to how she could possibly identify the man purported to be Sredoje Lukić in spite of this person allegedly wearing a stocking on his head. Quite to the contrary, very serious doubts were cast on the reliability of her evidence when testifying:

17 Q. [Interpretation] Madam, you provided a physical description of my
 18 client, Sredoje Lukic. You specified that he was wearing some sort of a
 19 sock, a mask, on his head and he did this in order not to be recognised
 20 by Visegrad's inhabitants or at least that's what you said. You said
 21 that he had this pulled over his head in both of the incidents involved.
 22 You will agree with me that one, in that case, could not actually see his
 23 hair?

³⁴⁴ T.686.

³⁴⁵ T.1432-1433.

24 A. No, not as long as he was wearing the sock pulled over his head.

25 Q. Or the eyes for that matter?

1 A. No, no, of course you could see his eyes. How else would a

2 man --

3 Q. Well, yes but you couldn't actually tell who the eyes belonged

4 to?

5 A. But he kept his eyes open throughout.

6 Q. Thank you. Thank you. But since he had this mask or sock pulled

7 over his head, then probably there was nothing really to distinguish him

8 in terms of distinguishing features, something that would betray

9 Sredoje Lukić's identity to anyone else --

10 A. Well, I knew Sredoje --.³⁴⁶

155. In this context, the Defence further submits that the Prosecution entirely failed to establish that VG-115 was physically capable to recognize the man purported to be Sredoje Lukić merely by the sound of his voice.

156. It is respectfully submitted that the explanation she provided in her testimony for why she was present on Pionirska Street on the day of the incident is also unreliable. In direct examination, VG-115 testified that "it was a workday because [she] was working on that day and [she] was coming back from work".³⁴⁷ At the beginning of the cross-examination she once again confirmed that it was a workday when she saw soldiers forcing people ahead on Pionirska Street.³⁴⁸ It is, however, undisputed that the 14 June 1992 was a Sunday and a religious holiday in both the Muslim and the Orthodox religions: it was the 4th Day of Kurban Bajram in the Muslim religion,³⁴⁹ while it was Holy Trinity, Pentecost in the Orthodox religion.³⁵⁰ In cross-examination by the Defence, VG-115 then admitted that in fact she could not remember any longer whether the day when the

³⁴⁶ T.781.

³⁴⁷ T.680.

³⁴⁸ T.774.

³⁴⁹ *Prosecutor v. Milan Lukić and Sredoje Lukić*, IT-98-32/1-T, Prosecution Motion for Judicial Notice of Adjudicated Facts, 28 February 2008, Annex A, fact 62; *Prosecutor v. Milan Lukić and Sredoje Lukić*, IT-98-32/1-T, Decision on Prosecution Motion for Judicial Notice of Adjudicated Facts, p.13.

³⁵⁰ See 2D43.

Pionirska Street incident occurred was a workday or not.³⁵¹ This attitude adopted in her live testimony clearly demonstrates the witness' inconsistency and unreliability as well as her strong tendency to incriminate the Accused by all means. Consequently, serious doubts are raised as to VG-115's presence in Pionirska Street on 14 June 1992.

157. Another issue that should be analysed and considered with greatest caution is VG-115's (in)ability to see the Omeragić house from her vantage point and the different accounts she has made in this regard. Her description of the Pionirska Street incident is highly implausible and vague and thus lacks reliability. [REDACTED],³⁵² she provided an entirely different account in her testimony in court by stating that she was already inside the Smajić house when she heard the explosion and saw the smoke and the fire.³⁵³ [REDACTED].³⁵⁴ It is clear from the aerial photo that three houses obstructed the view from VG-115's alleged vantage point to the Omeragić house. [REDACTED].³⁵⁵ These three houses evidently obstructed the view from VG-115's alleged vantage point to the Omeragić house.
158. This is further confirmed by the expert witness for the Defence of Milan Lukić, Mr. Cliff Jenkins, who visited the site on 29 January 2009 and produced photographs of the exact location of VG-115 on the night of the Pionirska Street incident³⁵⁶ and the view of the Omeragić house that she allegedly had according to her testimony.³⁵⁷ The photograph of the view that VG-115 allegedly had, clearly illustrates the impossibility of this witness to see the events at the Pionirska incident as she claimed. As is clear from this photograph and explained by the expert witness Cliff Jenkins not only did the three story house on the other side of the street obstruct her view but the neighbouring house entirely obstructed

³⁵¹ T.777.

³⁵² 1D18,p.11,para.1.

³⁵³ T.686-687.

³⁵⁴ T.788.

³⁵⁵ T.788.

³⁵⁶ 1D219,p.7,photograph 0894.

³⁵⁷ 1D219,p.9,photograph 0902;T.6465.

the direct line of sight to the Pionirska scene.³⁵⁸ As to the house neighbouring with the Smajić house, Cliff Jenkins explained the following:

23 A. The balcony that you see above the area that is coloured in kind
 24 of a yellow colour, that is the balcony area from which the witness is
 25 report to have been standing. If you look to the left, you can see the
 1 next-door residence and how that wall extends beyond parallel with the
 2 witness's back wall and thus obstructing any views back towards the
 3 scene.³⁵⁹

159. Cliff Jenkins further indicated yet another factor which, although not visible on the photograph, is of great influence on the reliability of VG-115's claim that she was able to see the incident from the balcony of the Smajić house. It concerns the elevation of the locations. The Omeragić house is slightly below the bank of the flood channel; this flood channel is located between the Omeragić house and the Smajić house.³⁶⁰ This difference in elevation between the two the two houses means that there is no direct line of sight between the Omeragić house and the Smajić house; therefore, it is physically impossible to directly witness any events at Omeragić house.³⁶¹ As indicated by Cliff Jenkins, in order to be able to see what is happening in the Omeragić house, an individual would have to physically get almost at the edge of the bank to look down the bank.³⁶² As this was not the case with VG-115, it can be concluded that she was unable to see the activity at the Omeragić which she stated in her statement from the year 2000.

160. [REDACTED].³⁶³ The Defence respectfully draws the Chamber's attention to the fact that the entrance door of the Omeragić house is in fact on the south-eastern side of the building. The fact that the group indeed entered the house on the south-

³⁵⁸ T.6464; See 1D219, p.9, photograph 0902.

³⁵⁹ T.6464-6465.

³⁶⁰ T.6462-6463. See also 1D210.

³⁶¹ T.6463.

³⁶² T.6463.

³⁶³ 2D3; T.786.

eastern side was confirmed by Prosecution witnesses VG-084,³⁶⁴ VG-013,³⁶⁵ VG-101³⁶⁶ [REDACTED].³⁶⁷ This grave inconsistency in VG-115's testimony raises serious doubts on this witness' reliability and credibility.

161. In addition, VG-115's testimony is highly inconsistent with other evidence in these proceedings. [REDACTED].³⁶⁸ In fact Mitar Vasiljević, who was injured in the late afternoon and was immediately transferred to the Užice hospital, stayed in hospital during that period of time³⁶⁹ and therefore could not possibly have been participating in the alleged incidents. The witness' attempt to explain the discrepancy in cross-examination blatantly indicates her tendency to fabricate stories and make excuses at the expense of innocent people. [REDACTED].³⁷⁰ [REDACTED].

162. [REDACTED]³⁷¹ [REDACTED]. This testimony has not been corroborated by any other evidence in these proceedings. [REDACTED].³⁷²

163. The Defence finally underscores the Trial Chamber's finding in the *Vasiljević* case that VG-115's evidence concerning the Pionirska Street incident was unreliable. The Trial Chamber in that case did not accept her evidence regarding this incident as it found her evidence of what she claimed to have seen in relation to Pionirska Street incident was not satisfactory and not sufficiently reliable.³⁷³

164. The Defence hereby again emphasises the unreliability of VG-115's allegation that she saw the Accused during the Pionirska Street incident. She provided two grounds for this allegation. First of all, VG-115 explained that she was allegedly

³⁶⁴ P78 and P80.

³⁶⁵ P58.

³⁶⁶ P94.

³⁶⁷ P49.

³⁶⁸ 1D18,p.11.

³⁶⁹ *Vasiljević* Trial Judgment,para.143.

³⁷⁰ T.734.

³⁷¹ T.763.

³⁷² T.5192.

³⁷³ T.793;*Vasiljević*, Trial Judgement, paras.89-90,159.

in Pionirska Street because she was coming home from work; however, this cannot be upheld as she later confessed that she could not remember if she was working that day. This fact raises serious doubts as to her contention that she was present in Pionirska Street. Even assuming that she was indeed present in Pionirska Street, it has not been established beyond reasonable doubt that VG-115 was able to identify the man behind the stocking. VG-115 claimed to have seen Sredoje Lukić whom she knew from before but (i) was unable to describe him in detail and moreover (ii) stated that he wore a stocking on his head. Her allegation that she could recognise Sredoje Lukić despite him allegedly wearing a stocking on his head is not very convincing. VG-115 did not provide any other explanation as to how she could recognise Sredoje Lukić at the incident. The only reasonable conclusion is that VG-115 was not able to recognise Sredoje Lukić through the stocking allegedly worn by one of the men.

165. For the above reasons, the Defence of Sredoje Lukić respectfully submits that the evidence of the alleged identification of Sredoje Lukić by VG-115 is highly unsatisfactory and that every reasonable Trial Chamber must conclude that VG-115's evidence is not sufficiently reliable to establish the participation of Sredoje Lukić in this incident and should therefore be dismissed as far as it relates to Sredoje Lukić.

4.2.1.1.8 Witness Huso Kurspahić

4.2.1.1.8.1 Huso Kurspahić Introduction

166. [REDACTED],³⁷⁴ [REDACTED].

167. Huso Kurspahić was a former policeman in Višegrad from 1970 until he fled on 6 April 1992.³⁷⁵ Sredoje Lukić was his colleague in the police for about ten years.³⁷⁶

³⁷⁴ P37,T.789.

³⁷⁵ T.883.

³⁷⁶ T.885.

168. [REDACTED].³⁷⁷

4.2.1.1.8.2 Huso Kurspahić Allegations

169. According to Huso Kurspahić, he first heard about the Pionirska Street fire from VG-013 about seven or eight days after the incident.³⁷⁸ It is Huso Kurspahić's testimony that VG-013 was the first person to tell him that Milan Lukić, Sredoje Lukić, Mitar Vasiljević and a blond man came to the house where the Koritnik group was staying on Pionirska Street and took away their money and valuables³⁷⁹ and that the group was later set on fire in Adem Omeragić's house by Milan Lukić, Sredoje Lukić and Mitar Vasiljević.³⁸⁰

170. Huso Kurspahić testified that his father told him that the Pionirska Street incident occurred on the fourth day of Bajram in Višegrad.³⁸¹ Huso Kurspahić claims that his father further told him that Milan Lukić, Sredoje Lukić and Mitar Vasiljević had entered the house and had ordered the group to put all their money and jewellery in a bag on a table.³⁸²

171. He asserts that he had been told by this father that the main perpetrators who killed their family members during the fire were: Sredoje Lukić, Milan Lukić, Mitar Vasiljević, Boško Djurić, Zoran Joksimović, a man with the last name Šušnjar and another individual with long blond hair.³⁸³

172. Huso Kurspahić testified that according to his father he was the last person to enter the second house and stayed right next to the door.³⁸⁴ Due to a sudden powerful explosion the door was blown open and his father was thrown

³⁷⁷ T.920;P38,T.870-872.

³⁷⁸ T.880.

³⁷⁹ P37,T.804.

³⁸⁰ T.933.

³⁸¹ T.879.

³⁸² P37,T.791.

³⁸³ T.879;P36,p.3.

³⁸⁴ P37,T.793.

outside.³⁸⁵ His father then managed to escape and hid in a mound down by the creek.³⁸⁶

4.2.1.1.8.3 Huso Kurspahić Credibility and Reliance

173. The Defence reiterates that the evidence given by Huso Kurspahić who was not present in Pionirska Street when the alleged crimes were being committed, constitutes pure hearsay evidence. As acknowledged in part 3.7. of this brief, it is well settled in the jurisprudence of this Tribunal that hearsay evidence is admissible.³⁸⁷ At the outset, it should be noted that the *Vasiljević* Trial Chamber repeatedly found that insofar as Huso Kurspahić relied in his testimony on Mitar Vasiljević's participation in the Pionirska Street incident upon what his father allegedly told him, there was no mention of this in his father's statement.³⁸⁸ It is respectfully submitted that the same holds true in the instant case regarding Huso Kurspahić's testimony on the alleged participation of Sredoje Lukić; this must be taken into account in the evaluation of the reliability of Huso Kurspahić's testimony.

174. The Defence further submits that during cross-examination, the Defence revealed important discrepancies in Huso Kurspahić's testimony and inconsistencies with evidence tendered by alleged eyewitnesses of the incident. Since his hearsay evidence has not been corroborated by any other reliable evidence, Huso Kurspahić's testimony should not be relied upon by the Tribunal.

175. Huso Kurspahić testified that he was allegedly told by VG-013 that Sredoje Lukić was one of the perpetrators of the Pionirska Street fire on 14 June 1992.³⁸⁹ This

³⁸⁵ P37,T.794.

³⁸⁶ P37,T.794.

³⁸⁷ *Prosecutor v. Tadić*, Case No.94-1-T, Decision on Defence Motion on Hearsay, 5 August 1996, paras.15-19.

³⁸⁸ *Vasiljević* Trial Judgement, para.124, footnote 298; paras.147 and 148; para.154, footnote 405; para.175.

³⁸⁹ T.932-933.

evidence was, however, not corroborated by VG-013 who, quite to the contrary, gave evidence that she did not tell Huso Kurspahić anything about the incident:

- 25 Q. Sometime after -- shortly after the fire did you speak to a
 1 policeman by the name of Huso Kurspahic about what happened?
 2 A. Huso Kurspahic found me in Medjedja when I got out of the
 3 hospital and he asked me after his family but I had no strength. I did
 4 not have the heart to tell him anything. I did not want to worry him. I
 5 thought he'd better hear from one else, not me.³⁹⁰

176. Furthermore, in his statement given to the OTP-ICTY in 2000,³⁹¹ Huso Kurspahić stated that he in fact heard of the Pionirska Street incident by phone from his relatives in Višegrad.³⁹² In this statement he never mentioned hearing about the incident from VG-013.

177. The Defence further contests the reliability of Huso Kurspahić's testimony given the fact that VG-013 herself repeatedly testified under oath before this Honorable Trial Chamber that she did not see Sredoje Lukić on the 14 June 1992.

178. Additionally, Huso Kurspahić claimed that his father told him in 1993 that Sredoje Lukić was one of the perpetrators of the Pionirska Street incident on 14 June 1992.³⁹³ Serious doubts are cast on this witness' testimony, since Huso Kurspahić's father, who knew Sredoje Lukić very well before the war, did not mention Sredoje Lukić in an interview about the Pionirska Street fire provided a month after the incident.

³⁹⁰ T.1067.

³⁹¹ P36.

³⁹² P36,page 3,para.2.

³⁹³ T.879.

179. In cross-examination, Huso Kurspahić extensively illustrated that his father was not only a neighbour but a close friend of Sredoje Lukić and his family before the war.³⁹⁴
180. In the *Vasiljević* case, the witness gave evidence that Sredoje Lukić had lunch with him in his father's house "a hundred times".³⁹⁵
181. It needs to be stressed that in the interview given by Huso Kurspahić's father to a television company as early as July 1992, Huso Kurspahić's father never mentioned Sredoje Lukić as one of the perpetrators:

"Journalist: Did you recognize somebody?
 HK: No, I did not. I knew them like from seeing before. That were that youngsters, when they were searching us. That evening, the same once arrived...
 Journalist: ... the ones who searched you ...
 HK: As I saw the one who told me: "Go, grandpa, go!" was the same one who searched me."³⁹⁶

182. [REDACTED]³⁹⁷ [REDACTED]. Upon being shown an excerpt of the video of the said interview, Huso Kurspahić confirmed that it is his father in the video³⁹⁸ and that it is absolutely the videotaped interview given by his father.³⁹⁹
183. In this interview, Huso Kurspahić's father, the victim, described the arrival of "Mitar" and his conversation with Mujo Halilović during the afternoon of that day.⁴⁰⁰ Furthermore, when giving his account of the Pionirska Street incident and the events following the incident he named all people whom he saw and had

³⁹⁴ T.914-915.

³⁹⁵ P37,T.805.

³⁹⁶ P40 and P41,pp.8,9.

³⁹⁷ T.875-876,878, T.918-919.

³⁹⁸ P37,T.796,798.

³⁹⁹ P37,T.797.

⁴⁰⁰ P 40;P41,p.4.

contact with.⁴⁰¹ This clearly demonstrates his capability to recognize and distinguish persons.

184. The Defence respectfully draws the Chamber's attention to the fact that this interview constitutes the earliest evidence of an eyewitness of the Pionirska Street incident admitted in this case. Since Huso Kurspahić's father provided this interview only 24 days after the Pionirska Street incident and since he knew Sredoje Lukić very well, the father would have mentioned Sredoje Lukić's name if he had recognized Sredoje Lukić among the group of perpetrators.

185. Huso Kurspahić was not able to provide any reasonable explanation for this remarkable discrepancy between his father's statements in the interview on the one hand and the information allegedly provided to him by his father in their conversation back in 1993 on the other hand.⁴⁰² Hence, Huso Kurspahić's evidence on Sredoje Lukić's alleged participation in the Pionirska Street incident is not reliable.

186. The Defence of Sredoje Lukić recalls that Huso Kurspahić himself and Sredoje Lukić have been very close friends before the war. Huso Kurspahić called Sredoje Lukić "Amidžić", which, as he explained, in the Arabic language means "Brother's son".⁴⁰³ Huso Kurspahić freed Sredoje Lukić thereby saving his life on 14 April 1992, after Sredoje Lukić had been arrested by Muslim Forces at the power plant in Užice.⁴⁰⁴ Huso Kurspahić himself agreed in cross-examination that when having in mind the strong relationship between Sredoje Lukić and himself it is not logical that Sredoje Lukić would kill his family members.⁴⁰⁵

187. Questioned about his reaction when he first heard about Sredoje Lukić's alleged participation in the Pionirska Street fire, Huso Kurspahić noted the following:

⁴⁰¹ P 40; P41, pp. 1, 2, 7, 8.

⁴⁰² T.903.

⁴⁰³ T.922.

⁴⁰⁴ T.923.

⁴⁰⁵ T.923.

- 3 JUDGE ROBINSON: And what was your first reaction when you heard
 4 about Sredoje's involvement in those crimes?
 5 A. It was hard to believe but I did believe and it actually
 6 happened.
 7 JUDGE ROBINSON: But why did you believe it, considering that you
 8 had been on friendly terms with him?
 9 A. I believed the witness who told me about that, because she had no
 10 reason to tell me something that was not true. No person would tell you
 11 a story that didn't happen.
 12 JUDGE ROBINSON: Well, I'm not sure about that.⁴⁰⁶

The Defence holds the view that it is not plausible that Sredoje Lukić would ever kill members of the family of this very close friend and colleague who had saved his life two months prior to the Pionirska Street incident.

188. In contrast to Huso Kurspahić, who is merely a hearsay witness, Huso Kurspahić's father was an eyewitness to the Pionirska Street incident. Given that the real eyewitness is in fact Huso Kurspahić's father, the Defence wishes to underline the exceptional importance of the interview of Huso Kurspahić's father given just four weeks after the incident.⁴⁰⁷ This constitutes the first evidence given after the incident and was provided by a person who knew Sredoje Lukić better than any of the other people among the victims and eyewitnesses. Considering that Huso Kurspahić's father was both a survivor of the Pionirska incident and had a long standing acquaintance with Sredoje Lukić it is highly significant that he, at no time, named Sredoje Lukić as one of the perpetrators.⁴⁰⁸

189. For the above reasons, the Defence of Sredoje Lukić respectfully requests the Trial Chamber to dismiss the evidence of Huso Kurspahić as unreliable and not

⁴⁰⁶ T.924.

⁴⁰⁷ P40 and P41.

⁴⁰⁸ P40 and P41, pp.8,9.

credible concerning Sredoje Lukić and to duly take into account the great importance of the interview of Huso Kurspahić's father.

4.2.1.2 Evidence presented by the Defence

190. [REDACTED]⁴⁰⁹ and in full compliance with the deadline established in the Work Plan by Pre-Trial Judge Thelin⁴¹⁰ and the deadlines set out in subsequent orders regarding extensions of the deadline.⁴¹¹ The Defence delivered substantial witness statements which enabled the Prosecution to prepare investigations concerning the alibi witnesses and to prepare interviews with these Defence witnesses. In contrast to the vast majority of the Prosecution witnesses (only VG-011 and VG-059 agreed to give an interview to the Defence of Sredoje Lukić, although the latter was not called as a Prosecution witness), all alibi witnesses of Sredoje Lukić have been fully cooperative with the Prosecution and the Tribunal and its organs. The Prosecution conducted in total three interviews with three alibi witnesses, namely Zorka Lukić, Veroljub Živković and Milojko Popadić. The fourth Defence witness, Mr. Branimir Bugarski, was unable to attend the OTP interview scheduled for 5 June 2008 due to his poor health condition at the time.⁴¹² [REDACTED].⁴¹³ The Defence of Sredoje Lukić limited its examination in chief to a minimum. The Defence recalls that the Prosecution did not present any specific rebuttal witness with regard to the alibi defence offered by the Defence of Sredoje Lukić.

⁴⁰⁹ *Prosecutor v. Milan Lukić and Sredoje Lukić*, "Defence Notice under Rule 67(A)(i)(a) and Request for Extension of Time", filed confidentially on 14 November 2007; "Sredoje Lukić's Defence Notice under Rule 67(A)(i)(a) and Request for Extension of Time", filed confidentially on 10 December 2007; "Sredoje Lukić's Additional Defence Notice under Rule 67(A)(i)(a)", filed confidentially on 8 January 2008; "Sredoje Lukić's Clarification of Defence Notices under Rule 67(A)(i)(a)", filed confidentially on 2 June 2008.

⁴¹⁰ *Prosecutor v. Milan Lukić and Sredoje Lukić*, Status Conference on 2 September 2007, T.124.

⁴¹¹ *Prosecutor v. Milan Lukić and Sredoje Lukić*, "Decision on Defence Motion for Extension of Time under Rule 67(A)(i)(a)", 20 November 2007; "Decision on Lukić's Defence Motion for Extension of Time under Rule 67(A)(i)", 14 December 2007; "Decision on Prosecution's Motion for an Order Requiring the Accused Lukić to Clarify Alibi Notice Served under Rule 67(A)(i)(a)", 15 May 2008.

⁴¹² T.3671-3672.

⁴¹³ Transcript of OTP interview with Witness Zorka Lukić tendered as 2D44; Transcript of OTP interview with Witness Veroljub Živković tendered as 2D53 and 2D54. The OTP interview with Milojko Popadić was not tendered into evidence since the Defence dropped this witness from its witness list due to Milojko Popadić's serious health problems prior to his scheduled testimony in The Hague, see T.3768-3769.

191. Once the war in Bosnia started, Sredoje Lukić brought his wife and children to Obrenovac in March 1992 where they initially stayed at the house of Milojko Popadić.⁴¹⁴ At the end of April 1992, Sredoje Lukić and his family then moved to one of Branimir Bugarski's houses in the village of Krtinska in Obrenovac where they stayed until the end of October 1992.⁴¹⁵
192. In 1992, the Serbian Christian Orthodox holiday of Holy Trinity was on Sunday 14 June.⁴¹⁶ This day is also the village feast day of the village of Obrenovac in Serbia.⁴¹⁷ Sredoje Lukić celebrated this holiday together with his family and friends at the house of Milojko Popadić in Obrenovac. In the evening, he went to the "Posavina" store in order to get some beer and take them to Mr. Popadić's house. Witness Veroljub Živković testified that he met Sredoje Lukić at the store in the evening of 14 June 1992 and Sredoje Lukić told him that he had come to celebrate the village feast day at Milojko Popadić's house.⁴¹⁸
193. At one point Sredoje Lukić and the store owner started arguing about a crate of beer bottles.⁴¹⁹ The shop-keeper would not give the beer bottles to him because he did not bring empty bottles in exchange.⁴²⁰ After this quarrel, Witness Živković continued to have a conversation with Sredoje Lukić for about two hours.⁴²¹ Later on, Milojko Popadić came to the store and after a while went back to his house together with Sredoje Lukić.⁴²² Witness Živković's testimony is corroborated by Witness Branimir Bugarski, who remembered being told about Sredoje Lukić's quarrel with the shop keeper of the "Posavina" store by Mr. Popadić during the evening of Holy Trinity in 1992 when Popadić and Sredoje Lukić shortly passed

⁴¹⁴ 2D41,para.3.T.3732.

⁴¹⁵ T.3732-3733;T.3622;2D47,para.5.

⁴¹⁶ 2D43;T.3613-3614.

⁴¹⁷ 2D42.T.3612-3613;3640;2D47,para.7.

⁴¹⁸ 2D41,para.5.

⁴¹⁹ 2D41,para.5.

⁴²⁰ 2D41,para.5.

⁴²¹ 2D41,para.5.

⁴²² 2D41,para.5.

by his house.⁴²³ Mr. Popadić then drove Sredoje Lukić back to the house, where he and his family were living at that time.⁴²⁴

194. Witness Živković testified that he and his friends recollected and discussed the dispute between Sredoje Lukić and the shop owner of the Posavina store on Holy Trinity in 1992 while celebrating the Pentecost in the following two or three years since it was a memorable incident.⁴²⁵ He testified that he was able to remember this particular Holy Trinity in June 1992 because it was the first Holy Trinity after the breakout of the war in Bosnia.⁴²⁶ Witness Bugarski remembers the Holy Trinity in 1992 because he and his family were in mourning at that time; his brother had died the previous year in November and the son of his wife's brother had died in March 1992.⁴²⁷
195. The Prosecution's attempt to affect the credibility of witness Živković by confronting him in cross-examination with criminal judgements,⁴²⁸ a List of alleged crimes⁴²⁹ and a List of Misdemeanours procedure⁴³⁰ failed, as those entirely irrelevant issues do not have any bearing on the credibility of this witness' testimony in the present case.
196. In relation to the List of alleged crimes and the List of Misdemeanours procedures against Mr. Živković, it is evident from both documents that it concerns mainly judgements of acquittal, whereas the remaining instances of convictions involve traffic offences, indeed none of which can be considered as severe acts.
197. With regard to the judgements, the Defence wishes to underline that the conviction of Mr. Živković contained in those judgements is irrelevant for the

⁴²³ T.3740;2D47,para.7.

⁴²⁴ T.3741.

⁴²⁵ T.3656-3657.

⁴²⁶ T.3654-3655.

⁴²⁷ T.3738-3739.

⁴²⁸ P199(First Instance Judgement of the Obrenovac Municipal Court),P201(Second Instance Judgement of the District Court in Belgrade).

⁴²⁹ P205.

⁴³⁰ P202.

purpose of the present proceedings, as he was convicted for violent behaviour and not for false testimony, fraud or other comparable, potentially relevant crimes.⁴³¹ Moreover, his criminal record has already been deleted and may not be used against him.⁴³²

198. In light of all the foregoing, the Defence submits that the only logical conclusion that can be drawn from these witnesses' testimonies and the exhibits admitted in the proceedings, is that the Accused Sredoje Lukić celebrated the orthodox holiday of Holy Trinity on 14 June 1992 in the village of Krtinska in Obrenovac. Witnesses Živković and Bugarski testified that they both saw Sredoje Lukić in Krtinska village in the evening of the day of the Holy Trinity in 1992 which was 14 June 1992.⁴³³ Their testimonies, characterized by accuracy, consistency and credibility, unambiguously confirm the alibi offered by the Accused Sredoje Lukić and prove that Sredoje Lukić was nowhere near Višegrad at the time of the incident.

4.2.1.3 Conclusion and Final Remarks

4.2.1.3.1 Sredoje Lukić Was Not Identified at the Pionirska Street Incident

199. It is respectfully submitted that Sredoje Lukić was not identified as one of the perpetrators of the Pionirska Street fire on 14 June 1992 by any of the eight Prosecution witnesses beyond reasonable doubt. Indeed, rather than strengthening an identification of the man purported to be Sredoje Lukić, the combined effect of the evidence serves to highlight the extent of uncertainties and inconsistencies prevalent in the body of evidence relevant to this issue. The majority of the witnesses' physical encounters with "Sredoje Lukić", from which the alleged identifications have been made, were limited in number and short in duration.

⁴³¹ P199,P200,P201.

