

**UNITED
NATIONS**



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

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

Date: 20 July 2009

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IN TRIAL CHAMBER III

Before:

**Judge Patrick Robinson, Presiding
Judge Christine Van den Wyngaert
Judge Pedro David**

Registrar:

Mr. John Hocking

Judgement of:

20 July 2009

PROSECUTOR

v.

**MILAN LUKIĆ
SREDOJE LUKIĆ**

PUBLIC

JUDGEMENT

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I. INTRODUCTION	9
A. The Accused Milan Lukić.....	9
B. The Accused Sredoje Lukić.....	10
C. Charges against Milan Lukić and Sredoje Lukić.....	11
D. Evidentiary matters	13
1. Contempt allegations raised by the Prosecution	13
2. Alibi evidence	14
(a) The nature of an alibi generally	14
(b) Notice of alibi defence	15
(c) Burden of proof	16
3. In-court identification	17
4. Protective measures	18
5. Evidence of non-indicted crimes	18
II. FACTS	19
A. Background.....	19
B. Višegrad Serb Police	25
C. White Eagles and other paramilitary units	27
1. Milan Lukić and Sredoje Lukić– membership of the White Eagles or “Avengers”	29
2. Factual finding	31
D. Evidence of existence of an armed conflict	31
E. The Drina river incident	37
1. Prosecution case	37
(a) Events	37
(b) Prosecution identification evidence	47
(i) VG032	47
(ii) VG014	48
(iii) Mitar Vasiljević	49
(iv) VG079	50
2. Defence case	50
(a) Challenges to the Prosecution case	50
(i) Testimony of Radomir Simšić	50
(ii) Evidence of Professor Vera Folnegović-Šmalc in the <i>Vasiljević</i> case	51
(iii) Evidence of Professor Linda LaGrange	52
(b) Milan Lukić’s alibi	54
3. Prosecution alibi rebuttal evidence	63
(a) Prosecution allegations of interference with Milan Lukić Defence witnesses	63
(i) Submissions	63
(ii) Evidence of Hamdija Vilić	64
(iii) Evidence of MLD10	65
(iv) Evidence of VG146	66
(v) Challenges to the evidence of MLD1	68
(b) Alibi rebuttal evidence of VG063	69
(c) Exhibits P147, P149 and P313	71
4. Factual findings in relation to the Drina river incident	71
(a) Defence challenge of the occurrence of the Drina river incident	71
(b) Prosecution evidence concerning Milan Lukić’s acts and conduct on 7 June 1992	72
(c) Prosecution evidence concerning Milan Lukić’s presence on 7 June 1992	74
(d) Defence evidence concerning Milan Lukić’s alibi	76
(e) Prosecution alibi rebuttal evidence	82
(f) Finding on Milan Lukić’s presence, acts and conduct on 7 June 1992	83
F. The Varda factory incident.....	83
1. Prosecution case	83
(a) Events	83
(b) John Clark	91
(c) Prosecution identification evidence	92
2. Defence case	96

(a) Defence challenge of Prosecution investigations, including of the Varda factory incident...	96
(b) Defence evidence concerning the victims of the Varda factory incident.....	98
(c) Milan Lukić's alibi	99
3. Prosecution alibi rebuttal evidence	99
(a) VG131	99
(b) VG133 and VG141	100
4. Factual findings in relation to the Varda factory incident	105
(a) Defence challenge of Prosecution investigations, including of the Varda factory incident.	105
(b) Weight to be placed on witness evidence	106
(c) Date of the incident	108
(d) Prosecution evidence concerning Milan Lukić's acts and conduct at the Varda factory	108
(e) Prosecution evidence concerning Milan Lukić's presence at the Varda factory.....	111
(f) Defence evidence concerning Milan Lukić's alibi	113
(g) Prosecution alibi rebuttal evidence	113
(h) Finding on Milan Lukić's presence, acts and conduct at the Varda factory	114
G. The Pionirska street incident	115
1. Prosecution case.....	115
(a) The witnesses	115
(b) The departure from Koritnik and arrival on Pionirska street	115
(c) The robbery in Jusuf Memić's house	118
(d) The removal of the Koritnik group's valuables	119
(i) The strip search	120
(ii) The removal of women among the Koritnik group.....	121
(e) Transfer to Adem Omeragić's house.....	122
(f) The events at Adem Omeragić's house	125
(i) The fire	125
(ii) Escape	128
(g) CW1's encounter with Milan Lukić in May 1992	132
(h) The victims.....	132
(i) Prosecution identification evidence	138
(i) VG018.....	138
(ii) VG084.....	139
(iii) VG013	140
(iv) VG038	142
(v) VG078	144
(vi) VG101	145
(vii) VG115	145
(viii) Huso Kurspahić.....	147
2. Milan Lukić Defence case	147
(a) Defence challenge of Mitar Vasiljević's presence at Pionirska street on 14 June 1992	147
(b) Defence evidence challenging the occurrence of the 14 June 1992 fire	152
(i) Physical description of Adem Omeragić's house.....	152
(ii) General conclusions of the experts.....	152
(iii) The door	153
(iv) The windows and the interior walls	154
(v) The floor in the room.....	156
(vi) The ceiling.....	157
(vii) The vent.....	158
(viii) The exterior walls.....	158
(ix) The upper floors of Adem Omeragić's house	159
(x) The effects of fire and smoke on human beings.....	159
(c) Milan Lukić's alibi	160
(i) Factual summary	160
(ii) Milan Lukić's membership in the reserve police	160
(iii) Evidence presented in support of Milan Lukić's alibi	161
(iv) Milan Lukić Defence identification evidence	165
a. Željko Marković	165
b. MLD7	166

c. MLD4	167
d. Goran Đerić	167
e. MLD19	167
f. MLD21	168
g. MLD22	169
h. MLD23	169
i. MLD24	170
j. Stoja Vujičić	172
k. Testimony of Wilhelmus Fagel in relation to exhibit 1D25	172
3. Sredoje Lukić Defence case	173
(a) Sredoje Lukić's alibi	173
(b) Sredoje Lukić Defence identification evidence	174
(i) Veroljub Živković	174
(ii) Branimir Bugarski	175
4. Prosecution alibi rebuttal evidence	177
(a) Ferid Spahić and VG136	177
(b) VG089	178
(c) Mirsada Kahrman	182
5. Factual findings in relation to the Pionirska street incident	184
(a) Defence challenge of the occurrence of the Pionirska street incident	184
(b) Prosecution's evidence concerning the events	185
(c) Defence challenge of Mitar Vasiljević's presence at Pionirska street on 14 June 1992	189
(d) Prosecution evidence on Milan Lukić's and Sredoje Lukić's presence, acts and conduct ..	191
(i) Arrival of the Koritnik group on Pionirska street	191
(ii) Events in Jusuf Memić's house	192
i. The robbery	192
ii. The strip search	196
iii. The removal of women among the Koritnik group	196
(iii) The transfer	197
(iv) The events at Adem Omeragić's house	200
(e) Defence evidence concerning Milan Lukić's alibi	202
(i) Milan Lukić's membership in the reserve police	202
(ii) Milan Lukić's presence in Kopito on 13-15 June 1992	203
(f) Prosecution alibi rebuttal evidence	205
(g) Findings on Milan Lukić's presence, acts and conduct on 14 June 1992	206
(h) Defence evidence concerning Sredoje Lukić's alibi	207
(i) Findings on Sredoje Lukić's presence, acts and conduct on 14 June 1992	208
H. The Bikavac incident	209
1. Prosecution case	209
(a) Events	209
(b) Victims	217
(c) Prosecution identification evidence	218
(i) Zehra Turjačanin	218
(ii) VG058	220
(iii) VG115	221
(iv) VG094 and VG119	221
2. Milan Lukić Defence case	223
(a) Evidence challenging the Prosecution case	223
(b) Milan Lukić's alibi	225
3. Sredoje Lukić alibi	225
4. Prosecution alibi rebuttal evidence	227
5. Factual findings in relation to the Bikavac incident	229
(a) Prosecution evidence regarding the events and the Milan Lukić Defence challenges thereto	229
(b) Prosecution evidence on Milan Lukić's presence, acts and conduct	233
(c) Defence evidence concerning Milan Lukić's alibi	235
(d) Prosecution alibi rebuttal evidence	236
(e) Findings on Milan Lukić's presence, acts and conduct during the Bikavac incident	236

(f) Prosecution evidence regarding Sredoje Lukić's presence.....	237
(g) Defence evidence concerning Sredoje Lukić's alibi.....	238
(h) Finding on Sredoje Lukić's presence, acts and conduct at the Bikavac incident.....	239
I. Trial Chamber's observations on the Pionirska street and Bikavac incidents.....	239
J. Killing of Hajra Korić.....	239
1. Prosecution case.....	239
(a) Events	239
(b) Prosecution identification evidence	241
2. Milan Lukić Defence case	241
3. Factual findings in relation to the Hajra Korić incident	243
(a) Prosecution evidence regarding the event	243
(b) Prosecution evidence regarding Milan Lukić's presence, acts and conduct	243
(c) Defence evidence	243
(d) Findings regarding Milan Lukić's presence, acts and conduct	243
K. Incidents at the Uzamnica detention camp.....	244
1. Prosecution case.....	244
(a) Beatings.....	246
(i) Beating of Adem Berberović.....	246
(ii) Beating of Islam Kustura.....	249
(iii) Beating of Nurko Dervišević	250
(iv) Beating of VG025	252
(b) Non-indicted crimes in Uzamnica camp.....	253
(i) Killings and disappearances	253
(ii) Rape and maltreatment of women.....	254
(c) Identification	255
(i) Adem Berberović	255
(ii) Islam Kustura	256
(iii) Nurko Dervišević	257
(iv) VG025	258
2. Milan Lukić Defence case and Sredoje Lukić Defence case.....	258
3. Factual findings in relation to the incidents at the Uzamnica camp	259
(a) Prosecution evidence regarding the beatings	259
(b) Prosecution evidence concerning Milan Lukić's presence at the Uzamnica camp.....	259
(c) Defence evidence regarding Milan Lukić's imprisonment	261
(d) Finding on Milan Lukić's presence, acts and conduct at the Uzamnica camp	262
(e) Prosecution evidence concerning Sredoje Lukić's presence in the Uzamnica camp.....	262
(f) Defence evidence concerning Sredoje Lukić's presence at the Uzamnica camp	264
(g) Finding on Sredoje Lukić's presence, acts and conduct at the Uzamnica camp.....	264
L. Further evidence of crimes	265
III. LAW AND FINDINGS ON THE RESPONSIBILITY OF THE ACCUSED	272
A. Introduction	272
B. General requirements of Article 3 of the Statute	272
C. General requirements of Article 5 of the Statute	273
1. Nexus to an armed conflict	273
2. Widespread or systematic attack against a civilian population	274
3. Applicability of Article 5 to non-civilian victims.....	275
D. Findings on the general requirements of Article 3 and Article 5	276
1. Existence of an armed conflict.....	276
2. Widespread or systematic attack.....	278
E. Article 7(1) of the Statute.....	280
F. Murder under Articles 3 and 5 of the Statute (counts 2, 3, 6, 7, 9, 10, 14, 15, 18 and 19).....	282
1. Law	282
2. Findings of responsibility	283
(a) Charges against Milan Lukić.....	283
(i) Counts 2 and 3 concerning the Drina river incident.....	283
(ii) Counts 6 and 7 concerning the Varda factory incident	285

(iii) Counts 9 and 10 concerning the Pionirska street incident	286
(iv) Counts 14 and 15 concerning the Bikavac incident	286
(v) Counts 18 and 19 concerning the Hajra Korić incident.....	287
(b) Charges against Sredoje Lukić.....	288
(i) Counts 9 and 10 concerning the Pionirska street incident.....	288
(ii) Counts 14 and 15 concerning the Bikavac incident	289
G. Extermination under Article 5(b) of the Statute (counts 8 and 13).....	289
1. Law	289
2. Findings of responsibility	290
(a) Charges against Milan Lukić.....	290
(i) Count 8 concerning the Pionirska street incident	290
(ii) Count 13 concerning the Bikavac incident.....	291
(b) Charges against Sredoje Lukić.....	292
(i) Count 8 concerning the Pionirska street incident	292
(ii) Count 13 concerning the Bikavac incident.....	293
H. Cruel treatment and inhumane acts under Article 3 and Article 5 of the Statute (counts 4, 5, 11, 12, 16, 17, 20 and 21).....	293
1. Law on cruel treatment	293
2. Law on inhumane acts	294
3. Findings of responsibility	295
(a) Charges against Milan Lukić.....	295
(i) Counts 4 and 5 concerning the Drina river incident.....	295
(ii) Counts 11 and 12 concerning the Pionirska street incident.....	296
(iii) Counts 16 and 17 concerning the Bikavac incident	297
(iv) Counts 20 and 21 concerning the Uzamnica detention camp.....	298
(b) Charges against Sredoje Lukić.....	299
(i) Counts 11 and 12 concerning the Pionirska street incident.....	299
(ii) Counts 16 and 17 concerning the Bikavac incident	300
(iii) Counts 20 and 21 concerning Uzamnica detention camp	300
I. Persecutions under Article 5(h) of the Statute (count 1)	301
1. Law	301
(a) Persecutory acts (<i>actus reus</i>).....	301
(b) Persecutory intent (<i>mens rea</i>)	302
(c) Specific acts charged.....	302
2. Findings of responsibility	303
(a) Charges against Milan Lukić.....	303
(i) Drina river incident	303
(ii) Varda factory incident.....	304
(iii) Pionirska street incident.....	305
(iv) Bikavac incident.....	307
(v) Murder of Hajra Korić.....	308
(vi) Uzamnica detention camp	309
(vii) Finding on count 1 in relation to Milan Lukić	309
(b) Charges against Sredoje Lukić.....	310
(i) Pionirska street incident	310
(ii) Bikavac incident.....	312
(iii) Uzamnica detention camp	312
(iv) Finding on count 1 in relation to Sredoje Lukić.....	313
J. Cumulative convictions	313
IV. SENTENCING.....	316
A. Law on sentencing.....	316
1. General principles	316
(a) General practice regarding prison sentences in the former Yugoslavia.....	316
(i) The practice of the Tribunal	317
(b) Other general principles	317
2. The gravity of the offence.....	318
3. Aggravating and mitigating circumstances and the character of the accused.....	318

(a) Aggravating circumstances	319
(b) Mitigating circumstances	319
(c) The character of the accused	320
4. Reduction in sentence of accused as a result of mitigating factors.....	320
5. Reduction in sentence of accused to credit for time already served	321
B. Discussion and findings.....	321
1. Discussion with regards to the offences committed by Milan Lukić.....	321
(a) The gravity of the offences committed by Milan Lukić.....	321
(b) The aggravating circumstances of the crimes committed by Milan Lukić	322
(c) The mitigating circumstances regarding Milan Lukić	324
(d) The character of Milan Lukić as a mitigating factor in his sentencing	326
(i) The character of Milan Lukić prior to the war	326
(ii) The character of Milan Lukić during the war.....	326
(e) The purpose of sentencing with regards to Milan Lukić.....	327
(f) Findings with regards to the offences committed by Milan Lukić	328
2. Discussion with regards to the offences committed by Sredoje Lukić.....	328
(a) The gravity of the offences committed by Sredoje Lukić	328
(b) The aggravating circumstances of the crimes committed by Sredoje Lukić	329
(c) The mitigating circumstances regarding Sredoje Lukić.....	330
(d) The character of Sredoje Lukić as a mitigating factor in his sentencing	331
(i) The character of Sredoje Lukić prior to the war.....	331
(ii) The character of Sredoje Lukić after his April 1992 detention	331
(e) Findings with regards to the offences committed by Sredoje Lukić.....	332
V. DISPOSITION	333
VI. SEPARATE OPINION OF JUDGE ROBINSON.....	336
A. Defence challenge to Mitar Vasiljević's presence at Pionirska street on 14 June 1992..	336
VII. SEPARATE OPINION OF JUDGE ROBINSON	337
VIII. PARTLY DISSENTING OPINION OF JUDGE VAN DEN WYNGAERT	338
A. Extermination is a crime of massiveness.....	338
B. The threshold for making a legal determination of extermination must remain high ...	339
C. Neither the Pionirska street incident nor the Bikavac incident meet the threshold for	
extermination.....	340
IX. PARTLY DISSENTING OPINION OF JUDGE DAVID	343
X. ANNEX	346
A. Procedural history.....	346
1. Pre-trial proceedings	346
2. Trial proceedings	347
(a) Overview	347
(b) Presentation of witnesses and evidence	348
(c) Adjournments and postponements	349
3. Significant issues arising during the proceedings.....	349
(a) Requests for amendment to the indictment	349
(b) Notice of alibi and notice of witnesses	350
(c) Presentation of alibi rebuttal evidence	351
(d) Disclosure by the Prosecution during the trial	352
(e) Issues surrounding the Prosecution handwriting expert Dr. Wilhelmus Fagel	352
(f) Contempt allegations	353
(g) Disqualification of Trial Chamber	354
B. List of cases and sources	355
1. ICTY	355
2. ICTR	358
3. Other	359

List of acronyms

ABiH	Army of the Republic of Bosnia and Herzegovina
BiH	Bosnia and Herzegovina
FNU	First Name Unknown
ICRC	International Committee of the Red Cross
ICTR	International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States, between 1 January 1994 and 31 December 1994, established pursuant to Security Council Resolution 995 of 8 November 1994 (UN Doc. S/RES/955)
Indictment	Second Amended Indictment, 27 February 2006
JNA	Yugoslav Peoples' Army
LNU	Last Name Unknown
MUP	Ministry of Interior
Prosecution	Office of the Prosecutor of the Tribunal
Rules	Rules of Procedure and Evidence of the International Tribunal for the Former Yugoslavia, 11 February 1994, as amended 4 November 2008 (UN Doc. IT/32/Rev. 42)
SDA	Party of Democratic Action
SDS	Serbian Democratic Party
Serbia	Republic of Serbia
SFRY	Socialist Federal Republic of Yugoslavia
SFRY Criminal Code	Criminal Code of the Socialist Federal Republic of Yugoslavia; published in the SFRY Official Gazette No. 44 of 8 October 1976 (corrections in the SFRY Official Gazette No. 36 of 15 July 1977), entry into force on 1 July 1977
SJB	Public Security Station
Statute	Statute of the Tribunal, adopted by Security Council Resolution 827 of 25 May 1993 (UN Doc. S/RES/827), last amended by Security Council Resolution 1837 of 29 September 2008 (UN Doc. S/RES/1837)
SUP	Secretariat of Internal Affairs
TO	Territorial Defence
Tribunal	International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, established by Security Council Resolution 827 of 25 May 1993 (UN Doc. S/RES/827)
UN	United Nations
UNDU	United Nations Detention Unit in The Hague, The Netherlands
VRS	Army of the Republika Srpska

I. INTRODUCTION

A. The Accused Milan Lukić

1. Milan Lukić, of Serb ethnicity, was born on 6 September 1967 in Foča.¹ He is the son of Mile Lukić and Kata Lukić.² Milan Lukić has two brothers, Gojko Lukić and Novica Lukić, the latter of whom was killed in 2004, and one sister, Draginja Lukić.³ Milan Lukić has two daughters, the first of whom was born during the war.⁴

2. Milan Lukić grew up in Rujište, a village approximately 15 kilometres north of Višegrad town.⁵ From 1974, he attended primary school in Klačnik from grade 1 to grade 4, and then in Prelovo, near Višegrad, from grade 5 to grade 8.⁶ School records state that on 1 September 1982, Milan Lukić was registered at the Ivo Andrić school in Višegrad in the “hospitality studies organization” as a waiter and later transferred to metallurgy studies.⁷ According to Prosecution evidence, after completing two years of secondary school, Milan Lukić left school to attend a police academy in Obrenovac, Serbia.⁸ However, according to Defence evidence, Milan Lukić never lived in Obrenovac, nor had there ever been a police academy in Obrenovac.⁹ Prior to returning to Višegrad, Milan Lukić lived in Offenbach, Germany, and in Zürich, Switzerland, where he worked as a bartender.¹⁰

3. Prosecution witness VG058 gave evidence that Milan Lukić was her neighbour in Šeganje for a period in 1992.¹¹ During the war, Milan Lukić lived with his father, mother and brother in a house on Pionirska street.¹²

¹ P147, p. 2; P149, p. 1; 1D105, p. 1.