⁴³² 2D49.

⁴³³ 2D43.

200. It is significant that the three witnesses who claim to have known Sredoje Lukić before the Pionirska Street incident, either did not see him themselves but rather heard about Sredoje Lukić's presence from other people whose identification or recognition of Sredoje Lukić has not been proven by the Prosecution (VG-013 from Edhem Kurspahić; Huso Kurspahić from VG-013 and his own father); or indicated that he was wearing a stocking over his face (VG-115), a detail that was not confirmed by any other evidence. Two witnesses allegedly present in the Memić house in the afternoon of 14 June 1992, never mentioned Sredoje Lukić as one of the perpetrators (VG-078 and VG-101). Two other witnesses who did not know Sredoje Lukić prior to the incident testified that they either did not see or did not hear Sredoje Lukić when he allegedly introduced himself (VG-018 and VG-084). Finally, the testimony of Witness VG-038 who was only thirteen and a half years old at that time and claimed to have seen "Sredoje Lukić" at the Memić and Omeragić houses, stands in stark contradiction to the cross examination and his previous testimony in the *Vasiljević* case where he testified under oath that he did not identify any of the perpetrators of the Pionirska Street fire.
201. Lastly, the Trial Chamber should take into due consideration the fact that Prosecution Witnesses Ferid Spahić, VG-133, VG-089 and VG-136, all of whom testified about particular events in Višegrad on 14 June 1992 other than the Pionirska Street fire, did not see Sredoje Lukić on that day.
202. Witness Ferid Spahić who knew Sredoje Lukić well,⁴³⁴ has never indicated that he saw or met Sredoje Lukić on 14 June 1992 in any of his four previous witness statements,⁴³⁵ [REDACTED]⁴³⁶ [REDACTED].
203. [REDACTED]⁴³⁷ [REDACTED].

⁴³⁴ T.569.

⁴³⁵ P20;P21;1D6;1D7.

⁴³⁶ P14;P15;P19.

⁴³⁷ P161.

204. [REDACTED]⁴³⁸ [REDACTED].⁴³⁹ A very similar description of the alleged perpetrators of the Pionirska street incident was provided by witness VG-101.⁴⁴⁰ This description of the man with black hair and a black moustache does not match with the physical appearance of Sredoje Lukić. The video bearing exhibit number P203 which was recorded just after Sredoje Lukić was captured clearly demonstrates this.

205. Furthermore, witness VG-136 testified about the event in the village of Dubovik on 14 June 1992, stating that Serb soldiers came to this village, told people to leave their houses and go down the main road where they were to wait for busses which were organized to drive them in a convoy to Olovo and Kladanj.⁴⁴¹ VG-136 named the men whom she recognized involved in this event.⁴⁴² She further named Milan Lukić as well as other soldiers whom she saw on the main square in 'Višegrad' when the bus arrived there.⁴⁴³ Nevertheless, this witness also never mentioned seeing Sredoje Lukić anywhere in Višegrad on 14 June 1992.

4.2.1.3.2 Sredoje Lukić's Alibi

206. Apart from submitting that Sredoje Lukić was not identified as one of the perpetrators of the Pionirska Street incident, the Defence submits that Sredoje Lukić could not have committed the crimes charged in the Second Amended Indictment because he was not present in Višegrad on 14 June 1992. Instead, he was celebrating the Serbian Christian Orthodox holiday of Holy Trinity in the village of Krtinska in Obrenovac with his family and friends.

207. Both alibi witnesses for the Pionirska Street incident, Witnesses Veroljub Živković and Branimir Bugarski, provided consistent and credible accounts of

⁴³⁸ 1D48,p.3;T.1769.

⁴³⁹ T.1756;1D47,p.6;1D48,p.3.

⁴⁴⁰ T.1432-1433.

⁴⁴¹ T.6797-6798.

⁴⁴² T.6798.

⁴⁴³ T.6801-6804.

Sredoje Lukić's presence in Krtinska, Obrenovac on the Holy Trinity in 1992, i.e. on 14 June 1992.⁴⁴⁴ Witness Živković and Witness Bugarski who recalled Sredoje Lukić being involved in an altercation with the shop owner of the Posavina store in Obrenovac on the evening of 14 June 1992 both provided credible reasons for their ability to remember this particular Holy Trinity in 1992, namely because it was the first Holy Trinity after the breakout of the war and Witness Burgarski's family was in mourning because of the death of two close family members a few months before.

208. For the reasons detailed above and elsewhere in this Final Brief, the Defence submits that the Prosecution has failed to prove its case against Sredoje Lukić beyond reasonable doubt in relation to Counts 8-12. It is accordingly submitted that not-guilty verdicts should be entered in relation to these counts alleged against the Accused, Sredoje Lukić, in the Second Amended Indictment.

4.2.2 House Burning in Bikavac (Counts 13-17)

209. Sredoje Lukić is further alleged to have committed and aided and abetted in the commission of the crimes of extermination, murder, inhumane acts and cruel treatment of approximately 70 civilians in a house burning in Bikavac on or about 27 June 1992. Some of the names of the killed individuals are detailed in Annex B to the Second Amended Indictment.

210. The Trial Chamber must determine whether the Prosecution proved beyond reasonable doubt the following charges:

- (a) COUNT 13: Extermination, a Crime against Humanity, punishable under Articles 5(b) and 7(1) of the Statute of the Tribunal;

⁴⁴⁴ 2D43.

- (b) COUNT 14: Murder, a Crime against Humanity, punishable under Articles 5(a) and 7(1) of the Statute of the Tribunal;
- (c) COUNT 15: Murder, a Violation of the Laws or Customs of War, as recognised by Common Article 3(1) (a) of the Geneva Conventions of 1949, punishable under Articles 3 and 7(1) of the Statute of the Tribunal;
- (d) COUNT 16: Inhumane acts, a Crime against Humanity, punishable under Articles 5(i) and 7(1) of the Statute of the Tribunal;
- (e) COUNT 17: Cruel treatment, a Violation of the Laws or Customs of War, as recognised by Common Article 3(1) (a) of the Geneva Conventions of 1949, punishable under Articles 3 and 7(1) of the Statute of the Tribunal.

211. In support of these allegations the Prosecution has produced evidence provided by the following witnesses:

- (a) Zehra Turjačanin (25/09/2008, 04/11/2008 – 05/11/2008);
(alleged eyewitness and victim)
- (b) VG-115 (27/08/2008 – 29/08/2008); (alleged eyewitness)
- (c) VG-058 (11/09/2008); (alleged eyewitness)
- (d) VG-035 (15/09/2008); (hearsay)
- (e) VG-119 (01/10/2008 – 02/10/2008); (hearsay)
- (f) Huso Kurspahić (01/09/2008); (hearsay)

212. Some of the witnesses identified above purported to have identified Sredoje Lukić as one of the perpetrators of the house burning in Bikavac on or about 27 June 1992. No evidence alleging Sredoje Lukić's Article 7(1) responsibility for the crimes alleged in Counts 8-12 of the Second Amended Indictment comes from any other source. It is submitted that none of these witnesses can be safely relied upon to find Sredoje Lukić guilty under Article 7(1) of the Statute.

213. The Defence submits that on 27 June 1992 Sredoje Lukić was present in Obrenovac and Belgrade and travelled back from Belgrade to Višegrad in the late evening hours. In the morning of 27 June 1992, Sredoje Lukić stayed at one of the houses of Witness Branimir Bugarski in Obrenovac. Later on, Sredoje Lukić together with his wife and his two children travelled to Belgrade, where they visited his brother and his sister in law, Witness Zorka Lukić, and their newborn child at his brother's apartment. In the afternoon of 27 June 1992 at around 4pm, Sredoje Lukić and his family drove back to Obrenovac, where he met with Witness Bugarski in the late afternoon. Sredoje Lukić was at no time present in Bikavac on 27 June 1992.

214. In support of its position, the Defence for the Accused Sredoje Lukić has produced the following witnesses:

- (a) Zorka Lukić (01/12/2008); (lives in Belgrade and is married to Sredoje Lukić's brother, Slavko Lukić. Sredoje Lukić and his family visited her, her husband and their newborn child in Belgrade in the afternoon of 27 June 1992);
- (b) Branimir Bugarski (02/12/2008); (lived in Obrenovac all his life; has known Sredoje Lukić, since the early 1980's. Sredoje Lukić stayed at one of his houses in Obrenovac in the morning of 27 June 1992; he met Sredoje Lukić in Obrenovac in the late afternoon of 27 June 1992).

215. A review of the entirety of the evidence presented by the Prosecution as it relates to the criminal liability of Sredoje Lukić fails to prove his guilt beyond reasonable doubt of the crimes charged against him in the Second Amended Indictment. He was not present in Bikavac on the day of the house burning. Therefore, the Trial Chamber must acquit him of Counts 13-17.

4.2.2.1 Evidence presented during the Prosecution case

4.2.2.1.1 Witness Zehra Turjačanin

4.2.2.1.1.1 Zehra Turjačanin Allegations

216. Zehra Turjačanin testified that on 27 June 1992, she spent the day at home together with several family members and neighbours.⁴⁴⁵ It is alleged that in the evening, several armed soldiers came to her house and told the people inside to come outside and that they would set up a convoy to take them to Bajina Basta.⁴⁴⁶ The witness claimed that among the soldiers was Milan Lukić and his cousin or uncle about 50 years of age whose last name is also Lukić who used to be a police officer.⁴⁴⁷ The Defence recalls that this witness made such claims for the first time 16 years after the incident, despite having given numerous statements and interviews in the meantime.

217. It is Zehra Turjačanin's testimony that she and the other people in the house were escorted by the men to the house of Meho Aljić.⁴⁴⁸ When they entered the house, there were already a number of people, mainly mothers and children and elderly persons, inside the house.⁴⁴⁹ At some point, the soldiers allegedly threw rocks at the house in order to break the windows, then threw in some grenades and shot at the people inside the house, after which they set the house on fire.⁴⁵⁰

218. When Zehra Turjačanin tried to escape through the door she realised that there was a metal garage door leaning against and blocking the door.⁴⁵¹ She, however, managed to slip through an opening of approximately 65 centimetres and escape

⁴⁴⁵ T.2301- 2305.

⁴⁴⁶ T.2308-2311.

⁴⁴⁷ T.2309-2310.

⁴⁴⁸ T.2311.

⁴⁴⁹ T.2311,T.2314.

⁴⁵⁰ T.2315.

⁴⁵¹ T.2316.

the fire.⁴⁵² She burned her hands when touching the doors because they were burning and hot.⁴⁵³ The witness claimed that she saw the men who had caused the fire lying on the grass about 100 metres away.⁴⁵⁴

219. After her escape, Zehra Turjačanin first went to Megdan, but later returned to Bikavac. That same night she went to four separate houses to warn people to leave.⁴⁵⁵ The fourth house where she then stayed for eleven days was the house of the family Salic.⁴⁵⁶ Later on, a soldier of the army warned Zehra Turjačanin that she should leave the area, because Milan Lukić knew where she was staying and would come and try to kill her.⁴⁵⁷ Accordingly, Zehra Turjačanin went to Okruglo, where she stayed for four days and then went on foot to Medjedja.⁴⁵⁸ In Medjedja she met Witness VG-032, her best friend's husband, who treated her wounds.⁴⁵⁹

4.2.2.1.1.2 Zehra Turjačanin Credibility and Reliance

220. At the outset it needs to be stressed that Zehra Turjačanin, the only known survivor of the Bikavac incident, never implicated Sredoje Lukić in the crimes committed during this incident on 27 June 1992. Neither in examination-in-chief, nor in cross-examination, nor in any of her previous witness statements or media interviews did she ever claim that Sredoje Lukić was one of the perpetrators of those crimes.

221. In direct examination, the witness testified that on 27 June 1992 she saw Milan Lukić and a relative of his, who used to be a police officer in Višegrad, in front of

⁴⁵² T.2317.

⁴⁵³ T.2334.

⁴⁵⁴ T.2317.

⁴⁵⁵ T.2332.

⁴⁵⁶ T.2333, T.2336.

⁴⁵⁷ T.2336.

⁴⁵⁸ T.2337.

⁴⁵⁹ T.2339.

her house. She was, however, not able to recall the first name of this relative and provided a description that does not fit the Accused Sredoje Lukić:

17 Q. You've mentioned soldiers. Can I ask you to describe with as
18 much specificity as you're able what you recall about the soldiers that
19 you saw?

20 A. One of the soldiers was Milan Lukic himself, and I remember a
21 second man, his cousin, and his uncle whose name is also Lukic.

22 Q. Do you recall this person -- or did you know the second person
23 you're referring to prior to this day?

24 A. Yes. I knew him. He used to be a police officer in the town.

25 THE INTERPRETER: Interpreter's correction: It was his cousin or
1 his uncle.

2 MR. GROOME:

3 Q. Are you able to recall the first name of that person, or did you
4 know the first name of that person?

5 A. No. I no longer can recall.

6 Q. Can I ask you to describe that person's physical appearance?

7 A. Yes.

8 Q. Please do so.

9 A. Yes. He was fairly strong, fairly tall, about 50 years of age.⁴⁶⁰

222. The Defence emphasises that since Sredoje Lukić was born in 1961, he was only thirty years old in 1992 and not in his fifties; he is in fact about the same age as the witness. As Zehra Turjačanin's description does not contain any other specific identifying feature, the Defence respectfully submits that this witness did not identify Sredoje Lukić as being present at the crime scene on 27 June 1992.

223. The Defence further recalls the following testimony of Zehra Turjačanin:

5 Q. After you got outside of the house did you see anyone?

6 A. Yes, I did. I saw the men who had caused the fire.

7 Q. Where precisely were they?

8 A. About 100 metres away. They were lying on the grass.

⁴⁶⁰ T.2309-2310.

9 Q. Could you see what they were doing?

10 A. Yes. They were lying on the grass.

11 Q. Did they see you?

12 A. Yes, they saw me.⁴⁶¹

The witness thereby reiterated that she had seen the perpetrators who had caused the fire and yet she did not identify Sredoje Lukić among the group of men.

224. After the Bikavac incident, Zehra Turjačanin provided several interviews and statements in which she described and/or named the alleged perpetrators. The Court should attach due weight to the fact that Zehra Turjačanin did not mention Sredoje Lukić a single time in any of these statements or interviews, as will be further demonstrated below.

225. [REDACTED].⁴⁶² Given the close temporal proximity to the incident, the witness had a very fresh memory of the events during this first interview. In this interview Zehra Turjačanin did not mention Sredoje Lukić in any way.

226. During her stay in Medjedja, Zehra Turjačanin gave another video interview during which she did not mention any participation of Sredoje Lukić in the Bikavac incident either,⁴⁶³ even though she had provided a detailed description of the perpetrators:

Journalist: Did you recognize any other criminals at the time?

ZT: They were all mere whipper-snappers, some of them looked like they were not merely drunk, but drugged as well. That's how terrible their behavior was. There was an older man. I think I would recognize all those people, but I don't know their names.⁴⁶⁴

⁴⁶¹ T.2317.

⁴⁶² P66.

⁴⁶³ 2D37.

⁴⁶⁴ 2D37,p.3,para 2.

- The only reasonable conclusion that can be drawn is that none of the abovementioned descriptions of the alleged perpetrators matches the physical appearance of Sredoje Lukić at the time.
227. On 30 July 1992, Zehra Turjačanin provided a witness statement in the presence of other witnesses, one of them being VG-032.⁴⁶⁵ Yet again, Sredoje Lukić was not mentioned in that statement.
228. Shortly after she left Medjedja, another interview was conducted with Zehra Turjačanin in Tuzla.⁴⁶⁶ In this interview she described the course of the incident in great detail and named the perpetrators whom she had allegedly identified at the time. The fact that throughout this interview, Zehra Turjačanin did not mention Sredoje Lukić as one of the perpetrators is therefore of paramount importance for the Chamber's assessment of Sredoje Lukić's alleged participation in the Bikavac incident.
229. [REDACTED]⁴⁶⁷ [REDACTED]. In that interview, Zehra Turjačanin named numerous alleged perpetrators of the incident but yet again, she did not mention Sredoje Lukić as one of the perpetrators.
230. Additionally, in the interview given to the daily newspaper "Oslobodjenje" from Sarajevo,⁴⁶⁸ Zehra Turjačanin again did not mention or describe Sredoje Lukić as one of the perpetrators.
231. In sum, Zehra Turjačanin never implicated Sredoje Lukić in the Bikavac incident. This is of great importance given that she repeatedly identified several individuals whom she claimed to have been responsible for the Bikavac fire.

⁴⁶⁵ 2D36.

⁴⁶⁶ P139.

⁴⁶⁷ 2D38.

⁴⁶⁸ 2D39.

232. As will be shown below, there also exists strong corroborating evidence supporting the above conclusion that Zehra Turjačanin has never ever implicated Sredoje Lukić in the Bikavac incident.

233. First, the Defence refers to two OTP-ICTY witness statements provided by Zehra Turjačanin's brother, VG-088, in 2001⁴⁶⁹ and 2008.⁴⁷⁰

234. As Zehra Turjačanin explained during her testimony on 4 November 2008, she told her brother, VG-088, about what had happened to her only when they came to Medjedja.⁴⁷¹

235. According to the statement of VG-088 dated 25 January 2001,⁴⁷² which was tendered by the Milan Lukić Defence through Zehra Turjačanin during her cross-examination on 4 November 2008, VG-088 met his sister in Medjedja shortly after the Bikavac fire, where they both stayed for one and a half months before jointly leaving for Zenica.⁴⁷³ The only reference to Sredoje Lukić in this 2001 statement is the following:

“I knew Sredoje LUKIC, he was a policeman. I never saw him during the war.”

236. Additionally, in his OTP-ICTY witness statement provided on 20 August 2008, in which he recalled his sister's account of the Bikavac fire, VG-088 did not state that Sredoje Lukić had been alleged by his sister to have been one of the perpetrators.⁴⁷⁴

⁴⁶⁹ 1D86.

⁴⁷⁰ 1D84.

⁴⁷¹ T.3336.

⁴⁷² 1D86.

⁴⁷³ 1D86,p.3.

⁴⁷⁴ 1D84,para.9.

237. In fact, nowhere in these two statements did VG-088 indicate that Zehra Turjačanin ever implicated Sredoje Lukić in the Bikavac incident in any of their conversations.

238. Secondly, the Defence stresses that VG-032, who according to his own testimony had been a very good and close friend of Zehra Turjačanin,⁴⁷⁵ never indicated that Zehra Turjačanin had ever incriminated Sredoje Lukić as one of the perpetrators of the Bikavac incident. [REDACTED]⁴⁷⁶ and when she provided a written statement on 30 July 1992.⁴⁷⁷ Questioned about Sredoje Lukić in examination in chief, VG-032 testified the following:

18 Q. VG-32, you say that you also recognise the other person in the
19 another person in the courtroom. Could you tell us the full name of the
20 other person that you say you recognise?
21 A. That's Mr. Sredoje Lukic.
22 Q. And where do you recognise him from?
23 A. I knew him. He worked as a police officer in Visegrad before the
24 war. I really never heard much of him, and I never mentioned him in any
25 of my statements. You just asked me whether I knew him, and if I said
1 no, I don't know this man, it would be a lie.⁴⁷⁸

239. Considering that VG-088 and VG-032 were both very close to Zehra Turjačanin and each of them talked with her about the Bikavac fire shortly after the incident, and the fact that both of them knew Sredoje Lukić very well, it can reasonably be expected that Zehra Turjačanin would have mentioned Sredoje Lukić's name or his description in relation to his alleged participation in the Bikavac fire in any of their conversations if she had identified him as one of the perpetrators.

240. Despite the fact that Zehra Turjačanin did not mention or describe Sredoje Lukić once in any of her evidence, the Defence of Sredoje Lukić opted to challenge her

⁴⁷⁵ T.1186.

⁴⁷⁶ P66.

⁴⁷⁷ 2D36.

⁴⁷⁸ T.1230-1231.

veracity through cross examination. When enquiring about the intention of the Defence of Sredoje Lukić to cross examine this witness, the Honourable Presiding Judge made the following remark:

19 JUDGE ROBINSON: Mr. Alarid, may I interrupt you. Mr. Cepic, may
 20 I ask how long you will be? I've been reviewing the examination-in-chief
 21 of the witness, and I haven't observed much in it that might be of
 22 interest to you in relation to your client.⁴⁷⁹

241. It is very telling that even in this cross examination, during which Zehra Turjačanin once again had the opportunity to implicate Sredoje Lukić in the crimes committed on 27 June 1992, she did not inculcate him in any of those crimes. The same holds true for Defence Exhibits 1D83, 2D36, 2D37, 2D38 and 2D39. Considering that the witness was able to provide a detailed and indeed very credible account of the events on 27 June 1992, serious doubts about Sredoje Lukić's participation in this incident have been raised by her evidence.

242. In the light of her severe suffering in consequence of the incident on 27 June 1992, the grievous loss of many family members, the obvious lack of a hostile attitude towards Sredoje Lukić and the fact that she is the sole direct eyewitness and survivor of the Bikavac incident, due weight should be attached to Zehra Turjačanin's *viva voce* testimony and other evidence given by her. It is submitted that those are of utmost importance for the Trial Chamber's assessment of the credibility and reliability of the Prosecution Witnesses VG-115, VG-058, VG-119, VG-035 and Witness Huso Kurspahić discussed below. Zehra Turjačanin's evidence will be equally important for the Chamber's determination of whether the Prosecution has proved Sredoje Lukić's participation in the crimes allegedly committed on 27 June 1992 beyond reasonable doubt.

⁴⁷⁹ T.3330.

4.2.2.1.2 Witness VG-115

4.2.2.1.2.1 VG-115 Allegations

243. VG-115 alleges that one early evening in late June 1992 when it was still daylight, she witnessed a fire in the house of Meho Aljić in Bikavac.⁴⁸⁰ [REDACTED].⁴⁸¹ Milan Lukić was shouting to make the people enter the house faster.⁴⁸² Sredoje Lukić who was wearing a balaclava also shouted at the people and pushed them around.⁴⁸³ VG-115 claims that the last people that she saw entering the house were four female members of the Turjačanin family, including Djulka and Zehra Turjačanin.⁴⁸⁴

244. [REDACTED].⁴⁸⁵ VG-115 allegedly witnessed this incident while she was standing in the orchard belonging to Medo Mulahasic.⁴⁸⁶ [REDACTED].⁴⁸⁷

4.2.2.1.2.2 VG-115 Credibility and Reliance

245. The Defence submits that VG-115 did not see Sredoje Lukić being present on the 27 June 1992 at the Bikavac incident. During the cross-examination, the Defence revealed that VG-115 did not identify Sredoje Lukić beyond reasonable doubt. To the contrary, doubt was cast on her reliability and credibility through cross-examination. For this reason, VG-115's testimony should not be relied upon by the Tribunal.

246. At the outset, the Defence reiterates that the Prosecution did not prove beyond reasonable doubt that VG-115 was in fact capable of recognizing or identifying Sredoje Lukić in Bikavac on 27 June 1992.⁴⁸⁸

⁴⁸⁰ T.698;T.776.

⁴⁸¹ T.699;T.701-702;T.739-740;T.744.

⁴⁸² T.716.

⁴⁸³ T.717.

⁴⁸⁴ T.703-705.

⁴⁸⁵ T.702;T.717;T.763.

⁴⁸⁶ T.705.

⁴⁸⁷ T.712;T.716-717;T.738.

247. Similar to her testimony regarding the Pionirska Street incident, with respect to the Bikavac incident, VG-115 again claimed that the man purported to be “Sredoje Lukić” “wore a balaclava not to be recognized”.⁴⁸⁹ In cross-examination, however, VG-115 did not provide any reasonable explanation as to how she was possibly capable of identifying the person purported to be Sredoje Lukić if the man was wearing a “balaclava” at the time.⁴⁹⁰ Additionally, it needs to be stressed that the fact that “Sredoje Lukić” wore some sort of stocking on his head during the Bikavac incident is not corroborated by any other witness or evidence in these proceedings. None of the other witnesses testified that one or more of the perpetrators wore anything over their head.
248. Another reason why her testimony should be deemed unreliable is the fact that it stands in strong contradiction to the testimony of the sole survivor of this incident, Zehra Turjačanin. As has been pointed out above, Witness Zehra Turjačanin testified that she saw the men who caused the fire during her escape but never claimed that Sredoje Lukić was among this particular group of perpetrators.
249. [REDACTED].⁴⁹¹ [REDACTED].⁴⁹² [REDACTED].⁴⁹³ [REDACTED].⁴⁹⁴ However, such testimony is contradicting the testimony of Zehra Turjačanin who claimed that the perpetrators were lying on the grass next to the house.⁴⁹⁵
250. Exhibit 2D2, on which Witness VG-115 marked in different colours the main street and the place where she was located during the incident, clearly demonstrates the discrepancy in her testimony. It is clearly visible from this exhibit that there are significant differences between the positions where this

⁴⁸⁸ See also paras. 152, 156 and 165 of this Brief.

⁴⁸⁹ T.717-718.

⁴⁹⁰ T.780-781.

⁴⁹¹ 1D18.

⁴⁹² 1D18,p.12.

⁴⁹³ 1D18,p.12.

⁴⁹⁴ T.702;T.705.

⁴⁹⁵ T.2317.

witness was allegedly standing, namely on the main road according to her statement and in the orchard near the house according to her testimony.

251. [REDACTED].⁴⁹⁶ [REDACTED].⁴⁹⁷

252. Throughout her oral testimonies and written statement, the witness has shown a strong biased attitude. This has been demonstrated by her refusal to give an interview to the Defence team of Sredoje Lukić in the pre-trial phase.⁴⁹⁸

253. The Defence finally reiterates that in the *Vasiljević* case the Trial Chamber did not regard VG-115 as a reliable and credible witness.⁴⁹⁹

254. For the above reasons, the Defence of Sredoje Lukić respectfully submits that the Trial Chamber dismiss the evidence of VG-115 as unreliable and not credible concerning Sredoje Lukić's participation in the Bikavac incident.

4.2.2.1.3 Witness VG-058

4.2.2.1.3.1 VG-058 Allegations

255. VG-058 testified that one evening she saw Milan Lukić, Sredoje Lukić, Mitar Vasiljević, Joviša Planojević and some others arrive in a red Passat and force a group of roughly 60 people to enter the house of Meho Aljić in Bikavac.⁵⁰⁰ Milan Lukić had a short rifle, which he was using to push people into the house.⁵⁰¹ It is alleged that Sredoje Lukić was also pushing people inside the house.⁵⁰² VG-058 heard some banging noise and then the door shut suddenly.⁵⁰³ According to VG-058's testimony the perpetrators used petrol and shot tracer bullets into the house

⁴⁹⁶ T.784.

⁴⁹⁷ T.784.

⁴⁹⁸ T.791.

⁴⁹⁹ T.793; *Vasiljević*, Trial Judgement, paras.89-90,159.

⁵⁰⁰ T.1597;T.1600.

⁵⁰¹ T.1598.

⁵⁰² T.1598.

⁵⁰³ T.1597.

to set it on fire.⁵⁰⁴ VG-058 allegedly saw Milan Lukić pushing two girls into a van and Milan Lukić, Sredoje Lukić, Mitar Vasiljević and Joviša Planojević getting into the car.⁵⁰⁵ They proceeded to leave by way of the street leading from Banpolje to the town.⁵⁰⁶ When VG-058 witnessed the incident, she claimed to have been standing in front of Meho Aljić's house, which is about five meters away.⁵⁰⁷ She further asserts that she stayed there until Zehra Turjačanin had passed and then set out in the direction of Seganje.⁵⁰⁸

4.2.2.1.3.2 VG-058 Credibility and Reliance

256. The Defence submits that VG-058 did not see Sredoje Lukić present at Meho Aljić's house on the 27 June 1992. In cross examination, the Defence revealed striking discrepancies and decisive inconsistencies in VG-058's testimony. Therefore, doubts were cast on this witness' reliability and credibility through cross-examination. Since VG-058 was not able to provide any sufficient explanation for these notable inconsistencies, VG-058's testimony is unreliable and as such should not be relied upon by the Tribunal.

257. In her testimony given before this Court, VG-058 claimed to have been an eyewitness of the Bikavac incident.⁵⁰⁹ However, the inconsistency between her oral testimony and other admitted evidence including her own prior statements and the testimony of and exhibits tendered through other witnesses raise serious doubts on the reliability of her testimony given before this Honorable Trial Chamber.

258. [REDACTED].⁵¹⁰ In her oral testimony, she further asserted that Sredoje Lukić

⁵⁰⁴ T.1597;T.1602.

⁵⁰⁵ T.1604-1605.

⁵⁰⁶ T.1604.

⁵⁰⁷ T.1600.

⁵⁰⁸ T.1607.

⁵⁰⁹ T.1597-1598.

⁵¹⁰ 1D40,p.1.

was a member of the White Eagles.⁵¹¹ These claims, however, evidently stand in contradiction to Exhibits P209 through P214 and evidence given by Prosecution⁵¹² and defence witnesses⁵¹³ proving that Sredoje Lukić was a full paid active member of the professional regular police during the relevant time of the incidents

259. [REDACTED],⁵¹⁴ [REDACTED],⁵¹⁵ [REDACTED],⁵¹⁶ [REDACTED]. It is highly unlikely and implausible that had the witness indeed witnessed the incident, she would have omitted to mention it in the 1992 and 2002 statements.

260. [REDACTED],⁵¹⁷ a claim that she later on repeated in her oral testimony on 11 September 2008.⁵¹⁸ VG-058 was, however, not able to describe any particular identifying features of the man purported to be Sredoje Lukić. She simply noted that he was dressed the same as Milan Lukić.⁵¹⁹ The Defence therefore respectfully submits that the Prosecution has not proved beyond reasonable doubts that this witness was able to recognise Sredoje Lukić among the group of perpetrators and that her testimony lacks reliability.

261. [REDACTED].⁵²⁰ [REDACTED],⁵²¹ [REDACTED]. This failed attempt of in-court identification raised further doubts on VG-058's alleged identification of Sredoje Lukić as one of the perpetrators of the Bikavac incident.

262. Moreover, VG-058 claimed that she lost two close relatives in the Bikavac

⁵¹¹ T.1588.

⁵¹² VG-064, VG-024, VG-133

⁵¹³ All three Sredoje Lukić Defence witnesses and Milan Lukić Defence witnesses MLD23, MLD24, MLD25.

⁵¹⁴ 1D40.

⁵¹⁵ 1D41.

⁵¹⁶ 1D42.

⁵¹⁷ 1D43, para.41.

⁵¹⁸ T.1597-1598.

⁵¹⁹ T.1598.

⁵²⁰ T.1581-1586.

⁵²¹ T.1582.

incident. [REDACTED].⁵²² [REDACTED].⁵²³ [REDACTED].⁵²⁴ It has to be noted, however, that these names are neither listed in Annex B of the Second Amended Indictment nor in the ICRC List of Missing Persons from Bosnia-Herzegovina,⁵²⁵ which raises doubts as to the credibility of the witness' evidence. [REDACTED].⁵²⁶

263. Furthermore, VG-058's testimony is not compatible with the testimony of Zehra Turjačanin.⁵²⁷ Nowhere in her testimony did Zehra Turjačanin indicate that she had seen VG-058 during the night of the incident. In contrast, VG-058 claimed to have seen the wounded Zehra Turjačanin after the incident, but she did not mention Zehra Turjačanin's activities in the neighbourhood after her escape.⁵²⁸

264. The Defence finally points to VG-058's unreliability on the grounds of her inability to identify the house of Meho Aljić on an aerial photo. The witness' respective marking ("MA") made in Prosecution Exhibit P99 does not reflect the accurate location of Meho Aljić's house at the time. Since the witness testified that she had been familiar with the area and claimed of having witnessed the Bikavac incident from a distance of five metres only,⁵²⁹ serious doubts are cast on VG-058's presence at the crime scene at the time of the Bikavac incident and on the reliability of her testimony as a whole.

265. For the above reasons, the Defence of Sredoje Lukić respectfully submits that the Trial Chamber dismiss the evidence of VG-058 as unreliable and not credible concerning Sredoje Lukić in regard to the Bikavac incident.

⁵²² T.1608.

⁵²³ T.1632-1633.

⁵²⁴ T.1633-1634

⁵²⁵ P119,P120.

⁵²⁶ T.1635.

⁵²⁷ T.2332.

⁵²⁸ T.1607.

⁵²⁹ T.1597

4.2.2.1.4 Witness VG-035

4.2.2.1.4.1 VG-035 Allegations

266. According to VG-035's testimony, at about 5am on 27 June 1992 someone banged at the door of her house.⁵³⁰ She claimed that when her mother-in-law opened the door, Milan Lukić and Sredoje Lukić and another person entered the house.⁵³¹ It is alleged that Milan Lukić pulled the bed covers off VG-035 and made derogatory remarks, while Sredoje Lukić was standing behind him.⁵³² After a while, they left the house.⁵³³

267. [REDACTED].⁵³⁴ [REDACTED].⁵³⁵

268. The witness further claimed that on the same day, around 4pm or 5pm, Milan Lukić returned to her house with a group of people, including Sredoje Lukić, all of which arrived in Behija Zukić's red car.⁵³⁶ She testified that Sredoje Lukić left the house before Milan Lukić who stayed to take away all VG-035's jewellery.⁵³⁷

269. According to VG-035, sometime after Milan Lukić had left, she heard loud shooting.⁵³⁸ At about 9pm, she looked through the bathroom window and saw a huge flame.⁵³⁹ At approximately 1 a.m. on 28 June 1992, Zehra Turjačanin banged on the door.⁵⁴⁰ When VG-035's mother-in-law opened the door, Zehra Turjačanin told them that Milan Lukić had set the people in Meho Aljić's house on fire, that her arms, hands, and hair were burned and that she did not succeed to

⁵³⁰ T.1660.

⁵³¹ T.1660-1661.

⁵³² T.1663-1664.

⁵³³ T.1664.

⁵³⁴ T.1664-1673.

⁵³⁵ T.1673.

⁵³⁶ T.1675, T.1677, T.1680.

⁵³⁷ T.1675.

⁵³⁸ T.1681.

⁵³⁹ T.1682.

⁵⁴⁰ T.1683.

save the life of her sister, who burned to death.⁵⁴¹ Before she left, Zehra Turjačanin told them to run away since they would also be set on fire.⁵⁴²

4.2.2.1.4.2 VG-035 Credibility and Reliance

270. The Defence submits that VG-035 did not see Sredoje Lukić at the crime scene in Bikavac on 27 June 1992. During cross-examination, the Defence revealed that in fact VG-035 did not identify Sredoje Lukić beyond reasonable doubt. To the contrary, doubt was cast on the witness' reliability and credibility through cross-examination. For these reasons, VG-035's testimony should not be relied upon by the Tribunal.

271. At the outset, it has to be noted that nothing in VG-035's testimony suggests that Zehra Turjačanin had incriminated Sredoje Lukić as one of the perpetrators of the Bikavac incident when Zehra Turjačanin informed VG-035 and the others present in the house in the early morning on 28 June 1992 about the fire in Meho Aljić's house.⁵⁴³

272. Serious doubts were cast on VG-035's ability to reliably recall the events of the Bikavac incident by her inability to mark the location of Meho Aljić's house in examination in chief. It has to be noted that the Prosecution expressly asked the witness to only mark the house if she is certain and not to mark the diagram if she is not able to clearly identify where the house is.⁵⁴⁴ The fact that VG-035 nonetheless marked a house different from the one of Meho Aljić,⁵⁴⁵ demonstrates the need for great caution to be exercised when evaluating VG-035's credibility and reliability.

⁵⁴¹ T.1683-1684;T.1706-1707.

⁵⁴² T.1684.

⁵⁴³ T.1683-1684.

⁵⁴⁴ T.1659.

⁵⁴⁵ P101,P102.See also Zehra Turjačanin's correct markings on the same aerial photograph on P133 and P134.

273. [REDACTED],⁵⁴⁶ [REDACTED],⁵⁴⁷ [REDACTED].⁵⁴⁸ [REDACTED]:⁵⁴⁹

[REDACTED]⁵⁵⁰

274. [REDACTED].⁵⁵¹

275. The Defence submits that as the identification of possible perpetrators of alleged crimes constitutes one of the investigators' main objectives when conducting witness interviews, it is very unlikely and indeed implausible that had the witness mentioned the name of Sredoje Lukić during the interview, the investigators would have forgotten to include the name in the witness statement. The Defence further stresses that the Prosecution did not present any evidence corroborating the witness' claim of still having been "in a state of shock" at the two-days interview in the year 1998 during which she failed to mention Sredoje Lukić as one of the alleged perpetrators.

276. [REDACTED],⁵⁵² testified before this Honorable Trial Chamber that she knew Sredoje Lukić as he used to to live in a rented apartment in her house.⁵⁵³ [REDACTED].⁵⁵⁴ CW2 described the same incidents as VG-035 that occurred on 27 June 1992. [REDACTED].⁵⁵⁵ With regard to the events in the evening of 27 June 1992, CW2 described that only one man came and took all the money and gold and did not let them leave the house. [REDACTED].⁵⁵⁶ [REDACTED]⁵⁵⁷ [REDACTED]. Testimony of CW2 further clearly demonstrates and rebuts VG-035's attempt to change her statement from 1998 through her testimony before the

⁵⁴⁶ T.1727-1728.

⁵⁴⁷ 1D44.

⁵⁴⁸ T.1725.

⁵⁴⁹ T.1727-1728.

⁵⁵⁰ T.1727.

⁵⁵¹ T.1729.

⁵⁵² P336, page 34; T.7085; P100.

⁵⁵³ CW2, 9 April 2009, 7079-7080.

⁵⁵⁴ P336, pages 32-34.

⁵⁵⁵ *Ibid.*

⁵⁵⁶ P336, pages 37-38.

⁵⁵⁷ 1D44.

Honorable Trial Chamber. CW2's testimony demonstrates the unreliability of VG-035's changed testimony and unambiguously shows that Sredoje Lukić did not participate in those crimes.

277. For the above reasons, the Defence of Sredoje Lukić respectfully submits that the Trial Chamber dismiss the evidence of VG-035 as unreliable and not credible concerning Sredoje Lukić.

4.2.2.1.5. Witness VG-119

4.2.2.1.5.1. VG-119 Allegations

278. VG-119 testified that together with her mother-in-law, her two sisters-in-law and other female family members, including Dzemila Ramović, she stayed at an abandoned house at the top of Bikavac for about ten days until 27 June 1992.⁵⁵⁸

279. On 27 June 1992, at about 8 p.m. in the evening, a group of armed Serbs including Milan Lukić and about five or six other Serbs entered the house.⁵⁵⁹ The armed Serbs inquired whether there were any women from Zupa and left the house after about 10 or 15 minutes.⁵⁶⁰ It is VG-119's testimony that she and her mother-in-law recognized Milan Lukić, and her mother-in-law and Baksa Ramović further recognized Mitar Vasiljević among the Serbs.⁵⁶¹ She claimed that just before 10pm, the same armed Serbs came back to the house and Milan Lukić pointed his finger at VG-119, VG-094 and Zumra Ramović telling them that they would be going with them that night.⁵⁶² VG-119 pretended to faint.⁵⁶³ Milan Lukić then told the women that he would come back and left the house together with the other Serbs.⁵⁶⁴

⁵⁵⁸ T.2402-2403.

⁵⁵⁹ T.2403.

⁵⁶⁰ T.2403-2404.

⁵⁶¹ T.2404.

⁵⁶² T.2405.

⁵⁶³ T.2405-2406.

⁵⁶⁴ T.2407.

280. According to VG-119, right after midnight, at about 2am, someone knocked on the door and when VG-119's mother-in-law opened the door, they saw Dzemila Ramović and Zehra Turjačanin whose upper body was badly burned.⁵⁶⁵ The witness claimed that Zehra Turjačanin told them that over 70 persons had been assembled in a house further down the road, which was set alight and that she had been able to save her life.⁵⁶⁶ Zehra Turjačanin further said that Milan Lukić was responsible for the burning of the people.⁵⁶⁷

281. VG-119 testified that she met Zehra Turjačanin again in Okrugla, and walked with her to Medjedja.⁵⁶⁸ She later visited Zehra Turjačanin who was staying at the medical station.⁵⁶⁹ In total, VG-119 allegedly spent about 20 days with Zehra Turjačanin.⁵⁷⁰ In Okrugla, VG-119 heard from the soldiers the account that Zehra Turjačanin had given them.⁵⁷¹ She listened in on an interview provided by Zehra Turjačanin to two journalists.⁵⁷²

4.2.2.1.5.2 VG-119 Credibility and Reliance

282. The Defence submits that VG-119 did not see Sredoje Lukić in Bikavac on 27 June 1992 and that she could not have heard Zehra Turjačanin mentioning Sredoje Lukić's name. During cross-examination, the Defence revealed that in fact VG-119 did not identify Sredoje Lukić beyond reasonable doubt. To the contrary, doubt was cast on her reliability and credibility through cross-examination. For this reason, VG-119 testimony should not be relied upon by the Tribunal.

⁵⁶⁵ T.2402-2408.

⁵⁶⁶ T.2408.

⁵⁶⁷ T.2408.

⁵⁶⁸ T.2414.

⁵⁶⁹ T.2457-2458.

⁵⁷⁰ T.2458.

⁵⁷¹ T.2458.

⁵⁷² T.2458, T.2477.

283. Firstly, it needs to be stressed that according to her own testimony, the witness did not know Sredoje Lukić before the Bikavac incident.⁵⁷³

284. VG-119 testified that Zehra Turjačanin, who after having escaped the fire had come to the house in which the witness was staying and told her that Milan Lukić was the one who had burned the people alive.⁵⁷⁴ It is also VG-119's testimony that soldiers who had carried Zehra Turjačanin through the woods informed her about having been told by Zehra Turjačanin that Milan Lukić and Mitar Vasiljević were the perpetrators of the Bikavac fire.⁵⁷⁵

285. In her oral testimony, VG-119 noted that she for the first time heard Zehra Turjačanin mention "Sredoje Lukić" during an interview conducted by two journalists a short time after the incident.⁵⁷⁶ In this context, the Defence respectfully draws the Trial Chamber's attention to the fact that during the Prosecution's re-examination, VG-119 admitted that she merely inferred from Zehra's description of "another man" that Zehra Turjačanin must have been referring to Sredoje Lukić:

12 Q. Can you answer that question? What else, if anything, did you
13 hear Zehra saying?
14 A. The description that I mentioned yesterday, the description of
15 those men. She was asked during her interview, and then she provided
16 that. She described Milan Lukic, Mitar Vasiljevic, the hat, the works.
17 And then she described another man who she said was shorter than
18 Milan Lukic, not black hair like Milan Lukic's, rather, brownish,
19 somewhat shorter. Not fat or anything, average really. That was the
20 description, and my inference was this must have been the same person,
21 Sredoje Lukic. That's what I said yesterday, the same thing.⁵⁷⁷

⁵⁷³ T.2497.

⁵⁷⁴ T.2408.

⁵⁷⁵ T.2416.

⁵⁷⁶ T.2417.

⁵⁷⁷ T.2497.

286. First of all it must be stressed that the description of the man, from which VG-119 allegedly inferred that it must have been Sredoje Lukić, does not match the description of the Accused. As is demonstrated by the still image taken of both accused in the courtroom,⁵⁷⁸ they are of the same height. Furthermore, the Defence submits that it is impossible for VG-119, who did not know Sredoje Lukić from before, to reliably infer solely from a brief description of a man, that this person is Sredoje Lukić. The only rational conclusion therefore is that VG-119 could not and did not identify Sredoje Lukić as a perpetrator of the alleged crimes.

287. In this context, the Defence reiterates that Zehra Turjačanin herself did not identify Sredoje Lukić as one of the alleged perpetrators of the Bikavac incident in her testimony. Zehra Turjačanin never mentioned him in any of her statements, interviews or testimony, and no evidence was presented by the Prosecution that Zehra Turjačanin identified Sredoje Lukić as one of the perpetrators of the Bikavac incident.

288. Furthermore, given VG-119 was not able to correctly mark the location of Meho Aljić's house in examination in chief, doubts are cast on her ability to remember the events of the Bikavac incident. [REDACTED].⁵⁷⁹

289. Further emphasis is placed on the fact that this interview with the journalists allegedly took place in Medjedja, where VG-119 and Zehra Turjačanin ended up after their escape from Bikavac. VG-119 testified that Zehra Turjačanin received medical treatment in the medical centre in Medjedja:

20 (...) And then when we reached Medjedja, I heard that Zehra had been put
21 up in some sort of a medical station, and I was just down the road from
22 there in a different house. I would go over and see Zehra every day. I
23 would just pat her on the head because that felt pleasant for as long as

⁵⁷⁸ 2D52.

⁵⁷⁹ 1D56. See also Zehra Turjačanin's correct markings on the same aerial photograph on P133 and P134.

24 they didn't shave her head. But they did eventually at the medical
 25 station. They shaved her head.⁵⁸⁰

290. In this context, the Defence respectfully draws the Trial Chamber's attention again to the testimony of VG-032, a medical assistant by profession, who gave evidence that he was a very good and close friend of Zehra Turjačanin.⁵⁸¹ VG-032 testified that he treated Zehra Turjačanin and personally dressed her infected wounds in the medical centre of Medjedja after her arrival 1992.⁵⁸² [REDACTED]⁵⁸³

291. Additionally, the Defence once again refers to the two statements of Zehra Turjačanin's brother, VG-088, who although having spent a considerable time with his sister in Medjedja and Zenica after the Bikavac fire, did not indicate that his sister ever implied Sredoje Lukić in the incident.⁵⁸⁴

292. As is already indicated with regard to witness Zehra Turjačanin, witness VG-032 clearly stated that he knew Sredoje Lukić and that he had never heard anything bad about him during the entire war period.⁵⁸⁵

293. In this respect, the Defence respectfully submits that VG-032 would not have testified that he never really heard much of Sredoje Lukić, if Zehra Turjačanin had ever implicated Sredoje Lukić in the Bikavac incident in any way during any of their conversations. Moreover, it is very unlikely that had Zehra Turjačanin in fact recognized Sredoje Lukić as one of the perpetrators as claimed by VG-119, she would have omitted to share this information with her close friend VG-032 during their conversations at the medical centre in Medjedja. From VG-119's claim of having gathered the information about Sredoje Lukić's alleged

⁵⁸⁰ T.2416.

⁵⁸¹ T.1186.

⁵⁸² T.1186.

⁵⁸³ 1D31,pp.6,7.

⁵⁸⁴ See paras. 237-238 of this Brief.

⁵⁸⁵ T.1188.

involvement in the Bikavac incident from Zehra Turjačanin in Medjedja, any reasonable Trial Chamber must therefore conclude that this witness' testimony is unreliable.

294. Further, the Defence submits that the Prosecution failed to establish that VG-119 was able to correctly identify the Accused in Zehra Turjačanin's alleged description. To the very contrary, insurmountable doubts are raised about her ability to identify Sredoje Lukić for the following reasons: (i) As has been stressed above, VG-119 herself did not know Sredoje Lukić prior to the incident; (ii) it is evident from VG-119's evidence that Zehra Turjačanin herself did not expressly mention "Sredoje Lukić" as being one of the perpetrators; (iii) as shown above, Zehra Turjačanin herself never implicated Sredoje Lukić in the Bikavac incident; (iv) according to VG-119's, her mother-in-law and Baksa Ramović had only recognized Milan Lukić and Mitar Vasiljević when they had previously come to the house in the evening. Thus, it has not been established how VG-119 was in a position to correctly link Zehra Turjačanin's description of "another man" to Sredoje Lukić's name.

295. Another factor demonstrating the unreliability of VG-119's testimony is her inability to provide a clear and detailed description of the person whom she allegedly identified as Sredoje Lukić. Questioned in cross-examination as to Sredoje Lukić's physical appearance, VG-119 admitted that her perception on the night of 27 June 1992 was weak and that she was not able to describe any identifying features of "Sredoje Lukić" such as his height,⁵⁸⁶ age,⁵⁸⁷ clothes,⁵⁸⁸ facial hair⁵⁸⁹ or any other distinguishing feature.⁵⁹⁰

296. Since the witness evidently neither noticed nor remembered any distinguishing feature of the man who allegedly came to the house with Milan Lukić in the

⁵⁸⁶ T.2465.

⁵⁸⁷ T.2465.

⁵⁸⁸ T.2466.

⁵⁸⁹ T.2465.

⁵⁹⁰ T.2466.

evening, she could not possibly have correctly concluded from Zehra Turjačanin's description that the man described was Sredoje Lukić. Hence, the Trial Chamber should not attach any weight to VG-119's testimony.

297. [REDACTED],⁵⁹¹ [REDACTED],⁵⁹² [REDACTED].⁵⁹³ [REDACTED].⁵⁹⁴

298. The Defence submits that VG-119 did not present any reasonable explanation for these striking discrepancies. [REDACTED],⁵⁹⁵ her simplistic claim of having been "obsessed by Milan Lukić"⁵⁹⁶ is neither plausible nor convincing and does not reasonably explain her omission to mention Sredoje Lukić at an earlier stage.

299. For the above reasons, the Defence of Sredoje Lukić respectfully submits that the Trial Chamber dismiss the evidence of VG-119 as unreliable and not credible concerning Sredoje Lukić.

4.2.2.1.6 Witness Huso Kurspahić

4.2.2.1.6.1 Huso Kurspahić Allegations

300. Huso Kurspahić claimed that about seven or eight days after the Bikavac incident, he talked with the sole survivor of the Bikavac fire, Witness Zehra Turjačanin.⁵⁹⁷ On this occasion, Zehra Turjačanin allegedly named Milan Lukić, Sredoje Lukić, and Mitar Vasiljević as the ones who had set the house in Bikavac on fire.⁵⁹⁸

4.2.2.1.6.2 Huso Kurspahić Credibility and Reliance

301. The Defence reiterates that the evidence given by Huso Kurspahić who was not present in Bikavac when the alleged crimes were being committed, constitutes

⁵⁹¹ 1D57.

⁵⁹² 1D58.

⁵⁹³ 1D59.

⁵⁹⁴ 1D60, para.16; See also T.2474.

⁵⁹⁵ 1D57, p.5.

⁵⁹⁶ T.2488.

⁵⁹⁷ T.880-881.

⁵⁹⁸ T.881.

pure hearsay evidence. As acknowledged in Chapter 3.5 of this Brief, it is well settled in the jurisprudence of this Tribunal that hearsay evidence is admissible.⁵⁹⁹ The Defence, however, submits that during cross-examination, the Defence revealed important discrepancies between Huso Kurspahić's testimony and the evidence tendered through Zehra Turjačanin, the sole survivor of the incident. Considering those significant discrepancies as well as the fact that the evidence given by Huso Kurspahić has not been corroborated by any reliable evidence, his testimony should not be relied upon by the Tribunal.

302. Due to the fact that Zehra Turjačanin did not mention or describe Sredoje Lukić as one of the alleged perpetrators in either her oral testimony or any other statement or interview,⁶⁰⁰ Huso Kurspahić's assertion that it was Zehra Turjačanin who told him that Sredoje Lukić was one of the perpetrators,⁶⁰¹ therefore lacks any reliability and credibility. The Prosecution failed to provide a reasonable explanation for this striking discrepancy.

303. Huso Kurspahić has also testified in the case against Mitar Vasiljević,⁶⁰² and even though in his testimony before this Honorable Trial Chamber, Huso Kurspahić mentioned Mitar Vasiljević amongst others as an alleged perpetrator of the incident,⁶⁰³ in his previous testimony in the *Vasiljević* case he never claimed that.

304. At the outset, it should be noted that the *Vasiljević* Trial Chamber repeatedly found that insofar as Huso Kurspahić (VG-061) relied in his testimony on Mitar Vasiljević's participation in the Pionirska Street incident upon what his father allegedly told him, there was no mention of this in his father's statement.⁶⁰⁴ It is respectfully submitted that the same holds true in the instant case regarding Huso Kurspahić's testimony on the alleged participation of Sredoje Lukić; this must be

⁵⁹⁹ *Prosecutor v. Tadić*, Case No.94-1-T, Decision on Defence Motion on Hearsay, 5 August 1996, paras.15-19.

⁶⁰⁰ See chapter 4.2.2.1.1.2, in particular paras. 221-232 of this Brief.

⁶⁰¹ T.881.

⁶⁰² P37 and P38.

⁶⁰³ *Ibid.*

⁶⁰⁴ *Vasiljević* Trial Judgement, para.124, footnote 298; paras.147 and 148; para.154, footnote 405; para.175.

taken into account in the evaluation of the reliability of Huso Kurspahić's testimony.

305. For the above reasons, the Defence of Sredoje Lukić respectfully submit that the Trial Chamber dismiss Huso Kurspahić's evidence in relation to the Bikavac incident as unreliable and not credible concerning Sredoje Lukić.

4.2.2.2 Evidence presented by the Defence

306. In support of Sredoje Lukić's alibi for the day of 27 June 1992, the Defence for the Accused Sredoje Lukić called Witnesses Zorka Lukić and Branimir Bugarski.

307. The Defence underlines that it notified the parties in due course of its intent to offer a defence of alibi and provided the witness statements within the time granted. Consequently, the OTP investigators have had ample time to investigate the authenticity of the Sredoje Lukić's alibi. In this context, Sredoje Lukić's alibi defence witnesses have provided clear, grounded and consistent explanations that on 27 June 1992 Sredoje Lukić was in Obrenovac and in Belgrade, both of which are significantly distanced from the town of Višegrad.

4.2.2.2.1 Witness Zorka Lukić

308. Witness Zorka Lukić confirmed that Sredoje Lukić and his family moved to Obrenovac after the war started.⁶⁰⁵ Since he could not find another job elsewhere, Sredoje Lukić continued to work as a policeman in Višegrad, but regularly visited his family.⁶⁰⁶

⁶⁰⁵ 2D44,p.6.

⁶⁰⁶ T.3681.

309. Witness Zorka Lukić gave birth to her second child, Ms. Dragana Lukić, on 22 June 1992 and was discharged from hospital on 26 June 1992.⁶⁰⁷ The very next day on 27 June 1992, Sredoje Lukić together with his wife and two children came to visit her around noon.⁶⁰⁸ They were the first people who visited Zorka Lukić after she gave birth to her daughter.⁶⁰⁹ At this occasion, as is the custom, Sredoje Lukić gave money for his niece.⁶¹⁰ He and his family stayed for three or four hours and then returned to Obrenovac.⁶¹¹ According to Zorka Lukić it takes between five and five and a half hours to get from Belgrade to Višegrad by car.⁶¹²

310. In this context, the Defence also recalls that alibi defence witness Zorka Lukić provided an interview to the Prosecution on 4 June 2008.⁶¹³ This Prosecution interview constitutes the sole statement given by this witness prior to her testimony. [REDACTED],⁶¹⁴ [REDACTED]. During direct examination and after witness Zorka Lukić confirmed that, if she were asked again the same questions she was asked by the Prosecution investigator during the interview, she would provide the same answers that she provided on that occasion,⁶¹⁵ the Defence tendered the transcript of this Prosecution interview with the witness and the transcript was admitted into evidence as Exhibit 2D44.⁶¹⁶

4.2.2.2 Witness Branimir Bugarski

311. The testimony of Zorka Lukić is corroborated by Witness Branimir Bugarski. Witness Bugarski testified that two or three days prior to 27 June 1992 Sredoje

⁶⁰⁷ 2D44, pp. 7-8. See also, 2D45; 2D46; T.3670.

⁶⁰⁸ 2D44, pp. 7-9; T.3669; T.3678.

⁶⁰⁹ 2D44, pp. 9 and 12; T.3678.

⁶¹⁰ 2D44, p. 9; T.3691.

⁶¹¹ 2D44, p. 9 and 13; T.3678.

⁶¹² 2D44, p. 15.

⁶¹³ 2D44.

⁶¹⁴ *Prosecutor v. Milan Lukić and Sredoje Lukić*, Sredoje Lukić's Motion for Admission of Witness Statement Pursuant to Rule 92ter with Confidential Annexes A-D, 24 November 2008.

⁶¹⁵ T.3669-3670.

⁶¹⁶ T.3670.