² VG115, 27 Aug 2008, T. 672, 28 Aug 2008, T. 701; Huso Kurspahić, 1 Sep 2008, T. 897-898; VG042, 27 Oct 2008, T. 2782; VG024, 3 Nov 2008, T. 3207, 3259-3262; P147, p. 2.

³ VG115, 27 Aug 2008, T. 672, 28 Aug 2008, T. 702, 718; VG024, 3 Nov 2008, T. 3207; Željko Marković, 17 Dec 2008, T. 3843; MLD18, 23 Jan 2009, T. 4429-4431; MLD20, 26 Jan 2009, T. 4481-4485; MLD17, 4 Feb 2009, T. 4716; P150, p. 1.

⁴ P96, p. 2; 1D203, p. 2.

⁵ VG058, 11 Sep 2008, T. 1581; VG042, 27 Oct 2008, T. 2780-2781; VG024, 3 Nov 2008, T. 3207; MLD20, 26 Jan 2009, T. 4479-4480; MLD4, 26 Jan 2009, T. 4534.

⁶ VG078, 8 Sep 2008, T. 1378; VG042, 27 Oct 2008, T. 2779-2780; VG024, 3 Nov 2008, T. 3207-3208, 3211; MLD20, 26 Jan 2009, T. 4480, 4497-4498; MLD24, 4 Mar 2009, T. 5031; P92, p. 4; 1D106.

⁷ VG082, 22 Sep 2008, T. 2034-2035, 2052; MLD 20, 26 Jan 2009, T. 4491; 1D105, p. 1; 1D203, p. 5.

⁸ VG078, 8 Sep 2008, T. 1378; VG082, 22 Sep 2008, T. 2058-2059. See also VG014, 10 Jul 2008, T. 356, 11 Jul 2008, T. 373-374; VG115, 27 Aug 2008, T. 667; 1D19, T. 1014.

⁹ Goran Đerić, 14 Jan 2009, T. 4102; Željko Marković, 17 Dec 2008, T. 3841.

¹⁰ Željko Marković, 17 Dec 2008, T. 3843-3844; P147, p. 2. See also 10 Sep 2008, T. 1553; MLD10, 18 Dec 2008, T. 3996; MLD20, 26 Jan 2009, T. 4500.

¹¹ VG058, 11 Sep 2008, T. 1578-1580.

¹² VG115, 27 Aug 2008, T. 671-672.

B. The Accused Sredoje Lukić

4. Sredoje Lukić, of Serb ethnicity, was born on 5 April 1961 in Rujište.¹³ He is the son of Đorđe Lukić, who is the brother of Milan Lukić's father, Mile Lukić.¹⁴ Sredoje Lukić and Milan Lukić are cousins.¹⁵ Sredoje Lukić has two brothers, Slavko Lukić and Rade Lukić, and two sisters, Vojka Lukić and Savka Lukić.¹⁶ Sredoje Lukić is married and has two children.¹⁷

5. Although Sredoje Lukić worked as a police officer in Belgrade for a period in the 1980s,¹⁸ for most of the time until the beginning of the war, Sredoje Lukić worked as a police officer in the traffic section of the Višegrad Public Security Station ("SJB").¹⁹ At this time, Sredoje Lukić lived in Šeganje, an area of Višegrad town.²⁰

6. In March 1992, Sredoje Lukić's family moved to Obrenovac where they first stayed in the house of Milojko Popadić, his brother-in-law.²¹ Sredoje Lukić joined his family in Obrenovac in April 1992.²² Branimir Bugarski, the brother-in-law of Milojko Popadić, testified that Sredoje Lukić and his family left Milojko Popadić's house and Branimir Bugarski allowed them to occupy an apartment he owned in the village of Krtinska located in Obrenovac municipality from the end of April 1992 to the end of October 1992.²³ However, Prosecution witness VG024 gave evidence that Sredoje Lukić lived in Šeganje during the war.²⁴

7. At the beginning of April 1992, Sredoje Lukić left the Višegrad police to join an armed group of 12 Serb men believed to be under the command and control of the Serbian Democratic Party ("SDS").²⁵ Between 7 and 9 April 1992, the members of this group, including Sredoje Lukić, were arrested by the Territorial Defence ("TO") during a routine territorial inspection because they were armed without belonging to either the police or the TO.²⁶ They were taken into custody at the

¹³ VG058, 11 Sep 2008, T. 1581; P319, p. 1.

¹⁴ Huso Kurspahić, 1 Sep 2008, T. 914; VG017, 9 Oct 2008, T. 2760-2761; P319, p. 1.

¹⁵ VG042, 27 Oct 2008, T. 2848.

¹⁶ VG024, 3 Nov 2008, T. 3215; Zorka Lukić, 1 Dec 2008, T. 3675.

¹⁷ Mevsud Poljo, 26 Aug 2008, T. 583; VG024, 3 Nov 2008, T. 3216; 1D18, p. 15. See also Hearing, 6 Mar 2009, T. 5238-5239.

¹⁸ Veroljub Živković, 1 Dec 2008, T. 3625-3626; 2D47, p. 2.

¹⁹ VG148, 25 Aug 2008, T. 501, 508; Ferid Spahić, 26 Aug 2008, T. 569; VG097, 26 Aug 2008, T. 579; Mevsud Poljo, 26 Aug 2008, T. 579; Huso Kurspahić, 1 Sep 2008, T. 885, 913-914, 917; VG013, 2 Sep 2008, T. 1000; VG064, 28 Oct 2008, T. 2897; MLD22, 26 Feb 2009, T. 4840; P36, p. 3; 1D18, p. 15; 1D29, p. 2; 2D44, p. 5; 2D47, p. 2; 2D56. See also financial records of the SJB Višegrad, P210, p. 1 (May 1992); P209, p. 1 (June 1992); P211, p. 1 (July 1992); P213, p. 1 (July 1992); 11 Sep 2008, T. 1639, 6 Mar 2009, T. 5309.

²⁰ VG058, 11 Sep 2008, T. 1578-1580; VG024, 4 Nov 2008, T. 3293; Zorka Lukić, 1 Dec 2008, T. 3676; P28, p. 3; 2D44, p. 5.

²¹ 2D53, p. 34.

²² Branimir Bugarski, 2 Dec 2008, T. 3732-3733; 2D47, pp 2-3.

²³ Branimir Bugarski, 2 Dec 2008, T. 3720, 3731-3733; 2D47, p. 2. See also Veroljub Živković, 1 Dec 2008, T. 3622; 2D53, pp 34-40.

²⁴ VG024, 4 Nov 2008, T. 3293.

²⁵ VG148, 25 Aug 2008, T. 497, 508, 514-515; P14, T. 138. See also Huso Kurspahić, 1 Sep 2008, T. 917-918.

²⁶ VG148, 25 Aug 2008, T. 495-496, 508, 514-515; P14, T. 138. See also 1D18, p. 6.

Višegrad SJB and subsequently transferred to the hydroelectric dam.²⁷ The Trial Chamber heard evidence that during this period of detention, Sredoje Lukić was subjected to violence at the hands of Muslims, including evidence that he was burned with cigarettes.²⁸ On 14 or 15 April 1992, Huso Kurspahić, a former police officer at the Višegrad SJB, facilitated the release of the men, including Sredoje Lukić, from Mededa and they were subsequently returned to Višegrad.²⁹

8. Defence witnesses testified that around May 1992, Sredoje Lukić began looking for work with the Belgrade police through Sreten Lukić, a relative who worked for the Secretariat of Internal Affairs (“SUP”).³⁰ During this period, Sredoje Lukić returned to work as a police officer in Višegrad.³¹ Sredoje Lukić was listed as a member of the police with “war assignments” from 4 August 1992 to 20 January 1993.³²

C. Charges against Milan Lukić and Sredoje Lukić

9. The Prosecution charges Milan Lukić with nine counts of violations of the laws or customs of war punishable under Article 3 of the Statute of the Tribunal (“Statute”) and recognised by Article 3 common to the four Geneva Conventions of 12 August 1949 (“Common Article 3”): *murder* (counts 3, 7, 10, 15 and 19) and *cruel treatment* (counts 5, 12, 17 and 21). The Prosecution further charges Milan Lukić with 12 counts of crimes against humanity punishable under Article 5 of the Statute: *persecutions* (count 1), *extermination* (counts 8 and 13), *murder* (counts 2, 6, 9, 14 and 18) and *inhumane acts* (counts 4, 11, 16 and 20).

10. The Prosecution charges Sredoje Lukić with five counts of violations of the laws or customs of war pursuant to Article 3 of the Statute: *murder* (counts 10 and 15) and *cruel treatment* (counts 12, 17 and 21). The Prosecution further charges Sredoje Lukić with eight counts of crimes against humanity pursuant to Article 5 of the Statute: *persecutions* (count 1), *extermination* (counts 8 and 13), *murder* (counts 9 and 14) and *inhumane acts* (counts 11, 16 and 20).

11. The Prosecution alleges that in 1992 Milan Lukić returned to Višegrad, near where he grew up and located in the eastern part of Bosnia and Herzegovina (“BiH”), and organised a group of local paramilitaries that was sometimes referred to as the “White Eagles” and the “Avengers”.³³ It is alleged that this group had ties to the Višegrad police and to Serb military units.³⁴ The Prosecution

²⁷ VG148, 25 Aug 2008, T. 510-511; P14, T. 138; P38, T. 870-871. See also Zorka Lukić, 1 Dec 2008, T. 3679; 2D44, p. 6.

²⁸ Branimir Bugarski, 2 Dec 2008, T. 3730; P203; 2D47, p. 2. See also MLD22, 26 Feb 2009, T. 4840.

²⁹ P38, T. 872-873; Huso Kurspahić, 1 Sep 2008, T. 920.

³⁰ Zorka Lukić, 1 Dec 2008, T. 3680; Branimir Bugarski, 2 Dec 2008, T. 3729.

³¹ Branimir Bugarski, 2 Dec 2008, T. 3728-3729; Zorka Lukić, 1 Dec 2008, T. 3681; 2D47, p. 2.

³² 2D60, p. 1; Zoran Ušćumlić, 2 Apr 2009, T. 6610-6611.

³³ Indictment, para. 1.

³⁴ Indictment, para. 1.

alleges that Sredoje Lukić worked as a policeman in Višegrad and that he joined “Milan Lukić’s group of paramilitaries” when the war started.³⁵ The Prosecution charges the following specific incidents in the indictment described in the following paragraphs.

12. On or about 7 June 1992, Milan Lukić, together with Mitar Vasiljević and other uncharged individuals, lined up seven Muslim men along the bank of the Drina river and opened fire on them. Five men were killed as a result and two men survived (“Drina river incident”).³⁶

13. On or about 10 June 1992, Milan Lukić and another uncharged individual took seven Muslim men from the Varda factory in Višegrad town to the bank of the Drina river, where they shot and killed the seven men (“Varda factory incident”).³⁷

14. On or about 14 June 1992, Milan Lukić and Sredoje Lukić, together with other uncharged individuals, robbed a group of approximately 70 Muslim persons, forcibly transferred them to a house on Pionirska street in Višegrad, locked them inside one room of the house, set fire to the room, and then shot at people who attempted to escape, resulting in the deaths of 70 people and seriously injuring the survivors (“Pionirska street incident”).³⁸

15. In or about 27 June 1992, Milan Lukić and Sredoje Lukić, together with other uncharged individuals, forced approximately 70 Muslim persons into a house in Bikavać settlement, barricaded them inside, and then set fire to the house, resulting in the deaths of approximately 70 people and serious injury to the sole survivor (“Bikavac incident”).³⁹

16. In or about June 1992, Milan Lukić, accompanied by a group of unknown individuals, went to the “Potok” neighbourhood in Višegrad and shot and killed Hajra Korić, a Muslim woman (“Killing of Hajra Korić”).⁴⁰

17. On multiple occasions between August 1992 and 10 October 1994, Milan Lukić, Sredoje Lukić and other unknown individuals beat Muslim men who were detained in the detention camp at the Uzamnica military barracks in Višegrad, resulting in serious and permanent injuries for many of the detainees (“Uzamnica camp incidents”).⁴¹

18. Count 1 alleges that Milan Lukić and Sredoje Lukić either committed persecutions or aided and abetted in the commission of persecutions by participating in:

³⁵ Indictment, para. 2.

³⁶ Indictment, para. 5.

³⁷ Indictment, para. 6.

³⁸ Indictment, paras 7-10.

³⁹ Indictment, para. 11.

⁴⁰ Indictment, para. 12.

⁴¹ Indictment, paras 13-15.

- the murder of Muslim and other non-Serb civilians allegedly perpetrated in the Pionirska street incident and the Bikavac incident, and further – but in respect of Milan Lukić only – in the Drina river incident, the Varda factory incident, and the killing of Hajra Korić;⁴²
- the cruel and inhumane treatment of Muslim and other non-Serb civilians at the Uzamnica detention camp between August 1992 and 10 October 1994;⁴³
- the unlawful detention and confinement of Muslim and other non-Serb civilians under inhumane conditions in the Pionirska street incident and the Bikavac incident;⁴⁴
- the harassment, humiliation, terrorisation and psychological abuse of Muslim and other non-Serb civilians in the Pionirska street incident, the Bikavac incident, at the Uzamnica detention camp, and further – but in respect of Milan Lukić only – in the Drina river incident, the Varda factory incident, and the killing of Hajra Korić;⁴⁵ and
- the theft of personal property and the destruction of houses of Muslim and other non-Serb civilians, in the Pionirska street incident, specifically the houses of Jusuf Memić and of Adem Omeragić, and in the Bikavac incident, specifically the house of Meho Aljić.⁴⁶

19. For each count in the indictment, the Prosecution charged Milan Lukić and Sredoje Lukić with having committed and aided and abetted in the commission of the crimes charged pursuant to Article 7(1) of the Statute. The Trial Chamber considers that these modes of liability are charged in the alternative and will therefore consider the counts accordingly.

20. The trial began on 9 July 2008 and closing arguments were heard on 19 and 20 May 2009.⁴⁷ Forty-six witnesses were heard for the Prosecution, three for the Sredoje Lukić Defence and 28 for the Milan Lukić Defence. The Trial Chamber called four witnesses.

D. Evidentiary matters

1. Contempt allegations raised by the Prosecution

21. On two occasions during the trial, the Trial Chamber ordered the Prosecution to investigate possible contempt allegations following Prosecution motions filed pursuant to Rule 77 of the Rules

⁴² Indictment, para. 4, referring to *id.*, paras 7-11, and, in respect of Milan Lukić only, paras 5, 6 and 12.

⁴³ Indictment, para. 4, referring to *id.*, paras 13-15.

⁴⁴ Indictment, para. 4, referring to *id.*, paras 7-11.

⁴⁵ Indictment, para. 4, referring to *id.*, paras 7-11, 13-15, and, in respect of Milan Lukić only, paras 5, 6 and 12.

⁴⁶ Indictment, para. 4, referring to *id.*, paras, 7, 9 and 11.

⁴⁷ Hearing, 9 Jul 2008, T. 229; Prosecution closing arguments, 19 May 2009, T. 7157-7185; Milan Lukić Defence closing arguments, 19 May 2009, T. 7185-7218; Sredoje Lukić Defence closing argument, 20 May 2009, T. 7230-7252.

of Procedure and Evidence (“Rules”).⁴⁸ In both motions, the Prosecution alleged that members of the Milan Lukić Defence had bribed Defence witnesses or otherwise interfered with Defence evidence. On each occasion, the Trial Chamber dismissed all allegations pertaining to assigned lead counsel or co-counsel. Moreover, on each occasion, following the receipt of investigation reports from the Prosecution, and with a view to assessing whether the alleged witness interference had had an impact on the reliability of the evidence in these proceedings, the Trial Chamber permitted the parties to make applications to introduce evidence or call witnesses relevant to the allegations.⁴⁹ The Prosecution was subsequently granted leave to call four witnesses as alibi rebuttal witnesses in this respect: Hamdija Vilić and VG146 were ultimately called to testify.⁵⁰ The Milan Lukić Defence did not call any witnesses.

2. Alibi evidence

22. Both Milan Lukić and Sredoje Lukić have raised alibis in relation to some of the charges brought against them. Both Accused assert that they were not at the relevant places on either Pionirska street or Bikavac at the time when the charged offences are alleged to have occurred. Milan Lukić has also raised an alibi in relation to the Drina river incident, and the Varda factory incident and for part of the period covered by the allegations in relation to the events at the Uzamnica detention camp. The factual arguments advanced in support of the alibis are considered later in this judgement in connection with the relevant event.

(a) The nature of an alibi generally

23. Where an alibi is pleaded, the accused denies that he was in a position to commit the crime for which he is charged because at the time of its commission, he was not at the scene of the crime, he was elsewhere.⁵¹ An alibi is based on evidence upon which the accused intends to rely in order to show that the Prosecution has failed to discharge the burden of proof that rests on it.⁵² However, as pointed out by the Appeals Chamber, in *Čelebići*, this does not constitute an actual “defence”:

It is a common misuse of the word to describe an alibi as a “defence”. If a defendant raises an alibi, he is merely denying that he was in a position to commit the crime with which he is charged.

⁴⁸ Order on Prosecution’s urgent motion to investigate potential contempt of the Tribunal, filed confidentially and *ex parte* on 29 August 2008; Order on Prosecution’s application under Rule 77, filed confidentially and *ex parte* on 10 February 2009. See further *infra* section II.E.3(a).

⁴⁹ Confidential and *ex parte* Decision on Prosecution’s submission of report pursuant to order to investigate potential contempt of the tribunal, as amended, and Decision on motion for leave to amend Prosecution’s list of witnesses, Decision on third Prosecution urgent motion in connection with contempt proceedings, filed confidentially and *ex parte* on 6 October 2008; Hearing, 13 Mar 2009, T. 5512.

⁵⁰ The Trial Chamber assesses their evidence *infra* in section II.E.4(d). Decision on Prosecution motion for leave to amend witness list (Hamdija Vilić), filed confidentially on 6 November 2008; Decision on rebuttal witnesses, filed confidentially on 25 March 2009, p. 5, 10.

⁵¹ *Musema* Trial Judgement, para. 108, cited in *Nahimana et al.* Trial Judgement, para. 99, and approved by Appeals Chamber in *Nahimana et al.* Appeal Judgement, para. 414.

⁵² *Kayishema and Ruzindana* Appeal Judgement, para. 106.

That is not a defence in its true sense at all. By raising that issue, *the defendant does no more than require the Prosecution to eliminate the reasonable possibility that the alibi is true.*⁵³

(b) Notice of alibi defence

24. Since the Prosecution cannot anticipate the alibi the Defence will raise, it is incumbent on the Defence to give the Prosecution notice of such alibi.⁵⁴ The relevant provisions of Rule 67 state that:

(B) As early as reasonably possible and in any event prior to the commencement of the trial:

(ii) the defence shall notify the Prosecutor of its intent to enter:

(a) the defence of alibi; in which case the notification shall specify the place or places at which the accused claims to have been present at the time of the alleged crime and the names and addresses of witnesses and any other evidence upon which the accused intends to rely to establish the alibi.