Lukić told him over the phone that he was supposed to go to Belgrade.⁶¹⁷ Sredoje Lukić asked Mr. Bugarski to prepare a suckling pig, which he would then collect on 27 June 1992 and take to Višegrad.⁶¹⁸ It was one day before Vidovdan (St Vitus' day), hence, on 27 June 1992, when Sredoje Lukić and Niko Vujčić briefly visited him in Obrenovac towards the evening in the late afternoon.⁶¹⁹ Sredoje Lukić told the witness that he could not take the meat with him, because he had to transport a couple of passengers.⁶²⁰ Witness Bugarski was not able to tell whether Sredoje Lukić left immediately for Višegrad or whether he drove there the next morning.⁶²¹ He stated that he was a little upset about being left in the awkward position of not knowing what to do with the meat that Sredoje Lukić was supposed to collect.⁶²² The witness recalled that he somehow managed to place the meat in the freezer and that Sredoje Lukić picked it up the next weekend when he came to visit his family in Obrenovac.⁶²³

4.2.2.2.3 Conclusion

312. The Defence submits that the only logical conclusion that can be drawn from these witnesses' consistent testimonies and the exhibits admitted in the proceedings is that the Accused Sredoje Lukić spent 27 June 1992, the day before the Serbian religious holiday St Vitus' day, in Belgrade and Obrenovac and was not present in Bikavac at the time of the incident. Witness Zorka Lukić testified that on that day Sredoje Lukić and his family visited her in Belgrade at around noon and left for Obrenovac after three or four hours. According to Branimir Bugarski's testimony, Sredoje Lukić visited him in Obrenovac when it was almost evening and he might have left for Višegrad during the next morning.

⁶¹⁷ T.3757.

⁶¹⁸ 2D47,para.9;T.3717;T.3749-3750.

⁶¹⁹ 2D47,para.9;T.3749-3750.

⁶²⁰ T.3754.

⁶²¹ T.3755.

⁶²² T.3755-3756.

⁶²³ T.3756.

4.2.2.3 Alibi Rebuttal Evidence Presented by the Prosecution

313. The sole witness presented by the Prosecution with the purpose of rebutting Sredoje Lukić's alibi for 27 June 1992, was witness VG-024.

314. Initially, this witness was announced as a witness testifying with regard to the incident at the Varda factory (Counts 1 and 6-7 in the Indictment).⁶²⁴ It must be noted that the name Sredoje Lukić was not men

315. tioned in the witness summary of this witness.⁶²⁵ Further, despite the fact that the Defence notified the parties of its intent to offer a defence of alibi for the Bikavac incident in due course,⁶²⁶ [REDACTED].⁶²⁷

4.2.2.3.1 Witness VG-024

4.2.2.3.1.1 Allegations

316. [REDACTED],⁶²⁸ [REDACTED]. The witness mentioned Sredoje Lukić for the first time during her testimony before this Honorable Trial Chamber.⁶²⁹

4.2.2.3.1.2 Credibility and Reliance

317. During her testimony before the Honorable Trial Chamber, witness VG-024 suddenly claimed she saw Sredoje Lukić and his family on 27 June or possibly on

⁶²⁴ Prosecution Pre-Trial Brief – List of Witnesses Pursuant to Rule 65ter(E)(II) from 14 March 2008.

⁶²⁵ Prosecution Pre-Trial Brief – List of Witnesses Pursuant to Rule 65ter(E)(II) from 14 March 2008.

⁶²⁶ *Prosecutor v. Milan Lukić and Sredoje Lukić*, Case No.IT-98-32/1-T, Sredoje Lukić's Defence Notice Under Rule 67(A)(i)(a) and Request for Extension of Time, 10 December 2007, Sredoje Lukić's Additional Defence Notice Under Rule 67(A)(i)(a), 8 January 2008; Sredoje Lukić's Clarification of Defence Notices Under Rule 67(A)(i)(a), 2 June 2008.

⁶²⁷ T.3213-3214, Prosecution Pre-Trial Brief related to VG-024.

⁶²⁸ 1D78, 2D34, 1D80, 1D81, 2D35.

⁶²⁹ T.3235.

28 June 1992 in his house in the settlement of Šeganje.⁶³⁰ She further claimed that Sredoje's brother Slavko Lukić was also there.⁶³¹

318. This claim cannot be relied upon. Zorka Lukić, the wife of Sredoje Lukić's brother Slavko Lukić, testified as an alibi witness for Sredoje Lukić. In addition to her testimony as discussed in previous sections of this final brief, Zorka Lukić also stated that her husband Slavko Lukić was in Belgrade at the time,⁶³² since she had just given birth to their child. Given these circumstances, the Defence considers that the most reasonable and logical conclusion in this regard is that Slavko Lukić was with his family in Belgrade a day after his newborn baby daughter came out of the hospital.⁶³³

319. In her testimony, this witness was not able to provide a precise date of her alleged observation of Sredoje Lukić. The witness claimed to have seen him on the 27 or the 28 June 1992.⁶³⁴ This important uncertainty cannot be held to be a reliable rebuttal of Sredoje Lukić's alibi for 27 June 1992.

320. [REDACTED].⁶³⁵

321. Nonetheless, this claim again is entirely illogical. [REDACTED]⁶³⁶ [REDACTED].⁶³⁷ [REDACTED],⁶³⁸ [REDACTED].⁶³⁹ However, it is clearly visible from the marked map that the distance is certainly more than one kilometer.⁶⁴⁰ In the bottom right corner of the original map 2D59, constituting the base for the marked exhibit 2D33, there is a scale. A simple comparison of the

⁶³⁰ T.3235.

⁶³¹ T.3236.

⁶³² T.3690.

⁶³³ 2D46.

⁶³⁴ T.3235.

⁶³⁵ T.3216.

⁶³⁶ T.3297;2D33.

⁶³⁷ 2D35,para.7.

⁶³⁸ T.3293.

⁶³⁹ T.3298-3299.

⁶⁴⁰ 2D59.

distance to this scale demonstrates that in reality the distance between the two houses is over 1,5 km.

322. [REDACTED].⁶⁴¹ [REDACTED].⁶⁴²

323. [REDACTED].⁶⁴³

[REDACTED].⁶⁴⁴

324. [REDACTED],⁶⁴⁵ [REDACTED].

325. [REDACTED].⁶⁴⁶

326. In light of the foregoing it must be concluded that it was impossible for this witness to see Sredoje Lukić in Šeganje anywhere between 9 June and 29 June 1992, because as she herself stated, out of fear she did not leave the immediate surroundings of her own house in Medjusedlje.

327. For all the above reasons, any reasonable Trial Chamber could not accept the testimony of this witness in relation to the rebuttal of Sredoje Lukić's alibi, for the reason that it is inconsistent, replete with significant discrepancies and uncertainties and therefore entirely unreliable.

4.2.2.4 Conclusion

4.2.2.4.1 Sredoje Lukić Was Not identified at the Bikavac Incident

328. The Defence submits that Sredoje Lukić was not identified as one of the perpetrators of the Bikavac fire on 27 June 1992 by any of the six Prosecution

⁶⁴¹ 2D35.

⁶⁴² 2D35,para.3.

⁶⁴³ T.3303.

⁶⁴⁴ 2D35 para.7.

⁶⁴⁵ T.3298-3299.

⁶⁴⁶ T.3303.

witnesses beyond reasonable doubt. Instead of strengthening an identification of the man purported to be Sredoje Lukić, the combined effect of the evidence serves to highlight the extent of uncertainties, discrepancies, and inconsistencies prevalent in the body of evidence relevant to the issue of identification.

329. It is significant that the only Prosecution witness present at the actual crime scene and the sole survivor of the fire, Witness Zehra Turjačanin, did not mention or even describe Sredoje Lukić as one of perpetrators.

330. It is noteworthy that none of the other Prosecution witnesses, who claimed to have identified “Sredoje Lukić”, were capable of providing any distinguishing features of the man purported to be Sredoje Lukić. In addition, two of these witnesses, VG-058 and VG-035, implicated Sredoje Lukić in the Bikavac incident for the very first time about sixteen years after the incident in their witness statements made in 2008 or in their oral testimonies before this Honourable Trial Chamber. One witness, VG-115, testified that “Sredoje Lukić” was wearing a stocking on his face, a detail that was not corroborated by any other witness. Both, VG-119 and Huso Kurspahić claimed that Zehra Turjačanin was their source of information with regard to the alleged participation of Sredoje Lukić in this incident. Having in mind all the evidence presented as well as the testimony of Zehra Turjačanin, it is more than clear that such claims put by VG-119 and Huso Kurspahić are entirely unfounded.

4.2.2.4.2 Sredoje Lukić’s Alibi

331. Additionally, the Defence submits that Sredoje Lukić could not have committed the crimes charged in the Second Amended Indictment because he was not present in Bikavac on 27 June 1992. Together with his wife and children, Sredoje Lukić visited his brother and sister-in-law and their newborn daughter in Belgrade and then returned to Obrenovac. Witness Zorka Lukić testified under oath that Sredoje Lukić and his family visited her in Belgrade on 27 June 1992, the day

after her release from hospital, and that they returned to Obrenovac in the afternoon. This was corroborated by Witness Branimir Bugarski, who remembers having met Sredoje Lukić in Obrenovac in the early evening on the day before the Serbian religious holiday Vidovdan (St Vitus' day).

332. For the reasons set out above, and elsewhere in this Final Brief, the Defence submits that the Prosecution failed to prove its case beyond all reasonable doubt in relation to Counts 13-17 against Sredoje Lukić. It is accordingly submitted that not-guilty verdicts should be entered in relation to these alleged counts against Sredoje Lukić.

4.2.3 Beatings at the Uzamnica Detention Camp (Counts 20 and 21)

333. Sredoje Lukić is alleged to have individually committed and aided and abetted others in the commission of the crimes of inhumane acts and cruel treatment of Bosnian Muslim civilian detainees at the detention camp at the Uzamnica military barracks in Višegrad between August of 1992 and 10 October 1994.⁶⁴⁷

334. Consequently, the Trial Chamber must determine whether the Prosecution proved beyond reasonable doubt the following charges:

- (a) COUNT 20: Inhumane acts, a Crime against Humanity, punishable under Articles 5(i) and 7(1) of the Statute of the Tribunal.
- (b) COUNT 21: Cruel treatment, a Violation of the Laws or Customs of War, as recognised by Common Article 3(1) (a) of the Geneva Conventions of 1949, punishable under Articles 3 and 7(1) of the Statute of the Tribunal.

335. In seeking to prove Sredoje Lukić's guilt for these Counts, the Prosecution has called the following witnesses:

⁶⁴⁷ Second Amended Indictment, para.13; Prosecution Pre-Trial Brief, para.106.

- (a) Nurko Dervišević (19/09/2008); (alleged victim)
- (b) VG-025 (no live testimony, written statements admitted pursuant to Rule 92*quater*); (alleged victim)
- (c) Islam Kustura (23/09/2008 - 24/09/2008); (alleged victim)
- (d) Adem Berberović (02/10/2008); (alleged victim)

336. Some of the witnesses identified above purported to have identified Sredoje Lukić as one of the perpetrators of the beatings at the Uzamnica barracks in the period relevant to the Second Amended Indictment. No evidence alleging Sredoje Lukić's Article 7(1) responsibility for the crimes alleged in Counts 20 and 21 of the Second Amended Indictment has come from any other source. It is submitted that none of these witnesses can be safely relied upon to find Sredoje Lukić guilty under Article 7(1) of the Statute.

337. A review of the entirety of the evidence presented by the Prosecution as it relates to the criminal liability of Sredoje Lukić in relation to the beatings at the Uzamnica barracks establishes that the Prosecution failed to prove his guilt beyond reasonable doubt of the crimes charged against him in the Second Amended Indictment. The Trial Chamber must therefore acquit Sredoje Lukić of Counts 20 and 21.

4.2.3.1 Evidence presented during the Prosecution case

4.2.3.1.1 Witness Nurko Dervišević

4.2.3.1.1.1 Nurko Dervišević Allegations

338. Nurko Dervišević testified that he was arrested on 19 June 1992 by members of the party "SDS".⁶⁴⁸ He was first taken to the Ministry of Interior ("MUP") where

⁶⁴⁸ T.1952-1953.

he was beaten by Milan Lukić.⁶⁴⁹ He was detained in a warehouse at the Uzamnica barracks for 28 months and was finally exchanged in October 1994.⁶⁵⁰

339. According to Nurko Dervišević, throughout the 28 months of detention he was always detained in the same building with up to 26 other Muslim detainees.⁶⁵¹ Inter alia, he spent about five or six months in the same warehouse as VG-025, who arrived at the barracks in the summer of 1992.⁶⁵² Adem Berberović was brought to the Uzamnica camp in June or July 1992 and imprisoned in the same hangar until their exchange in October 1994.⁶⁵³ Further, Islam Kustura was brought to the barracks in August 1992 and Nurko Dervišević stayed with him in the same hangar until their exchange.⁶⁵⁴ Of these four persons, Nurko Dervišević spent the longest period of time in the Uzamnica barracks.⁶⁵⁵ Nurko Dervišević reiterated that all four were imprisoned in the same hangar and each of them could see what happened to the others.⁶⁵⁶
340. The witness testified that during his detention at the Uzamnica barracks he saw Sredoje Lukić, whom he had known 15 years prior to 1992,⁶⁵⁷ only once, when Sredoje Lukić allegedly came together with Milan Lukić.⁶⁵⁸ Nurko Dervišević claimed that during this occasion, Sredoje Lukić hit him several times.⁶⁵⁹
341. After the war started, one of Nurko Dervišević's twin sons, Samir, was taken away and he heard a couple of days later from VG-089 that he had been killed by Milan Lukić.⁶⁶⁰

⁶⁴⁹ T.1955;T.1961.

⁶⁵⁰ T.1958.

⁶⁵¹ T.1958-1959.

⁶⁵² T.1995.

⁶⁵³ T.1995-1996.

⁶⁵⁴ T.1996-1997.

⁶⁵⁵ T.1998.

⁶⁵⁶ T.1997-1998.

⁶⁵⁷ T.1999;See also P112,p.2.

⁶⁵⁸ T.1963;T.1970;T.1999;T.2004.

⁶⁵⁹ T.1963.

⁶⁶⁰ T.1971-1973.

4.2.3.1.1.2 Nurko Dervišević Credibility and Reliance

342. The Defence submits that Nurko Dervišević did not see Sredoje Lukić in the Uzamnica barracks in the relevant period between August of 1992 and 10 October 1994. During cross-examination, the Defence revealed that Nurko Dervišević did not identify Sredoje Lukić beyond a reasonable doubt. To the contrary, doubt was cast on her reliability and credibility through cross-examination. For this reason, Nurko Dervišević's testimony should not be relied upon by the Trial Chamber.

343. At the outset, the Defence must underline that in the three statements⁶⁶¹ given by Nurko Dervišević prior to his testimony before this Honorable Trial Chamber, he never mentioned Sredoje Lukić as one of the perpetrators of the beatings in the Uzamnica barracks. In fact he never made mention of Sredoje Lukić at all in those statements. The fact that two of those statements were given very shortly after his exchange, i.e. 23 December 1994 and 6 January 1995, when his memory was fresh, is of paramount importance as it severely affects the credibility and the reliability of his later statements and testimony.

344. However, if the Trial Chamber is minded to find that Sredoje Lukić hit Nurko Dervišević on one single occasion, as he claimed during his testimony before this Honorable Trial Chamber,⁶⁶² the Defence holds the opinion that this would not constitute the *actus reus* requirements of the crimes charged in the Second Amended Indictment namely (i) *inhumane acts*, a crime against humanity, punishable under Articles 5(i) and 7(1) of the Statute of the Tribunal and (Count 20) (ii) *cruel treatment*, a violation of the laws or customs of war, as recognized by Common Article 3(1)(a) of the Geneva Conventions of 1949, punishable under Articles 3 and 7(1) of the Statute of the Tribunal (Count 21).

⁶⁶¹ 2D15;2D16;2D17.

⁶⁶² T.1963;T.1970;T.1999;T.2004.

345. The Defence submits that the alleged act of slapping the witness in the face on one single occasion does not amount to what is legally understood as “cruel treatment” pursuant to Common Article 3(1)(a) of the Geneva Conventions of 1949. At the outset, it must be stressed that at present there is no definition of “cruel treatment” in any international legal instrument. Accordingly, it was observed in *Tadić* that “it has been found impossible to find any satisfactory definition of this general concept, whose application to a specific case must be assessed on the basis of all the particularities of the concrete situation”.⁶⁶³ The Appeals Chamber in *Čelebići* defined cruel treatment as a violation of the laws and customs of war as

- a. An intentional act or omission which causes serious mental or physical suffering or injury or constitutes a serious attack on human dignity
- b. Committed against a person taking no active part in the hostilities.⁶⁶⁴

This was confirmed by the Appeals Chamber in *Blaškić*⁶⁶⁵ and the Trial Chamber in *Jelišić*.⁶⁶⁶

346. Further, Count 20 charges the Accused with inhumane acts. The Appeals Chamber in *Čelebići* defined inhumane treatment as

- a. An intentional act or omission, that is an act which, judged objectively, is deliberate and not accidental, which causes serious mental harm or physical suffering or injury or constitutes a serious attack on human dignity
- b. Committed against a protected person.⁶⁶⁷

⁶⁶³ *Prosecutor v. Tadić*, Case No. IT-94-1-T, Opinion and Judgment, 7 May 1997, para. 724.

⁶⁶⁴ *Čelebići Appeals Judgement*, paras. 424, 426.

⁶⁶⁵ *Blaskić* Case No IT-95-14-A, Appeal Judgment, para. 595.

⁶⁶⁶ *Jelišić*, Case No IT-95-10-T, Trial Judgment, para. 41.

347. Similarly, the European Commission of Human Rights has described inhuman treatment as that which “deliberately causes *serious* mental and physical suffering”.⁶⁶⁸ The European Court of Human Rights found that inhumane or degrading treatment or punishment “must attain a minimum level of severity if it is to fall within the scope of Article 3” of the European Convention on Human Rights.⁶⁶⁹
348. It can be observed that as stated by the Trial Chamber in *Jelišić*, these two standards have the same legal meaning.⁶⁷⁰ Thus, if the Prosecution is not able to prove the commission of cruel treatment they will similarly be unable to prove the commission of inhuman acts.
349. Applying this standard to the instant proceedings, Sredoje Lukić’s alleged action, if any, does not amount to cruel or inhuman treatment. Nurko Dervišević testified that Sredoje Lukić slapped him several times on the face on one single occasion. The Prosecution has failed to establish the duration of these particular alleged beatings, or their mental or physical effects on the witness or the seriousness of the mental harm, physical suffering, injury or attack on the witness’ human dignity caused by these particular beatings. Nurko Dervišević only testified as to the physical, emotional and mental injuries he suffered as a result of his 28 month detention.⁶⁷¹ The Prosecution manifestly failed to prove the specific extent to which Sredoje Lukić’s alleged single action had in fact contributed to the serious deterioration of Nurko Dervišević’s health.
350. On the contrary and what is more, the Defence submits that Nurko Dervišević did not even see Sredoje Lukić in the period between 19 June 1992 and October 1994

⁶⁶⁷ *Čelebići Appeals Judgement*, Appeal Judgment, para. 426.

⁶⁶⁸ As discussed in *Yagiz v. Turkey*, 22 EHRR 573, 1996.

⁶⁶⁹ *Ireland v. The United Kingdom*, Judgement of 19 January 1978, Series A, No. 25, (1978) 2 EHRR 25, para. 162; *A. v. The United Kingdom*, Judgement of 23 September 1998, para. 20 (citing *Costello-Roberts v. United Kingdom*, Judgement of 25 March 1993, Series A No. 247-C, p. 59, para. 30).

⁶⁷⁰ *Jelisić*, Case No IT-95-10-T, Trial Judgment, para. 52.

⁶⁷¹ T.1970-1971.

during his detention at the Uzamnica barracks. During cross-examination, the Defence revealed that Nurko Dervišević in fact did not identify Sredoje Lukić beyond a reasonable doubt. Furthermore, doubt was cast on his reliability and credibility through cross-examination. For these reasons, Nurko Dervišević's testimony should not be relied upon by the Trial Chamber.

351. Questioned by the Prosecution in direct examination whether anyone apart from Milan Lukić beat him during the time he was imprisoned in the camp, Nurko Dervišević did not mention Sredoje Lukić at all:

12 Q. Now, did anyone else beat you other than Milan Lukic during your
13 time in detention?

14 A. Yes. Once there was Milan Spasojevic, called Mico, and he took
15 out me and Mustafa Cuprija, a neighbour of mine. He was four years older
16 than I. He gave us some sticks to beat each other with three times each.
17 He hit me three times, and it was very painful, and I hit him three
18 times, but this man, "You're not doing it well enough. You don't want to
19 beat each other?" He took the sticks from us and beat us. This man was
20 sick. He had trouble with his blood sugar, and he was peeing blood.
21 This same Mico --

22 JUDGE ROBINSON: Thank you very much, Witness.⁶⁷²

352. The Defence further submits that the Prosecution in fact failed to establish beyond reasonable doubts that Nurko Dervišević had known Sredoje Lukić before the war. Nurko Dervišević did not present a reliable and consistent description of the physical appearance of the man whom he allegedly recognized as Sredoje Lukić. In his OTP-ICTY statement from 1998, Nurko Dervišević described Sredoje Lukić's hair at the time as being "blond",⁶⁷³ whereas he testified in cross-examination that "Sredoje Lukić has brown hair".⁶⁷⁴ The Defence submits that as a consequence of this lack of consistency serious doubts are cast on Nurko Dervišević's ability to identify or recognize Sredoje Lukić.

⁶⁷² T.1962.

⁶⁷³ P111,p.5.

⁶⁷⁴ T.1999.

353. Nurko Dervišević testified that he only saw Sredoje Lukić in Uzamnica on one single occasion.⁶⁷⁵ He stated that “Sredoje Lukić” hit him on this occasion, slapping him across his face.⁶⁷⁶ This testimony is highly unreliable in the light of his prior statements which have been admitted into evidence. In his testimony, the witness confirmed that the three witness statements given on 23 December 1994,⁶⁷⁷ 6 January 1995,⁶⁷⁸ and 22 June 2007⁶⁷⁹ were his prior statements.⁶⁸⁰ In all three statements Nurko Dervišević failed to identify Sredoje Lukić as one of the perpetrators of the crimes in the Uzamnica barracks.

354. It is particularly striking that Nurko Dervišević did not mention Sredoje Lukić in his statement from 23 December 1994.⁶⁸¹ As this interview was conducted only two months after the witness’ release from Uzamnica, this is his earliest evidence when the witness still had a fresh memory of the events. It is notable that in this statement Nurko Dervišević provided the names of numerous alleged perpetrators, alleged members of the White Eagles as well as other prisoners. This statement proves that he was in fact physically capable of recognizing and identifying people he saw during the time of his detention and at the time of the statement mentally capable to provide a detailed description of the events as well as the names of the perpetrators. Bearing in mind that he claimed to have known Sredoje Lukić for a long time prior to his detention, Nurko Dervišević would have been able to recognize Sredoje Lukić. Therefore he would have named him as one of the perpetrators during this interview on 23 December 1994, if Sredoje Lukić had in fact come to the Uzamnica camp during the period of his detention. The fact that Nurko Dervišević in this earliest statement given according to his freshest memory, while naming many other alleged perpetrators, did not even mention Sredoje Lukić, a man who he allegedly knew for many years prior to his

⁶⁷⁵ T.2004.

⁶⁷⁶ T.2007

⁶⁷⁷ 2D15.

⁶⁷⁸ 2D16.

⁶⁷⁹ 2D17.

⁶⁸⁰ T.2001,2002,2003.

⁶⁸¹ 2D15.

detention, is telling and this statement should therefore be considered as the most reliable evidence provided by this witness.

355. This is further confirmed in his second statement given just two weeks later, on 6 January 1995,⁶⁸² where Nurko Dervišević again failed to mention Sredoje Lukić at all.

356. Finally, being asked for alleged perpetrators in the interview from 22 June 2007⁶⁸³, Nurko Dervišević again did not mention Sredoje Lukić.

357. For the above reasons, the Defence of Sredoje Lukić respectfully submits that Sredoje Lukić's alleged actions do not amount to inhuman acts and/or cruel treatment as charged in the Second Amended Indictment. Furthermore, bearing in mind the fact that Nurko Dervišević did not mention Sredoje Lukić in his earliest statements as well as significant discrepancies in Nurko Dervišević's subsequent testimony, the Trial Chamber must dismiss the evidence of Nurko Dervišević as unreliable and not credible concerning Sredoje Lukić.

4.2.3.1.2 Witness VG-025

4.2.3.1.2.1 VG-025 Allegations

358. According to VG-025, he was captured by Serbs in Moremišlje, a village south of Višegrad, on 16 October 1992.⁶⁸⁴ He was first brought to Rudo on the Serbian border where he was detained for 40 days.⁶⁸⁵ On 26 November 1992 he was then taken to the Uzamnica barracks,⁶⁸⁶ where he was detained until his exchange on 8 July 1993.⁶⁸⁷

⁶⁸² 2D16.

⁶⁸³ 2D17.

⁶⁸⁴ P168,p.5.

⁶⁸⁵ P168,pp.5-6.

⁶⁸⁶ P168,p.6.

⁶⁸⁷ P168,p.8.

359. At the Uzamnica camp, VG-025 was detained in a military warehouse together with the other detainees, including Nurkica Dervišević, Adem Berberović and Islam Kustura.⁶⁸⁸ It is alleged that after the first ten days of his detention at the Uzamnica barracks four guards started to beat the detainees, usually at night.⁶⁸⁹ Another detainee told VG-025 the names of the guards who allegedly beat them, namely: Dragan Popović, Srdjan Vučićević, Siniša Špinjo and Rade Milosavljević.⁶⁹⁰

360. Apart from those four guards, the detainees were allegedly beaten by Milan Lukić, Dragan Šekarić and Boban Indić.⁶⁹¹ It is VG-025's testimony that these three individuals used to come to the camp very frequently.⁶⁹² They allegedly kicked and beat the detainees inside the room with their automatic rifles until they started to bleed.⁶⁹³ One day, the three men made the detainees lie down on a table in the warehouse one by one, and then proceeded to beat the detainees with a wooden post, which was about 10cm thick and wide.⁶⁹⁴ After this beating Milan Lukić, Dragan Šekarić and Boban Indić returned after a one-month absence and continued to beat them with rifle butts.⁶⁹⁵

361. VG-025 stressed that he knew Sredoje Lukić for a couple of years before the war but never saw him in Uzamnica.⁶⁹⁶

4.2.3.1.2.2 VG-025 Credibility and Reliance

362. The Defence submits that serious doubts about Sredoje Lukić's presence and participation in the alleged beatings of the detainees in the Uzamnica camp are

⁶⁸⁸ P168,p.6.

⁶⁸⁹ P168,p.6.

⁶⁹⁰ P168,p.6.

⁶⁹¹ P168,p.7.

⁶⁹² P168,p.7(stating that the three men would come to the camp every seven or ten days);P171,p.2(stating that Milan Lukić would come two or three times per week and sometimes weekly).

⁶⁹³ P168,p.7.

⁶⁹⁴ P168,p.7.

⁶⁹⁵ P168,p.8.

⁶⁹⁶ P171,p.3.

raised by VG-025's testimony. Due weight should be attached to the fact that the witness did not implicate Sredoje Lukić in the alleged beatings in any of his two witness statements provided in 1998 and emphasised in his OTP-ICTY Statement given on 15 April 2008 that:

“I knew Sredoje Lukic, as a police officer in Višegrad for perhaps a couple of years before the war. (...) I never saw Sredoje Lukić in Uzamnica”.⁶⁹⁷

363. This testimony further casts doubt on the credibility and reliability of the evidence provided by Adem Berberović and Islam Kustura as far as they claimed that they saw Sredoje Lukić in the Uzamnica camp during the period of their detention between August/October 1992 and October 1994. In fact the evidence given by VG-025, a Prosecution witness, confirms the position of the Defence that Sredoje Lukić was not in the Uzamnica Camp and did not participate in any kind of mistreatment as alleged in the indictment.

4.2.3.1.3 Witness Islam Kustura

4.2.3.1.3.1 Islam Kustura Allegations

364. Islam Kustura testified that he was arrested and brought to the Uzamnica camp on 3 October 1992 together with his wife and his mother.⁶⁹⁸ He was detained for two-years and ten-days⁶⁹⁹ and exchanged in October 1994.⁷⁰⁰ Nurko Dervišević, Adem Berberović and VG-025 were already at the Uzamnica camp when he arrived. The four of them were detained together in the same hangar until Islam Kustura's exchange.⁷⁰¹

⁶⁹⁷ P171,para.9

⁶⁹⁸ T.2176-2177;T.2269.

⁶⁹⁹ T.2269.

⁷⁰⁰ T.2197.

⁷⁰¹ T.2269-2271.