(C) Failure of the defence to provide such notice under this Rule shall not limit the right of the accused to rely on any of the above defences.

25. Rule 67(C) specifies that failure of the Defence to provide such notice shall not limit the right of the accused to rely on an alibi.⁵⁵ The notice provision is necessary to allow the Prosecution to prepare its case adequately and is consistent with the principle of the presumption of innocence and the duty of the Prosecution to prove guilt beyond reasonable doubt.⁵⁶ Consequently, compliance at a late stage in the proceedings may have the effect of depriving the Prosecution of the opportunity to adduce evidence related to the alibi and the jurisprudence of the Tribunal permits a Chamber to consider any failure to provide the requisite notice in its assessment of the alibi.⁵⁷

26. Rule 67(B)(i) further provides that, when the Defence intends to enter the defence of alibi, in addition to giving the required notice to the Prosecution, the accused must also provide the evidence upon which he intends to rely to establish his alibi.⁵⁸

27. Following lengthy litigation and several submissions on the issue of the adequacy of the respective Defence alibi notices during the pre-trial stage of the proceedings, the Trial Chamber

⁵³ *Delalić et al.* Appeal Judgement, para. 581 (emphasis added).

⁵⁴ *Kayishema and Ruzindana* Appeal Judgement, para. 106.

⁵⁵ As originally adopted in the Rules of Procedure and Evidence, the provision quoted appeared in paragraph (B) of this Rule and is referred to as such in the alibi notices presented by the two accused. The paragraph was renumbered as (C) in IT/32/Rev.41, adopted on 28 Feb 2008.

⁵⁶ *Kayishema and Ruzindana* Trial Judgement, paras 233-234.

⁵⁷ *Ndindabahizi* Appeal Judgement, para. 66, citing, *inter alia*, *Kayishema and Ruzindana* Appeal Judgement, paras 106, 110-111; *Nchamihigo* Trial Judgement, para. 20.

⁵⁸ *Musema* Appeal Judgement, para. 202.

issued two decisions requiring clarification of the notices of alibi.⁵⁹ The Sredoje Lukić Defence filed its notice on 2 June 2008 and the Milan Lukić Defence filed its notice on 18 July 2008.⁶⁰

(c) Burden of proof

28. It is now settled jurisprudence of the Appeals Chamber of the two *ad hoc* Tribunals that, in putting forward an alibi, an accused need only produce evidence likely to raise a reasonable doubt in the Prosecution's case.⁶¹ The onus remains on the Prosecution to prove beyond reasonable doubt the facts underpinning the crimes charged.⁶² Indeed, it remains incumbent on the Prosecution to establish beyond reasonable doubt that, despite the alibi, the facts alleged are nevertheless true.⁶³ However, this does not specifically require the Prosecution to disprove each alibi witness's testimony beyond reasonable doubt.⁶⁴ Rather, the Prosecution's burden is to prove the accused's guilt as to the alleged crimes beyond reasonable doubt in spite of the proffered alibi.⁶⁵ The sole purpose of an alibi is to cast a reasonable doubt on the Prosecution's case⁶⁶ and "obliges the Prosecution to demonstrate that there is no reasonable likelihood that the alibi is true."⁶⁷

29. With respect to the evaluation of the alibi itself, the Appeals Chamber has repeatedly upheld the standard set out by the Trial Chamber in *Musema* that an alibi does not carry a separate burden of proof but that: "If the defence is reasonably possibly true, it must be successful."⁶⁸ In the Appeal Judgement of the *Musema* case, the Appeals Chamber accepted this as a correct statement of law and also added: "The accused must simply produce evidence *tending* to show that he was not present at the time of the alleged crime".⁶⁹

⁵⁹ Decision on the Prosecution's motion for an order requiring the accused Milan Lukić to clarify alibi notice served under Rule 67(A)(i)(a) and on the Milan Lukić Defence second motion concerning protective measures for alibi witnesses, 9 May 2008; Decision on Prosecution's motion for an order requiring the accused Sredoje Lukić to clarify alibi notice served under Rule 67(A)(i)(a), 15 May 2008.

⁶⁰ Sredoje Lukić's clarification of defence notices under Rule 67(A)(i)(a), 2 June 2008; Milan Lukić's further submissions in regard to defence of alibi, 18 July 2008.

⁶¹ *Niyitegeka* Appeal Judgement, para. 60, referring to *Kayishema and Ruzindana* Appeal Judgement, para. 113, *Musema* Appeal Judgement, para. 202. See also *Kamuhanda* Appeal Judgement, para. 167.

⁶² *Niyitegeka* Appeal Judgement, para. 60.

⁶³ *Niyitegeka* Appeal Judgement, para. 60, referring to *Musema* Appeal Judgement, para. 202. See also *Limaj et al.* Appeal Judgement, para. 63, quoting *Niyitegeka* Appeal Judgement, para. 60.

⁶⁴ *Limaj et al.* Appeal Judgement, para. 63; *Kajelijeli* Appeal Judgement, para. 43.

⁶⁵ *Limaj et al.* Appeal Judgement, para. 63.

⁶⁶ *Musema* Appeal Judgement, para. 200.

⁶⁷ *Nahimana et al.* Appeal Judgement, para. 417, citing *Musema* Appeal Judgement, para. 202. See also *Limaj et al.* Appeal Judgement, para. 65.

⁶⁸ *Musema* Trial Judgement, para. 108, cited with approval in *Nahimana et al.* Appeal Judgement, para. 414; *Niyitegeka* Appeal Judgement, para. 61; *Musema* Appeal Judgement, paras 205-206.

⁶⁹ *Musema* Appeal Judgement, para. 202 (emphasis added). See also *Kayishema and Ruzindana* Appeal Judgement, para. 113, where the requirement is phrased slightly differently: "[The defence] is merely required to produce evidence likely to raise reasonable doubt regarding the case of the Prosecution."

3. In-court identification

30. On 27 October 2008, the Trial Chamber requested the parties to make written submissions concerning the issue of in-court identification of an accused by witnesses.⁷⁰ In their submissions, the Milan Lukić Defence and the Sredoje Lukić Defence objected to the use of any in-court identification and questioned the reliability of this type of identification evidence.⁷¹

31. The Tribunal's case-law recognises a difference between "identification witnesses" and "recognition witnesses." The Trial Chamber in *Tadić* defined "identification witnesses" as witnesses to whom the accused was "previously unknown by sight."⁷² By contrast, "recognition witnesses" had prior knowledge of the accused which enabled them to recognise the accused at the time of the alleged crime.⁷³

32. The Appeals Chamber in the *Kunarac* case gave "no positive probative weight" to in-court identifications and reasoned that "all the circumstances of a trial necessarily lead such a witness to identify the person on trial."⁷⁴ This position was adopted in both the *Kamuhanda* and *Limaj et al.* cases.⁷⁵ However, this Trial Chamber notes that in the *Kunarac et al.*, *Kamuhanda*, and *Limaj et al.* cases, the Appeals Chamber did not address the issue of in-court identification by recognition witnesses.

33. In the present case, the Trial Chamber faced difficulties with in-court identification in view of the fact that the witnesses' purported knowledge of Milan Lukić and Sredoje Lukić has varied significantly. Several witnesses testified to having known one or both of the Accused for various lengths of time prior to the relevant incident. Other witnesses had no prior knowledge of them, but testified that other persons, who did have prior knowledge, identified Milan Lukić and Sredoje Lukić to them. Some of these witnesses, once having learned of their identities, were exposed to and observed Milan Lukić and Sredoje Lukić over long periods of time.

34. With one exception, for every situation in the present case where the Trial Chamber has found there to be sufficient evidence to identify Milan Lukić or Sredoje Lukić at the incident in question, the Trial Chamber has only considered evidence of prior knowledge and identifying information provided by the relevant witness.⁷⁶ However, the Trial Chamber considers that the

⁷⁰ Hearing, 28 Oct 2008, T. 2766-2767.

⁷¹ Prosecution submission on in-court identification evidence, 3 Nov 2008; Milan Lukić's submissions regarding in-court identification pursuant to order of the Trial Chamber, 3 Nov 2008; Sredoje Lukić's submission on the treatment of in-court identification, 3 Nov 2008.

⁷² *Tadić* Trial Judgement, para. 545.

⁷³ *Tadić* Trial Judgement, para. 545. See also *Haradinaj et al* Trial judgement, para. 29.

⁷⁴ *Kunarac et al.* Appeal judgement, para. 226.

⁷⁵ *Kamuhanda* Appeal judgement, para. 27; *Limaj et al.* Appeal judgement, para. 27.

⁷⁶ See *infra* section II.K.3(b).

categories of “identification” and “recognition” cannot be so strictly interpreted as to require that a witness must have prior knowledge of the accused before the start of the commission of a crime in order to be classified as a recognition witness. In particular, the Trial Chamber is satisfied that, where a crime is committed over a long period of time and a witness has acquired sufficient knowledge of the accused during that period, such a witness is a “recognition witness.”⁷⁷

4. Protective measures

35. A significant number of witnesses in the present case testified subject to protective measures, including many originally granted in the *Vasiljević* case.⁷⁸ Moreover, many exhibits have been admitted into evidence on a confidential basis.⁷⁹ In the interest of a comprehensive and public judgement, the Trial Chamber has endeavoured to provide the fullest account possible of the evidence, while ensuring that any protective measures and confidentiality requirements are not undermined.

5. Evidence of non-indicted crimes

36. On 12 June 2008, less than one month before the start of the trial and more than two years after the second amended indictment, the Prosecution filed a motion to amend the second amended indictment, including proposals to reflect more accurately the current case-law on joint criminal enterprise, and to include new charges of rape, enslavement, and torture.⁸⁰ The Trial Chamber denied this motion on the ground that the Prosecution had not acted with the required diligence in submitting the motion in a timely manner so as to provide adequate notice to the Accused.⁸¹

37. During the trial, a very large amount of evidence has been presented of crimes that were committed in Višegrad during the indictment period, including specific instances of murders, rapes and beatings allegedly committed by Milan Lukić and Sredoje Lukić, but which are not charged in the indictment.⁸² A significant proportion of this evidence was presented by the Prosecution for the purpose of rebutting the alibis presented by Milan Lukić and Sredoje Lukić. Specifically, a large portion of such alibi rebuttal evidence includes incidents of rape. In view of the fact that Milan Lukić and Sredoje Lukić are not charged with any crimes arising out of these incidents, including

⁷⁷ *Ibid.*

⁷⁸ Protective measures were granted for 30 Prosecution witnesses, 14 Milan Lukić Defence witnesses and two Trial Chamber witnesses. See further *infra* section IX.B.2.

⁷⁹ See *infra* section IX.A.2.

⁸⁰ Prosecution motion seeking leave to amend the second amended indictment, filed on 16 June 2008 with confidential annexes (initially filed on 12 June 2008), para. 3.

⁸¹ Decision on Prosecution motion seeking leave to amend the second amended indictment and on Prosecution motion to include United Nations Security Council Resolution 1820 (2008) as additional supporting material to proposed third amended indictment as well as on Milan Lukić’s request for reconsideration or certification of the pre-trial Judge’s order of 19 June 2008, 8 Jul 2008, pp 26-27.

⁸² See *infra* section II.L.

the rape incidents, the Trial Chamber makes it clear that it has not made any determination of guilt in relation to these non-indicted crimes.

II. FACTS

A. Background

38. The municipality of Višegrad is situated in the south-eastern region of BiH and borders the Republic of Serbia ("Serbia") on its eastern side.⁸³ In 1991, the municipality of Višegrad population was inhabited by 21,000 persons, 63 per cent of whom were of Muslim ethnicity and 32 per cent of whom were Serbs.⁸⁴

39. The town of Višegrad is the municipality's capital and is situated on the eastern bank of the Drina river. In 1991, Višegrad town consisted of 9,000 residents, predominantly of Muslim and Serb ethnicity.⁸⁵ A hydroelectric dam, which was located south of Višegrad town, provided electricity for the region and allowed for the regulation of the water levels of the Drina river.⁸⁶

40. In November 1990, multi-party elections were held in the Višegrad municipality resulting in a victory for the Party of Democratic Action ("SDA"), a primarily Muslim party, with the Serbian Democratic Party as the runner-up.⁸⁷ The distribution of power left Serb politicians feeling dissatisfied and under-represented in positions of authority, and tensions between the two groups arose.⁸⁸

41. Between late 1991 and early 1992, following orders issued by the Yugoslav People's Army ("JNA"), Muslim citizens as well as companies, institutions, and the TO, which was primarily comprised of Muslims due to the demographics in the municipality, were disarmed or told to surrender their weapons.⁸⁹ During the same time period, the JNA organised military training for the Serbs, and the Serbs were being armed.⁹⁰ The Muslim section of the population also attempted to arm and organise themselves, but did not achieve the same degree of success as the Serbs.⁹¹ SDS

⁸³ On 22 August 2008, the Trial Chamber took judicial notice of 52 adjudicated facts from the *Vasiljević* trial judgement, Decision on Prosecution's motion for judicial notice of adjudicated facts, 22 Aug 2008 ("Adjudicated Facts Decision, 22 Aug 2008"). Adjudicated Facts Decision, 22 Aug 2008, facts nos. 1-2. See also P118.

⁸⁴ The Višegrad municipality also had Yugoslavs (4.5%) and Croats (0.2%), Adjudicated Facts Decision, 22 Aug 2008, fact no. 2. See also P118, p. 1.

⁸⁵ Adjudicated Facts Decision, 22 Aug 2008, facts nos. 1-2. See also P118.

⁸⁶ P38, T. 869.

⁸⁷ Adjudicated Facts Decision, 22 Aug 2008, fact no 3.

⁸⁸ Adjudicated Facts Decision, 22 Aug 2008, fact no. 4. See also VG014, 10 Jul 2008, T. 352; P23, T. 616; P172, T. 931.

⁸⁹ Adjudicated Facts Decision, 22 Aug 2008, fact no 5. See also VG148, 25 Aug 2008, T. 485-487; P14, T. 136-138.

⁹⁰ VG014, 10 Jul 2008, T. 355; VG148, 25 Aug 2008, T. 491; Mirsad Tokača, 23 Sep 2008, T. 2157; Islam Kustura, 23 Sep 2008, T. 2157; MLD18, 23 Jan 2009, T. 4412; P14, T. 136-138, 174.

⁹¹ Adjudicated Facts Decision, 22 Aug 2008, fact no. 6. See also P14, T. 173; 1D66, p. 3.

politicians repeatedly requested that the local police be divided along ethnic lines.⁹² As ethnic tensions grew in and around Višegrad municipality, Serbs and Muslims erected barricades.⁹³

42. In early April 1992, acts of violence against the Muslim population, such as shootings and shelling, occurred in and around Višegrad municipality. Within a few days the JNA's Užice Corps, which had established its headquarters in Bikavac, had seized strategic locations in the municipality.⁹⁴ As a result, many Muslim civilians fled their villages or went into hiding in the woods.⁹⁵

43. Meanwhile, reserve police stations were reactivated throughout the territory of BiH.⁹⁶ Between approximately 7 and 9 April 1992, a group of twelve armed and uniformed Serbs, some of whom had abandoned their police posts, were arrested and taken into custody by Muslim police officers and members of the TO.⁹⁷ Around the same time, Murat Šabanović, a Muslim from Višegrad, together with other Muslims, armed themselves in order to protect their villages. They ultimately seized control of the hydroelectric dam.⁹⁸ On or about 13 April 1992, Murat Šabanović released water from the dam, damaging properties downstream.⁹⁹ On 14 April 1992, the Užice Corps intervened, took control of the dam, and entered Višegrad town.¹⁰⁰ In the period of time between the opening of the dam and the JNA capture of Višegrad, almost the entire population of Višegrad left, seeking refuge and shelter in places such as Goražde, Mededa, Brstanica and Uzamnica.¹⁰¹

44. After having secured Višegrad, the JNA and SDA leaders led a joint media campaign to encourage those who had fled to return.¹⁰² In doing so, the JNA guaranteed the safety of all citizens who returned and also organised patrols¹⁰³ by soldiers through the villages.¹⁰⁴ As a result, many returned towards the end of April 1992.¹⁰⁵

⁹² Adjudicated Facts Decision, 22 Aug 2008, fact no. 7. See also P14, T. 181.

⁹³ Mevsud Poljo, 26 Aug 2008, T. 581; MLD18, 23 Jan 2009, T. 4414; P23, T. 616; 1D8, T. 4548-4549.

⁹⁴ VG082, 22 Sep 2008, T. 2050; P127, T. 856.

⁹⁵ VG035, 15 Sep 2008, T. 1647-1648; P23, T. 616-617; P38, T. 866; P127, T. 856.

⁹⁶ VG014, 10 Jul 2008, T. 355; P38, T. 862-865.

⁹⁷ VG148, 25 Aug 2008, T. 506-510; P14, T. 138. Sredoje Lukić was among those arrested, see *supra* section I.B.

⁹⁸ Adjudicated Facts Decision, 22 Aug 2008, fact no. 10. See also VG148, 25 Aug 2008, T. 509-513; P127, T. 856; P14, T. 140, 178-179; P38, T. 869.

⁹⁹ Adjudicated Facts Decision, 22 Aug 2008, fact no. 10. See also VG014, 10 Jul 2008, T. 288-289; VG042, 27 Oct 2008, T. 2804; P14, T. 140, 178-179, 509-513; P15, T. 407; 1D19, T. 1040-1041.

¹⁰⁰ Adjudicated Facts Decision, 22 Aug 2008, fact no. 10.

¹⁰¹ VG032, 4 Sep 2008, T. 1143; VG035, 15 Sep 2008, T. 1647-1648; MLD21, 25 Feb 2009, T. 4765; 1D19, T. 1040-1041; P14, T. 151; P15, T. 407; P38, T. 869-870; P127, T. 846, 855-856.

¹⁰² VG035, 15 Sep 2008, T. 1648; P127, T. 846, 856; Adjudicated Facts Decision, 22 Aug 2008, fact no. 11.

¹⁰³ P15, T. 355-356.

¹⁰⁴ VG014, 10 Jul 2008, T. 288-289; VG032, 4 Sep 2008, T. 1143-1144; VG035, 15 Sep 2008, T. 1648; MLD18, 23 Jan 2009, T. 4415-4416.

¹⁰⁵ VG014, 10 Jul 2008, T. 288-289; VG032, 4 Sep 2008, T. 1143-1144; VG035, 15 Sep 2008, T. 1648. See also 1D19, T. 1042.

45. Around 15 April 1992, rounds of negotiations took place between the members of the SDS and the SDA. The SDA asked for an end to the shelling of Muslim areas in exchange for the release of the 12 Serb men.¹⁰⁶ The JNA was also involved in these negotiations in order to resolve the tensions between the Serb and Muslim groups.¹⁰⁷ During the negotiations, VG148 heard a Serb JNA officer explain to other officers that the Užice Corps had “clean[ed]” areas along the Drina river and indicated that an area with 4,000 Muslims would be “clean” the following day.¹⁰⁸ Following an intervention by the SDA during the negotiations in order to protect the Muslim population in the municipality, the Užice Corps agreed to bring parts of the Muslim population in Brstanica to the Višegrad football stadium.¹⁰⁹ This coincided with an attack by local Serbs on the village of Koritnik on 15 April 1992. Villagers from Koritnik fled to Brstanica, where they were met by the Užice Corps, who also brought them to the stadium.¹¹⁰ The Užice Corps also organised convoys in order to empty other villages of their Muslim population.¹¹¹

46. There is evidence that in the Višegrad football stadium, the rounded-up population was searched for weapons and men were separated according to military age.¹¹² A JNA commander addressed the crowd, saying that people living on the left side of the river could return to their villages, which had been cleansed of “reactionary forces”, whereas those who lived on the right side of the river, which included the Muslim village of Koritnik, were not allowed to return until the next day.¹¹³ Upon returning to their villages, many Muslims found that their houses had been broken into, searched, burnt or otherwise damaged, while Serb houses had been left untouched.¹¹⁴ When the Koritnik villagers returned to their homes, they found that some houses had been burned down.¹¹⁵

47. The Užice Corps set up several checkpoints in and around Višegrad town which were manned by JNA soldiers and local Serbs, some in military and police uniforms.¹¹⁶ Most, if not all,

¹⁰⁶ VG148, 25 Aug 2008, T. 512-513; P14, T. 142-143.