365. The witness alleged that the detainees at the Uzamnica camp were hit by the guard Mićo Spasojević on two occasions with a kind of whip, to which he tied a piece of iron to the end, whereas the other guards did not beat them.⁷⁰²
366. Islam Kustura claimed to have also suffered mistreatments at the hands of Milan Lukić and Sredoje Lukić.⁷⁰³ Milan allegedly kicked and beat all the detainees in turn using a rifle or his fists and would not stop until he had beaten everybody.⁷⁰⁴
367. According to Islam Kustura, Sredoje Lukić was always with Milan Lukić and would also beat him, just like Milan.⁷⁰⁵ Every other day Milan Lukić would come with Sredoje Lukić and they would beat the detainees.⁷⁰⁶ Islam Kustura never saw Milan Lukić come to Uzamnica alone.⁷⁰⁷ It is his testimony that whenever Milan Lukić came, Sredoje Lukić was with him.⁷⁰⁸
368. Islam Kustura further claimed to have witnessed Milan Lukić and Sredoje Lukić beat Nurko and dragged him outside of the hangar and threw him into a puddle.⁷⁰⁹
369. [REDACTED].⁷¹⁰ He finally claimed to have personally seen Milan Lukić and Sredoje Lukić take a person called Nermin and a man from Rogatica away, who never returned.⁷¹¹

4.2.3.1.3.2 Islam Kustura Credibility and Reliance

370. The Defence submits that Islam Kustura did not see Sredoje Lukić at the Uzamnica barracks during his detention in the period between 3 October 1992 and

⁷⁰² T.2181.

⁷⁰³ T.2181.

⁷⁰⁴ T.2182.

⁷⁰⁵ T.2182-2184.

⁷⁰⁶ T.2186-2187.

⁷⁰⁷ T.2187.

⁷⁰⁸ T.2189;T.2283-2284.

⁷⁰⁹ T.2189.

⁷¹⁰ T.2193-2194.

⁷¹¹ T.2194-2195.

October 1994. During cross-examination, the Defence revealed that Islam Kustura neither recognized nor identified Sredoje Lukić beyond reasonable doubt. On the contrary, doubts were cast on his reliability and credibility through cross-examination. For these reasons, Islam Kustura's testimony should not be relied upon by the Tribunal.

371. Islam Kustura claimed that prior to his detention in the Uzamnica barracks he had known Sredoje Lukić as a policeman.⁷¹² Serious doubts on his prior knowledge of Sredoje Lukić as well as on the credibility and reliability of his entire testimony regarding Sredoje Lukić's participation in the alleged crimes are raised by the witness' strong tendency to incriminate the Accused by implicating him in the alleged beatings at the camp in a striking stereotypical manner. As such, he was not able to describe or provide any specific details in relation to the alleged acts committed by Sredoje Lukić, but rather implicated him in all acts allegedly committed by Milan Lukić.⁷¹³

1 Q. Who was it who beat these people?

2 A. Milan and Sredoje.

3 Q. How many times would you say you saw Milan Lukic beating other
4 detainees?

5 A. A thousand times. I don't know how many times.

6 Q. How many times would you say you saw Sredoje Lukic beating other
7 detainees?

8 A. Whenever Milan came, Sredoje was with him.⁷¹⁴

372. These allegations are contradictory to the testimony of all other Prosecution witnesses who testified in relation to this incident.

373. VG-025 gave evidence that he never saw Sredoje Lukić during the period of his detention in the camp, from 26 November 1992 to 8 July 1993.⁷¹⁵

⁷¹² T.2181.

⁷¹³ T.2182 ;T.2184 ;T.2187.

⁷¹⁴ T.2189.

374. Nurko Dervišević, who among the four Prosecution witness was the one who was detained in the Uzamnica barracks for the longest period, namely from June/July 1992 up to October 1994,⁷¹⁶ testified that he only saw Sredoje Lukić on one single occasion.⁷¹⁷ In his prior statements however, dated 23 December 1994,⁷¹⁸ 6 January 1995,⁷¹⁹ and 22 June 2007,⁷²⁰ Nurko Dervišević also never mentioned Sredoje Lukić.
375. Adem Berberović, having been imprisoned from 15 August 1992 to 6 October 1994, alleged that he saw Sredoje Lukić four times in the camp.⁷²¹
376. Questioned in cross examination, the three live witnesses testified that the four of them had all spent the time in the camp together in the same hangar.⁷²²
377. Islam Kustura's testimony on the alleged mistreatments of Sredoje Lukić is therefore highly unreliable given the striking discrepancies between his testimony and the testimony of the other three witnesses who were with him in the same hangar. Confronted with these inconsistencies during cross-examination, in particular with the testimony of Nurko Dervišević, the witness failed to reasonably account for these deficiencies.⁷²³
378. Furthermore, Islam Kustura's allegations cannot be deemed credible nor reliable, as he provided an entirely inaccurate physical description of Sredoje Lukić when describing him as "blondish" and about 20cm – more than half a foot - shorter than Milan Lukić:

25 Q. Could you tell us what is the colour of Sredoje Lukic's hair?

⁷¹⁵ P168,p.6,8

⁷¹⁶ T.1995-1996.

⁷¹⁷ T.1962.

⁷¹⁸ 2D15

⁷¹⁹ 2D16

⁷²⁰ 2D17

⁷²¹ T.2536

⁷²² T.1997;T.2271;T.2544.

⁷²³ T.2283-2285

- 1 A. He was kind of blondish at the time. I'm not sure about now.
- 2 Q. Yesterday you stated that Milan Lukic is one metre 90, or 180
- 3 centimetres tall. I refer to page 83, line 21. My question is, is Milan
- 4 Lukic taller than Sredoje Lukic as far as you remember?
- 5 A. Yes. Yes.
- 6 Q. Could you estimate how much taller Milan Lukic is than Sredoje
- 7 Lukic, in centimetres perhaps?
- 8 A. Taller by about 20 cent.
- 9 Q. 20 centimetres, yes. Did I understand you correctly, 20
- 10 centimetres?
- 11 A. Yes.⁷²⁴

379. This physical description of Sredoje Lukić is obviously wrong. In this respect, the Defence refers to a letter from UNDU admitted as Exhibit 2D64 according to which Sredoje Lukić's height is 1,85m.⁷²⁵ It is submitted that strong evidence suggests that the Co-Accused is approximately of equal height.⁷²⁶ The fact that both Accused are of almost identical height is actually verified by a still image of both Accused taken in the courtroom during trial.⁷²⁷ The incorrect description of "Sredoje Lukić" provided by this witness, demonstrates not only that Islam Kustira did not know Sredoje Lukić from before, but also his determination to falsely incriminate the Accused. The foregoing however clearly exhibits that the man purported to be Sredoje Lukić by this witness, is not the Accused Sredoje Lukić.

380. It is of outmost relevance that Islam Kustura did not mention Sredoje Lukić in his statement given on 18 November 1994,⁷²⁸ in which he provided an extensive list of names of no less than 16 guards and soldiers allegedly responsible for the mistreatments at the Uzamnica barracks. This statement was given only one month after his release from the Uzamnica camp. During cross-examination the

⁷²⁴ T.2271-2272.

⁷²⁵ 2D64.

⁷²⁶ T.6519.

⁷²⁷ 2D52.

⁷²⁸ 2D19.

witness confirmed the authenticity of his signature under this statement.⁷²⁹ In light of the severe allegations against Sredoje Lukić, it is hard to believe that he simply forgot to mention the name of Sredoje Lukić, who, according to his testimony, participated in the alleged mistreatments on a daily basis together with Milan Lukić. In light of the severe allegations against Sredoje Lukić and having specifically recalled Milan Lukić as one of the soldiers or guards, it is not plausible that he simply forgot to mention the name of Sredoje Lukić if, as he claimed in his testimony, they jointly participated in the alleged mistreatments on a daily basis.

381. The testimony of this witness demonstrates pure, groundless assertions against Sredoje Lukić. Based on the fact that Islam Kustura never mentioned Sredoje Lukić in his previous statement given in 1994 and subsequently in his testimony merely testified in a stereotyped manner, not to mention entirely inconsistent with other witnesses, the only sensible conclusion to be reached is that Islam Kustura is evidently a hostile witness.

382. For the above reasons, the Defence of Sredoje Lukić respectfully submits that the Trial Chamber dismiss the evidence of Islam Kustura as unreliable and not credible concerning Sredoje Lukić.

4.2.3.1.4 Witness Adem Berberović

4.2.3.1.4.1 Adem Berberović Allegations

383. According to Adem Berberović's testimony, he was captured by Serb soldiers and brought to the Uzunica camp on 15 August 1992.⁷³⁰ He was released from the Uzunica camp on 6 October 1994.⁷³¹ During his detention he stayed in the same hangar as Nurko Dervišević, VG-025 and Islam Kustura,⁷³² [REDACTED]⁷³³

⁷²⁹ T.2273.

⁷³⁰ T.2532 ;P142,p.4.

⁷³¹ T.2540 ;P142,p.11.

⁷³² T.2544.

384. The witness claimed that a couple of days after his arrival at the Uzamnica barracks he and his fellow inmates, including Nurko Dervišević, VG-025 and Kustura were beaten by Milan Lukić and Sredoje Lukić.⁷³⁴ He noted that during his detention he saw Sredoje Lukić on four occasions.⁷³⁵ It is his testimony that he did not know Milan Lukić and Sredoje Lukić before his detention but was told their names by Nurko Dervišević.⁷³⁶ He further claimed that Nurko Dervišević told him that Milan Lukić and Sredoje Lukić had already come to the camp prior to the witness' arrival and had beaten and maltreated Nurko Dervišević.⁷³⁷ Milan Lukić and his soldiers allegedly came to the hangar on a regular basis and beat the detainees with their fists, rifle butts, wooden sticks and an electric baton and kicked them with boots.⁷³⁸ Adem Berberović alleges that he and the other detainees at the Uzamnica camp were also regularly beaten by the prison guards.⁷³⁹

4.2.3.1.4.2 Adem Berberović Credibility and Reliance

385. The Defence submits that Adem Berberović did not see Sredoje Lukić at the Uzamnica camp during the period of his detention between 5 August 1992 and 6 October 1994. During cross-examination, the Defence revealed that in fact Adem Berberović was not able to identify Sredoje Lukić beyond reasonable doubt. Further doubts were cast on his reliability and credibility through cross-examination. For these reasons, Adem Berberović's testimony should not be relied upon by the Tribunal.

386. The Defence reiterates that the testimony of Adem Berberović is inconsistent with the testimonies of other witnesses. While Witness Nurko Dervišević in his

⁷³³ T.2543,2552.

⁷³⁴ T.2507;1D61,p.4.

⁷³⁵ T.2536.

⁷³⁶ T.2506-2508.

⁷³⁷ T.2509.

⁷³⁸ T.2511;T.2513;T.2536;P142,p.9.

⁷³⁹ P142,p.7.

testimony claimed that he saw Sredoje Lukić at the Uzamnica camp just on one isolated occasion, in three prior statements he never mentioned Sredoje Lukić being at the Uzamnica camp. The latter is in conformity with the testimony of another alleged detainee, VG-025, who also stated that he never saw Sredoje Lukić at the Uzamnica camp. Adem Berberović claimed to have seen Sredoje Lukić on four occasions. Being constantly with Nurko Dervišević during the relevant time period in the hangar,⁷⁴⁰ the inconsistencies between his testimony and the testimony of Nurko Dervišević are striking.

387. It has to be noted that although Adem Berberović described the lighting conditions in the hangar as poor, he claimed to have been able to see the perpetrators clearly.⁷⁴¹ However, this assertion is not reliable as in cross examination the witness did not provide a correct description of the physical appearance of the man purported to be Sredoje Lukić. Being asked to describe the difference in height between Milan Lukić and Sredoje Lukić, the witness noted the following:

17 If you say that -- that Milan Lukic is taller than Sredoje Lukic,
 18 due to your memory is it -- is it perhaps 20 centimetre, the difference
 19 between both?
 20 He is taller than Sredoje, taller. How much taller exactly it's
 21 difficult to say. Maybe 15 centimetres, maybe 20. I wasn't taking
 22 measurements. He was taller, that much I can say. Now you're asking me
 23 about centimetres. I really can't say.
 24 Q. Thank you very much. Thank you. All right. Sir, in line 22
 1 you're saying, "He is taller than Sredoje." Which person do you mean
 2 with "he is taller than Sredoje"?
 3 A. Milan Lukic.⁷⁴²

388. The Prosecution failed to establish that Adem Berberović's description of the man purported to be Sredoje Lukić, i.e. being 20cm shorter than Milan Lukić, fits

⁷⁴⁰ T.2536

⁷⁴¹ T.2509,2510.

⁷⁴² T.2551-2552.

Sredoje Lukić's actual physical appearance. On the contrary, the Defence respectfully submits that both Accused have approximately the same height, which can be seen on a photograph admitted as 2D52 showing both Accused standing next to each other in the courtroom. Therefore, Adem Berberović's testimony that he allegedly saw Sredoje Lukić at the Uzamnica camp four times⁷⁴³ is not reliable. The evidence given by this witness therefore fails to prove beyond reasonable doubt that Adem Berberović identified Sredoje Lukić as one of the perpetrators of the beatings at the Uzamnica camp.

389. Since the Prosecution has not established that Adem Berberović ever saw Sredoje Lukić in the camp, no weight should be attached to the alleged recognition or identification of Sredoje Lukić in the courtroom.⁷⁴⁴

390. The Defence stresses another issue of paramount importance which should be taken into due consideration by the Trial Chamber when assessing Adem Berberović's testimony. During Adem Berberović's witness interview given to the OTP-ICTY investigator in 2000, he was shown a photospread on which he allegedly identified Sredoje Lukić.⁷⁴⁵ In cross examination, the Defence raised the issue of missing photospreads with the Trial Chamber. In particular, the Defence submitted that due to the fact that the photo array shown to Adem Berberović was not disclosed to the Defence, it was not able to adequately cross examine the witness on this matter. In response, the Prosecution admitted that several photospreads indeed went missing.⁷⁴⁶ The Honorable Presiding Judge Robinson expressed his deepest concerns about this occurrence.⁷⁴⁷

⁷⁴³ T.2536.

⁷⁴⁴ T.2518-2521.

⁷⁴⁵ 2D20,p.3

⁷⁴⁶ T.2549-2550.

⁷⁴⁷ T.2549-2550.

391. Most striking is that during examination in chief⁷⁴⁸ and in cross-examination Prosecution witness Ib Jul Hansen testified that OTP-ICTY investigators had never shown a photo of Sredoje Lukić to any witness:

- 2 Q. Is it true that you never used a photo of Sredoje Lukic in a
 3 photo identification procedure?
 4 A. Yes.
 5 Q. Thank you.⁷⁴⁹

This prosecution Investigator further explained that he conducted the interview and signed the witness statement of Mr. Adem Berberović from 2000,⁷⁵⁰ as investigator, on which Adem Berberović indicated a recognition of Sredoje Lukić in the photospread.⁷⁵¹ Mr. Hansen again confirmed that none of the photospreads shown to Mr. Berberović contained a picture of Sredoje Lukić.⁷⁵² It is therefore evident that the person whom Adem Berberović recognized as 'Sredoje Lukić' is not the same person as the Accused.

392. For the above reasons, the Defence of Sredoje Lukić respectfully submits that the Trial Chamber dismiss the evidence of Adem Berberović as unreliable and not credible concerning Sredoje Lukić.

4.2.3.2 Conclusion

393. The Defence respectfully submits that Sredoje Lukić was not identified as one of the perpetrators at the Uzamnica camp by any of the four Prosecution witnesses beyond reasonable doubt. Witness Nurko Dervišević was detained in the camp for the longest period and contended to have known Sredoje Lukić for 15 years prior to 1992. Yet he provided inconsistent physical descriptions of Sredoje Lukić.

⁷⁴⁸ T.3084-3085.

⁷⁴⁹ T.3120

⁷⁵⁰ 2D20,T.3120

⁷⁵¹ 2D20,p.3 last para.

⁷⁵² T.3120-3122.

Furthermore, in his three witness statements, in particular the first two given shortly after his release from the Uzamnica camp, he never mentioned Sredoje Lukić; his testimony is therefore unreliable. It is significant that the other two witnesses, Islam Kustura and Adem Berberović, both gave a manifestly incorrect description of Sredoje Lukić's height, describing him as being about 20cm (more than half a foot) shorter than Milan Lukić. In addition, Islam Kustura described Sredoje Lukić's hair as blondish and Adem Berberović stressed that he was short rather than tall. Furthermore, the missing photospread on which Adem Berberović recognized Sredoje Lukić clearly shows that this is a case of misidentification, as a photograph of the Accused was never shown to Adem Berberović or any other witness by the Prosecution. This misidentification is corroborated by another Prosecution witness, VG-025, who had known Sredoje Lukić before his detention at the Uzamnica camp and testified that he never saw Sredoje Lukić during his nine month detention at the camp.

394. Consequently, an analysis of the evidence in its entirety must lead to the determination that the Prosecution has failed to meet its burden of proof beyond all reasonable doubt in relation to Sredoje Lukić's alleged participation in the Uzamnica beatings or presence in the Uzamnica barracks during the period relevant to the Second Amended Indictment.

395. For the reasons set out above, and elsewhere in this Final Brief, the Defence submits that the Prosecution has failed to prove its case against Sredoje Lukić beyond reasonable doubt in relation to Counts 20 and 21. It is accordingly submitted that not-guilty verdicts should be entered in relation to these counts alleged against the Accused, Sredoje Lukić, in the Second Amended Indictment.

4.2.4 Persecutions (Count 1)

396. It is alleged that Sredoje Lukić "with specific intent to discriminate on political, racial or religious grounds, committed the crime of persecutions and, with the

awareness of the discriminatory intent of other perpetrators, aided and abetted in the execution of the crime of persecutions”.⁷⁵³

397. The persecution charge against Sredoje Lukić is therefore based upon the Pionirska Street and Bikavac incidents and the beatings at the Uzamnica camp. As stated above, the Prosecution has failed to prove its case against Sredoje Lukić beyond reasonable doubt in relation to Counts 8-17, 20 and 21 in the Second Amended Indictment, and therefore not-guilty verdicts should be rendered in relation to these counts alleged against Sredoje Lukić. Accordingly the Accused, Sredoje Lukić, should be acquitted of persecution under Count 1.

398. In the event that the Trial Chamber finds the Accused Sredoje Lukić guilty of one of the above counts, the Defence submits that the Prosecution has not proved beyond reasonable doubt that Sredoje Lukić acted with discriminatory intention as required under Article 5(h) of the Statute. As has been found in *Krnojelac* and *Vasiljević*, “the discriminatory intent must relate to the specific act charged as persecution”.⁷⁵⁴ Thus, it is not sufficient that the alleged act merely occurs within an attack, which has a discriminatory aspect.⁷⁵⁵ In practice, the law, which has been occasionally applied by this Tribunal, is “that a discriminatory attack is a sufficient basis from which to infer the discriminatory intent of acts carried out within that attack”.⁷⁵⁶

⁷⁵³ Second Amended Indictment, para.4.

⁷⁵⁴ *Prosecutor v. Milorad Krnojelac*, Case No.IT-97-25-T, Judgment, 15 March 2002 (“*Krnojelac* Trial Judgment”), para.436. *Vasiljević* Trial Judgement, para.249.

⁷⁵⁵ *Krnojelac* Trial Judgment, para.436. *Vasiljević* Trial Judgement, para.249.

⁷⁵⁶ *Krnojelac* Trial Judgment, para.436. *Vasiljević* Trial Judgement, para.249.

5. THE ALLEGED PARTICIPATION OF SREDOJE LUKIĆ IN OTHER ALLEGED INCIDENTS

5.1 Alleged Participation of Sredoje Lukić in the Alleged Killing of 7 Muslim Men at the “Varda” Factory (Counts 6 and 7) for Which He is Not Charged in the Indictment

399. The Co-Accused Milan Lukić is charged with murder of seven workers at the Varda factory on or about 10 June 1992. The Prosecution called witness VG-017, VG-024 and VG-042 to testify with regard to this incident. Witness VG-042 was the sole witness to mention Sredoje Lukić as an alleged participant in this incident.

5.1.1 Witness VG-042

5.1.1.1 VG-042 Allegations

400. Witness VG-042 alleged that Sredoje Lukić was present during the abductions in the Varda factory on 10 June 1992.⁷⁵⁷ [REDACTED]⁷⁵⁸

5.1.1.2 VG-042 Credibility and Reliability

401. Witness VG-042 has given several statements to the investigating authorities. [REDACTED].⁷⁵⁹

402. [REDACTED]⁷⁶⁰ [REDACTED]⁷⁶¹ [REDACTED]⁷⁶²

403. [REDACTED]⁷⁶³

⁷⁵⁷ T.2798.

⁷⁵⁸ 1D68,p.3,para.3;1D67,p.2.

⁷⁵⁹ 1D66,p.6.

⁷⁶⁰ 1D67.

⁷⁶¹ 1D68.

⁷⁶² 1D68,p.3,para.3.

404. Witness VG-042 testified before this Honorable Trial Chamber *viva voce*, and throughout the direct examination she never mentioned Sredoje Lukić.⁷⁶⁴

405. The first instance of this witness mentioning the alleged participation of Sredoje Lukić during her testimony was only upon a question put to her by the Defence of Milan Lukić during cross-examination.⁷⁶⁵ Nevertheless, during cross-examination of the Defence of Sredoje Lukić the witness stated that she actually did not dare to look at the driver:

24 Q. Therefore you will agree with me that you did not see that. It
 25 was merely an assumption on your part, as you state?
 1 A. I didn't look him in the eye. I didn't dare to look because as
 2 soon as you had a look at them, they would shoot straight away.⁷⁶⁶

406. That this witness's allegation against Sredoje Lukić is solely based on a biased assumption is further confirmed by the witness herself during Defence cross-examination:

3 Q. But, ma'am, you're over -- you're over 50 metres away on your
 4 veranda, and this person did not get out of a vehicle, and you gave no
 5 descriptive means for that person. Isn't that true?
 6 A. I assume, and I always assume that Sredoje and Milan Lukic were
 7 in the car -- the Passat car together.

407. Another Prosecution witness, who was an eyewitness to this incident in front of the sawmill of the Varda factory, is witness VG-017. The position from which he

⁷⁶³ 1D69,para.9.

⁷⁶⁴ T.2775-2796.

⁷⁶⁵ T.2798.

⁷⁶⁶ T.2839-2840.

was observing the incident was significantly closer than the position of witness VG-042, which can be seen on the marked photographs.⁷⁶⁷

408. [REDACTED]⁷⁶⁸ [REDACTED]⁷⁶⁹ [REDACTED]

409. Even so, it must be noted that during his testimony, witness VG-017, who was standing closer to the incident, confirmed that he knew Sredoje Lukić well and that he did not see him at all during the war.⁷⁷⁰ He certainly did not mention Sredoje Lukić in relation to this incident. VG – 024, another witness who testified about this incident, stated that she knew Sredoje Lukić, but she also never mentioned him as one of the participants in the incident in front of the Varda factory.⁷⁷¹

410. Moreover, during cross-examination witness VG-042 was shown a video recording, [REDACTED]⁷⁷² [REDACTED]⁷⁷³ [REDACTED]⁷⁷⁴

A simple look at the snapshot and the entire video recording being 2D23, proves that it is not possible to see with the naked eye anyone sitting in the car in 2008, and therefore also not in 1992.

411. Considering the snapshot vision, which completely refutes the allegations made by witness VG-042, the above quoted answer of the witness clearly demonstrates her significant bias, unreliability and clear lack of objectiveness.

412. Her unreliability is further affirmed by her claim in relation to another incident, namely the murder of Behija Zukić. Witness VG-042 claimed that the incident in

⁷⁶⁷ 2D21,2D22,C1 related to VG-042;and P154,P155 and P156 related VG-017.

⁷⁶⁸ T.2846-2847.

⁷⁶⁹ T.2847.

⁷⁷⁰ T.2761.

⁷⁷¹ T.3203-3309.

⁷⁷² T.2848-2849.

⁷⁷³ 2D23;T.2851-2852.

⁷⁷⁴ T.2851-2852.

front of the Varda factory occurred on the day of the highest religious holiday, Kurban Bajram,⁷⁷⁵ [REDACTED]⁷⁷⁶ This witness further asserted that same day, in the morning prior to the described incident, she was in the house of Behija Zukić where she found her dead body,⁷⁷⁷ and that she was also present when the body of Behija Zukić was loaded into the car and taken away.⁷⁷⁸

413. VG-042's testimony is in complete contradiction to all other witnesses who testified about this incident,⁷⁷⁹ and stated that the murder of Behija Zukić occurred on 19 May 1992.⁷⁸⁰ VG-042's testimony is further contradicted by material evidence – [REDACTED]⁷⁸¹ The Defence is of the view that it is impossible to be confused or mistaken when alleging that two such serious incidents occurred on the same day.

414. The Defence submits that, given the established impossibility of witness VG-042 to see the person in the car from her terrace, her contradictory statements in comparison to other witnesses and her clear, unconcealed bias, every reasonable Trial Chamber shall dismiss the testimony of this witness.

5.2 Alleged Participation of Sredoje Lukić in Other Alleged Incidents Outside the Scope of the Indictment

5.2.1 Introduction

415. The Prosecution has presented evidence and heard witnesses who did not testify on the counts from the Second Amended Indictment as they were called as alibi

⁷⁷⁵ T.2792.

⁷⁷⁶ 1D68,p.3,para.1,

⁷⁷⁷ T.2801-2802.

⁷⁷⁸ T.2783-2785.

⁷⁷⁹ P5,p.5,para.4;T.305,T.308;T.439-440;T.669;1D23,p.4,T.807;T.1152-1153,T.1214;T.1593;T.1699;T.1735-1736;P116,p.5,para.3 – p.6,para.5;T.2045;T.2714-2715;T.2953;T.3218;T.2783-2785.

⁷⁸⁰ 2D34,p.2,para.7;T.2952;1D52,pp.1-2.

⁷⁸¹ P162.

rebuttal witnesses. Nevertheless, their testimonies were primarily focused on incidents which fall outside the scope of the Second Amended Indictment.

416. The Defence recalls the following alleged incidents in which participation by Sredoje Lukić is alleged:

- a) The taking of Rasim Torohan
- b) The murder of Nurka Kos
- c) The murder of Behija Zukić
- d) Bringing of the body of Behija Zukić in front of the Višegrad Health Centre
- e) Alleged crimes against Muslims gathered in the „Hasan Veletovac“ school
- f) Alleged rapes in the „Vilina Vlas“ hotel
- g) The taking of father and brother of witness VG-094
- h) Alleged murder of Sadija Dedić and other alleged crimes described by VG-058

5.2.2 Alleged Taking of Rasim Torohan and the Murder of Nurka Kos

5.2.2.1 Witness VG-097

5.2.2.1.1 VG-097 Allegations

417. Witness VG-097 was announced as an alibi rebuttal witness for the Accused. [REDACTED].⁷⁸² [REDACTED]⁷⁸³ [REDACTED]⁷⁸⁴

⁷⁸² P28.

⁷⁸³ P28,p.4,para.4.

⁷⁸⁴ P28,p.4,last paragraph and p.5,first paragraph.

5.2.2.1.2 VG-097 Credibility and Reliance

418. VG-097 has previously testified in the case *Prosecutor v. Mitar Vasiljević*.⁷⁸⁵ His testimony in this case took place one year after this witness gave a statement to the Prosecution, which has been admitted as Exhibit P28. [REDACTED]⁷⁸⁶ [REDACTED]⁷⁸⁷

419. The Defence wishes to highlight that this witness for the first time gave a statement to an investigating authority, i.e. OTP investigators, in the year 2001,⁷⁸⁸ once the Indictment against the accused was made public, but prior to his testimony in the case *Prosecutor v. Mitar Vasiljević*.

420. Another witness who testified in the case *Prosecutor v. Mitar Vasiljević* regarding the above incidents was witness Bakira Hasečić.⁷⁸⁹

421. After confronting the witness with Bakira Hasečić's statement relating to the same incidents,⁷⁹⁰ witness VG-097 answered as follows:

11 Q. [Interpretation] Ms. Hasecic knows Sredoje Lukic very well, and
12 she never said that he participated in the incident, as you can see from
13 her statement. Do you have any comment?

14 A. No, I have no comment.⁷⁹¹

13 Q. Thank you. I am asking you again. Are you saying that
14 Ms. Bakira Hasecic is lying?

15 A. No, I'm not.⁷⁹²

⁷⁸⁵ 1D8.

⁷⁸⁶ 1D8.

⁷⁸⁷ T.650-651.

⁷⁸⁸ T.644;P 28.

⁷⁸⁹ *Vasiljević* Trial Judgement, paras.86 and 164.

⁷⁹⁰ 2D1.

⁷⁹¹ T.648.