¹⁰⁷ P14, T. 142-143, 145; Adjudicated Facts Decision, 22 Aug 2008, fact no. 11.

¹⁰⁸ P14, T. 149.

¹⁰⁹ P14, T. 153-157.

¹¹⁰ P44, T. 1339-1341. See also P72, T. 1645.

¹¹¹ VG014, 10 Jul 2008, T. 289; VG018, 8 Sep 2008, T. 1338; VG084, 5 Sep 2008, T. 1265-1266; P44, T. 1339-1341; Adjudicated Facts Decision, 22 Aug 2008, fact no. 12.

¹¹² VG038, 2 Sep 2008, T. 969-970; P44, T. 1341. See also P14, T. 159.

¹¹³ P14, T. 159-160; P72, T. 1651-1652; Adjudicated Facts Decision, 22 Aug 2008, fact no. 13.

¹¹⁴ VG014, 10 Jul 2008, T. 291-292, 375; VG063, 17 Sep 2008, T. 1818; P72, T. 1653; Adjudicated Facts Decision, 22 Aug 2008, fact no. 12.

¹¹⁵ P72, T. 1652-1653.

¹¹⁶ Nurko Dervišević, 19 Sep 2008, T. 1989; VG014, 10 Jul 2008, T. 289-291, 11 Jul 2008, T. 367, 376-377; VG032, 4 Sep 2008, T. 1145, 1147, 1155-1156, 1215; VG042, 27 Oct 2008, T. 2835; VG097, 27 Aug 2008, T. 606; VG133, 29 Oct 2008, T. 3007-3008; P14, T. 161, 163.

of those who were stopped at those checkpoints were Muslims and they were searched for weapons.¹¹⁷ Their names were checked against lists.¹¹⁸

48. Muslims who did not have an appropriate certificate or permit, which could only be obtained at the police station, were not allowed to leave Višegrad or go to their jobs.¹¹⁹ As a result, their mobility was severely restricted.¹²⁰ The initial calming effect of the JNA's presence was soon replaced by a sense of fear among the Muslim population as a result of the searches at checkpoints and the taking away of Muslims from their homes or workplaces.¹²¹ Many Muslim men who reported to the police were interrogated and beaten.¹²² There were also instances where Muslims who were taken away disappeared or were murdered.¹²³ Many Muslim men abandoned their jobs and fled or went into hiding.¹²⁴ In some villages, JNA soldiers, on occasion with the help of local Serbs, ordered the surrender of weapons and searched and took away non-Serb men of military age.¹²⁵ Muslim properties were burnt.¹²⁶

49. On about 19 May 1992, the Užice Corps withdrew from Višegrad.¹²⁷ However, paramilitary units remained and were also reinforced by the arrival of more paramilitary groups following the JNA's departure.¹²⁸ Local Serbs joined these paramilitary units.¹²⁹ The non-Serb population that had remained in or returned to the municipality found themselves trapped, disarmed and at the mercy of these paramilitaries, who operated with the complicity, or at least with the acquiescence, of the Serb authorities, in particular by the then Serb-only police force.¹³⁰ Following the JNA's departure, attacks on the non-Serb population intensified and the evidence shows that the number of arbitrary killings and disappearances reached its peak in the months of May and June 1992.¹³¹ Many

¹¹⁷ VG014, 10 Jul 2008, T. 289-291, 367, 11 Jul 2008, T. 376-377; VG042, 27 Oct 2008, T. 2835; P172, T. 909-910.

¹¹⁸ VG014, 10 Jul 2008, T. 290-291; VG032, 4 Sep 2008, T. 1147; P19, T. 421; P172, T. 909-910.

¹¹⁹ VG014, 11 Jul 2008, T. 386; VG032, 4 Sep 2008, T. 1156-1157, 1221; VG148, 25 Aug 2008, T. 498, 500. Companies also issued certificates for their Muslim employees so that they could move around within Višegrad, VG035, 15 Sep 2008, T. 1648-1650.

¹²⁰ P127, T. 846-847.

¹²¹ Adem Berberović, 2 Oct 2008, T. 2528-2529; MLD1, 22 Jan 2009, T. 4331; VG014, 11 Jul 2008, T. 376, 382; VG038, 2 Sep 2008, T. 965; VG017, 9 Oct 2008, T. 2730-2731; VG032, 4 Sep 2008, T. 1145; VG063, 17 Sep 2008, T. 1821; Zehra Turjačanin, 25 Sep 2008, T. 2351-2352; P7, T. 314; P127, T. 848-849; Adjudicated Facts Decision, 22 Aug 2008, fact no. 13.

¹²² VG014, 11 Jul 2008, T. 382, 384; VG017, 9 Oct 2008, T. 2730-2731; VG032, 4 Sep 2008, T. 1145.

¹²³ VG014, 10 Jul 2008, T. 293, 11 Jul 2008, T. 380-381; VG079, 11 Jul 2008, T. 438.

¹²⁴ VG014, 10 Jul 2008, T. 293-294; VG104, 29 Aug 2008, T. 828; P7, T. 317.

¹²⁵ Adem Berberović, 2 Oct 2008, T. 2528-2529; Islam Kustura, 23 Sep 2008, T. 2153; VG038, 2 Sep 2008, T. 963-965; P127, T. 846-849, 853.

¹²⁶ VG017, 9 Oct 2008, T. 2728; VG032, 4 Sep 2008, T. 1145.

¹²⁷ Adem Berberović, 2 Oct 2008, T. 2528-2529; Mirsad Tokača, 23 Sep 2008, T. 2153; VG058, 11 Sep 2008, T. 1586; P7, T. 315; Adjudicated Facts Decision, 22 Aug 2008, fact no. 14.

¹²⁸ Adem Berberović, 2 Oct 2008, T. 2528-2529; Adjudicated Facts Decision, 22 Aug 2008, fact no. 14.

¹²⁹ Adjudicated Facts Decision, 22 Aug 2008, fact no. 14.

¹³⁰ Adjudicated Facts Decision, 22 Aug 2008, fact no. 15.

¹³¹ Ewa Tabeau, 22 Sep 2008, T. 2089-2090, 19 Sep 2001, T. 771-775; P118, pp 19-22; Adjudicated Facts Decision, 22 Aug 2008, fact no. 20.

of those killed were simply thrown into the Drina river, where bodies could be seen floating.¹³² Of all the bodies that were pulled out of the water, only one was that of a Serb.¹³³

50. According to Mevsud Poljo, from May 1992, numerous bodies came down the Drina river from Višegrad.¹³⁴ Mevsud Poljo was a member of a group of locals who pulled out and buried 170 to 180 bodies from the Drina river from mid-May 1992 through to September or October 1992.¹³⁵ In June and July 1992, the bodies came down the river on a daily basis.¹³⁶ The bodies the group pulled out of the Drina river accounted for approximately 20 per cent of those in the Drina river.¹³⁷ Mevsud Poljo estimated that approximately ten of these bodies were female and two or three were small children.¹³⁸ The bodies “had been mutilated”¹³⁹ and some had traces of bullets.¹⁴⁰ Most of the bodies wore civilian clothes, one or two bodies wore police uniforms, and none wore military uniforms.¹⁴¹

51. The non-Serb population was subjected to rapes and beatings.¹⁴² Muslims and other non-Serb civilians who had not yet fled were systematically expelled by bus, sometimes escorted by the Serb police.¹⁴³ During their transfer, identification documents and valuables were often stolen.¹⁴⁴ The evidence also shows that some of the Muslims who were attempting to leave Višegrad on such convoys were killed.¹⁴⁵ Muslim homes were looted and often burned down.¹⁴⁶ The two mosques located in the town of Višegrad were destroyed.¹⁴⁷ The Muslim and non-Serb population hid in the hills and woods and also fled to villages such as Dobrun, Jelačić and Hamžići.¹⁴⁸

¹³² Adjudicated Facts Decision, 22 Aug 2008, fact no. 17. See also Mevsud Poljo, 26 Aug 2008, T. 574-575.

¹³³ Adjudicated Facts Decision, 22 Aug 2008, fact no. 18.

¹³⁴ Mevsud Poljo, 26 Aug 2008, T. 574-575, 577. Mevsud Poljo recognised close to 50 of the bodies and identified them as people who had lived in Višegrad including his neighbours and some who were wearing uniforms from the Terpentin and Varda factories in Višegrad, *id.* See also P23, T. 619; P24, T. 636-638. See also 1D68, pp 3-4; P8, T. 328; P25.

¹³⁵ Mevsud Poljo, 26 Aug 2008, T. 574, 577; P23, T. 618-620. Note that in 2000, Mevsud Poljo showed members of the international community, the police and security forces the graves in which the bodies had been buried. Later there was an exhumation of two of the graves, P24, T. 635-636.

¹³⁶ P23, T. 9. See also Mevsud Poljo, 26 Aug 2008, T. 577.

¹³⁷ P23, T. 619, 622; P24, T. 638-639, 641. He estimated that between 500-600 bodies floated down the river.

¹³⁸ P23, T. 620-621, 626. The children were around a few months old. See also P23, T. 625; P24, T. 641, 643-644; John Clark, 3 Oct 2001, T. 1546-1547.

¹³⁹ P23, T. 621-624, 626. See also Mevsud Poljo, 26 Aug 2008, T. 577-578.

¹⁴⁰ Mevsud Poljo, 26 Aug 2008, T. 578; P23, T. 626.

¹⁴¹ P24, T. 634-635.

¹⁴² Adjudicated Facts Decision, 22 Aug 2008, fact no. 21.

¹⁴³ Adjudicated Facts Decision, 22 Aug 2008, facts nos. 15, 24.

¹⁴⁴ Adjudicated Facts Decision, 22 Aug 2008, fact no. 25.

¹⁴⁵ Adjudicated Facts Decision, 22 Aug 2008, fact no. 25.

¹⁴⁶ Adjudicated Facts Decision, 22 Aug 2008, fact no. 26.

¹⁴⁷ VG032, 4 Sep 2008, 1174; Adjudicated Facts Decision, 22 Aug 2008, fact no. 26.

¹⁴⁸ P8, T. 321; P15, T. 360-361.

52. After the war, the bodies of hundreds of Muslim civilians of all ages, both male and female, were exhumed from mass graves in the municipality.¹⁴⁹ In October 2000, two grave-sites in Slap where locals had buried bodies taken from the Drina river were exhumed.¹⁵⁰ John Clark, a pathologist and expert for the Prosecution, who was in Visoko at this time,¹⁵¹ stated that they found 131 bodies: 114 male, 14 female, and three gender unknown.¹⁵² The majority of the people had been between 30 and 60 years of age when they died, while 13 were 25 or younger, and eight could have been 75 or older.¹⁵³

53. While no cause of death could be established for 28 per cent of the cases, it was determined that the remaining 72 per cent were killed by between one and six high-velocity gunshot injuries.¹⁵⁴ Blunt-force-trauma likely caused by blows from weapons was also found in a number of cases.¹⁵⁵ In cross-examination, John Clark conceded that he would be unable to conclude whether some of the wounds were obtained in combat.¹⁵⁶ There were ten cases where bindings and ligatures found with the bodies suggested that these people had their wrists or entire bodies tied.¹⁵⁷ While there was clothing on most of the bodies, he maintained on cross-examination that there was no evidence that any of the clothing was military clothing.¹⁵⁸

54. Ewa Tabeau, the Prosecution demographics expert, gave evidence regarding the change in demographic composition in Višegrad from 1991 to 1997.¹⁵⁹ Her analysis was based on three data sources: the 1991 Population Census, the 1997 Voters Register, and the 2005 International Committee of the Red Cross ("ICRC") list of missing persons.¹⁶⁰

55. Evidence shows that when the conflict started, Višegrad was inhabited by almost twice as many Muslims as Serbs, and that, in 1997, Serbs made up 95.9 per cent of the population and the Muslim population had dropped to below one per cent.¹⁶¹ Evidence also shows that the highest

¹⁴⁹ John Clark, 22 Sep 2008, T. 2100, 2101; Adjudicated Facts Decision, 22 Aug 2008, fact no. 19.

¹⁵⁰ John Clark, 22 Sep 2008, T. 2100; P122, p. 1. See also John Clark, 23 Sep 2008, T. 2122, where, in cross-examination, John Clark agreed that because of the amount of time that had passed and the changes that had occurred to the skin and other soft tissue, he could not conclude whether the bodies had been in the water of the Drina river.

¹⁵¹ John Clark, 3 Oct 2001, T. 1530, 22 Sep 2008, T. 2099.

¹⁵² John Clark, 22 Sep 2008, T. 2101; P122, p. 5. Note that while some bodies were incomplete, John Clark maintained under cross-examination that this was not necessarily evidence of mishandling at the grave site, John Clark, 22 Sep 2008, T. 2112-2113.

¹⁵³ P122, p. 5.

¹⁵⁴ John Clark, 3 Oct 2001, T. 1538-1540, 1544, 22 Sep 2008, T. 2104; P122, pp 13-15.

¹⁵⁵ John Clark, 3 Oct 2001, T. 1544-1545; P122, p. 11.

¹⁵⁶ John Clark, 22 Sep 2008, T. 2114.

¹⁵⁷ John Clark, 3 Oct 2001, T. 1545-1546; P122, pp 7-8.

¹⁵⁸ John Clark, 3 Oct 2001, T. 1548, 1550, 23 Sep 2008, T. 2123; P122, pp 6-7.

¹⁵⁹ Ewa Tabeau, 22 Sep 2008, T. 2079; P118, p. 1.

¹⁶⁰ P118, pp 1, 3.

¹⁶¹ Ewa Tabeau, 22 Sep 2008, T. 2085-2086, 24 Sep 2008, T. 2216-2217, 2220, 2228.

numbers of missing persons in Višegrad were reported in May, June and July 1992.¹⁶² Within those three months, the dates on which the most people disappeared were 25 May, 14 June, and 20 June 1992.¹⁶³ According to Ewa Tabeau, the Prosecution's demographics expert, the "vast majority of persons missing in Višegrad were Muslim men, mainly aged 15 to 44 years (younger military age)".¹⁶⁴ Furthermore, "[t]he largest group of the internally displaced population from the Višegrad municipality were the Muslims".¹⁶⁵

56. Following a comparison between Višegrad and surrounding municipalities,¹⁶⁶ Ewa Tabeau concluded that the "intensity" of the changes in Višegrad was "substantially higher" than those in most surrounding municipalities.¹⁶⁷

57. In cross-examination, Ewa Tabeau was asked whether the 1997 Voters Register data could be accurately compared to the 1991 Population Census, and she maintained that these sources provided a sufficiently large sample from which to estimate the ethnic composition of the region at that time.¹⁶⁸ She conceded on cross-examination that the statistics she presented on the overall ethnic composition of the region only reflected the change from 1991 to 1997, and could not be attributed to a particular year within this period.¹⁶⁹ When asked whether or not she believed that there was a chance that someone listed on the 2005 ICRC missing persons list was still living, she maintained that the likelihood was very low.¹⁷⁰

B. Višegrad Serb Police

58. Due to rising tensions between Serb and Muslim police officers, the police force in Višegrad was divided along ethnic lines at the beginning of the war.¹⁷¹ The Serb officers remained at the main police station in Višegrad,¹⁷² while the Muslim officers went to other police stations in the area.¹⁷³ In April 1992 the police force in Višegrad consisted of between 220 and 250 reserve¹⁷⁴ and

¹⁶² Ewa Tabeau, 22 Sep 2008, T. 2089, 24 Sep 2008, T. 2248; P118, p. 19. Sixty-two per cent of all the missing persons in 1992 went missing in May and June 1992, Ewa Tabeau, 24 Sep 2008, T. 2247-2248; P118, p. 22.

¹⁶³ Ewa Tabeau, 22 Sep 2008, T. 2090; P118, pp 18-19, 20, 22.

¹⁶⁴ P118, p. 20.

¹⁶⁵ P118, p. 14. Ewa Tabeau also stated in her report that "out of 2,255 persons who left the municipality and in 1997 still lived in locations different from their pre-war place of residence which in addition were outside the borders of BiH, the largest group (some 2,081) were Muslims", *id.*, p. 15.

¹⁶⁶ P118, p. 16.

¹⁶⁷ P118, p. 17.

¹⁶⁸ Ewa Tabeau, 24 Sep 2008, T. 2213-2216, 2225-2226.

¹⁶⁹ Ewa Tabeau, 24 Sep 2008, T. 2222-2223.

¹⁷⁰ Ewa Tabeau, 24 Sep 2008, T. 2263.

¹⁷¹ Adjudicated Facts Decision, 22 Aug 2008, fact no. 7; Huso Kurspahić, 1 Sep 2008, T. 891, 895, P36, p. 2; VG042, 1D68, p. 2.

¹⁷² Stoja Vujičić, 2 Apr 2009, T. 6683, where she explained that the police station was about one kilometre from the old bridge.

¹⁷³ P36, p. 2.

¹⁷⁴ Huso Kurspahić, 1 Sep 2008, T. 889, 908.

active duty officers.¹⁷⁵ Many men were mobilised into the reserve police force and also into the army in May 1992.¹⁷⁶

59. Risto Perišić, a teacher, became the chief of police at Višegrad,¹⁷⁷ and Dragan Tomić was the commander.¹⁷⁸ One of his escorts was Vidoje Andrić, a reserve police officer.¹⁷⁹

60. Dragan Tomić, Vidoje Andrić and Mladen Andrić were all killed on 19 July 1992 when their vehicle detonated a mine at Okrugla.¹⁸⁰ About 15 days later Milan Josipović became commander of the police.¹⁸¹

61. After the division of the police, there were shortages and not all officers could be provided with police uniforms.¹⁸² Both active duty and reserve police officers wore blue uniforms, but some wore camouflage uniforms, some olive-drab, and some also wore their own uniforms.¹⁸³ Some officers had cockades on their sleeves and caps, and insignia which read “Srpska Policija” or “Milicija”, but there were not enough badges for all officers.¹⁸⁴ Both active duty and reserve police were armed with rifles.¹⁸⁵ The Višegrad police had only two or three official police cars in 1992.¹⁸⁶ It also used civilian cars because there were not enough cars.¹⁸⁷

62. Reserve police officers were given various kinds of tasks. They stood guard outside the police building in Višegrad, manned checkpoints, handed out call-up papers or pulled out bodies of

¹⁷⁵ Huso Kurspahić, 1 Sep 2008, T. 890-891, 895; MLD23, 3 Mar 2009, T. 4965.

¹⁷⁶ MLD21, 25 Feb 2009, T. 4747-4748; Miodrag Mitrašinić, 26 Feb 2009, T. 4855; MLD22, 25 Feb 2009, T. 4813; MLD7, 19 Jan 2009, T. 4245; MLD23, 3 Mar 2009, T. 4966, 4967.

¹⁷⁷ VG022, 25 Aug 2008, T. 489-490; VG082, 22 Sep 2008, T. 2058; VG097, 26 Aug 2008, T. 600; Ferid Spahić, 26 Aug 2008, T. 549, 556; VG115, 28 Aug 2008, T. 747; MLD18, 23 Jan 2009, T. 4416; MLD23, 3 Mar 2009, T. 4932, 4952-4953, 4990; Huso Kurspahić, 1 Sep 2008, T. 895; Stoja Vujičić, 3 Apr 2009, T. 6689. See also Zoran Uščumlić, 2 Apr 2009, T. 6597-6598.