⁷⁹² T.649.

422. Furthermore, [REDACTED]⁷⁹³ when asked by the Prosecution on this subject in re-direct examination, witness VG-097 stated that he “was in a black uniform and wore a hat”.⁷⁹⁴

423. [REDACTED]⁷⁹⁵ In fact, Mitar Vasiljević was in the hospital during that period of time⁷⁹⁶ and therefore could not possibly have been participating in the alleged incidents.

424. The Defence respectfully submits that the testimony of witness VG-097 has shown to be untrustworthy and can therefore not be relied upon by a reasonable Trial Chamber.

5.2.3 The Murder of Behija Zukić

425. Several witnesses have testified on the alleged murder of Behija Zukić, namely VG-014,⁷⁹⁷ VG-079,⁷⁹⁸ VG-115,⁷⁹⁹ Mirsada Kahrman,⁸⁰⁰ VG-032,⁸⁰¹ VG-058,⁸⁰² VG-035,⁸⁰³ VG-089,⁸⁰⁴ VG-082,⁸⁰⁵ VG-017,⁸⁰⁶ VG-133,⁸⁰⁷ VG-024⁸⁰⁸ and VG-042.⁸⁰⁹ Yet only witness Mirsada Kahrman has actually mentioned Sredoje Lukić as one of the men present during the murder.⁸¹⁰

⁷⁹³ P28,p.4,last paragraph.

⁷⁹⁴ T.655.

⁷⁹⁵ P28.

⁷⁹⁶ *Vasiljević* Trial Judgment,para 143.

⁷⁹⁷ P5,p.5,para.4;T.305,T.308.

⁷⁹⁸ T.439-440.

⁷⁹⁹ T.669.

⁸⁰⁰ 1D23,p.4;T.807.

⁸⁰¹ T.1152-1153,1214.

⁸⁰² T.1593.

⁸⁰³ T.1699.

⁸⁰⁴ T.1735-1736.

⁸⁰⁵ P116,p.5,para.3 – p.6,para.5;T.2045.

⁸⁰⁶ T.2714-2715.

⁸⁰⁷ T.2953.

⁸⁰⁸ T.3218.

⁸⁰⁹ T.2783-2785.

⁸¹⁰ P34,para.24;T.807.

5.2.3.1 Witness Mirsada Kahrman

5.2.3.1.1 *Mirsada Kahrman Allegations*

426. Immediately after hearing a shot, this witness allegedly crossed her terrace into the apartment of Behija Zukić and stood at a distance of 1 meter away from Milan Lukić, when he killed Behija Zukić, while Sredoje Lukić was allegedly standing a bit further away from Milan Lukić.⁸¹¹ This witness further claimed that previously the same day Milan Lukić stole Behija Zukić's cherry red passat, and that Sredoje Lukić drove the truck that carried away the six men and boys from the Zukić home.⁸¹²

5.2.3.1.2 *Mirsada Kahrman Credibility and Reliance*

427. As is mentioned above, during her testimony witness Kahrman pointed out only Milan Lukić and Sredoje Lukić as the alleged perpetrators of the incident. In her witness statement from 2001 however, this witness also mentioned Mitar Vasiljević as one of the participants in the incident.⁸¹³

428. A significant discrepancy is evident from her statement given to the OTP investigators in 2008, where witness Kahrman stated that during the murder of Behija Zukić, she in fact only saw Mitar Vasiljević.⁸¹⁴

429. This witness's unreliability is further demonstrated by her description of the alleged incident provided in the statement from 2001, where she claimed that one of the last days of May 1992, a man named Slavko, who used to work in the

⁸¹¹ T.807.

⁸¹² T.808 lines 1-8.

⁸¹³ P34,para.24.

⁸¹⁴ P35,para.7.

laboratory of the Health Centre in Višegrad was impaled on the square in front of the “Višegrad” hotel by Sredoje Lukić.⁸¹⁵ During cross-examination, the Defence confronted the witness with those allegations as well as the signature of the witness on that statement. Although at first unable to remember giving a statement about any such incident,⁸¹⁶ after further questioning and confrontation with her signature the witness accepted that she had stated that. Even so, this witness was not able to provide further information about the alleged victim, his physical appearance, his age, nor the time of day when the incident allegedly took place.⁸¹⁷ Furthermore, the Defence contended, that there was only one man by the name Slavko working in the Health Centre in Višegrad, and that this man is in fact alive to this day. The Defence invited the Prosecution to investigate this matter in case it had any suspicions about the reliability of this contention.⁸¹⁸ Above all, the contention that no one by the name Slavko was killed in Višegrad during the relevant period, is confirmed by the fact that this person is not included in any of the tables of victims or missing persons which are admitted into evidence, namely the Victim List from Lukić and Lukić Indictment Schedules⁸¹⁹, the list of Additional Victims Confirmed on the ICRC List of Missing Persons from Bosnia and Herzegovina,⁸²⁰ the ICRC List of Missing Persons in the Višegrad Municipality⁸²¹ and Amor Mašović’s Table “A” of People Still Missing From the Višegrad Municipality.⁸²²

430. During her testimony witness Kahrman further claimed that her husband was killed by Milan Lukić and Sredoje Lukić.⁸²³ However, it is most significant that she has never put this claim in any of her previous statements.⁸²⁴ In her statement from 2001 (P34, para. 16), the witness unambiguously stated that her husband

⁸¹⁵ P34,para.28.

⁸¹⁶ T.855 lines 17-22,T.856 lines 2-19.

⁸¹⁷ T.857 line 25,T.858 lines 1-8,T.858 line 25 – T.859 lines 1-8,T.859 lines 16-17.

⁸¹⁸ T.859-860.

⁸¹⁹ P119.

⁸²⁰ P120.

⁸²¹ 2D26.

⁸²² P176.

⁸²³ T.811.

⁸²⁴ P34,P35,1D23.

- was killed by a man named Slobodan Tripković. Yet again, contrary to both claims mentioned above, in her statement given to the Office of the Prosecutor in 2008 this witness stated that she did not actually see her husband get shot.⁸²⁵
431. Moreover, during her testimony under oath, witness Kahrman proved another discrepancy by claiming that when she gave her statement in 2001, only one photo-spread was shown to her,⁸²⁶ while in the statement from 2001 itself the witness clearly stated that she was shown three photo-spreads.⁸²⁷
432. The Defence particularly wishes to emphasize, that this witness gave a statement to the investigating authority – Ministry of Internal Affairs of BiH - on 23 June 1992⁸²⁸ only a few weeks following the incidents about which she testified before this Honorable Chamber 16 years later. In that statement, the witness provided an entirely different account of the events surrounding the murder of Behija Zukić and mentioned the full names and surnames of a significant number of alleged perpetrators. And yet nowhere in that statement, not even with one word, did she mention Sredoje Lukić in relation to the murder of Behija Zukić nor any other alleged incident.⁸²⁹
433. The Defence emphasizes that this witness in fact first started mentioning the name Sredoje Lukić in the statement from 2001,⁸³⁰ only after the Indictment against the Accused was made public.
434. The Defence persistently objected to the Prosecution request for in-court-identification of the accused.⁸³¹ Nonetheless, the witness was unable to recognize either of the accused, even in the situation where there are only two accused in

⁸²⁵ P35,para.8.

⁸²⁶ T.862-864.

⁸²⁷ P34,para.54.

⁸²⁸ 1D24.

⁸²⁹ 1D23,p.4.

⁸³⁰ P34.

⁸³¹ See e.g.T.886;T.1582;T.1688-1689.

court, whose pictures and video's have been made public to a large extent by the media.⁸³²

435. The Defence submits that the identification of the Accused Sredoje Lukić by witness Kahrman is entirely unreliable. Namely, in her statement from 2001 this witness described Sredoje Lukić as being shorter than Milan Lukić and also stated that she did not know his occupation.⁸³³ And although in direct examination she claimed that she used to see Sredoje Lukić three times a day during the relevant period,⁸³⁴ during cross-examination she was not able to provide any further information about Sredoje Lukić. In particular, she was unable to testify about the kind of clothes he was wearing or whether he had a beard or a moustache.⁸³⁵

436. The Defence respectfully submits that the testimony of witness Mirsada Kahrman is unreliable to such an extent that it can not be accepted in any of its parts.

5.2.4 Bringing of the Body of Behija Zukić to the Višegrad Health Centre

437. Two Prosecution witnesses have testified in relation to the bringing of the body of Behija Zukić to the Višegrad Health Centre on 20 May 1992, namely witnesses VG-133 and VG-032.

5.2.4.1 Witness VG-133

5.2.4.1.1 VG-133 Allegations

438. Witness VG-133 testified in relation to the murder of Behija Zukić, or rather the bringing of her body to the Višegrad Health Centre.⁸³⁶ [REDACTED]⁸³⁷ During her testimony, VG-133 stated that when the body of Behija Zukić was brought in

⁸³² T.811 line 5-9,T.812 lines 7-10.

⁸³³ P34,para.13.

⁸³⁴ T.805 line 14.

⁸³⁵ T.854-855.

⁸³⁶ P161,paras.11-13;T.2953.

⁸³⁷ P161,para.13.

front of the Health Centre, Milan Lukić arrived in the red passat owned by Behija Zukić, together with Niko Vujičić and Sredoje Lukić who was allegedly sitting in the back seat of the car and that Milan Lukić opened the window of the door and laughed cynically.⁸³⁸

5.2.4.1.2 VG-133 Credibility and Reliance

439. The first time that this witness claimed to have seen Sredoje Lukić in the red passat together with Milan Lukić and Niko Vujičić was during her testimony in the present case. It must be underlined that this claim is highly unreliable, since the witness stated that she knew Sredoje Lukić from before [REDACTED]⁸³⁹ [REDACTED]⁸⁴⁰

440. Witness VG-133 clearly confirmed that her statement from 18th and 20th of August 2008⁸⁴¹ is true and accurate to the best of her knowledge and if she were to be asked the same questions she would give the same answers.⁸⁴² Although the witness subsequently made certain corrections to her statement she did not make any corrections to the part of her statement related to the appearance of the red passat in front of the Health Centre.⁸⁴³

441. Afterwards, during cross-examination this witness did not provide any reliable explanation for such a significant discrepancy in her testimony and stated that she does not know why the name was left out and that it might be a typing error or a misinterpretation.⁸⁴⁴

442. Another Prosecution witness who testified in relation to this incident was witness VG-032 and he claimed to have seen only Milan Lukić in the red passat in front

⁸³⁸ T.2953.

⁸³⁹ P161,para.9.

⁸⁴⁰ P161,para.12.

⁸⁴¹ P161.

⁸⁴² T.2948.

⁸⁴³ T.2946-2948.

⁸⁴⁴ T.3054,lines 1-18.

- of the Health Centre.⁸⁴⁵ Witness VG-032 further stated that he knows Sredoje Lukić and that he has not heard anything bad about him.⁸⁴⁶
443. The Defence wishes to stress that witness VG-133 gave her first statement to the investigating authority in August 2008,⁸⁴⁷ 16 years after the alleged incidents and after the trial against the accused had started.
444. Another discrepancy in this witness's testimony can be found in relation to the alleged incident of taking of Islam Čormehić.⁸⁴⁸ The witness made a clear correction and stated that Sredoje Lukić did not participate in that incident⁸⁴⁹. This witness claims that Islam Čormehić went missing in the centre of Višegrad in May 1992. Nevertheless, in the Excerpt from the ICRC List of Missing Persons in Višegrad Municipality, it stands clearly established that Islam Čormehić went missing outside the town of Višegrad, in the area of the settlement Povještica.⁸⁵⁰ The witness did not provide a credible explanation for this discrepancy either.⁸⁵¹
445. [REDACTED]⁸⁵² During the cross-examination, however, after confronting her with a video clip⁸⁵³ showing the Old bridge and its surroundings, the witness clearly explained that she was in fact not able to see the perpetrators of those crimes.⁸⁵⁴
446. In her further testimony after being questioned by the Defence, witness VG-133 unmistakably confirmed that she had never seen Sredoje Lukić committing any

⁸⁴⁵ T.1153.

⁸⁴⁶ T.1230 line 17-25,T.1231 lines 1-2.

⁸⁴⁷ P161.

⁸⁴⁸ P 161,para.25;T.2947-2948.

⁸⁴⁹ T.2947-2948.

⁸⁵⁰ 2D26 under number 94.

⁸⁵¹ T.3051.

⁸⁵² P161 para.22.

⁸⁵³ 2D26.

⁸⁵⁴ T.3061.

crime.⁸⁵⁵ To a specific question put to her by the Honorable Presiding Judge Robinson, Witness VG-133 answered as follows:

13 JUDGE ROBINSON: Did anybody ever tell you that they saw Sredoje
 14 kill anyone or abuse anyone? Did you ever hear that from anybody?
 15 THE WITNESS: [Interpretation] Not to me, no. And I can explain a
 16 few things. The rumours, when you say somebody said so and so said and
 17 then so and so said something else two days later or you heard something
 18 else two days later, so I don't want to repeat these rumours from people
 19 that would change their accounts from one day to the next. But as I say,
 20 no serious-minded person ever told me or nor did I hear them say that
 21 Sredoje Lukic killed anybody or abused anybody and towards me his conduct
 22 was decent. We came across him in -- I came across him in the MUP. He
 23 said hello nicely, warned me not to move around town and left.⁸⁵⁶

447. For the foregoing reasons, the Defence respectfully submits that this witness did not provide any sufficiently reliable information supporting the contention that the Accused Sredoje Lukić was in the red passat together with Milan Lukić and Niko Vujičić in front of the Višegrad Health Centre, nor that he in any way participated in any other criminal act.

5.2.5 Alleged Crimes against Muslims Gathered in the “Hasan Veletovac” School

5.2.5.1 Witness VG-063

5.2.5.1.1 VG-063 Allegations

448. This witness testified in relation to the alleged incidents in the Hasan Veletovac school during the month June in 1992, explaining the alleged participation of Sredoje Lukić in two instances in that school.

⁸⁵⁵ T.3061-3062.

⁸⁵⁶ T.3062.

449. [REDACTED]⁸⁵⁷ [REDACTED]⁸⁵⁸ [REDACTED]⁸⁵⁹.

5.2.5.1.2 VG-063 *Credibility and Reliance*

450. During her testimony, witness VG-063 was not even able to provide any detailed identifying information regarding Sredoje Lukić. [REDACTED]⁸⁶⁰ [REDACTED]⁸⁶¹

451. The Defence specifically underscores the unreliability of this witness's testimony. Namely, prior to her testimony before this Honorable Trial Chamber and starting from the year 1994, this witness gave five statements in total⁸⁶² to various institutions (Office of the Prosecution, Bosnia and Herzegovina Ministry of Internal Affairs, Prosecution of Bosnia and Herzegovina, Women Victims of War Organisation) [REDACTED]⁸⁶³ all relating to the alleged incidents in the "Hasan Veletovac" school in Višegrad during the month June in 1992. [REDACTED]⁸⁶⁴.

452. The unreliability of her statements is further confirmed by the witness's testimony relating to her short stay at the house of Meho Aljić⁸⁶⁵ in Bikavac [REDACTED]⁸⁶⁶ [REDACTED]⁸⁶⁷ [REDACTED]⁸⁶⁸

453. In the light of the foregoing, any reasonable Trial Chamber must conclude that this witness's testimony is unreliable and biased, and should therefore be dismissed in its entirety.

⁸⁵⁷ T.1844,1850.

⁸⁵⁸ T.1855.

⁸⁵⁹ T.1863.

⁸⁶⁰ T.1908.

⁸⁶¹ T.1908.

⁸⁶² 1D49,1D51,2D11,2D12,2D13.

⁸⁶³ 2D14.

⁸⁶⁴ 1D49,1D51,2D11,2D12,2D13,2D14.

⁸⁶⁵ The house of Meho Aljić is designated in Counts 13-17 of the Indictment in relation to the incident in Bikavac.

⁸⁶⁶ T.1840.

⁸⁶⁷ 1D49,1D51,2D11,2D12,2D13,2D14.

⁸⁶⁸ 2D13,p.5;1D49,p.7;2D12,pp.4 and 5.

5.2.6 Alleged Rapes in the “Vilina Vlas” Hotel

454. Two Prosecution witnesses have testified regarding the alleged rapes in the “Vilina Vlas” hotel, namely VG-131 and VG-094.

5.2.6.1 Witness VG-131

5.2.6.1.1 VG-131 Allegations

455. Witness VG-131 testified in relation to alleged rapes in the hotel “Vilina Vlas”.
[REDACTED]⁸⁶⁹ [REDACTED]⁸⁷⁰ [REDACTED]⁸⁷¹

5.2.6.1.2 VG-131 Credibility and Reliance

456. The Defence explicitly underlines that it is only in the testimony before this Honorable Trial Chamber, 16 years after the alleged incidents, that witness VG-131 for the first time mentioned the name of Sredoje Lukić. The name of Sredoje Lukić is not mentioned in any of the admitted statements of this witness.⁸⁷²
[REDACTED]⁸⁷³ [REDACTED]⁸⁷⁴

457. [REDACTED]⁸⁷⁵ [REDACTED]⁸⁷⁶ [REDACTED]⁸⁷⁷ [REDACTED]⁸⁷⁸

458. [REDACTED]⁸⁷⁹

⁸⁶⁹ T.3382.

⁸⁷⁰ T.3387-3388.

⁸⁷¹ T.3386.

⁸⁷² 1D88,1D89,2D40.

⁸⁷³ T.3440.

⁸⁷⁴ T.3435.

⁸⁷⁵ 2D40,p.3,paras.5 and 6.

⁸⁷⁶ 1D88,p.2 lines 38-40.

⁸⁷⁷ 1D89,para.12.

⁸⁷⁸ T.3437.

⁸⁷⁹ T.3438;1D89,para.12.

459. The description provided by this witness clearly shows that the other soldier is not the Accused Sredoje Lukić. Namely, the video recording showing a clear image of Sredoje Lukić in April 1992 (Exhibit P203) [REDACTED]⁸⁸⁰ clearly show that Sredoje Lukić did not have nor does he have scars on his face as if suffering from some skin disease, nor is he shorter and heavier than Milan Lukić.
460. Similarly, Sredoje Lukić could not have had “longish hair”. On the video recording⁸⁸¹ taken only 6 weeks prior to the alleged incidents, one can clearly see that Sredoje Lukić had short hair, which could not have grown that much in that time period so as to be considered longish.
461. For the foregoing reasons, the Trial Chamber must conclude that this witness did not provide any reliable information in relation to the alleged participation of Sredoje Lukić in any criminal act.

5.2.6.2 Witness VG-094

5.2.6.2.1 VG-094 Allegations

462. Witness VG-094 was called by the Prosecution as an alibi rebuttal witness for the Bikavac incident. Nevertheless, this witness has also testified with regard to the alleged rapes in the hotel “Vilina Vlas”. [REDACTED]⁸⁸²

5.2.6.2.2 VG-094 Credibility and Reliance

463. [REDACTED]⁸⁸³
464. However, the description of the person who is supposed to be Sredoje Lukić according to this witness’ understanding does not correspond in its entirety to the

⁸⁸⁰ 2D52.

⁸⁸¹ P203.

⁸⁸² T.6994-6997;1D227;P335;2D69.

⁸⁸³ T.6996;P335,para.31.

actual appearance of the Accused Sredoje Lukić. [REDACTED]⁸⁸⁴
[REDACTED]⁸⁸⁵ [REDACTED]⁸⁸⁶

465. [REDACTED]⁸⁸⁷

466. A similar description of the person who is alleged to be Sredoje Lukić has been provided by some other Prosecution witnesses.⁸⁸⁸ The given description clearly shows that that person is not the Accused Sredoje Lukić, who is a tall man and in fact significantly taller than VG-094. According to the report from the UNDU⁸⁸⁹ Sredoje Lukić is 185 cm tall, i.e. actually 10 cm taller than the witness, which constitutes a significant difference of 15 cm in total in relation to the description provided by the witness. The fact that Sredoje Lukić was not short just 170 cm tall in 1992, that he was not a fat person, that he did not have dark hair and that he did not look like a 45 year old person, instead of 31 years, is clearly visible in the video footage taken only five-six weeks prior to this alleged incident.⁸⁹⁰ The video is taken after Sredoje Lukić release on the Višegrad dam on 14 April 1992 and from this video it is clearly visible how Sredoje Lukić looked like at the time.

467. For the foregoing reasons, the Trial Chamber must conclude that this witness did not provide any reliable information in relation to the alleged participation of Sredoje Lukić in this specific or any other criminal act.

⁸⁸⁴ T.6996.

⁸⁸⁵ 2D69,p.3,para.2.

⁸⁸⁶ P335 para.32; 1D227,p.4,para 4.

⁸⁸⁷ T.7057.

⁸⁸⁸ A detailed analysis can be found in the Identification Chapter, paras. 537 – 542.

⁸⁸⁹ 2D64.

⁸⁹⁰ P203.

5.2.7 The Taking of the Father and Brother of Witness VG-094

5.2.7.1 Witness VG-094

5.2.7.1.1 VG-094 Allegations

468. Prosecution witnesses VG-119 and VG-094 have testified with regard to the taking of the father and brother of witness VG-094. Neither in her testimony nor in her previous statements did witness VG-119 describe any participation by Sredoje Lukić in this alleged incident. [REDACTED]⁸⁹¹

5.2.7.1.2 VG-094 Credibility and Reliance

469. [REDACTED]⁸⁹²

470. [REDACTED]⁸⁹³

471. In particular, the Defence must stress that this witness gave an entirely incorrect identification of the person she considered to be Sredoje Lukić.⁸⁹⁴

472. For the foregoing reasons, the Trial Chamber must conclude that this witness did not provide any reliable information in relation to the alleged participation of Sredoje Lukić in this specific or any other criminal act.

⁸⁹¹ T.6986-6988.

⁸⁹² Ibid.

⁸⁹³ 1D227,P335,2D69.

⁸⁹⁴ A detailed description is provided in the previous chapter 5.2.6.2.2.

5.2.8 Alleged Murder of Sadija Dedić and Other Alleged Crimes Described by VG-058

5.2.8.1 Witness VG-058

5.2.8.1.1 VG-058 Allegations

473. VG-058 has made a number of allegations against Sredoje Lukić which, the Defence must stress, are entirely unfounded. VG-058 claimed that she saw White Eagles drinking outside the door of Momir Miošković's house; among the group were Milan Lukić and Sredoje Lukić.⁸⁹⁵ She further stated that one day Mitar Vasiljević, Milan Lukić, Sredoje Lukić and Joviša Planojević came to her house and Mitar Vasiljević kicked in the door.⁸⁹⁶ Mitar Vasiljević then asked her for gold and money and she gave the group what they wanted.⁸⁹⁷ Additionally, VG-058 claimed that she met the White Eagles on the Drina bridge and that Sredoje Lukić was amongst them.⁸⁹⁸ [REDACTED]⁸⁹⁹

5.2.8.1.2 VG-058 Credibility and Reliance

474. The Defence stresses that all the abovementioned allegations put forward by VG-058 are entirely unfounded. It has not been established that this witness knew Sredoje Lukić from before the alleged incident. [REDACTED]⁹⁰⁰ which suggests that she did not know Sredoje Lukić and consequently could not have identified him at these alleged incidents either. Neither did witness VG-058 identify Sredoje Lukić in the alleged incidents, nor are her allegations corroborated by any other piece of evidence presented during this case. The Defence further recalls that this witness' credibility has been discussed in detail in the section regarding the Bikavac incident and submits that significant doubt is cast on the credibility and

⁸⁹⁵ T.1588.

⁸⁹⁶ T.1589.

⁸⁹⁷ T.1589.

⁸⁹⁸ T.1588-1589.

⁸⁹⁹ T.1591.

⁹⁰⁰ T.1581-1586.

reliability of her testimony. It is therefore that her testimony may not be admitted in any of its aspects.

6. POSITION OF SREDOJE LUKIĆ DURING THE PERIOD OF WAR 1992-1995

6.1 Sredoje Lukić Was Not a Member of Any Paramilitary Group

475. The Defence maintains that the evidence presented during the proceedings unambiguously demonstrated Sredoje Lukić's position as an ordinary policeman and an ordinary soldier during the war in Bosnia in the period from 1992 to 1995, more precisely the period referred to in the Indictment, i.e. 7 June 1992 to 10 October 1994. The Defence stresses that the clear and sole conclusion to be drawn from the numerous presented exhibits, is that during the year 1992 Sredoje Lukić was an ordinary active policeman without any higher rank, and from January 1993, he was a regular member of the VRS (Army of Republika Srpska). The Defence in particular stresses that during the war Sredoje Lukić was not a member of any paramilitary formation; rather he was conducting his duties in regular formations.

6.2 Sredoje Lukić's Personal Situation in 1992

476. From the beginning of the war in the spring of 1992 Sredoje Lukić was on duty as an ordinary policeman in Višegrad. He moved his family to the village Krtinska in Obrenovac.⁹⁰¹ Shortly afterwards he was arrested by the Muslim forces and released after a few days of detention.⁹⁰² He then went to stay with his family in Obrenovac. Later on, due to his professional duties as an ordinary policeman in Višegrad, he was forced to travel a lot between Višegrad and Obrenovac – village Krtinska, in order to visit his family.⁹⁰³

⁹⁰¹ 2D41,para.3;2D44,p.6,line 20 – 24;T.3732.

⁹⁰² T.920-921;P203.

⁹⁰³ 2D44,p.12,lines 19-28;2D47,paras.6 and 8.

477. Defence witness Zorka Lukić stated the following during the interview with the Prosecution:

19 PS: As far as you remember, that is, to your understanding, was Sredoje still
 20 working in Višegrad, regardless of the fact that he lived in Obrenovac?
 21
 22 ZL: Yes, he went to work in Višegrad and came here to visit his wife and children.
 23 Since he did not have other income, he went there to work but he returned over
 24 here to visit his wife and children.⁹⁰⁴

478. In order to avoid the conflict and any participation in the war, other than moving his family to Serbia, Sredoje Lukić tried to find employment in Belgrade. He was looking for a job in Serbia and applied for a job in Belgrade.⁹⁰⁵ Unfortunately however, his application for a job was dismissed because of some administrative issues.⁹⁰⁶

479. These actions of Sredoje Lukić clearly demonstrate his intention to start a life with his family in Serbia, far away from the war and any war incidents.

6.3 The Alleged Membership of Sredoje Lukić in a Paramilitary Formation

6.3.1. Exhibit P196

480. The Prosecution presented an exhibit with the purpose of suggesting that Sredoje Lukić was a member of a paramilitary formation. This exhibit is the State Security Operational Information on Sredoje Lukić from 4 June 1992 (P196).

⁹⁰⁴ 2D44,p.12.

⁹⁰⁵ 2D44,p.6,lines 32-34;T.3680;2D47,para.10.

⁹⁰⁶ 2D44,p.12,lines 24-26;T.3769.

481. The Defence respectfully submits that this document has little evidentiary weight, if any.⁹⁰⁷ Namely, the report is neither signed by its author nor is the name of the author mentioned anywhere in the report. That is utterly unacceptable in the country where this document originates from. Considering the fact that the author of the document is unknown, there was no prospect of calling the author of the document for cross-examination. In this context, the Defence refers to the Trial Chamber's "Decision on Sredoje Lukić's Request for Certification to Appeal Decision of 13 November 2008" delivered on 1 December 2008, in which it found "that lack of corroboration or cross-examination are factors to be taken into consideration when assessing the weight to be attached to such a document.
482. Furthermore, the Defence stresses that the alleged original source of information, "M.G. from Mokra Gora, Užice Municipality"⁹⁰⁸ cannot be properly identified, since the name of the author is not provided in the report. Again as the person who provided this information is unknown, the Defence had no opportunity to call this person for cross-examination.
483. Besides that, the last sentence of paragraph 1 clearly indicated, "the information unconfirmed". The only possible conclusion therefore is that those are only speculations.
484. Besides all the abovementioned, the allegations from this document have not been corroborated by any other piece of evidence.
485. [REDACTED]⁹⁰⁹

⁹⁰⁷ On 10 November 2008, the Defence filed "Sredoje Lukić's Response to 'Prosecution's Request for admission of Exhibit 65ter 167 with Confidential Annexes A,B,C,and D'" questioning the authenticity and reliability of 65ter 167 and subsequently filed on 19 November 2008 "Sredoje Lukić's Request for Certification for Appeal of the Trial Chamber's 'Decision On Prosecution's Request For Admission Of Exhibit 65ter 167' Dated 13 November 2008".

⁹⁰⁸ P196, para.1.