¹⁷⁸ Huso Kurspahić, 1 Sep 2008, T. 895, P36, p. 2, P38, T. 870; VG022, 25 Aug 2008, T. 489-490; MLD22, 25 Feb 2009, T. 4816; MLD23, 3 Mar 2009, T. 4916-4917, 4931-4932, 4952-4953; Stoja Vujičić, 2 Apr 2009, T. 6676; VG115, 28 Aug 2008, T. 744-745; VG097, 26 Aug 2008, T. 600; Zoran Uščumlić, 2 Apr 2009, T. 6612-6613; VG082, 22 Sep 2008, T. 2058.

¹⁷⁹ MLD21, 25 Feb 2009, T. 4775; MLD23, 3 Mar 2009, T. 4928-4929; 6 Mar 2009, T. 5310-5311.

¹⁸⁰ Huso Kurspahić, P36, p. 2; MLD21, 25 Feb 2009, T. 4775; MLD23, 3 Mar 2009, 4930, 4943, 4953; 6 Mar 2009, T. 5311; Stoja Vujičić, 2 Apr 2009, T. 6676. See also 1D122 (Dragan Tomić); 1D115 (Vidoje Andrić); 1D119 (Mladen Andrić).

¹⁸¹ MLD23, 3 Mar 2009, T. 4931-4932; VG115, 28 Aug 2008, T. 744.

¹⁸² MLD23, 3 Mar 2009, T. 4918-4919, 4920.

¹⁸³ Huso Kurspahić, 1 Sep 2008, T. 889; MLD23, 3 Mar 2009, T. 4918-4920, 4922; Miodrag Mitrašinić, 26 Feb 2009, T. 4855-4856.

¹⁸⁴ MLD23, 3 Mar 2009, T. 4918-4920.

¹⁸⁵ MLD23, 3 Mar 2009, T. 4922, 4982.

¹⁸⁶ MLD23, 3 Mar 2009, T. 4923, 4933.

¹⁸⁷ MLD23, 3 Mar 2009, T. 4923, 4932, 4947.

soldiers.¹⁸⁸ Reserve police officers also participated in combat action.¹⁸⁹ However, membership in the reserve police and in the army was mutually exclusive.¹⁹⁰

C. White Eagles and other paramilitary units

63. Various paramilitary or irregular units were present in Višegrad in 1992,¹⁹¹ including “Šešelji’s Men”,¹⁹² “Arkan’s Men”,¹⁹³ “Garavi Sokak”,¹⁹⁴ and “Beli Orlovi” or “White Eagles”.¹⁹⁵ The White Eagles was a paramilitary group from Serbia that entered Višegrad with the JNA on 13 April 1992.¹⁹⁶ There is also evidence that paramilitary groups in Višegrad were commonly referred to as “White Eagles” regardless of the group to which they belonged.¹⁹⁷

64. Some of the evidence suggests that the White Eagles were under the protection of the JNA and that upon its withdrawal, the JNA left weapons and equipment behind for the paramilitaries.¹⁹⁸ By contrast, Mitar Vasiljević testified that the White Eagles were members of the police force.¹⁹⁹ However, MLD23 and MLD24 testified that the White Eagles did not operate jointly with the Višegrad police,²⁰⁰ and remained an armed group of its own.²⁰¹

65. After the withdrawal of the JNA, the White Eagles began to commit crimes, such as murder, looting, robbery, burning villages, rapes and forcibly taking people away, including young women.²⁰² Both Serbs and Muslims were scared of the White Eagles.²⁰³

66. When the Republika Srpska was established and people were mobilised into the army, most of the White Eagles left Višegrad and were not seen again until the end of the war.²⁰⁴

¹⁸⁸ MLD23, 3 Mar 2009, T. 4917-4918, 4922, 4924.

¹⁸⁹ MLD23, 3 Mar 2009, T. 4927, 4961-4963, 4967; Miodrag Mitrašinić, 26 Feb 2009, T. 4864.

¹⁹⁰ MLD23, 3 Mar 2009, T. 4961-4962.

¹⁹¹ VG032, 4 Sep 2008, T. 1145-1146, 1217, 1219-1220; VG133, 29 Oct 2008, T. 3002; VG148, 25 Aug 2008, T. 515; 1D30, T. 216; 1D66, p. 3; 1D70, p. 5; P7, T. 317; P15, T. 357; P20, p. 2.

¹⁹² VG032, 4 Sep 2008, T. 1146; P7, T. 317; P15, T. 357.

¹⁹³ VG032, 4 Sep 2008, T. 1146; 1D66, p. 4; P5, p. 4; P7, T. 317; P15, T. 357.

¹⁹⁴ VG032, 4 Sep 2008, T. 1146; 1D30, T. 297.

¹⁹⁵ VG014, 11 Jul 2008, T. 380; 1D30, T. 216; 1D66, p. 4.

¹⁹⁶ MLD18, 23 Jan 2009, T. 4420; MLD24, 5 Mar 2009, T. 5034, 5098-5099; VG014, 11 Jul 2008, T. 379-380; VG038, 2 Sep 2008, T. 971; VG084, 5 Sep 2008, T. 1266; VG148, 25 Aug 2008, T. 477-479; P15, T. 351; P72, T. 1650; P74, p. 2; P83, p. 3; P96, pp 5-6.

¹⁹⁷ VG032, 4 Sep 2008, T. 1145-1146, 1219-1220. Cf. MLD23, 3 Mar 2009, T. 4980 who stated that there was no talk of any other groups committing crimes against Bosnian civilians during this time period, only the White Eagles.

¹⁹⁸ Mirsad Tokača, 23 Sep 2008, T. 2156; Mirsada Kahriman, 29 Aug 2008, T. 832-833; VG014, 11 Jul 2008, T. 383-343; VG148, 25 Aug 2008, T. 477; P5, p. 4; VG084, 5 Sep 2008, T. 1266; P15, T. 357.

¹⁹⁹ P96, pp 5-6. See also 6 Mar 2009, T. 5309-5310.

²⁰⁰ MLD23, 3 Mar 2009, T. 4950; MLD24, 4 Mar 2009, T. 5034; P5, p. 4.

²⁰¹ MLD24, 4 Mar 2009, T. 5034.

²⁰² MLD18, 23 Jan 2009, T. 4437-4438; VG014, 10 Jul 2008, T. 294; VG018, 8 Sep 2008, T. 1338-1339; VG148, 25 Aug 2008, T. 476, 480-481; VG042, 27 Oct 2008, T. 2826; 1D35, p. 1; 1D69, p. 4; P92, p. 2.

²⁰³ MLD18, 23 Jan 2009, T. 4421, 4437-4438; MLD23, 3 Mar 2009, T. 4949-4950, 4975; MLD24, 4 Mar 2009, T. 5098-5099. The Trial Chamber also heard evidence about crimes committed by other paramilitary groups, VG018, 8 Sep 2008, T. 1339-1340; P83, pp 4-5; P116, pp 6, 7.

67. The Trial Chamber heard differing testimony as to the location of the base or headquarters of the White Eagles. Some witnesses testified that the headquarters was the Višegrad hotel.²⁰⁵ Other witnesses testified that the White Eagles group was based in the Bikavac hotel.²⁰⁶ There is also evidence that members of the White Eagles carried membership cards or “admission slips” granting admission to the headquarters²⁰⁷ and that they used pseudonyms or nicknames to communicate.²⁰⁸

68. The testimony presented varied widely in relation to the uniforms and appearance of the White Eagles. For example, VG022 testified that the White Eagles wore camouflage uniforms, a cockade with an insignia of a double-headed eagle, blue and red berets, and balaclavas.²⁰⁹ Mirsada Kahrman testified that the White Eagles wore uniforms with patches containing an image of white eagles and the name of their group in Cyrillic letters on their sleeves.²¹⁰ VG058 stated that when she first encountered members of the White Eagles they were dressed in black uniforms with white ribbons on their shoulders and hats with insignias of a skull.²¹¹ MLD23 testified that White Eagles wore similar uniforms to other units engaged in combat.²¹² Other witnesses testified that there was no common uniform for members of the White Eagles, and that all wore different types of clothing.²¹³

69. Considerable evidence was presented as to different types of caps, hats and insignia worn by the White Eagles.²¹⁴ MLD18 testified that some members of the White Eagles wore *šubaras* or fur caps, while others wore large black hats.²¹⁵ MLD18 further testified that White Eagles wore the Nemanjić family coat of arms.²¹⁶ However, he added that many soldiers of the Serb army also wore fur caps with this insignia, particularly because they had borrowed the hats from their grandfathers and great-grandfathers who wore the Nemanjić coat of arms in World War I and World War II.²¹⁷

²⁰⁴ MLD18, 23 Jan 2009, T. 4432.

²⁰⁵ Also known as the Novi/New Hotel, MLD23, 3 Mar 2009, T. 4950; MLD24, 4 Mar 2009, T. 5034; VG014, 10 Jul 2008, T. 380; VG032, 4 Sep 2008, T. 1146; 2D15, p. 4. VG133 testified that members of the White Eagles were stationed at Vilina Vlas, and later at the Višegrad hotel, VG133, 29 Oct 2008, T. 3002.

²⁰⁶ P5, p. 4; P34, p. 6. However, there is also evidence that regular units were in the Bikavac hotel, MLD18, 23 Jan 2009, T. 4417; MLD21, 25 Feb 2009, T. 4748; MLD22, 25 Feb 2009, T. 4813-4814.

²⁰⁷ P15, T. 351, 405.

²⁰⁸ MLD18, 23 Jan 2009, T. 4437, 4450; MLD23 3 Mar 2009, T. 4978.

²⁰⁹ P5, p. 4.

²¹⁰ P34, p. 3.

²¹¹ 1D41, p. 5.

²¹² MLD23, 3 Mar 2009, T. 4974-4975.

²¹³ MLD18, 23 Jan 2009, T. 4420, 4438, 4440-4441, 4444, 4452; MLD23 3 Mar 2009 T. 4974.

²¹⁴ MLD18, 23 Jan 2009, T. 4420, 4438.

²¹⁵ MLD18, 23 Jan 2009, T. 4438, 4439, 4452.

²¹⁶ MLD18, 23 Jan 2009, T. 4438, 4439, 4446-4447, 4453-4454. This reference is to the ancient crest of the old Nemanjić state, which consists of a double-headed eagle with a crown. The Nemanjić coat of arms is very similar to the coat of arms of the Republika Srpska, which is also a two-headed eagle.

²¹⁷ MLD18, 23 Jan 2009, T. 4446-4447.

According to VG014, White Eagles wore the two-headed eagle symbol.²¹⁸ MLD24 testified that all military personnel wore eagles on their uniforms.²¹⁹

70. P229 is a photograph of two men standing on either side of a van, armed with automatic rifles and holding a banner decorated with a white skull, cross-bones and the words “with faith in God”.²²⁰ A number of Defence witnesses were asked if the two individuals depicted in that photograph were known, reputed or otherwise believed to be members of the White Eagles or of any paramilitary organisation in Višegrad in 1992. MLD24²²¹ and MLD4²²² recognised the men in the photograph as Stevo Milosavljević (on the left) and Josip Stevanović (on the right) and denied that the men were members of the White Eagles.²²³ They testified that both men drove food supplies to troops.²²⁴ Questions were also raised as to the hats worn by the individuals in the photographs.²²⁵

1. Milan Lukić and Sredoje Lukić– membership of the White Eagles or “Avengers”

71. A number of witnesses testified that Milan Lukić and Sredoje Lukić were members of the White Eagles, and that Milan Lukić was the leader of the group.²²⁶ There is evidence that Mitar Vasiljević, Slobodan Trifković, Veselin Vucelja, and Oliver Krsmanović belonged to the White Eagles.²²⁷ According to MLD23, the White Eagles stood out from other people in Višegrad because they were not known there,²²⁸ and MLD18 testified that the White Eagles came from different parts of the country.²²⁹

72. There is also evidence that Milan Lukić was not a member of the White Eagles, and had never been the leader of the White Eagles.²³⁰ The Trial Chamber also heard that the leader of the White Eagles was Veselin Vucelja,²³¹ Dejan Jeftić,²³² or a man named “Charlie”.²³³

²¹⁸ VG014, 11 Jul 2008, T. 377-378.

²¹⁹ MLD24, 4 Mar 2009, T. 5069.

²²⁰ P229. See also MLD18, 23 Jan 2009, T. 4438-4439, 4442-4444; MLD23, 3 Mar 2009, T. 4979; MLD24, 4 Mar 2009, T. 5036-3037.

²²¹ MLD24, 4 Mar 2009, T. 5036-3037.

²²² MLD4, 26 Jan 2009, T. 4540-4542 and 27 Jan 2009, T. 4579-4580.

²²³ MLD4, 26 Jan 2009, T. 4541; MLD24, 4 Mar 2009, T. 5036-3037.

²²⁴ MLD4 26 Jan 2009, T. 4540-4541; MLD24, 4 Mar 2009, T. 5036-3037. See also MLD21, 25 Feb 2009, T. 4749-4750.

²²⁵ Witnesses testified that the man on the left hand side of the photograph was wearing a *šajkača* and that the man on the right hand side of the photograph was wearing a *šubara*, MLD4, 26 Jan 2009, T. 4541-4542; MLD18, 23 Jan 2009, T. 4452-4453; MLD23, 3 Mar 2009, T. 4979. MLD4 testified that the *šajkača* was a hat usually worn around Užice in Serbia by Serbs, Serb farmers or peasants, MLD4, 26 Jan 2009, T. 4541-4542. See also MLD24, 4 Mar 2009, T. 5037.

²²⁶ Ferid Spahić, 26 Aug 2008, T. 562; VG058, 11 Sep 2008, T. 1588; P34, p. 3; 2D15, pp 4, 8.

²²⁷ VG014, 10 Jul 2008, T. 291, 11 Jul 2008, T. 377; P34, p. 3. See also 6 Mar 2009, T. 5258; P260.

²²⁸ MLD23, 3 Mar 2009, T. 4975.

²²⁹ MLD18, 23 Jan 2009, T. 4452

²³⁰ MLD18, 23 Mar 2009, T. 4420-4421; MLD24, 4 Mar 2009, T. 5034.

²³¹ P34, p. 3; P35, p. 2.

²³² MLD18, 23 Jan 2009, T. 4421, 4436.

²³³ MLD23, 3 Mar 2009, T. 4950.

73. According to Mitar Vasiljević, Milan Lukić was the leader of a group of 10-15 supporters who came from outside Višegrad, but he does not link this group to the White Eagles.²³⁴ There is other evidence suggesting that Milan Lukić was the leader of a group called “Avengers” and that members of that group included Sredoje Lukić, Mitar Vasiljević, Niko Vujičić²³⁵ and Mitar Knezević.²³⁶ In particular, the Trial Chamber received reports of interviews with Milan Lukić conducted by the Serb police in Užice at the end of 1992 in relation to alleged crimes which do not form part of the indictment in this case.²³⁷ In these interviews, Milan Lukić is reported to have stated that he was the leader of the “Avengers”.²³⁸ He explained that the group was initially known as the “Obrenovac Detachment”, it was “composed of people from the outskirts of Višegrad who mostly lived in Serbia”, and that the group was initially attached to the Višegrad SUP and later to the Višegrad TO “as a company of volunteer guards called Osvetniki/Avengers”.²³⁹

74. Milan Lukić was seen wearing various uniforms, including a blue uniform and different types of camouflage, and he was also seen wearing civilian clothes.²⁴⁰ Sredoje Lukić was seen wearing different types of camouflage uniforms.²⁴¹

75. Milan Lukić was also seen wearing insignia showing a double eagle, including on a fur cap,²⁴² and a Serbian emblem with four inverted Cyrillic “C’s”.²⁴³ For example, VG032 testified that, on 7 June 1992, Milan Lukić was wearing a hat with the double-headed eagle insignia when he took him from his home.²⁴⁴ VG064 recalled that Milan Lukić wore a hat with a skull and was part of a group of 15 armed men and a woman who had black painted faces and some of whom wore a fur hat with a cockade on it.²⁴⁵

²³⁴ P96, p. 5; P256, T. 2, 4, 7-8.

²³⁵ 1D18, pp 8-9. According to VG115, members of that group included Sredoje Lukić, Gojko Lukić, Jovo Lipovac, Veljko Planičić, nicknamed “Razinoda”, Slobodan Rončević, Momir Savić, Radoje Šimšić, Zoran Vasiljević, Niko Vujičić.

²³⁶ P256, T. 6.

²³⁷ P147; P148; P149; P150; P313. See also VG142, 8 Oct 2008, T. 2600-2601.

²³⁸ P147, p. 1; P148, p. 1; P149, p. 1; P150, p. 1; P313, p. 1.

²³⁹ P147, p. 2; P149, p. 1; P150, p. 1; P313, p. 3.

²⁴⁰ Islam Kustura, 23 Sep 2008, T. 2186-2187; MLD17, 4 Feb 2009, T. 4702-4704; MLD22, 25 Feb 2009, T. 4816, 26 Feb 2009, T. 4824-4825; MLD21, 25 Feb 2009, T. 4751-4752; MLD23, 3 Mar 2009, T. 4933-4934; Stoja Vujičić, 2 Apr 2009, T. 6671-6672; P142, p. 9. See also 6 Mar 2009, T. 5310-5311.

²⁴¹ Islam Kustura, 23 Sep 2008, T. 2186-2187. According to VG148, Sredoje Lukić was an ordinary police officer, but when he was arrested by the TO, the witness presumed Sredoje Lukić no longer belonged to the police but had joined an informal armed group, VG148, 25 Aug 2008, T. 496-501.

²⁴² Mirsada Kahrman, 29 Aug 2008, T. 807, 818-819, 831-833; VG032, 4 Sep 2008, T. 1161-1162; 1D30, T. 241. See also MLD18, 23 Jan 2009, T. 4447-4448; MLD23, 26 Feb 2009, T. 4982-4984; MLD24, 4 Mar 2009, T. 5069; P230; P249; P258.

²⁴³ MLD18, 23 Jan 2009, T. 4448; 5 Mar 2009, T. 5253-5254; P230.

²⁴⁴ 1D30, T. 241.

²⁴⁵ VG064, 27 Oct 2008, T. 2878.

76. Both VG064 and VG115 testified that members of the White Eagles, including Milan Lukić, Sredoje Lukić and Mitar Vasiljević, carried a black flag with a skull and bones.²⁴⁶ VG115 testified that “the Avenger” was written on the flag.²⁴⁷

2. Factual finding

77. The indictment alleges that Milan Lukić returned to Višegrad in spring 1992 and organised a group of local paramilitaries sometimes referred to as “White Eagles” and “Avengers” and that this group had ties to the Višegrad police and Serb military units.²⁴⁸ The indictment alleges that Sredoje Lukić joined Milan Lukić’s group.²⁴⁹

78. There has been no convincing evidence presented to the Trial Chamber as to Milan Lukić’s and Sredoje Lukić’s membership of the White Eagles or Avengers or any linkage between the White Eagles or Avengers and any of the crimes with which Milan Lukić and Sredoje Lukić are charged. The Trial Chamber notes in particular that no inference as to membership of the White Eagles can be drawn from the clothes, hats or insignia worn by Milan Lukić and Sredoje Lukić. Further, the Trial Chamber does not place much weight on the police interviews in which Milan Lukić is reported to have stated that he was the leader of the “Avengers”.