⁹⁰⁹ P144, para.18; T.2618-2624.

6.3.2. *Duga* Article

486. The Defence of Sredoje Lukić submits that the *Duga* article does not have any reliability and weight. The Defence refers to paragraphs 8 through 39 of “Sredoje Lukić’s Response to Prosecution Third Request for Admission Of Exhibit From The Bar Table With Confidential Annexes A Through H and Prosecution Submission in Relation with the Bar Table with Supplemental Annex G” from 1 April 2009, and paragraphs 5 through 18 of “Sredoje Lukić’s Response to Prosecution Motion to Reconsider or in the Alternative to Appeal the Trial Chamber’s Decision on the Prosecution Motion for the Admission of Documents from the Bar Table” from 20 April 2009 as well as to pages 5 and 9 of Trial Chamber’s “Decision on the Prosecution Motion for the Admission of Documents from the Bar Table” from 9 April 2009. In these Defence Submissions as well as in Trial Chamber decision, it is convincingly outlined at the identified paragraphs and pages, that none of the respective documents have any reliability and weight.

487. Firstly, the Prosecution requested admission of a document bearing 65^{ter} number 189, which allegedly represents a newspaper article entitled “Sjeverin Case: First Defeat of Milan Lukić, Commander without Firearm” (“*Duga* Article”). The authenticity of this exhibit was already discussed in trial. On 17 December 2008, the Defence successfully objected to the admissibility of this exhibit, because the date of the publication of this article was unknown and the actual original publication was not available.⁹¹⁰ The Prosecution only has a photocopy of the article.⁹¹¹ On 24 March 2009, the Prosecution again requested admission of the *Duga* Article together with “supporting documents from Investigator King and the Sarajevo Media Centre”.⁹¹² The Prosecution however did not present any evidence, why it is not possible for them to present the original document. The Defence submits that a document could only be checked by the Defence through Defence experts if this document is the original. The

⁹¹⁰ T. 3889-3896.

⁹¹¹ T. 3889-3896.

⁹¹² Annex A, p. 1, Description of Exhibit No. 1.

documents, put into Confidential Annex B of its request, are neither reliable nor sufficient to prove the still contested authenticity of the *Duga* Article. The Prosecution did not present any evidence regarding the “Sarajevo Media Centre” and why the Chamber should presume that the “Statement” from 23 December 2008 issued by this centre can be regarded as reliable. The Defence underlines, that the *Duga* Magazine is a political magazine that is published and – as Mr. Groome said on 17 December 2008 in trial – “widely distributed among the public in Serbia”, and in fact not in Bosnia.⁹¹³ The Prosecution did not present any plausible explanation why this article should be stored in an archive in Sarajevo rather than in Serbia. The Defence further notices that the Prosecution still does not intend to call the author of the *Duga* Article as a witness in its case, although the author of the article is known to the Prosecution.⁹¹⁴ Since the author of the *Duga* Article was not called to give testimony and was not be available for cross examination, and since the Co accused has opted not to give testimony, there was no possibility for the Defence to challenge the reliability of the *Duga* Article. Finally, the Prosecution does not present any justification why it requested admission of the documents, incorporated in Confidential Annex B of its motion, only at this very late stage of the proceedings, although it was in possession of the documents since the end of December 2008. In consequence of this late filing it is impossible for the Defence to initiate necessary investigations in Sarajevo with regard to the archives of the “Sarajevo Media Centre”. This late filing therefore obstructed any opportunity of the Defence to respond adequately to this new evidence, containing clearly unfounded but nevertheless serious allegations against Sredoje Lukić. Therefore, this article is not admissible or in any event it does not have any weight.

⁹¹³ T. 3891.

⁹¹⁴ T. 3891.

6.3.3. Alleged Interview of Sredoje Lukić

488. There are reasonable doubts that the Record of Interview is without probative value and not authentic, since this record was not produced in conformity with relevant Law on Criminal Proceedings of the SFRJ.⁹¹⁵ Due to its Article 82 paragraph 2, every single page of the record of interview has to be signed by the witness at the bottom. Here, there is only a signature on page 4, similar to the signature of the Accused, while pages 1 through 3 do not contain any signature at all. It is further striking that the family name of the witness is not noted under the alleged signature on page 4. It is notable that on page 1 of the copy of the record of interview, page no. 3 is also visible. Finally it is striking that the part of the record of the interview the Prosecutions refers to, is exactly on page 4, the only page with a signature similar to the one of the Accused. The Defence holds it highly reliable that this record, page 4 in particular, is a pure fabrication and falsification. At last, the alleged presence of the Defence Counsel Mr. Slobodan Dogančić is not confirmed by a signature on the document itself, although this Defence Counsel is counsel for the accused and not the witness, as the witness cannot have a Defence Counsel.

489. Since the Prosecution is evidently not in a position to present the Chamber the original record of interview, the Defence can not initiate an analysis of the quality and accuracy of this document, to be conducted by an expert. In the light of those circumstances serious doubts are casts on the reliability and the authenticity of this document. This record of interview is not admissible.

6.3.4. Conclusion

490. The Defence submits that the three aforementioned documents do not have any probative value. They are even in contradiction to the Prosecution case and the indictment where it is held that Sredoje Lukić was an active policeman and that

⁹¹⁵ 2D50.

allegedly he was a member of the Milan Lukić group and certainly not an alleged paramilitary leader or a deputy commander of some paramilitary unit. Also in stark contrast to those three documents are all statements given by Milan Lukić and admitted into evidence where it is stated that Milan Lukić was the commander of some unit and not someone else⁹¹⁶. The same is true for the judgement in the *Sjeverin* case⁹¹⁷. Nowhere in those statements or that judgement is Sredoje Lukić's name mentioned. Also in contradiction to those three documents are all documents from the Višegrad police station, admitted upon Prosecution's tendering, which demonstrate that Sredoje Lukić was an active policeman and not a member of some paramilitary unit⁹¹⁸. The Prosecution can not prove through these three pieces of evidence beyond reasonable doubt its allegation that Sredoje Lukić was a member of a paramilitary unit in the relevant time period. The Defence once more underlines that the allegations found in the three documents are not corroborated by any witness testimony, nor any piece of evidence admitted during the trial proceedings. It is even in contradiction to the allegations in the indictment itself.

6.4 Milan Lukić's Paramilitary Group

491. In paragraph 2 of the Second Amended Indictment in the segment regarding Sredoje Lukić, it is alleged "After the war started, Sredoje Lukić, joined Milan Lukić's group of paramilitaries."

492. The fact that Sredoje Lukić was never a member of Milan Lukić's group is clearly demonstrated in the Judgement of the District Court of Belgrade in the 'Sjeverin' case⁹¹⁹ against Milan Lukić and others. This judgement contains numerous explanations and statements and Sredoje Lukić was never mentioned in any of those. Similarly, Sredoje Lukić is not present in any of the numerous photographs

⁹¹⁶ P147,P149,P313.

⁹¹⁷ P312.

⁹¹⁸ P209-P214.

⁹¹⁹ P312.

of the members of Milan Lukić's group which have admitted in the present case.⁹²⁰

493. Witness MLD25, in his personal capacity, was close with both Milan Lukić and Sredoje Lukić. [REDACTED]⁹²¹

494. Testifying about the Milan Lukić group, witness MLD25 is absolutely consistent in his testimony about the fact that Sredoje Lukić was not a member of Milan Lukić's group. During his interview provided to the OTP investigators on 16 and 17 November 2000, MLD25 clearly explained that Sredoje Lukić was not a member of the Milan Lukić group, but rather that he was an ordinary policeman.⁹²²

495. [REDACTED]⁹²³

[REDACTED]⁹²⁴

496. [REDACTED]⁹²⁵

6.5 Sredoje Lukić Was an Active Policeman in 1992

497. The documents admitted into evidence under Exhibit numbers P209 through P211 and P213 to P214 unambiguously show that during the year 1992 as well as the most critical period from the Second Amended Indictment, Sredoje Lukić was an active policeman in Višegrad. Those exhibits will be discussed in detail below.

⁹²⁰ See e.g., P247-P250, P259, P260.

⁹²¹ T.1497; P97, first excerpt.

⁹²² 2D57.

⁹²³ 2D55, part II; 2D56, List of names.

⁹²⁴ T.5279.

⁹²⁵ T.5303.

498. This fact is further confirmed by several witnesses. Two of the Prosecution's witnesses, namely [REDACTED]⁹²⁶ and [REDACTED],⁹²⁷ and three of Milan Lukić's defence witnesses; namely MLD23,⁹²⁸ MLD24,⁹²⁹ and [REDACTED].⁹³⁰ MLD24 described seeing Sredoje Lukić two or three times during June 1992 in Višegrad in the capacity of an active policeman, with regular police insignia, in a blue police uniform, wearing a policemen's cap with a visor.⁹³¹
499. Furthermore, Sredoje Lukić's Defence witnesses, Zorka Lukić,⁹³² Branimir Bugarski⁹³³ and Veroljub Živković,⁹³⁴ also confirmed that Sredoje Lukić was working as an active ordinary policeman.
500. The fact that Sredoje Lukić was a regular active policeman in Višegrad during the relevant period, is confirmed and stipulated in the Prosecution exhibits, which represent the financial records of the SJB Višegrad for the most critical period from the Indictment, i.e. the months May, June and July 1992.
501. Exhibit P210 is a SJB Višegrad "List of active duty policemen – Employees who, in the course of the month of May 1992, carried out duties in this police station and to whom the advance payment for this month has been paid". Sredoje Lukić is registered under serial number 10 as an active ordinary policeman.
502. Exhibits P209 and P214 are the SJB Višegrad "List of permanent staff and reserve forces of the police – payment of wages for June 1992" and SJB Višegrad "List of employees who worked in this SM /police station/ and who were paid in advance

⁹²⁶ T.2892.

⁹²⁷ T.3216.

⁹²⁸ T.4991.

⁹²⁹ T.5074.

⁹³⁰ T.5302;2D57.

⁹³¹ T.5074-5075.

⁹³² 2D44,p.5.

⁹³³ 2D47,para.2.

⁹³⁴ T.3681.

to their salaries for June”, respectively. On both these lists the Accused Sredoje Lukić is registered under serial number 13 as an ordinary active policeman.

503. Exhibits P211 and P213 are the SJB Višegrad “Payment List for the month of July 1992” and SJB Višegrad “List of permanent staff and reserve forces of the police – payment of wages for July 1992”, respectively. Again here, Sredoje Lukić is registered under serial number 13 as an active ordinary policeman.

504. In exhibit 2D60 which is the SJB Višegrad “List of participation in war of all v/o/conscripts/ who had wartime assignments in the SJB /Public Security Station/ in the period from 4 August 1991 to 30 June 1996”, and where Sredoje Lukić is registered under serial number 71, it is clearly indicated that Sredoje Lukić was on duty as a policeman up to 20 January 1993.

6.6 Disciplinary Proceedings against the Policeman Sredoje Lukić

505. Sredoje Lukić was on duty as a policeman until 20 January 1993,⁹³⁵ when he became a member of the Army of the Republika Srpska (VRS). His duty as an active policeman was concluded by the Decision of the Police Disciplinary Organ pronouncing the disciplinary measure of cessation of employment.⁹³⁶ The decision was made on the basis of the Request to institute disciplinary proceedings⁹³⁷ on account of disciplinary offences allegedly committed in mid August 1992. Sredoje Lukić was suspended on 19 August 1992.⁹³⁸ All the foregoing clearly demonstrates that Sredoje Lukić was an ordinary policeman, in particular during the period relevant to the Second Amended Indictment (May-June-July 1992). The same is confirmed by other documents which have been admitted into evidence.⁹³⁹

⁹³⁵ 2D60.

⁹³⁶ 2D65.

⁹³⁷ P318.

⁹³⁸ 2D66 under No.13, 2D67 under No.14, 2D68 under No.13.

⁹³⁹ P209-P214; 2D60.

506. The alleged police report from November 1992 (P339) is not stamped or signed and furthermore refers to an unconfirmed report containing a minimal degree of suspicion. Similarly, it does not relate to the commission of any crime from the Indictment, nor does it connect Sredoje Lukić in any way with certain paramilitary formations, murders or any other grave crime. Besides that, the Defence submits that this document cannot be given any weight, for the reason that it is entirely unfounded and uncorroborated by any other document, potential request based on this report or any testimony. Pursuant to the Trial Chamber Decision from 9 April 2009,⁹⁴⁰ the Sredoje Lukić Defence has disclosed to the Prosecution the entire material mentioned in the letter attached as Annex B1 and B2 in the Defence response from 1 April 2009.⁹⁴¹ The mentioned material contains the complete file of the Disciplinary proceedings instituted against Sredoje Lukić after mid August 1992. A list of those documents has been admitted into evidence under Exhibit number 2D70. This list clearly demonstrates that the alleged report bearing Exhibit number P339 has not been legally acted upon.

507. In particular, the Defence wishes to underline the significance of the disciplinary proceedings against Sredoje Lukić. It is evident that Sredoje Lukić had not acted outside the law and that he was not a member of any illegal formation. Rather Sredoje Lukić was an active policeman who could be prosecuted and held responsible for violating the work discipline, an offence which does not constitute a criminal act, but a rather minor form of responsibility. A reasonable conclusion to be reached is that if Sredoje Lukić was prosecuted for such minor offences, he would certainly have been prosecuted for any other more serious crime had he committed such in the relevant period or in any other period for that matter.

⁹⁴⁰ *Prosecutor v. Milan Lukić and Sredoje Lukić*, Decision on Prosecution Motion for the Admission of documents from the Bar Table, 9 April 2009.

⁹⁴¹ *Prosecutor v. Milan Lukić and Sredoje Lukić*, Sredoje Lukić's Response to 'Prosecution third Request for Admission of Exhibits from the Bar Table with Confidential Annexes A through H' dated 24 March 2009 and "Prosecution Submission in Relation to the Bar Table with Supplemental Annex G", 1 April 2009.

6.7 Sredoje Lukić Was a Member of the Army of the Republika Srpska (VRS) in the Period from 1993 to 1995

508. Sredoje Lukić was on duty as a policeman until 20 January 1993, when he became a member of the Army of the Republika Srpska (VRS).

509. Exhibit 2D61, List of Military Personnel of the 2nd and 5th Podrinje Light Infantry Brigade demonstrates that Sredoje Lukić was a member of that army unit in the period from 20 January 1993 until 1 November 1993 and from 10 June 1995 until 30 November 1995.⁹⁴²

510. Exhibit 2D62, List of Military Personnel of the Worker's Battalion in VRS in shifts – 2nd and 5th Podrinje Light Infantry Brigade, in the same way confirms that Sredoje Lukić was a member of the VRS in the 2nd and 5th Podrinje Light Infantry Brigade and further that he was on duty in the following periods during the years 1994 and 1995:

- From 25 March 1994 until 1 May 1994;
- From 2 September 1994 until 9 September 1994;
- From 16 November 1994 until 2 December 1994;
- From 12 January 1995 until 19 January 1995;
- From 16 February 1995 until 23 February 1995.⁹⁴³

6.8 Conclusion

511. The Defence respectfully submits that the only reasonable conclusion to be reached is that Sredoje Lukić was not a member of any paramilitary formation, but rather he performed his duties exclusively within the scope of regular police and army formations.

⁹⁴² 2D61.

⁹⁴³ 2D62.

7. IDENTIFICATION

7.1 Introduction

512. Central to this case is the reliability of the purported identifications of the Accused which have been presented as evidence by the Prosecution in seeking to prove its case beyond a reasonable doubt.

513. The Trial Chamber must always, in the interest of justice, proceed with extreme caution when assessing a witness' identification of the Accused. The Defence submits that a review of the procedures used in obtaining identification evidence presented by the Prosecutor must lead to the conclusion that any reliance upon such identification evidence is unsafe.

7.2 Rules Applicable to Proper Identification

514. Identification procedures are designed to test a witness's ability to make an accurate identification of a person from a previous occasion and to provide safeguards against mistaken identification.

515. It is emphasized that, like all elements of an offence, the identification of each accused as a perpetrator must be proved by the Prosecution beyond a reasonable doubt.⁹⁴⁴ In order to determine whether the Prosecution has met this burden of proof the Trial Chamber should take into account the totality-of-evidence bearing on the identification of the Accused.⁹⁴⁵ In particular, the Trial Chamber should take into account whether an identifying witness has any relevant motive which would be furthered by a false identification. Based upon the poor quality of identification evidence introduced in the present case, the Defence asserts that the Prosecution has

⁹⁴⁴ *Limaj* Trial Judgement, para.20.

⁹⁴⁵ *Ibid.*

failed to prove beyond a reasonable doubt that the Accused was correctly identified as being the perpetrator of the crime.

7.2.1 Identification Is a Category of Evidence Susceptible to Error

It has become widely accepted in domestic criminal law systems and by the jurisprudence of this Tribunal that visual identification evidence is particularly liable to error and is therefore treated with special care.⁹⁴⁶ In the widely cited case *R v Turnbull* in the United Kingdom, the Court of Appeal laid down important guidelines for judges in trials that involved disputed identification evidence. Firstly, the Court stated that the judge should remind the jury of the special need for caution before convicting the accused in reliance on the correctness of identification and instruct the jury as to the need for such a caution. Secondly, the Court of Appeal went on to state that

“when the quality of identifying evidence is poor, as for example when it depends solely on a fleeting glance or on a longer observation made in difficult conditions, the situation is very different. The judge should withdraw the case from the jury and direct an acquittal unless there is other evidence which goes to support the correctness of the identification.”⁹⁴⁷

516. The Appeals Chamber in *Kupreškić* followed the approach taken in *R v Turnbull* stating that when assessing evidence of visual identification

[a] Trial Chamber must always, in the interests of justice, proceed with extreme caution when assessing a witness’ identification of the accused made under difficult circumstances.⁹⁴⁸ (*emphasis added*)

⁹⁴⁶ *Regina v. Turnbull and Another* [1977] Q.B.224;*Reid v R* [1991] 1 AC 363 United Kingdom,*US v Wade*,338 US 218(1967) United States,Bundesgerichtshof,*reprinted in* Strafverteidiger 409(1991);Bundesgerichtshof,*reprinted in* Strafverteidiger 555(1992) Germany;Oberster Gerichtshof,10 December 1992,15 Os/150/92;4 June 1996,11 Os 59/96 and 20 March 2001,11 Os 141/00 Austria.

⁹⁴⁷ *Regina v. Turnbull and Another* [1977] Q.B.224,229.

⁹⁴⁸ *Prosecutor v. Kupreškić et al.*,Case No.IT-95-16-A,Appeal Judgement,23 October 2001(“*Kupreškić Appeals Judgement*”),para.39.

517. Following this rule articulated in *Kupreškić*, the Appeals Chamber then went on to establish the following significant factors that may impact negatively on the reliability of the identification evidence:⁹⁴⁹ (1) Identifications of the accused by witnesses who had only a fleeting glance or an obstructed view of the accused;⁹⁵⁰ (2) identification occurring in the dark;⁹⁵¹ (3) identification as a result of a traumatic event experienced by the witness;⁹⁵² (4) inconsistent or inaccurate testimony about the defendant's physical characteristics at the time of the event;⁹⁵³ (5) misidentification or denial of the ability to identify followed by later identification of the accused by the witness;⁹⁵⁴ (6) the existence of irreconcilable witness testimonies;⁹⁵⁵ and (7) a witness' delayed assertion of memory regarding the defendant coupled with the clear possibility from the circumstance that the witness had been influenced by suggestions from others.⁹⁵⁶

518. The *Limaj* Trial Chamber affirmed the approach taken in *Kupreškić*, re-stating the need for "extreme caution" in relation to visual identification evidence.⁹⁵⁷

519. Regarding weight, the Trial Chamber in *Limaj* stated that the ultimate weight to be attached to each piece of evidence is not to be determined in isolation. Rather it is the cumulative effect of the evidence, i.e. the totality of the evidence bearing on the identification of an accused, which must be weighed to determine whether the Prosecution has proved beyond all reasonable doubt that each accused is a perpetrator as alleged.⁹⁵⁸

⁹⁴⁹ *Kupreškić* Appeals Judgement, para.40(citing to several domestic jurisdictions).

⁹⁵⁰ *Regina v. Turnbull and Another* [1977] Q.B.224,229.

⁹⁵¹ *Ibid.*

⁹⁵² *Jaafar bin Ali v PP*, [1998] 4 M.L.J.406.

⁹⁵³ *People(DDP) v. Cox*, 28 April,1995,(CCA) 4/93.

⁹⁵⁴ *Domican v. R.*, [1992] 186 A.L.R.203.

⁹⁵⁵ *People(DPP) v. McNamara*, 22 March,1999,(CCA) 111/95.

⁹⁵⁶ *R.v. Burke*, [1996] 1 S.c.R.474.

⁹⁵⁷ *Limaj* Trial Judgement para.17, citing *Kupreškić* Appeals Judgement, para.34.

⁹⁵⁸ *Limaj* Trial Judgement, para.20, citing *Prosecutor v. Kunarac*, Case No.IT-96-23-T, Decision on Motion for Acquittal, 3 July 2000, para.4 (stating "[a] Tribunal of fact must never look at the evidence of each witness separately, as if it existed in a hermetically sealed compartment; it is the accumulation of *all* the evidence in the case which must be considered").

7.2.2 In-Court Identification and the Precondition of an Identification Parade

520. The Prosecution attempted to supplement its evidence regarding identification by having the witnesses identify the accused in court. As has been previously submitted by the Defence in paragraph 11 of “Sredoje Lukić’s Submission on the Treatment of In-Court Identification” filed on 2 November 2008 (“In-Court Identification Submission”), in-court identification constitutes a situation in which the accused is identified by the witness in the courtroom as being the perpetrator he/she saw at the crime scene.⁹⁵⁹ The Defence further reiterates its position adopted in paragraph 13 of the In-Court Identification Submission that in the instant case the attempted in-court identifications of the Accused were conducted in a very vague and general manner, which consequently leaves the identification to implication. In the vast majority of instances, the Prosecution simply asked the witnesses whether they “recognize” anyone in the courtroom apart from the Prosecutor himself.⁹⁶⁰ Thus, these in-court identification procedures have failed to produce any link between the Accused and the crimes and should not be treated as proper “in-court identifications”.

521. With regard to the Defence’s position that no weight should be accorded to in-court identifications, in particular where they were made by witnesses who have not previously identified the accused at an identity parade or other pre-trial identification procedures, reference is made to paragraphs 17 through 30 of the In-Court Identification Submission.

⁹⁵⁹ See also, paras. 7-10 of the In-Court Identification Submission.

⁹⁶⁰ T.335, lines 5-7; T.593, lines 19-20; T.794, lines 1-3; T.811, lines 6-7; T.1010, lines 4-7; T.1230, lines 3-5; T.1321, lines 1-4; T.1387, lines 3-5; T.1453, lines 13-16; T.1688, lines 22-23; T.1777, lines 9-11; T.1868, lines 4-6; T.1969, lines 5-6; T.2035, lines 9-11; T.2342, lines 1-3; T.2517, lines 23-25; T.2895, lines 14-16; T.2981, lines 17-18; T.3217, lines 5-8; T.3401, lines 18-20.

7.3 Serious Shortcomings in the Use of Photospreads and Non-existent Identification Procedure Regarding Sredoje Lukić

522. The Defence submits that the identification procedures used by the Prosecution in the present case are flawed to such an extent that they are not acceptable as reliable identifications.

7.3.1 Witness Ib Jul Hansen

523. It has been established that Witness Ib Jul Hansen worked as an investigator for the Prosecution of the OTP-ICTY from 1995 up to 2006.⁹⁶¹ He conducted interviews during which he used to confront the witnesses with photoboard.⁹⁶²

524. In cross-examination by the Defence, he admitted that he was aware of the existence of ICTY Prosecution Identification Guidelines for Photographic Procedures.⁹⁶³ Asked about the author of these guidelines, the witness testified that he could tell from the footer that it was a former OTP-ICTY team leader and OTP-ICTY investigations commander called Mr. Malhig.⁹⁶⁴

525. Ib Jul Hansen testified that prior to showing a photospread to Witness Adem Berberovic during the witness interview he did not ask Adem Berberovic whether he had seen the suspects in a photo, TV or a poster.⁹⁶⁵ The Defence contends that this omission constitutes a violation of one of the ICTY Prosecution Identification Guidelines for Photographic Procedures, namely

⁹⁶¹ T.3122.

⁹⁶² For instance, he confronted Witness Adem Berberovic with a photospread which later on went missing, see T.3121.

⁹⁶³ T.3123. The OTP Identification Guidelines were admitted as 1D74.

⁹⁶⁴ T.3136.

⁹⁶⁵ T.3124.

"Procedure with witness

The investigator must ascertain whether the witness has seen the suspect in a photograph, on television or a poster. It may be that the photoboard procedure would then be inappropriate."⁹⁶⁶

526. Secondly, Ib Jul Hansen confirmed that Prosecution witnesses VG-014, VG-024, VG-025 and VG-119 were all shown an identical photospread during their respective OTP-ICTY interviews.⁹⁶⁷ [REDACTED]⁹⁶⁸

527. The Defence submits that this practice gravely breached the following ICTY Prosecution Identification Guidelines:

"If it is intended to show photoboards to more than one witness on a mission, several photoboards should be prepared, if possible, with the photographs arranged in a different sequence in each photoboard. Each should then be photocopied.

"Once you have a positive identification, ideally the photoboard should not be used with other witnesses. If this is necessary, however, the positions of the photographs should be changed and the suspect's photograph, in particular, should be moved. Take a fresh photocopy of the new layout for use in the procedure."⁹⁶⁹

Ib Jul Hansen did not provide any explanation for this breach of the internal ICTY identification guidelines.

528. [REDACTED]⁹⁷⁰ This omission constitutes a further violation of the widely adopted and applied identification procedures.

⁹⁶⁶ 1D74,p.2.

⁹⁶⁷ T.3125;T.3128;See also 1D75 and 2D29.

⁹⁶⁸ T.3132.

⁹⁶⁹ 1D74,p.2.

⁹⁷⁰ T.3137.

529. Testifying about the investigation practice in the instant case, the witness confirmed that the OTP-ICTY investigators never used a photograph of Sredoje Lukić in any photo identification procedure such as photospreads or others during their investigations.⁹⁷¹ [REDACTED]⁹⁷²

7.3.2 Missing photospreads

530. During his witness interview given to OTP-ICTY investigator Ib Jul Hansen in 2000, Witness Adem Berberovic was shown a photospread on which he allegedly identified Sredoje Lukić.⁹⁷³ In cross examination, the Defence raised the issue of missing photospreads with the Trial Chamber, an issue that had been previously discussed on several occasions in 65*ter* conferences.⁹⁷⁴ In particular, the Defence submitted that due to the fact that the photo array shown to Adem Berberovic was not disclosed to the Defence, it was not able to adequately cross examine the witness on this matter. In response, the Prosecution admitted that several photospreads indeed went missing.⁹⁷⁵ The Honorable Presiding Judge Robinson expressed his concerns about this occurrence:

18 JUDGE ROBINSON: Well, speaking for myself, I'm quite alarmed at
 19 that. It's very important, very vital evidence that really ought to be
 20 available to the Defence, particularly in a case where identification
 21 is -- is the issue.
 22 MR. GROOME: Yes, Your Honour. And as is clear from the 65 ter
 23 Conference, I, too, am shocked and expressed my shock and dismay and
 24 had -- and had an extensive inquiry done into the matter and had people
 25 search boxes out at the beach building and every possible conceivable
 1 place where these photospreads could be. I don't believe there's any
 2 other thing else that I can have done to locate them. I believe that in
 3 the switch -- or in the attempt to archive the Vasiljevic case that they
 4 were inadvertently shredded by someone, and I fully appreciate that their\

⁹⁷¹ T.3120.

⁹⁷² T.3137.

⁹⁷³ 2D20,p.3.

⁹⁷⁴ Rule 65*ter* Conference, 11 March 2008, T.122-123; Rule 65*ter* Conference, 21 May 2008, T.183-184; Rule 65*ter* Conference, T.279-280; Rule 65*ter* Conference, T.195-196.

⁹⁷⁵ T.2549-2550.

- 5 absence is something that may very well be considered against the
 6 Prosecution in its case.
 7 JUDGE ROBINSON: Yes. We'll certainly consider that, Mr. Groome.⁹⁷⁶

7.3.3 Conclusion

531. In the light of the previous discussion, the Defence underscores that there was no identification procedure followed with regard to the Accused Sredoje Lukić in pre-trial and that where applied the identification procedures conducted by OTP-ICTY investigators in the present case were fraught with violations of the most basic rules applicable to any alleged identification. The Defence submits that accordingly each and every positive identification put forward by the Prosecution as evidence incriminating Sredoje Lukić cannot and should not be relied upon as evidence in determining the facts in this case.