D. Evidence of existence of an armed conflict

79. The conflict in BiH began in early April 1992 and ended with the Dayton Accords at the end of 1995.²⁵⁰ On or about 14 April 1992, the Užice Corps of the JNA entered Višegrad.²⁵¹ The headquarters of the Užice Corps was established in the Bikavac hotel,²⁵² along with checkpoints to control the movement of people in and out of Višegrad.²⁵³

80. At this time, the TO in Višegrad was in operation.²⁵⁴ The TO, of which every resident was a member,²⁵⁵ was an organ of the Republic of Bosnia and Herzegovina and had been part of the armed forces of Yugoslavia.²⁵⁶ Due to the ethnic composition of the population, the Višegrad TO

²⁴⁶ VG064, 27 Oct 2008, T. 2878.

²⁴⁷ VG115, 28 Aug 2008, T. 723.

²⁴⁸ Indictment, paras 1, 31.

²⁴⁹ Indictment, para. 2.

²⁵⁰ Goran Đerić, 15 Jan 2009, T. 4120; MLD10, 18 Dec 2008, T. 3952; P116, p. 3. See also VG013, 3 Sep 2008, T. 1079.

²⁵¹ Adjudicated Facts Decision, 22 Aug 2008, fact no. 10.

²⁵² MLD21, 25 Feb 2009, T. 4746, 4748; MLD22, 25 Feb 2009, T. 4814; P5, p. 3.

²⁵³ P5, p. 3.

²⁵⁴ 1D68, p. 2. There is evidence that the incorporation of the Muslim TOs in Višegrad also occurred in the indictment period. See P116, p. 8; P168, p. 4.

²⁵⁵ VG148, 25 Aug 2008, T. 485. In addition, anyone who wanted to join the reserve police force or reserve TO could do so in response to a call from the municipal authorities, *id.*, T. 512. The TO had municipal offices with several divisions, P116, p. 2.

²⁵⁶ P116, p. 2.

had predominantly Muslim members.²⁵⁷ According to VG082, the Višegrad TO was directly subordinated to the regional TO staff in Goražde.²⁵⁸ It was divided into various areas of responsibility, such as intelligence, security and logistics, and it was responsible for training soldiers.²⁵⁹ From early April 1992, efforts were made, by the predominantly Muslim personnel, to organise the TO in order to protect Višegrad.²⁶⁰

81. When the Užice Corps took control of the municipality of Višegrad, it searched Muslim homes in the town of Višegrad and in the surrounding villages,²⁶¹ and disarmed the existing TO.²⁶² VG082 testified that the Višegrad TO's weapons were held at the Uzamnica barracks and that the Užice Corps prevented the TO from accessing them.²⁶³ The Užice Corps also confiscated weapons from the Muslim population.²⁶⁴

82. Serbs, who had previously left Višegrad, returned when the Užice Corps arrived, and began to arm themselves with weapons that were brought in from Serbia.²⁶⁵ The Užice Corps also supplied local Serbs in Višegrad with weapons,²⁶⁶ and provided them with military training.²⁶⁷ Serbs were mobilised into the Višegrad reserve police, and they also formed units which became part of the Serb forces.²⁶⁸ The Obrenovac Detachment, for example, was under the command of the Višegrad TO, and took orders from Vinko Pandurević.²⁶⁹ In a record of an interview, Milan Lukić lists a range of weapons that had been issued to him "as a member of a military unit of Republika Srpska, as a company commander", specifically five hand grenades, a pistol, a rifle-launched grenade, a sub-machine gun, and an automatic rifle.²⁷⁰ He wore a flak jacket and had a "radio transmitter for radio communication with my superiors".²⁷¹ On 27 June 1992, the Rogatica Brigade, a unit of the Serb forces, included 30 officers, 108 junior officers, and 1,391 soldiers.²⁷²

²⁵⁷ VG148, 25 Aug 2008, T. 486; P116, p. 3. See also Adjudicated Facts Decision, 22 Aug 2008, fact no. 5.

²⁵⁸ P116, p. 2.

²⁵⁹ P116, p. 2. See also VG082, 22 Sep 2008, T. 2062-2063.

²⁶⁰ P116, p. 3.

²⁶¹ 1D18, p. 18.

²⁶² VG148, 25 Aug 2008, T. 485-486; 1D18, p. 18. See also Adjudicated Facts Decision, 22 Aug 2008, fact no. 5.

²⁶³ P116, pp 2, 3.

²⁶⁴ 1D18, p. 18; 1D27, pp 2-3; 1D32, p. 1; 1D61, p. 2; 2D4, p. 2; P83, p. 2. See also Adjudicated Facts Decision, 22 Aug 2008, fact no. 5.

²⁶⁵ P168, p. 2. See also Adjudicated Facts Decision, 22 Aug 2008, fact no. 6.

²⁶⁶ 1D18, p. 18; 1D66, p. 3; P74, p. 2; 1D79, p. 2; P142, p. 3. See also Mirsad Tokača, 23 Sep 2008, T. 2157.

²⁶⁷ VG148, 25 Aug 2008, T. 491-492; 1D18, p. 18; 1D79, p. 2. See also Adjudicated Facts Decision, 22 Aug 2008, fact no. 6. See also P148, p. 2, according to which the Obrenovac Detachment was trained by members of the "Red Berets – *Knindžas*".

²⁶⁸ MLD21, 25 Feb 2009, T. 4747-4748, 4759; P150, p. 1; P313, p. 3. See also P317, p. 2.

²⁶⁹ P150, p. 1; P313, p. 3.

²⁷⁰ P313, p. 5. See also P150, p. 2.

²⁷¹ P313, p. 5.

²⁷² P219, p. 1.

83. On 19 May 1992, the Užice Corps withdrew from Višegrad.²⁷³

84. VG025 explained that following an attack on his village, Muslims began organising themselves “into some sort of Territorial Defence which developed into some sort of army” and that “we were considered as members of the BiH army from 11th of June 1992”.²⁷⁴ VG082 testified that after 11 June 1992, he became a member of the TO of the municipality of Višegrad, but he also stated that as of 11 June 1992 he joined the “BiH army”.²⁷⁵ His position in the TO was the same as it had been before the war.²⁷⁶ A number of other witnesses were also part of the Muslim forces.²⁷⁷ The Muslim forces were not well-equipped or well-armed.²⁷⁸ However, in late June 1992, VG013 was taken to what she referred to as “our army” in Crni Vrh, where she was treated by a doctor and then transported by the army to a hospital in Goražde.²⁷⁹

85. There were front lines of both armed forces around Višegrad municipality,²⁸⁰ in particular at Brodar,²⁸¹ Rujište,²⁸² Rudo,²⁸³ and across the Drina river in Žepa.²⁸⁴

86. Combat activities occurred both before and during the indictment period in the Višegrad municipality and surrounding areas.²⁸⁵ After May 1992, there was shelling.²⁸⁶ There were frequent clashes between the Serb and Muslim forces on the Višegrad-Rogatica road; both forces used the road and it was the only road in the region not under the control of the Muslim forces.²⁸⁷

87. Other witnesses recalled specific attacks. Adem Berberović recalled that by June 1992, his village, Hamzići,²⁸⁸ and the 12 surrounding villages were being intensely shelled “from the villages

²⁷³ Adjudicated Facts Decision, 22 Aug 2008, fact no. 14. Mirsad Tokača testified that when the JNA withdrew in May 1992 it did so only “in formal terms”, as it became the Army of the Republika Srpska (“VRS”), Mirsad Tokača, 23 Sep 2008, T. 2156-2157.

²⁷⁴ P168, p. 4.

²⁷⁵ VG082, 22 Sep 2008, T. 2062. See also P116, p. 8.

²⁷⁶ VG082, 22 Sep 2008, T. 2062.

²⁷⁷ Ferid Spahić, P20, p. 9; MLD1, 22 Jan 2009, T. 4377. See also MLD10, 18 Dec 2008, T. 3952-3953. Some witnesses were also members of the VRS: MLD4, 26 Jan 2009, T. 4538; MLD21, 25 Feb 2009, T. 4748; MLD22, 25 Feb 2009, T. 4813 and 26 Feb 2009, T. 4829-4830; Miodrag Mitrašinić, 26 Feb 2009, T. 4855, 4863; MLD23, 3 Mar 2009, T. 4916, 4926-4927; MLD24, 4 Mar 2009, T. 5030, 5035, 5065.

²⁷⁸ P116, p. 8. See also P168, p. 4.

²⁷⁹ P60, pp 9-10.

²⁸⁰ P168, p. 4.

²⁸¹ MLD23, 3 Mar 2009, T. 4922-4923, 4976-4977.

²⁸² MLD22, 25 Feb 2009, T. 4815; MLD24, 4 Mar 2009, T. 5038-5039.

²⁸³ P148, p. 3; P313, p. 3.

²⁸⁴ MLD24, 4 Mar 2009, T. 5038; P24, T. 10.

²⁸⁵ Goran Đerić, 15 Jan 2009, T. 4121; MLD23, 3 Mar 2009, T. 4922-4923; MLD24, 4 Mar 2009, T. 5039, 5065; P24, T. 10. See also P317, pp 1-3.

²⁸⁶ P24, T. 10, 14; P60, p. 2.

²⁸⁷ Goran Đerić, 14 Jan 2009, T. 4103-4104, 15 Jan 2009, T. 4145-4146.

²⁸⁸ Adem Berberović, 2 Oct 2008, T. 2500; P142, p. 2.

of Haluga and Donja Lijeska, and the Višegrad Sports Centre”.²⁸⁹ As a result of the shelling, Adem Berberović’s father was killed.²⁹⁰ On 10 June 1992, Koritnik was also shelled.²⁹¹

88. Following earlier battles between the Serb and Muslim forces for Crni Vrh,²⁹² on 20 June 1992, Serb forces and reservists attacked the area from Gornja Lijeska, Donja Lijeska and Kočarin with shells and mortar fire.²⁹³

89. On 13 June 1992, Serb forces were dispatched to set up ambushes in the areas of Kočari, Gornja and Donja Lijeska, Han Brdo and Kopito, and the Žepa-Goradže road, where the Muslim forces were expected to launch attacks.²⁹⁴

90. Operations reports of the Rogatica Brigade command describe various combat activities that had taken place in its zone of responsibility on 13-15 June 1992.²⁹⁵ In particular, they document defensive preparations and offensive actions undertaken by units of the Rogatica Brigade,²⁹⁶ including fortifying and camouflaging positions, laying mine fields and setting up ambushes, and they also document a series of “enemy” attacks or provocations.²⁹⁷ The reports also state that units of the Rogatica Brigade were involved with “mopping up” certain territories, including “the town and suburban areas”, and securing roads.²⁹⁸ These reports record the ammunition used by the Rogatica Brigade on 13 and 14 June 1992: 100 82-millimetre mortar shells, 115 120-millimetre (smoke) and 82-millimetre mines, and significant quantities of other forms of ammunition.²⁹⁹

91. On approximately 18 June 1992, VG013 recalled seeing tank fire in the direction of Crnca and Hamzići.³⁰⁰

92. A Rogatica Brigade operations report dated 27 June 1992 records ongoing combat operations by “enemy forces” in its zone of responsibility, including in the Kopito-Gornja Lijeska sector, as well as offensive preparations carried out by units of the Brigade.³⁰¹ During these

²⁸⁹ 1D61, p. 2.

²⁹⁰ 1D61, p. 2.

²⁹¹ P60, p. 2.

²⁹² P116, p. 8.

²⁹³ P116, p. 8. See also 2D59.

²⁹⁴ MLD4, 26 Jan 2009, T. 4546-4547, 27 Jan 2009, T. 4567; MLD7, 19 Jan 2009, T. 4245, 4254-4256, 20 Jan 2009, T. 4281; P220, p. 2; P221, p. 1; P238, p. 1. This evidence is addressed in greater detail in section II.G.2(c)(iii) *infra*.

²⁹⁵ P220; P221; P222.

²⁹⁶ The report notes that these preparations were being undertaken by 24 officers, 99 non-commissioned officers, and 1,198 soldiers, P220, p. 1.

²⁹⁷ P220, p. 1; P221, pp 1-2; P222.

²⁹⁸ P220, p. 2; P221, p. 1.

²⁹⁹ P220, p. 2; P221, pp 1-2.

³⁰⁰ P60, p. 9.

³⁰¹ P219.

operations, the Rogatica Brigade used 120 82-millimetre shells, 40 60-millimetre shells and 25 120-millimetre (smoke) mines, and large quantities of other forms of ammunition.³⁰²

93. In July 1992, a convoy consisting of 753 people and including TO members from Okrugla came to Višegrad to collect the remaining Muslims who were there.³⁰³ The convoy went on to Mededa.³⁰⁴

94. A report on the security situation in Višegrad dated 13 July 1992 states that “80% of the territory of the Serbian municipality of Višegrad has been liberated in fighting with the enemy”, and that “[f]ierce fighting is underway in the border area of the liberated territory of the Serbian municipality of Višegrad and the part of the local community which has not been liberated”.³⁰⁵ The report continues, “offensive combat operations will be undertaken as soon as possible to liberate this part of the municipal territory as well”.³⁰⁶

95. On 19 July 1992, seven or eight members of the Serb reserve police were deployed to an elevation called Granje from which they surrounded “enemy troops” after meeting with little resistance.³⁰⁷ While the fighting was taking place, Dragan Tomić, Vidoje Andrić and Mladen Andrić were killed when the car they were travelling in drove over a landmine which exploded.³⁰⁸

96. On 8 August 1992, Serb forces launched an attack on the west side of the Drina river, and entered the villages of Barimo and Miloševići.³⁰⁹ In Barimo, houses were set on fire and 24 people were killed, including three children.³¹⁰ Other people were taken to the Drina river and killed there.³¹¹

97. Following the shelling of Jelačići, Koritnik, Haluga, and Prelovo by Serb forces in early August 1992, the Muslim inhabitants of these towns left in two convoys towards Mededa and the “Free Territory”.³¹²

98. In September 1992, Serb forces launched another offensive on Crni Vrh.³¹³ On 16 October 1992, there were combat activities in and around Meremišlje, south of Višegrad.³¹⁴

³⁰² P219, p. 2.

³⁰³ Zehra Turjačanin, 25 Sep 2008, T. 2350; P139, p. 24.

³⁰⁴ 1D83, p. 4; P66, pp 6-7; P139, p. 24. See also VG024, 3 Nov 2008, T. 3238-3239.

³⁰⁵ P317, pp 1-2.

³⁰⁶ P317, p. 2.

³⁰⁷ MLD23, 3 Mar 2009, T. 4930-4931.

³⁰⁸ MLD23, 3 Mar 2009, T. 4930. See also 1D115; 1D119; 1D122. See also section II.B *supra*.

³⁰⁹ P168, p. 5.

³¹⁰ P168, p. 5.

³¹¹ P168, p. 5.

³¹² P8, T. 326, 328.

³¹³ P168, p. 5.

99. On approximately 20 October 1992, fighting took place in Meremišlje, during which the soldiers' combat equipment was taken and 20 Serb soldiers were killed, five were wounded, and three "crossed over".³¹⁵ A few days later, on 24 October, an operation was organised against the Muslim forces that were responsible.³¹⁶

100. The Trial Chamber heard other evidence of soldiers killed as a result of the fighting,³¹⁷ and that inhabitants of Višegrad went missing as a result of the combat activities.³¹⁸ The evidence of Ewa Tabeau indicates that the population composition of Višegrad changed drastically between 1991 and 1997, with the effect that the population comprised almost singularly of Serbs in 1997, and that the highest numbers of missing people were reported in May, June and July 1992.³¹⁹

³¹⁴ P168, p. 5, in which he stated that Meremišlje was an important position because one could control Mededa from there. See also *ibid*, "There was combat, the fighting started, we captured a lot of weapons, including heavy weapons. The Muslims held some Serbs, but some managed to flee away. We had some wounded".

³¹⁵ P313, p. 4.

³¹⁶ P313, p. 4.

³¹⁷ For example, a male nurse with the VRS, Stevan Grujić, was killed on a road in the area of Klačnik on 28 August 1992, MLD22, 26 Feb 2009, T. 4829, 4833, 4835-4836; P246. In addition, the Milan Lukić Defence showed P246, List of Soldiers Killed in War: Višegrad Parish, to MLD23, who recognised the following men: Vidoje Andrić (killed 19 July 1992, Okrugla), Dusko Andrić (killed 16 October 1992, Meremišlje), Mico Indić (killed 12 April 1992, Višegrad), Dragan Filipović (16 October 1992, Meremišlje), MLD23, 3 Mar 2009, T. 4935-4936; 1D115. MLD23 confirmed that Vidoje Andrić's date of death, 19 July 1992, is correct. MLD23, 3 Mar 2009, T. 4936. MLD23 also recognised the following men from the same list: Vlatko Tričević (killed 13 June 1992, Gornja Lijeska), MLD23, 3 Mar 2009, T. 4936-4937; 1D116; Ilija Andrić (killed 5 September 1992, Drinsko), MLD23, 3 Mar 2009, T. 4938; 1D117; Stevo Drasković (killed 27 July 1992, Kaoštica), Pero Kovacević (killed 16 October 1992, Meremišlje), Miodrag Vucelja (killed 5 September 1992, Pijavice), MLD23, 3 Mar 2009, T. 4938-4939; 1D118; Milan Krsmanović or Kremarović (killed 14 September 1992, Višegrad), Radomir Nikitović (killed 25 October 1992, Višegrad), Jovo Samardžić (killed 29 October 1992, Donja Lijeska), Mladen Andrić (killed 19 July 1992, Okrugla), Slaviša Knežević (killed 8 December 1992, Višegrad), Radivoje Nikitović (killed 16 October 1992, Meremišlje), MLD23, 3 Mar 2009, T. 4939-4940; 1D119; Mladen or Mladjo Savić (killed 16 October 1992, Meremišlje), MLD23, 3 Mar 2009, T. 4941; 1D120; Goran Zečević (killed 20 June 1992, Kopito), Dušan Baranac (killed 30 December 1992, Džankići), Risto Marković (killed 27 June 1992, Gornja Lijeska), Slavko Dikić, (killed 21 March 1995, Goražde), MLD23, 3 Mar 2009, T. 4941-4942; 1D121; Dragan Tomić (killed 19 July 1992, Okrugla), MLD23, 3 Mar 2009, T. 4943; 1D122; Milan Šimšić (killed 6 August 1992, Gornje Dubovo), MLD23, 3 Mar 2009, T. 4944; 1D123; Radislav Stanimirović (killed 16 June 1992, Jabuka), MLD23, 3 Mar 2009, T. 4945; 1D124; Stanko Pecikoz (killed 20 June 1992, Oplave), and Milenko Čosović (killed 16 October 1992, Meremišlje), MLD23, 3 Mar 2009, T. 4945-4946; 1D125. MLD23 also identified Slavo Tošić, who died on 31 October 1993, and Mile Veljović, who died on 25 April 1994. MLD23, 3 Mar 2009, T. 4945; 1D125.

³¹⁸ P184, pp 26-51. Amor Mašović also stated that he was sure that more people went missing outside of the Višegrad municipality; they either "disappeared from the territories of some other municipalities during the war [either neighbouring or non-neighbouring municipalities]" or were missing after fleeing Višegrad for Goražde. An estimated 3,000 "Bosniaks" from Višegrad fled to Goražde. In addition, "a certain number" went missing while attempting to reach Sarajevo, Ženica, or Central Bosnia. P173, T. 975-976. See also Amor Mašović, 30 Oct 2008, T. 3170; P183, pp 4, 8; P184, p. 62. Amor Mašović stated that the two youngest persons recorded missing in BiH were from Višegrad municipality (Irma Subašić and the "Kurspahić baby", both two days old) and one of the oldest person to go missing in BiH, Fata Sejdić, was from Višegrad municipality, P183, p. 8.

³¹⁹ See above section II.A *supra*.

E. The Drina river incident

1. Prosecution case

(a) Events

101. On 7 June 1992, VG032, a Muslim, was hiding with Hasan Kustura and VG032's father-in-law in the basement of the latter's house in Bikavac.³²⁰ During the afternoon, through a small window VG032 saw his own car stop briefly outside the house where he was hiding before continuing down the street.³²¹ After a short distance, the car stopped once more and the driver left the vehicle to ask a woman where to find VG032 but she said she did not know.³²² Shortly thereafter, at around 5 p.m., VG032, his father-in-law and Hasan Kustura left the house.³²³ They then saw four soldiers coming towards them, one of whom was Milan Lukić.³²⁴ Milan Lukić wore a purple-blue camouflage uniform of the kind normally worn by the police, a black beret with a two-headed eagle and tennis shoes.³²⁵ On each of the uniform's sleeves was a two-headed eagle emblem, and Milan Lukić's face was painted with a dark colour.³²⁶ VG032 noticed that Milan Lukić had a bundle of gauze and a band-aid on the inside of his right arm.³²⁷ VG032 also saw that Milan Lukić carried a sniper rifle with a silencer attached and that the other three soldiers had automatic weapons.³²⁸

102. Milan Lukić asked VG032 why he had been hiding and took VG032's identity card and tore it up.³²⁹ Milan Lukić then ordered VG032 and Hasan Kustura to follow him and another soldier, leaving the two remaining soldiers behind.³³⁰ After a while, they came to a house in Bikavac, near

³²⁰ VG032, 4 Sep 2008, T. 1155 (testifying that a Serb acquaintance had told VG032 to go into hiding to avoid the "men from Obrenovac" who would kill him if they found him), *id.* T. 1157-1159; 1D30, T. 230.

³²¹ VG032, 4 Sep 2008, T. 1157-1159; 1D30, T. 234-235, where VG032 testified that he had previously left his car at the apartment.

³²² VG032, 4 Sep 2008, T. 1157-1159; 1D30, T. 236.

³²³ VG032, 4 Sep 2008, T. 1158-1159; 1D30, T. 236-237.

³²⁴ VG032, 4 Sep 2008, T. 1159; 1D30, T. 237-238.

³²⁵ VG032, 4 Sep 2008, T. 1161-1163; 1D31, p. 3. In the *Vasiljević* case, VG032 testified that Milan Lukić wore "a camouflage hat with the double-headed eagle insignia", 1D30, T. 241. However, VG032 also stated that Milan Lukić wore a blue beret with a double-headed eagle insignia, 1D31, p. 3.

³²⁶ VG032, 4 Sep 2008, T. 1161-1163. In the *Vasiljević* case, VG032 stated that the patches were on Milan Lukić's shirt pockets and that there was a patch on the sleeve reading "Police" in Cyrillic, 1D30, T. 241.

³²⁷ VG032, 4 Sep 2008, T. 1162; 1D30, T. 242; P68, an entry for 7 June 1992, provides that Milan Lukić was registered as having come to the Višegrad Health Centre and received an intramuscular injection of, *inter alia*, glucose. See also VG032, 4 Sep 2008, T. 1162, 1191-1193. VG133 testified that the logbook of the Višegrad Health Centre for the date of 7 June 1992, at entry 5170, lists a Milan Lukić, born 1967 and a member of the TO, as having received two intramuscular injections of glucosis and vitamins, VG133, 28 Oct 2008, T. 2963-2965; P161, p. 6; P165; P166. VG133 confirmed that such injections were normally administered to the vein on the inside of the elbow, VG133, 28 Oct 2008, T. 2966-2967.

³²⁸ VG032, 4 Sep 2008, T. 1163; 1D30, T. 241.

³²⁹ VG032, 4 Sep 2008, T. 1161.

³³⁰ VG032, 4 Sep 2008, T. 1163; 1D30, T. 240, testifying that Milan Lukić told VG032's father-in-law to remain at the house.

the Grad hill, which Milan Lukić entered and searched.³³¹ When Milan Lukić came out, he told VG032 and Hasan Kustura to enter the house.³³² Milan Lukić then left the house, but the other soldier remained at the entrance of the house.³³³ That soldier was quite friendly and talked with Hasan Kustura.³³⁴

103. After a while, Hasan Mutapčić and his 13 year old son entered the house.³³⁵ Hasan Mutapčić's son was terrified and trembled visibly.³³⁶ Shortly thereafter, several other persons were brought to the house until eventually ten to thirteen persons were held in the house.³³⁷ Meho Džafić and one of his sons, Ekrem Džafić, were among those who came to the house.³³⁸ Hasan Kustura told the soldier that he wished to speak with Branimir Savović, the President of Višegrad municipality, whom he knew personally.³³⁹ The soldier replied that he would need to ask Milan Lukić when he returned.³⁴⁰

104. After Milan Lukić had left the house where the persons were being detained, he went to the house of VG014. VG014 testified that at around 5.30 p.m. there was a knock on the door and Milan Lukić entered the house.³⁴¹ VG014's evidence as to Milan Lukić's appearance is similar to that of VG032: his face was painted black, he wore a blue camouflage uniform with a police insignia on one of the sleeves, and had white sneakers on his feet.³⁴² VG014 observed a band-aid on the vein in the crook of Milan Lukić's right arm and that he carried a sniper rifle fitted with a silencer.³⁴³

105. Milan Lukić ordered VG014 to get his uniform and come with him to a burgundy Passat that was parked outside and guarded by a soldier in an olive-drab uniform, whom Milan Lukić called "Montenegro".³⁴⁴ VG014 recognised the car as being the one that previously had belonged to Behija Zukić.³⁴⁵ When Milan Lukić came out of the house, he caught sight of Amir Kurtalić, VG014's friend and a friend of his family, who had fled from the village of Kurtalići, and told him to come with them.³⁴⁶ Amir Kurtalić said he wanted to bring his identity card but Milan Lukić told

³³¹ VG032, 4 Sep 2008, T. 1164; 1D30, T. 240, 243-244.

³³² VG032, 4 Sep 2008, T. 1164; 1D30, T. 244.

³³³ VG032, 4 Sep 2008, T. 1164.

³³⁴ VG032, 4 Sep 2008, T. 1165.

³³⁵ VG032, 4 Sep 2008, T. 1166; 1D30, T. 246-247; 1D31, p. 3.

³³⁶ VG032, 4 Sep 2008, T. 1166.

³³⁷ VG032, 4 Sep 2008, T. 1166; 1D30, T. 249; 1D31, p. 3.

³³⁸ VG032, 4 Sep 2008, T. 1166; 1D30, T. 249; 1D31, p. 3.

³³⁹ VG032, 4 Sep 2008, T. 1165; 1D30, T. 246; 1D31, p. 3.

³⁴⁰ 1D31, p. 3.

³⁴¹ VG014, 10 Jul 2008, T. 304-307; P5, p. 5. See also VG014, 10 Jul 2008, T. 335-339.

³⁴² VG014, 10 Jul 2008, T. 296-297, 299, 11 Jul 2008, T. 391-393; P5, p. 5.

³⁴³ VG014, 10 Jul 2008, T. 296-297, 299; P5, p. 5.

³⁴⁴ VG014, 10 Jul 2008, T. 304-307, 314-315, 11 Jul 2008, T. 395; P5, p. 5.

³⁴⁵ VG014, 10 Jul 2008, T. 304-307; P5, p. 5.

³⁴⁶ VG014, 10 Jul 2008, T. 304-307, 11 Jul 2008, T. 394-395; P5, p. 6.

him that he would not need it as he, Milan Lukić, was Amir Kurtalić's "identity card".³⁴⁷ VG014 and Amir Kurtalić were placed in the back seat of the Passat.³⁴⁸ "Montenegro" sat in the front passenger seat and Milan Lukić entered on the driver's side.³⁴⁹ They drove into a side street near the Bikavac hotel and stopped at the house where VG032 and the other persons were held.³⁵⁰ A grey Yugo was outside the house.³⁵¹

106. Milan Lukić entered the house and told the detained men to stand in a semi-circle, to take off their shoes and socks, and to place all valuables on the floor.³⁵² Milan Lukić said that if he found anything on anyone he would kill them.³⁵³ Milan Lukić took the banknotes from the wallets and put them in his pockets.³⁵⁴ He kicked the identification papers that the men had placed on the floor.³⁵⁵ When Hasan Kustura's request to speak with Branimir Savović was relayed to Milan Lukić, he cursed at Hasan Kustura.³⁵⁶ Milan Lukić then asked who owned the Yugo parked outside and Meho Džafić said it was the car of his older son Osman.³⁵⁷ Milan Lukić requested the keys to the car and left the house with Meho Džafić to get the keys.³⁵⁸ When Milan Lukić returned inside, he pointed at Ekrem Džafić, Hasan Kustura, Hasan Mutapčić and VG032, and told them to come with him.³⁵⁹

107. The evidence of VG032 and VG014 differs slightly as to what happened next. VG032 testified that when he exited the house on Milan Lukić's command, he saw an olive-green Yugo outside the house and, in front of that car, the burgundy Passat.³⁶⁰ Milan Lukić then told the men how to sit in the Yugo. Ekrem Džafić was to drive, VG032 was placed to the left in the back seat, Meho Džafić was in the middle and to his right was the soldier who had stood guard outside the house.³⁶¹ Milan Lukić told Ekrem Džafić to drive "straight to Banja", referring to Višegradska

³⁴⁷ VG014, 10 Jul 2008, T. 304-307; P5, pp 5-6.

³⁴⁸ VG014, 10 Jul 2008, T. 304-307; P5, p. 5.

³⁴⁹ VG014, 10 Jul 2008, T. 311-312.

³⁵⁰ The Yugo was a medium-sized two-door vehicle with five seats, VG014, 11 Jul 2008, T. 399-401. See also P5, p. 6. In response to the question of the Milan Lukić Defence, VG014 stated that the Yugo was bigger than a Peglica and that it would be difficult to fit six people inside a Peglica though he thought it could be done if necessary, VG014, 11 Jul 2008, T. 399-401.

³⁵¹ VG014, 10 Jul 2008, T. 310 (also testifying that Osman Džafić owned the Yugo), 11 Jul 2008, T. 396; P5, p. 6.

³⁵² VG032, 4 Sep 2008, T. 1166; 1D30, T. 250.

³⁵³ VG032, 4 Sep 2008, T. 1166; 1D30, T. 250.

³⁵⁴ VG032, 4 Sep 2008, T. 1166-1167; 1D30, T. 250-251.

³⁵⁵ VG032, 4 Sep 2008, T. 1168; 1D30, T. 251.

³⁵⁶ VG032, 4 Sep 2008, T. 1167-1168; 1D30, T. 252; 1D31, pp 3-4.

³⁵⁷ VG032, 4 Sep 2008, T. 1168; 1D30, T. 251.

³⁵⁸ VG032, 4 Sep 2008, T. 1168; 1D30, T. 251.

³⁵⁹ VG032, 4 Sep 2008, T. 1168; 1D30, T. 252; 1D31, p. 3.

³⁶⁰ VG032, 4 Sep 2008, T. 1152, 1168-1169; 1D30, T. 253.

³⁶¹ VG032, 4 Sep 2008, T. 1169, 1227-1229; 1D30, T. 253-254; P5, p. 6.

Banja.³⁶² Hasan Kustura was told to sit in the front passenger seat.³⁶³ VG032 testified that Hasan Mutapčić was told to enter the Passat³⁶⁴ and that Milan Lukić entered on the passenger side.³⁶⁵

108. VG014 testified that when he and Amir Kurtalić arrived with Milan Lukić at the house in the Passat, a soldier with blond curly hair, who was about 30 years old and thin, and wearing a camouflage uniform emerged from the house leading the five Muslim men, Meho Džafić, Ekrem Džafić, Hasan Kustura, Hasan Mutapčić and VG032.³⁶⁶ He testified that Hasan Mutapčić was placed in the Passat and the other four men, plus the soldier who had come out of the house, entered the Yugo.³⁶⁷

109. The Passat and the Yugo were driven to the Vilina Vlas hotel, a journey which took 20 to 25 minutes.³⁶⁸ On the way, VG032 saw that the two mosques in Višegrad had been burnt down.³⁶⁹ Milan Lukić would occasionally stop the car when he saw a man on the road, ask his name and in reply say, "Oh, you are not a *balija*".³⁷⁰ At the Sase intersection, there was a checkpoint and Milan Lukić stopped the car. A policeman opened the driver-side door and looked in, but made no comments.³⁷¹ VG014 heard Milan Lukić tell the men at the checkpoint that "he had hunted himself a number of *balijas*".³⁷²

110. When they arrived at the Vilina Vlas hotel, Milan Lukić ordered everybody to leave the vehicles and enter the hotel.³⁷³ Mitar Vasiljević testified in the *Vasiljević* case that the seven captured men were all unarmed.³⁷⁴ The hotel was closed for business.³⁷⁵ Milan Lukić lined up the captured men in front of the reception desk and asked Mitar Vasiljević, who had been present in the lobby when the men entered, to give him the keys to the hotel manager's office.³⁷⁶ Mitar Vasiljević was unarmed and wore the olive-grey uniform of the TO and a black rimmed hat, which had a cockade and a double-headed eagle.³⁷⁷ When VG014 entered the hotel reception, he recognised two persons whom he knew: Momir Savić, who wore a camouflage uniform and the same kind of black

³⁶² 1D30, T. 254-255.

³⁶³ VG032, 4 Sep 2008, T. 1168-1169, 1227-1229; 1D30, T. 253-254.

³⁶⁴ VG032, 4 Sep 2008, T. 1169; P5, p. 6.

³⁶⁵ 1D30, T. 254.

³⁶⁶ VG014, 10 Jul 2008, T. 310, 332-333 and 11 Jul 2008, T. 396; P5, p. 6.

³⁶⁷ VG014, 10 Jul 2008, T. 310-312.

³⁶⁸ VG014, 10 Jul 2008, T. 311-312; VG032, 4 Sep 2008, T. 1174; 1D31, p. 4.

³⁶⁹ VG032, 4 Sep 2008, T. 1174; 1D30, T. 255.

³⁷⁰ VG014, 10 Jul 2008, T. 312-313; P5, p. 6. VG014 testified that it would be offensive under any circumstances for someone to refer to a Muslim as a *balija*, VG014, 11 Jul 2008, T. 410-411.

³⁷¹ 1D30, T. 257.

³⁷² VG014, 10 Jul 2008, T. 313; P5, p. 6.

³⁷³ VG014, 10 Jul 2008, T. 313, 328; P2; P96, clip 20 (Mitar Vasiljević's testimony in the *Vasiljević* case); P264, clip 115 (video recording of an interview with Mitar Vasiljević on 16 and 17 Nov 2000). In the *Vasiljević* case, VG032 testified that it was the soldier in the Yugo who told them to leave the car, 1D30, T. 258.

³⁷⁴ 10 Sep 2008, T. 1506; P96, clip 24.

³⁷⁵ VG032, 4 Sep 2008, T. 1175; 1D30, T. 258.

³⁷⁶ VG014, 10 Jul 2008, T. 313-315; VG032, 4 Sep 2008, T. 1175-1178; P54; P69.

hat as Mitar Vasiljević, and a soldier by the last name of Šušnjar.³⁷⁸ Thus, in total, there were six soldiers at the hotel.³⁷⁹

111. Milan Lukić looked behind the reception desk but did not find the keys.³⁸⁰ Mitar Vasiljević testified in the *Vasiljević* case that he gave Milan Lukić some keys that did not open the office, which made Milan Lukić angry.³⁸¹ Milan Lukić also asked Šušnjar to give him the keys, but Šušnjar refused saying that Milan Lukić should let the seven men go.³⁸² After having been at the hotel for 15 to 20 minutes, Milan Lukić ordered “Montenegro”, the blond soldier and the seven men, as well as Mitar Vasiljević, to go to the cars.³⁸³ At this point, Milan Lukić carried a sniper rifle, Mitar Vasiljević was armed with an automatic or semi-automatic rifle, and the two other soldiers had automatic weapons.³⁸⁴

112. The cars left the Vilina Vlas hotel and were driven in the direction of Višegrad by the same road they had come.³⁸⁵ Mitar Vasiljević testified in the *Vasiljević* case that, during the journey, he asked Milan Lukić what was going to happen to the captured men.³⁸⁶ Milan Lukić replied that they were going to be “exchanged” for “300 soldiers who had fallen at Žepa”.³⁸⁷ Milan Lukić also said that they must hurry up because there were another six men in the house where the men had initially been detained by Milan Lukić, who had to be fetched in order to be executed.³⁸⁸

113. The cars stopped after a few hundred metres from the intersection at Sase, in the direction of Višegradska Župa.³⁸⁹ Milan Lukić ordered everybody to leave the vehicles and to walk towards the nearby Drina river.³⁹⁰ Milan Lukić threatened to kill the men should they try to run away.³⁹¹ VG032 noticed that the demeanour of the soldier, who had guarded the detained men at the house and had

³⁷⁷ VG014, 10 Jul 2008, T. 313; VG032, 4 Sep 2008, T. 1208; 10 Sep 2008, T. 1532; 1D30, T. 260-261; P96, clip 21.

³⁷⁸ VG014, 10 Jul 2008, T. 313 and 11 Jul 2008, T. 416-417; 1D30, T. 259; P5, p. 6; P263, clip 113 (video recording of an interview with Mitar Vasiljević on 16 and 17 Nov 2000).

³⁷⁹ VG014, 10 Jul 2008, T. 314.

³⁸⁰ VG032, 4 Sep 2008, T. 1177.

³⁸¹ VG014, 10 Jul 2008, T. 315; P263, clip 113.

³⁸² VG014, 10 Jul 2008, T. 313, 315-316; VG032, 4 Sep 2008, T. 1177; 1D30, T. 270, 289; P96, clip 23.

³⁸³ VG014, 10 Jul 2008, T. 315-318, 11 Jul 2008, T. 411-412; VG032, 4 Sep 2008, T. 1177, 1227-1228; 10 Sep 2008, T. 1504; 1D30, T. 270-271; 1D31, p. 5; P5, p. 7; P96, clips 26, 40; P263, clip 113.

³⁸⁴ VG014, 10 Jul 2008, T. 323; 11 Mar 2009, T. 5362-5363; 1D30, T. 271; P96, clip 23; P264, clip 122. VG032 testified that he believed that the soldiers were members of “the paramilitary forces” because they did not have official insignia on their uniforms, VG032, 4 Sep 2008, T. 1209; 1D30, T. 242-243. Mitar Vasiljević stated in an interview given to the Prosecution in the *Vasiljević* case that he was unarmed, P263, clip 113. See also 10 Sep 2008, T. 1506-1507.

³⁸⁵ VG014, 10 Jul 2008, T. 316-318; 1D31, p. 5. VG032 stated that they left the Vilina Vlas hotel at around 6.45 p.m., though he did not have a watch at the time, 1D31, p. 5.

³⁸⁶ VG014, 10 Jul 2008, T. 318-319.

³⁸⁷ VG014, 10 Jul 2008, T. 318-319; P263, clip 113.

³⁸⁸ VG014, 10 Jul 2008, T. 326.

³⁸⁹ Adjudicated Facts Decision, 22 Aug 2008, no. 52. See also VG014, 10 Jul 2008, T. 316-318; VG032, 4 Sep 2008, T. 1178; 10 Sep 2008, T. 1501-1502; 1D30, T. 273; P3; P5, p. 7; P263, clip 113.