7.4 Alleged Identification of Sredoje Lukić by Prosecution Witnesses

532. The Defence submits that the descriptions of the individual whom the Prosecution witnesses claimed to have identified as “Sredoje Lukić” are inconsistent and incompatible with the physical appearance of the Accused Sredoje Lukić. Therefore, their evidence related to the alleged identification of Sredoje Lukić is not reliable.

533. The Defence submits that Sredoje Lukić was neither identified as one of the perpetrators of the Pionirska Street fire on 14 June 1992, nor as one of the perpetrators of the Bikavac fire on 27 June 1992, nor as a perpetrator of the crimes allegedly committed in the Uzamnica camp in the period between 1992 and 1994, nor in any other alleged incident mentioned during the Trial by any of the Prosecution witnesses beyond reasonable doubt. Instead of strengthening an identification of the man purported to be Sredoje Lukić, the combined effect of

⁹⁷⁶ T.2549-2550.

the evidence serves to highlight the extent of uncertainties, discrepancies and inconsistencies prevalent in the body of witness identification evidence.

534. With regard to Sredoje Lukić's physical appearance, the Defence first refers to a letter from the UN Detention Unit admitted as Exhibit 2D64 which states Sredoje Lukić's height is 1,85m.⁹⁷⁷ It is submitted that strong evidence suggests that the Co-Accused is approximately of equal height.⁹⁷⁸ [REDACTED]⁹⁷⁹ In addition, the Defence stresses that Sredoje Lukić was born on 5 April 1961 and was therefore 31 years of age in June 1992.⁹⁸⁰ Moreover, Defence witnesses Veroljub Živković and Zorka Lukić testified that Sredoje Lukić weighed between 80⁹⁸¹ and 90⁹⁸² kilograms in 1992. This evidence should be borne in mind when assessing the following descriptions made by the Prosecution witnesses.

535. In order to avoid repetitions, reference is made to the above detailed analysis of the identification evidence presented by the Prosecution in the following chapters of this Final Brief: (1) Chapter 4.2.1 on the house burning on Pionirska street, paragraphs 28 through 209, (2) Chapter 4.2.2 on the house burning in Bikavac, paragraphs 210 through 332, and (3) Chapter 4.2.3 on the beatings at the Uzamnica detention camp, paragraphs 333 through 395.

536. In addition, the Defence draws the Trial Chamber's particular attention to the strikingly inconsistent and objectively wrong physical descriptions of Sredoje Lukić's height, figure and age provided by the following Prosecution witnesses.

537. With regard to the height of the alleged perpetrators, Adem Berberovic testified that Milan was about 15 to 20 centimetres taller than the man purported to be Sredoje Lukić.⁹⁸³

⁹⁷⁷ 2D64.

⁹⁷⁸ T.6519-6520.

⁹⁷⁹ 2D52.

⁹⁸⁰ 1D232; *See also* Second Amended Indictment, para.2.

⁹⁸¹ T.3676.

⁹⁸² T.3620; T.3676.

⁹⁸³ T. 2551.

538. Islam Kustura equally stated that Milan Lukić was about 20 centimeters taller than the other man.⁹⁸⁴

539. [REDACTED]⁹⁸⁵

540. Witness VG-119 also noted that:

8 Sredoje was shorter than Milan, and his hair was fairer than Milan's, who
9 was rather the robust individual.⁹⁸⁶ (*Emphasis added*)

541. Mirsada Kahrman also testified that “Sredoje Lukić” was shorter than Milan Lukić.⁹⁸⁷

542. In this context, the testimony of VG-094 is of paramount importance. Her evidence has not only cast serious doubts on the alleged identification and recognition of Sredoje Lukić by the abovementioned Prosecution witnesses but has also demonstrated the high likelihood of a grave mistake made by the Prosecution witnesses as regards the identity of Sredoje Lukić. [REDACTED]⁹⁸⁸

[REDACTED]⁹⁸⁹

[REDACTED]⁹⁹⁰

543. In relation to the figure of the man purported to be Sredoje Lukić, Adem Berberovic noted that the man was “chubby”⁹⁹¹ and “on the plump side”.⁹⁹²

⁹⁸⁴ T. 2272.

⁹⁸⁵ T.3438.

⁹⁸⁶ T.2417. *See also* T.2464.

⁹⁸⁷ T.854. *See also* P34,p.3,para.13.

⁹⁸⁸ T.6996.

⁹⁸⁹ 1D227,p.4,para.4;P335,para.32.

⁹⁹⁰ T.7056.

⁹⁹¹ P142,p.9,para.4.

⁹⁹² T.2551

544. [REDACTED]⁹⁹³

545. [REDACTED]⁹⁹⁴ [REDACTED]⁹⁹⁵

546. [REDACTED]⁹⁹⁶ [REDACTED] In this respect reference is made to paragraph 542 of this Brief.

547. [REDACTED]⁹⁹⁷

548. [REDACTED]⁹⁹⁸ [REDACTED]⁹⁹⁹ [REDACTED] In this respect, the Defence again refers to its submissions made in paragraph 542 of this Brief.

549. The Defence therefore submits that the numerous abovementioned inaccurate physical descriptions of the man purported to be Sredoje Lukić and VG-094's testimony strongly suggest that the Prosecution witnesses described a person other than Sredoje Lukić; a person who was significantly shorter than Milan Lukić and much older than Milan Lukić or in fact the Accused Sredoje Lukić at the time.

550. The Defence further wishes to direct the Trial Chamber's attention to a number of Prosecution witnesses who could not have possibly identified the Accused Sredoje Lukić as one of the perpetrators of the Pionirska street incident. Witness VG-018 and VG-084 testified that they did not look at the perpetrators, while witness VG-013 testified that she never saw Sredoje Lukić during the incident. They therefore did not identify the Accused Sredoje Lukić as one of the perpetrators.

⁹⁹³ T.1908;T.3438.

⁹⁹⁴ 1D41,p.2.

⁹⁹⁵ T.1581.

⁹⁹⁶ 1D227,p.4,para.4;P335,para.32.

⁹⁹⁷ T.3436.

⁹⁹⁸ 1D227,p.4,para.4;P335,para.32.

⁹⁹⁹ 2D69,p.3.

551. In the light of the foregoing, between false descriptions and lack of any identification, the Defence submits that the Prosecution did not prove beyond reasonable doubts that Sredoje Lukić was recognized or identified by any of the Prosecution witnesses as one of the perpetrators of any of the crimes Sredoje Lukić is charged with in the Second Amended Indictment.

7.5 Alleged In-court Identification of Sredoje Lukić by Prosecution Witnesses

552. Due to the many shortcomings during the identification procedures in the present case, any reasonable Trial Chamber must conclude that the alleged in-court identifications of Sredoje Lukić by Prosecution witnesses are flawed.

553. Firstly, the Defence reiterates that throughout these proceedings it has continuously objected to “in-court identifications”.¹⁰⁰⁰ [REDACTED]¹⁰⁰¹ Additionally, when asking the witnesses whether they “recognize” anyone in the courtroom apart from the Prosecutor himself, the Prosecution has failed to produce any link between the Accused and the crimes in the vast majority of in-court identification procedures.¹⁰⁰² These are therefore flawed and should not be treated as proper “in-court identifications”.

554. With reference to paragraphs 25 – 30 of its In-Court Identification Submission, the Defence reiterates that the identification procedure through improper “in-court identifications” of Sredoje Lukić for the first time in trial is inadmissible pursuant to either Rule 89(C) or Rule 95 of the Rules. Alternatively, reiterating the arguments and jurisprudence set out in paragraphs 18 through 24 of its In-Court Identification Submission and paragraph 523 of this Brief, according to which

¹⁰⁰⁰ See, for example, T.794, lines 5 – 6; T.885, lines 19 – 25; T.1010, lines 10 – 12; T.1417, lines 5 – 6; T.1453, line 19; T.1582, line 3; T.1688, line 25; T.1868, lines 9 – 10; T.2518, lines 4 – 5; T.2895, lines 11-12; T.2981, lines 17-18; T.3401, lines 13-16; T.3217, lines 10-12; T.7006, lines 11-17.

¹⁰⁰¹ T.3137.

¹⁰⁰² See T.335, lines 5-7; T.593, lines 19-20; T.794, lines 1-3; T.811, lines 6-7; T.1010, lines 4-7; T.1230, lines 3-5; T.1321, lines 1-4; T.1387, lines 3-5; T.1453, lines 13-16; T.1688, lines 22-23; T.1777, lines 9-11; T.1868, lines 4-6; T.1969, lines 5-6; T.2035, lines 9-11; T.2342, lines 1-3; T.2517, lines 23-25; T.2895, lines 14-16; T.2981, lines 17-18; T.3217, lines 5-8; T.3401, lines 18-20.

little or no weight should be accorded to the in-court identification made by a witness who has not previously identified the accused at an identity parade or other pre-trial identification procedures. Identification procedure, the Defence submits that the identifications of Sredoje Lukić by Prosecution witnesses in the courtroom do not carry any weight in the instant proceedings against the Accused.

7.6 Conclusion

555. Accordingly, the Defence respectfully submits that the Trial Chamber should not attach any weight to either the positive photo identification by Adem Berberović or the in-court identifications of the Accused by any Prosecution witness. Furthermore, the Trial Chamber should make a finding that this entire body of purported evidence is unreliable as it fails to meet even basic standards commonly accepted for identification procedures as the Defence has defined and shown in this chapter.

556. Finally, it is reiterated that a reasonable Trial Chamber must conclude that none of the Prosecution witnesses recognized or identified Sredoje Lukić beyond reasonable doubt as one of the perpetrators of the crimes he is charged with in the Second Amended Indictment or any other alleged incident mentioned during the course of the Trial.

8. CHARACTER

557. The Defence submits that the Trial Chamber has received substantial evidence consistently describing Sredoje Lukić as a friendly man of good character who took care of his family. All his life he lived and socialized with people equally and regardless of their ethnic origin or religious beliefs. Sredoje Lukić has never demonstrated any ideologically motivated fanaticism. Even in the difficult time of war, when relations between the ethnic groups were tense, Sredoje Lukić continued this positive social conduct by helping Muslims. During the war, he

even helped his Muslim neighbours to escape from prison, an endeavour in which he selflessly risked his own life in order to save the lives of others.¹⁰⁰³

558. All three Defence witnesses testified as to Sredoje Lukić's family devotion, his friendliness and good character.

559. Veroljub Živković was a good and sound acquaintance of Sredoje Lukić.¹⁰⁰⁴ He stressed that Sredoje Lukić is a good man and a family man, very attached to his family and liked to joke and socialize with people and at all times he was tolerant.¹⁰⁰⁵

560. Similarly, Zorka Lukić testified that Sredoje Lukić was well liked by his neighbours.¹⁰⁰⁶

561. Lastly, Branimir Bugarski testified that for the past 24 to 25 years he enjoyed a good relationship with Sredoje Lukić,¹⁰⁰⁷ who was very devoted to his family.¹⁰⁰⁸ He testified that Sredoje Lukić was always a cheerful man¹⁰⁰⁹ and added the following when being asked by the Honourable Judge Robinson:

16 JUDGE ROBINSON: Have you come here to lie to protect your
17 friend? Because remember, you took an oath. You made a declaration to
18 speak the truth.
19 THE WITNESS: [Interpretation] And nothing but the truth. In a
20 few days, I'll turn 60. I would not have come here to tell lies. I know
21 this man as a good man, a sociable man, always ready to share a good
22 joke. I never knew him as a criminal. It's only for that reason that I
23 made this long journey. I have many things to do in my life. I don't
24 want to lie. I have my family. I have children. I have grandchildren.

¹⁰⁰³ T.2892.

¹⁰⁰⁴ T.3615.

¹⁰⁰⁵ 2D41,para.6.

¹⁰⁰⁶ T.3676.

¹⁰⁰⁷ T.3724;See also 2D47,para.11.

¹⁰⁰⁸ 2D47,para.11.

¹⁰⁰⁹ T.3741;See also 2D47,para.11.

25 That's a hard thing to say.¹⁰¹⁰

562. Indeed, many Prosecution witnesses have also personally given evidence of Sredoje Lukić's good character and of the very real and sincere undertaking to protect his Muslim neighbours during the war in the spring-summer of 1992.

563. Ferid Spahić knew Sredoje Lukić very well before the war.¹⁰¹¹ He knew that Sredoje Lukić was a policeman; his brother was Sredoje Lukić's Deputy Commander.¹⁰¹² Ferid Spahić stated the following about Sredoje Lukić under cross examination on 26 August 2008:

14 I was at the petrol station and those went one together, so we
15 had quite a few drinks together, and unfortunately it is a pity that we
16 are not having them today as well.¹⁰¹³

564. In response to a question asked by Presiding Judge Robinson, Ferid Spahić confirmed that Sredoje Lukić was a man of good character:

3 JUDGE ROBINSON: Just a minute. Just a minute. Witness, you're
4 asked whether from your personal experience with Sredoje Lukic whether
5 you would agree that he's a friendly person, a good person of good
6 character. Now, that question is a question that in my view you can
7 answer. What is your answer?
8 THE WITNESS: [Interpretation] Yes. Yes, I agree.¹⁰¹⁴

565. Witness Mevsud Poljo also knew Sredoje Lukić well from before the war and knew that he was a policeman.¹⁰¹⁵ He was on good terms with Sredoje Lukić and

¹⁰¹⁰ T.3765.

¹⁰¹¹ T.569

¹⁰¹² T.569

¹⁰¹³ T.569.

¹⁰¹⁴ T.570.

¹⁰¹⁵ T.579.

regarded him as his friend.¹⁰¹⁶ This witness even knew Sredoje Lukić's parents and stated:

22 A. Yes. I worked near their place of residence in a shop, and I
23 knew Sredoje's parents well. We were friends.¹⁰¹⁷

During cross-examination by the Defence of Milan Lukić, Mevsud Poljo expressly mentioned Sredoje Lukić and underlined:

2 And if I may say about Sredoje, I
3 only heard good things.¹⁰¹⁸

566. This witness' opinion of Sredoje Lukić is further evidenced by his express wish during his proofing session with the Prosecution to comment in support of the defence of Sredoje Lukić.¹⁰¹⁹ Mevsud Poljo explained his motives for this request by explaining that he knew of two different occasions in which Sredoje Lukić had helped Muslims escape from detention;¹⁰²⁰ by acting this way Sredoje Lukić had saved the lives of these men¹⁰²¹ despite the fact he was in fear of Milan Lukić.¹⁰²² He gave evidence that Sredoje Lukić set two Muslim men free from detention, considering this act as a "human gesture of his part".¹⁰²³ The witness further described an occasion when Sredoje Lukić helped another Muslim man escape to Žepa¹⁰²⁴ and noted how Sredoje Lukić saved this man's life:

22 A. Yes. I was glad that he acted in that way towards his next door
23 neighbours, for had he taken him to Prelovo, he certainly would not have
24 returned alive.¹⁰²⁵

¹⁰¹⁶ T.579.

¹⁰¹⁷ T.579.

¹⁰¹⁸ T.580.

¹⁰¹⁹ T.584.

¹⁰²⁰ T.584.

¹⁰²¹ T.584.

¹⁰²² T.580.

¹⁰²³ T.583.

¹⁰²⁴ T.583-584.

¹⁰²⁵ T.584.

567. Witness VG-064 is the wife of one of the men that Sredoje Lukić released. VG-064 knew Sredoje Lukić well from before war and knew that he was a policeman. She is a Muslim who socialized with Sredoje Lukić and considers him as her friend.¹⁰²⁶ VG-064 explained how after she came across Sredoje Lukić in front of the MUP building and informed him that her husband was detained and that she could not find him, Sredoje Lukić immediately went to try and save her husband and her brother-in-law and succeeded.¹⁰²⁷ As VG-064 testified, upon returning her husband and brother-in-law home, Sredoje Lukić explained that he was in fear for his own life for helping the Muslims:

12 A. He didn't explain anything. He just said, I've been successful,
 13 I've managed it, just be careful and don't get caught again. He didn't
 14 explain anything else. I asked him whether he could get us out of
 15 Visegrad, and he said he didn't dare. He was afraid he would get killed,
 16 but he didn't tell us by whom.¹⁰²⁸

In cross-examination the witness confirmed that Sredoje Lukić was a positive personality who, in those very difficult times, exposed himself to danger in order to save her husband her brother-in-law.¹⁰²⁹

568. Witness VG-133 testified under oath, that she never saw or heard of Sredoje Lukić killing anybody.¹⁰³⁰ On being questioned by Presiding Judge Robinson, she stated:

13 JUDGE ROBINSON: Did anybody ever tell you that they saw Sredoje
 14 kill anyone or abuse anyone? Did you ever hear that from anybody?
 15 THE WITNESS: [Interpretation] Not to me, no. And I can explain a
 16 few things. The rumours, when you say somebody said so and so said and

¹⁰²⁶ T.2892.

¹⁰²⁷ T.2891-2892.

¹⁰²⁸ T.2892.

¹⁰²⁹ T.2922.

¹⁰³⁰ T.3062.

17 then so and so said something else two days later or you heard something
 18 else two days later, so I don't want to repeat these rumours from people
 19 that would change their accounts from one day to the next. But as I say,
 20 no serious-minded person ever told me or nor did I hear them say that
 21 Sredoje Lukic killed anybody or abused anybody and towards me his conduct
 22 was decent. We came across him in -- I came across him in the MUP. He
 23 said hello nicely, warned me not to move around town and left.¹⁰³¹

VG-133 further testified that Sredoje Lukić is a positive personality and a pleasant character who did not fit into the overall war atmosphere that prevailed at the time in spring-summer 1992.¹⁰³²

569. VG-013, who knew Sredoje Lukić before the war, testified under oath:

6 Q. Can you describe what you remember about him as a young man, his
 7 character or his personality?
 8 A. He was nice. He didn't offend anybody. Life at that time was
 9 nice, and the socialising between us was good regardless of ethnicity or
 10 religion before the war, and after that.¹⁰³³

Witness VG-013 hereby confirms the overall impression given in that Sredoje Lukić did not discriminate against other ethnic or religious groups at any time. She describes him as a “nice policeman, nice man”.¹⁰³⁴

570. VG-017 testified that Sredoje Lukić was “a very good man”.¹⁰³⁵
 [REDACTED]¹⁰³⁶ It is very telling when a man who went through such an ordeal of losing two sons and under the present circumstances, continues to state that Sredoje Lukić was the best man he has ever known.

¹⁰³¹ T.3062.

¹⁰³² T.3063.

¹⁰³³ T.1005.

¹⁰³⁴ T.1006.

¹⁰³⁵ T.2761.

¹⁰³⁶ T.2846. *See also* 1D63, p.4, para.3.

571. As is demonstrated by many witnesses, Sredoje Lukić has always been of the utmost tolerance and friendly to people regardless of their ethnicity or religion. He has never demonstrated any fanaticism or shown any prejudice against people of other ethnic or religious origins. On the contrary, Sredoje Lukić's life is typified by socialising with people equally and acting compassionately for Muslims even during the very difficult period of war. Viewed impartially, the Defence submits that it is impossible to conceive that a man so demonstrably concerned for the wellbeing of Muslim people, to the extent that he even endangered his own life in a dangerous situation, would or could ever behave in the manner alleged by the Prosecution in its Second Amended Indictment.

9. MITIGATION

9.1 Introduction

572. At the outset, the Defence strongly maintains that the Accused Sredoje Lukić is not guilty of any crimes alleged against him and should therefore be acquitted on all counts of the Second Amended Indictment.

573. However, should the Trial Chamber find Sredoje Lukić responsible under some or all of the counts in the Indictment, the Defence submits that there are a number of mitigating factors which must be taken into account when determining the sentence.

9.2 Applicable Law

574. The aggravating and mitigating factors to be taken into consideration when determining the sentence are regulated in Article 24 of the Statute and Rule 101(B) of the Rules. Furthermore, the rules on sentencing and aggravating and mitigating circumstances in the Former Yugoslavia are regulated in the Criminal

Code of the Socialist Federative Republic of Yugoslavia (“SFRY”),¹⁰³⁷ in particular Article 41(1) of the Criminal Code of the SFRJ.

575. These factors are not exhaustive rendering a Trial Chamber with considerable discretion in determining the aggravating and the mitigating factors, including the weight to be accorded to those factors in a particular case.¹⁰³⁸

576. The Defence further recalls the Tribunal’s jurisprudence holding that, while aggravating factors must be directly related to the commission of the offence¹⁰³⁹ and must be proved beyond reasonable doubt,¹⁰⁴⁰ mitigating factors are to be taken into account regardless of their relation with the offence¹⁰⁴¹ and the burden of proof for mitigating factors is that of balance of probabilities.¹⁰⁴²

9.3 Mitigating Factors

577. The Defence respectfully submits that there are significant individual circumstances of the Accused Sredoje Lukić, which constitute mitigating factors in the present case and should therefore be taken into consideration by the Trial Chamber for the purpose of determination of a proper sentence.

¹⁰³⁷ 2D51.

¹⁰³⁸ *Prosecutor v. Zejnil Delalić, Zdravko Mucić, Hazim delić and Esad Landžo*, Case No.IT-96-21-A, Appeals Chamber Judgement (“*Čelebići* Appeal Judgement”), 20 February 2001, para.777; *Prosecutor v. Tihomir Blaškić*, Case No.IT-98-14-A, Appeals Chamber Judgement (*Blaškić* Appeal Judgement), 29 July 2004, para.685, *Prosecutor v. Naser Orić*, Case No.IT-03-68-T, Trial Chamber Judgement (“*Orić* Trial Judgement”), 30 June 2006, paras.717 and 731.

¹⁰³⁹ *Orić* Trial Judgement, para.731.

¹⁰⁴⁰ *Blaškić* Appeal Judgement, para.686; *Orić* Trial Judgement, para.731.

¹⁰⁴¹ *Orić* Trial Judgement, para.747.

¹⁰⁴² *Blaškić* Appeal Judgement, para.697; *Orić* Trial Judgement, para.747.

9.3.1 Voluntary Surrender

578. Voluntary surrender is considered “a significant mitigating circumstance in determining the sentence”.¹⁰⁴³ On 15 September 2005, Sredoje Lukić surrendered voluntarily to the custody of the Tribunal. In the light of the established practice of the Tribunal, the Defence submits that the Accused’s voluntary surrender warrants mitigation of his potential punishment.

9.3.2 Good Conduct in the UN Detention Unit

579. Good conduct during the time spent in the UN Detention Unit is also deemed a mitigating circumstance.¹⁰⁴⁴ To date the Accused has spent over three and a half years in the UN Detention Unit and throughout this time his behavior has been exceptional. Sredoje Lukić has at all times complied with the Rules of Detention, followed all the instructions of the guards, and has always been respectful towards the management and the staff of the Detention Unit. This is unconditionally confirmed by the Sredoje Lukić Behaviour Report Whilst in Custody,¹⁰⁴⁵ issued by the UN Detention Unit.

9.3.3 Positive Influence on the Proceedings

580. A positive attitude of an accused towards the proceedings is further considered a mitigating factor in the determination of the sentence.¹⁰⁴⁶ The Defence hereby wishes to underline the exemplary behavior of Sredoje Lukić, throughout the proceedings. The Accused was always present in the courtroom during trial sessions. The Accused and his Counsel were at all times respectful towards the Trial Chamber as well as the Prosecution. Above that, the Defence respectfully

¹⁰⁴³ *Prosecutor v. Tihomir Blaškić*, Case No.IT-95-14-T, Trial Chamber Judgement (“*Blaškić* Trial Judgement”), para.776.

¹⁰⁴⁴ *Prosecutor v. Milorad Krnojelac*, Case No.IT-97-25-T, Trial Chamber Judgement (“*Krnojelac* Trial Judgement”), para.519.

¹⁰⁴⁵ 2D71.

¹⁰⁴⁶ *Ibid*, para.520.

submits that the Accused should be given credit for the extent to which his Counsel co-operated with the Trial Chamber and with the Prosecution in the efficient conduct of the trial. Counsel were careful not to compromise their obligations to the Accused; however, Counsel made every effort to restrict the issues raised in the defence of the Accused to issues, which were genuinely in dispute. This enabled the Trial Chamber to complete the trial in much less time than it would otherwise have taken.¹⁰⁴⁷ This attitude of the Accused and his Counsel has been affirmed in many instances throughout the proceedings, for example respect for time limits set for submissions, presentation of a brief and exceptionally concise defence case, restriction to cross-examinations which are genuinely necessary and restriction of issues raised to those genuinely in dispute.

9.3.4 Personal and Family Circumstances

581. The family status of an accused is a mitigating circumstance acknowledged as such in the jurisprudence of the Tribunal.¹⁰⁴⁸ The Accused Sredoje Lukić is married with two children.¹⁰⁴⁹ The Defence respectfully submits that those circumstances warrant to be taken into account as a mitigating factor.

9.3.5 No Prior Criminal Conviction Nor Any Violent Criminal Acts

582. Prior to the filing of the Indictment by the OTP, Sredoje Lukić had never been convicted or indicted before any court for any violent criminal act.

9.3.6 Good Character

583. The good character of Sredoje Lukić – as discussed in detail in Chapter 8 – should be taken into account as a significant mitigating factor. Many Defence and Prosecution witnesses, who knew Sredoje Lukić, testified about his

¹⁰⁴⁷ Ibid.

¹⁰⁴⁸ *Orić* Trial Judgement, para.758.

¹⁰⁴⁹ See for example T.5238.

professionalism as a policeman, his good and friendly character, and his positive personality.¹⁰⁵⁰ Sredoje Lukić was concerned about the fate of the Muslim population and tried to help where he could, which is proven by the fact that in a few instances he helped Muslims to escape from detention in the heat of the war.¹⁰⁵¹

9.3.7 *Regret*

584. Expressions of regret have been recognized as a mitigating factor by this Tribunal if the regret is real and sincere.¹⁰⁵² The Defence recalls the position of the Tribunal that an accused can express sincere regrets without admitting his participation in a crime or giving evidence and being cross-examined by the Prosecution.¹⁰⁵³

585. Throughout the trial, the Accused, through his Counsel, has treated the witnesses with the utmost respect and understanding. Throughout the trial, the Accused has shown sincere empathy with the victims for their loss and suffering through his Counsel. This can be found in many instances when his Defence counsel expressed compassion to the victims witnesses for their loss and suffering on behalf of the Accused.¹⁰⁵⁴ By acting in this way, the Accused Sredoje Lukić has shown real and sincere regret for the suffering that all the victims had to go through.

586. The Defence reiterates and upholds that the Accused Sredoje Lukić is not guilty of any counts in the Second Amended Indictment. However, in case the Trial Chamber decides otherwise, the Defence respectfully submits that all the aforementioned individual circumstances are deemed considerable mitigating factors, which should have a significant mitigating impact on a potential sentence.

¹⁰⁵⁰ T.569;T.579-580;T.3062;T.2761;T.1005;T.718;T.913,920;2D41,para.6;T.3676;T.3765.

¹⁰⁵¹ T.583;T.2892;T.2922.

¹⁰⁵² *Orić* Trial Judgement,para.752;*Blaškić* Appeal Judgement,para.705.

¹⁰⁵³ *Orić* Trial Judgement,para.752.

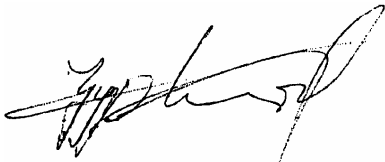
¹⁰⁵⁴ T.1271;T.3347;T.3435;T.2482;T.1359;T.1119;T.2461;T.2759;T.2267;T.981.

10. CONCLUSION

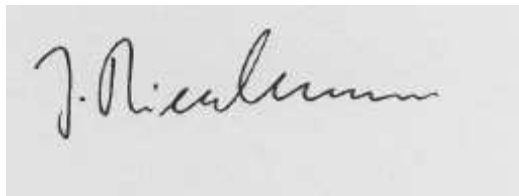
587. In the light of all the foregoing, the Defence respectfully submits that the Prosecution has failed to prove beyond reasonable doubt the liability of the Accused Sredoje Lukić under Article 7(1) of the ICTY Statute in relation to all counts alleged against him in the Second Amended Indictment. The Trial Chamber should accordingly acquit Sredoje Lukić of all counts alleged against him in the Second Amended Indictment.

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Respectfully submitted,



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Dated this 12 May 2009
The Hague, The Netherlands