³⁹⁰ VG014, 10 Jul 2008, T. 318-319; VG032, 4 Sep 2008, T. 1178; 10 Sep 2008, T. 1505, 1519-1520, 1522; 1D30, T. 274-275; P4; P5, p. 7; P263, clip 113.

been quite friendly, changed dramatically at this point.³⁹² VG014 testified that the men walked in a single column through a field: Meho Džafić went first, followed by his son Ekrem Džafić, VG032, Hasan Mutapčić, VG014, Hasan Kustura and Amir Kurtalić.³⁹³ VG032 testified that the men walked in a line, one next to the other.³⁹⁴ By the time they were crossing the field, VG032 felt that “if there had been a trace of hope that this could all somehow have a happy ending, this trace of hope was extinguished”.³⁹⁵

114. About ten metres before the captured men reached the river, Milan Lukić ordered them to stop.³⁹⁶ The bank of the river, from the field to the water’s edge, was about five metres wide.³⁹⁷ Milan Lukić asked the captured men who could swim and VG032 replied that he could.³⁹⁸ Milan Lukić then ordered the men to move to the river, warning them that they would be killed should they try to escape.³⁹⁹ The men cried and begged for their lives.⁴⁰⁰ In VG032’s opinion, none of those present gave orders to Milan Lukić or seemed able to affect his actions or decisions.⁴⁰¹ VG014 testified that he saw images of his wife and young daughter in his mind and that he felt that nothing could be changed.⁴⁰² VG032 testified that he was “frozen”, that he walked slowly to the river’s edge and that he “wanted to go those last ten metres with only [his] daughter in [his] mind”.⁴⁰³ Meho Džafić pleaded with his former colleague, Mitar Vasiljević, to spare them.⁴⁰⁴

115. The seven captured men were lined up on the bank facing the river.⁴⁰⁵ VG014 testified that the men were in the following order: Meho Džafić, Ekrem Džafić, VG032, Hasan Mutapčić, VG014, Hasan Kustura and Amir Kurtalić.⁴⁰⁶ VG032 testified that the men were in the same order

³⁹¹ P5, p. 7.

³⁹² VG032, 4 Sep 2008, T. 1178.

³⁹³ VG014, 10 Jul 2008, T. 322-323; P4.

³⁹⁴ VG032, 4 Sep 2008, T. 1179.

³⁹⁵ VG032, 4 Sep 2008, T. 1178-1179.

³⁹⁶ VG014, 10 Jul 2008, T. 318-319.

³⁹⁷ VG014, 10 Jul 2008, T. 332-333, testifying that the water level was low; P4; P5, p. 7, stating that the water level was low “because they were controlling it from the dam” and that “about four or five metres of the river had receded [...] creating a shoreline”; 1D30, T. 295; P65.

³⁹⁸ VG014, 10 Jul 2008, T. 320; VG032, 4 Sep 2008, T. 1179; 10 Sep 2008, T. 1505; 1D30, T. 277; 1D31, p. 5; P96, clip 22.

³⁹⁹ Adjudicated Facts Decision, 22 Aug 2008, No. 54. See also VG014, 10 Jul 2008, T. 320; 10 Sep 2008, T. 1521-1523; P96, clip 27.

⁴⁰⁰ VG032, 11 Sep 2001, T. 278; 10 Sep 2008, T. 1523; P263, clip 113.

⁴⁰¹ VG032, 11 Sep 2001, T. 300-301.

⁴⁰² VG014, 10 Jul 2008, T. 320.

⁴⁰³ VG032, 4 Sep 2008, T. 1179-1180; 1D30, T. 278.

⁴⁰⁴ VG014, 10 Jul 2008, T. 320; VG032, 4 Sep 2008, T. 1179; 10 Sep 2008, T. 1510; 11 Mar 2009, T. 5362-5363; 1D30, T. 278; P8, T. 328; P96, clip 13; P264, clip 121.

⁴⁰⁵ VG014, 10 Jul 2008, T. 322; VG032, 4 Sep 2008, T. 1179; 10 Sep 2008, T. 1507-1508; P65. See also VG032, 4 Sep 2008, T. 1204-1205; P5, p. 7.

⁴⁰⁶ VG014, 10 Jul 2008, T. 322.

as that described by VG014 except that Amir Kurtalić⁴⁰⁷ and Hasan Kustura were in opposite places.⁴⁰⁸

116. One of the soldiers asked how they should fire, single shots or bursts, and Milan Lukić ordered the soldiers to set their weapons to fire single shots.⁴⁰⁹ The soldiers complied by turning a knob on their weapons.⁴¹⁰ The soldiers were swearing and cursing the *balija* mothers of the captured men.⁴¹¹ When the two soldiers and Milan Lukić opened fire, Mitar Vasiljević in the *Vasiljević* case testified that he was further away from the river.⁴¹²

117. VG014 fell into the water unharmed.⁴¹³ At the same time, VG032 jumped into the water and was also unharmed; when he landed he saw blood in the water.⁴¹⁴ Meho Džafić cried out but his scream was cut short.⁴¹⁵ VG032 did not hear a gunshot at that point in time. However, he realised that Meho Džafić had been shot by Milan Lukić's sniper rifle, which was fitted with a silencer.⁴¹⁶ VG014 also heard the sound of Milan Lukić's sniper rifle being fired.⁴¹⁷ Hasan Mutapčić fell over VG014 and covered the top of his body.⁴¹⁸ A man also fell on top of VG032.⁴¹⁹ Lying in the water, both VG014 and VG032 heard the screams of men who were not fatally wounded by the first shot and then heard individual shots being fired.⁴²⁰ VG014 lay partly submerged near the water's edge facing the shore.⁴²¹ VG032 moved his head to the side so it was halfway into the sand and dug his arms into the sand.⁴²² VG032 realised that Ekrem Džafić, who lay next to him, had fallen silent.⁴²³ A little later, one of the soldiers came closer to the bank of the river and said "there is one of them

⁴⁰⁷ VG032 refers to Amir Kurtalić as "a man I didn't know", VG032, 4 Sep 2008, T. 1180.

⁴⁰⁸ VG032, 4 Sep 2008, T. 1180, 1184, 1207; P65.

⁴⁰⁹ VG014, 10 Jul 2008, T. 321-325; VG032, 4 Sep 2008, T. 1180; 1D30, T. 279; 1D31, p. 5; P5, p. 7.

⁴¹⁰ VG014, 10 Jul 2008, T. 323-325 and 11 Jul 2008, T. 401-402; VG032, 4 Sep 2008, T. 1180 (testifying that he heard the sound of rifles being switched to single shots "on three different sides"); 1D30, T. 278-279, 306-307 (testifying that he heard "three clicks").

⁴¹¹ 1D30, T. 278.

⁴¹² VG032, 4 Sep 2008, T. 1179-1180, 1184; 10 Sep 2008, T. 1507-1509; 11 Mar 2009, T. 5363-5364; 1D30, T. 295; 1D31, p. 5; P65; P96, clip 22; P264, clips 121, 123.

⁴¹³ VG014, 10 Jul 2008, T. 320-322, 325-326; P5, p. 7.

⁴¹⁴ VG032, 4 Sep 2008, T. 1180-1181; 1D30, T. 279.

⁴¹⁵ VG032, 4 Sep 2008, T. 1180; 1D30, T. 280.

⁴¹⁶ VG032, 4 Sep 2008, T. 1180, 1D30, T. 279-280; 1D31, p. 5.

⁴¹⁷ P5, p. 7.

⁴¹⁸ VG014, 10 Jul 2008, T. 325-326; P5, p. 8.

⁴¹⁹ VG032, 4 Sep 2008, T. 1181-1182; 1D30, T. 281.

⁴²⁰ Adjudicated Facts Decision, 22 Aug 2008, No. 58. See also VG014, 10 Jul 2008, T. 320-322 and 11 Jul 2008, T. 401-402; VG032, 4 Sep 2008, T. 1181; 1D31, p. 5; P5, p. 8.

⁴²¹ VG014, 10 Jul 2008, T. 321, 325.

⁴²² VG032, 4 Sep 2008, T. 1181; 1D30, p. 280.

⁴²³ VG032, 4 Sep 2008, T. 1181-1182; 1D30, T. 281.

that's alive" and "[w]hy don't you go there".⁴²⁴ Three more shots were fired and after that everything went quiet.⁴²⁵

118. When VG014 heard the car doors close, he stood up in the water together with VG032.⁴²⁶ VG032 examined the five men lying in the water to see if anyone was alive but the five men were dead.⁴²⁷ VG014 suggested that they leave because Milan Lukić had said that he had six more people he wanted to bring and execute.⁴²⁸ At this point in time, VG014 looked at his watch and saw that it was 7.45 p.m.⁴²⁹ They then walked two and a half kilometres along the Drina river towards Mušići and when night fell they crossed the river using a piece of wood.⁴³⁰ Eventually they reached VG014's house where VG032 stayed for several days.⁴³¹

119. The killings were observed from the opposite side of the river by VG079. In the afternoon on 6 or 7 June 1992, he and his brother-in-law were just below the village of Hamižići and observed the incident at a distance of some 400 to 500 metres.⁴³² The brother-in-law had brought a pair of binoculars.⁴³³ VG079 saw two cars parked at Sase and that ten or eleven men moved towards the Drina river from the cars.⁴³⁴ VG079 perceived the cars to be an olive-green Yugo and a mauve Peglica.⁴³⁵

120. The Milan Lukić Defence suggested to both VG014 and VG032 that someone from the opposite bank of the Drina river had fired at the location where they had been lined up. VG014 denied this suggestion.⁴³⁶ VG032 also denied this suggestion, but described an incident on an unknown date when two brothers and their father had been brought to the Drina river to be executed by unknown men.⁴³⁷ On that occasion, a Muslim sniper had helped these men by shooting from the

⁴²⁴ VG014, 10 Jul 2008, T. 321; VG032, 4 Sep 2008, T. 1182; 1D30, T. 281.

⁴²⁵ Adjudicated Facts Decision, 22 Aug 2008, No. 58. See also VG014, 10 Jul 2008, T. 320-322; VG032, 4 Sep 2008, T. 1182; 10 Sep 2008, T. 1508-1509, 11 Mar 2009, T. 5363-5364; 1D30, T. 281; P264, clip 123.

⁴²⁶ Adjudicated Facts Decision, 22 Aug 2008, No. 60. See also VG014, 10 Jul 2008, T. 321-322; VG032, 4 Sep 2008, T. 1182; 1D30, T. 281-282; 1D31, p. 5.

⁴²⁷ Adjudicated Facts Decision, 22 Aug 2008, No. 59. See also VG032, 4 Sep 2008, T. 1183; VG014, 10 Jul 2008, T. 321-322; 1D30, T. 283-284; 1D31, p. 6. VG014 saw that Meho Džafić, Ekrem Džafić, Hasan Kustura and Amir Kurtalić were lying on their stomachs, whereas Hasan Mutapčić was on his back so that a gunshot wound to his head was visible, VG014, 10 Jul 2008, T. 326-327.

⁴²⁸ VG014, 10 Jul 2008, T. 322; P5, p. 8.

⁴²⁹ VG014, 11 Jul 2008, T. 392; P5, p. 8.

⁴³⁰ VG014, 10 Jul 2008, T. 327-328; VG032, 4 Sep 2008, T. 1183; 1D30, T. 285-286; 1D31, p. 6.

⁴³¹ 1D30, T. 287; 1D31, p. 6.

⁴³² VG079, 11 Jul 2008, T. 426-428, 452. VG079 corrected a mistake in his statement (1D2, para. 7) that he observed the incident at 11 a.m., VG079, 11 Jul 2008, T. 452-453.

⁴³³ VG079, 11 Jul 2008, T. 430-431.

⁴³⁴ VG079, 11 Jul 2008, T. 428; 1D3.

⁴³⁵ VG079, 11 Jul 2008, T. 447-448; P8, T. 323. VG079 also testified that he observed the cars from a long distance without the assistance of the binoculars, that one of the cars was parked behind a hedge or some bushes and that he considered a Yugo to be the same as a Peglica, VG079, 11 Jul 2008, T. 455-456. See also 1D2, p. 2.

⁴³⁶ VG014, 11 Jul 2008, T. 403-405. See also 10 Sep 2008, T. 1556.

⁴³⁷ VG032, 4 Sep 2008, T. 1203.

opposite side of the river.⁴³⁸ VG032 was adamant that this incident is unrelated to the one VG032 himself experienced at the Drina river.⁴³⁹ In relation to this suggestion by the Defence, the Trial Chamber notes that the evidence of VG079 is that he and his brother-in-law were not armed that day and that there is no evidence that there was combat activity in the vicinity.⁴⁴⁰

121. VG079 observed seven men in civilian clothes, among whom he recognised Meho Džafić and Amir Kurtalić.⁴⁴¹ Three or four armed men, dressed in black, blackish or bluish uniforms and wearing black scarves with skulls on their heads, walked behind the seven men. VG079 did not recognise these men.⁴⁴² The seven men walked into the water in a line, separated by 20 to 50 centimetres, and facing the river.⁴⁴³ Three armed men stayed behind at a distance of six to seven metres from the water.⁴⁴⁴ VG079 also believed that he saw a fourth person behind a tree, whom he believes belonged to the assailing party.⁴⁴⁵

122. In a sketch attached to a statement given to the Prosecution, VG079 had indicated the manner in which he had seen the men “walking and approaching the Drina river”: VG079 saw seven men “walking in a same [*sic*] line in front and three (3) men behind them”.⁴⁴⁶ In cross-examination, the Milan Lukić Defence suggested that VG079’s testimony contradicted his statement, in which, in counsel’s submission, VG079 had indicated that the “victims walked across the field towards the Drina side by side in a line”.⁴⁴⁷ In response to this submission of counsel, VG079 testified that what he “drew [was the stage] when they had already reached the bank and as they were – when they were separated and when they were already stepping into the water”.⁴⁴⁸ VG079 also testified that “[t]here was a column, they were walking side by side towards the river, and when they reached the bank, they were separated from one another”.⁴⁴⁹ The Trial Chamber concludes that counsel’s proposition does not find support in VG079’s statement, which concerned how the men had walked as they were coming near to the river and lining up, not when the men were crossing the field.

⁴³⁸ VG032, 4 Sep 2008, T. 1203.

⁴³⁹ VG032, 4 Sep 2008, T. 1203.

⁴⁴⁰ VG079, 11 Jul 2008, T. 434.

⁴⁴¹ VG079, 11 Jul 2008, T. 428-430; P8, T. 325, 336-337. VG079 also testified that at this point he used the binoculars to verify that it was Meho Džafić and Amir Kurtalić, VG079, 11 Jul 2008, T. 446-447, 450.

⁴⁴² VG079, 11 Jul 2008, T. 429, 447; P8, T. 324, 334-336, 338-339. The Trial Chamber notes in this respect the testimony of VG014 that he did not see any of the soldiers at the Vilina Vlas hotel wearing black scarves with skulls, VG014, 11 Jul 2008, T. 393.

⁴⁴³ VG079, 11 Jul 2008, T. 430-431, testifying that the water was about 30 centimetres deep, 450-451; P8, T. 336-337.

⁴⁴⁴ VG079, 11 Jul 2008, T. 430-431; P8, T. 325, testifying that “there must have been some kind of order because they stopped, and then I saw straight away that they were shooting from those rifles”.

⁴⁴⁵ VG079, 11 Jul 2008, T. 445; P8, T. 324-325, 334.

⁴⁴⁶ 1D2, pp 2-3.

⁴⁴⁷ VG079, 11 Jul 2008, T. 444-445.

⁴⁴⁸ VG079, 11 Jul 2008, T. 445.

⁴⁴⁹ VG079, 11 Jul 2008, T. 445.

123. VG079 saw the three armed men shoot the seven men in civilian clothes.⁴⁵⁰ After the seven men had fallen into the water, the armed men returned to the cars; however, shortly thereafter two of them returned to the river bank and fired one or two individual shots at the men in the water.⁴⁵¹ Then, the armed men got into the cars and drove off in the direction of Višegrad.⁴⁵² VG079 saw that VG014 and VG032 had survived and watched them until about 8 p.m. when they began to swim across the river.⁴⁵³ Two days later, VG079 and his relative returned to where they had observed the execution and saw that the bodies were still in the water.⁴⁵⁴

124. The Prosecution tendered into evidence P119, a table of data collected by the Prosecution's demographics expert Ewa Tabeau, which lists the five victims of the Drina river incident. P119 contains information on the date and place of disappearance of the five victims of the Drina river incident as reported to the ICRC.⁴⁵⁵ The place of disappearance is noted differently for four of the five victims.⁴⁵⁶ Hasan Kustura is not listed as having disappeared; rather, he is listed in the voters' register of 1997-1998.⁴⁵⁷ When re-called by the Milan Lukić Defence, Ewa Tabeau testified that following verification based on biographical information, she concluded that the Hasan Kustura who is listed in the voters' register is a different person than the Hasan Kustura who is listed as a victim for the Drina river incident.⁴⁵⁸ There are also discrepancies regarding the date of disappearance or death of the five victims.⁴⁵⁹

125. In addition to the evidence of Ewa Tabeau the Trial Chamber also received evidence from Amor Masović as to missing persons. The Trial Chamber admitted into evidence P184, which contains several tables compiled by Amor Masović listing persons still missing from the Višegrad municipality and information as to where the remains of victims were exhumed. P184 lists as

⁴⁵⁰ VG079, 11 Jul 2008, T. 430-431, 450-451, 453-454, testifying that the armed men shot the captured men with bursts of fire, and that afterwards two men returned and shot one or two single shots; P8, T. 326 (testifying that the shooting lasted "[b]riefly, two or three individual gunshots"), 336-337 (testifying that Meho Džafić was the second person to be shot), 338-339. In a statement given to the Prosecution on 19 January 2001, VG079 stated that the armed men shot with "bursts of fire" holding their weapons at waist level, 1D2, p. 3.

⁴⁵¹ VG079, 11 Jul 2008, T. 431.

⁴⁵² VG079, 11 Jul 2008, T. 431.

⁴⁵³ 1D2, p. 3.

⁴⁵⁴ VG079, 11 Jul 2008, T. 434, also testifying that he estimates the bodies were lying in the water about four days. VG032 testified that he could see the bodies of the victims laying in the water for seven days after the incident. See also 1D30, T. 287.

⁴⁵⁵ P119, p. 1.

⁴⁵⁶ Meho Džafić is listed as having disappeared in Višegrad, Ekrem Džafić in Holijaci, Hasan Mutapčić in Bikavac and Amir Kurtalić in Sase, P119, p. 1. On p. 9, there is information from the Bosnian Book of Dead that all five victims disappeared in Višegrad.

⁴⁵⁷ P119, p. 1.

⁴⁵⁸ Ewa Tabeau, 24 Mar 2009, T. 6135-6140, 6145; P119, p. 9.

⁴⁵⁹ P119, p. 1, lists Meho Džafić, Ekrem Džafić and Hasan Mutapčić as having disappeared on "7.06.1992". On p. 9, Meho Džafić and Hasan Mutapčić are listed as having disappeared on 7 June 1992, whereas Ekrem Džafić is listed as having been killed on that date. Hasan Kustura and Amir Kurtalić are listed as having been killed on 25 June 1992 and 31 May 1992, respectively. Furthermore, there is information that the remains of Hasan Mutapčić were exhumed on 14 November 2002 at Kameničko Tocilo-Srebrenica, which is located near the Slap 1 exhumation site, P119, p. 9; P172, p. 938.

missing all victims of the Drina river incident, except Hasan Mutapčić.⁴⁶⁰ The exhibit contains information that the remains of Hasan Kustura were exhumed on 4 October 2000 in Slap.⁴⁶¹ Moreover, the exhibit also provides that the remains of Hasan Mutapčić were exhumed on 14 November 2000 in Kameničko Tocilo-Luke.⁴⁶²

(b) Prosecution identification evidence

(i) VG032

126. VG032 testified that he had seen Milan Lukić before 7 June 1992. Sometime between 25 or 26 April to 19 May 1992, acquaintances of VG032 had pointed out Milan Lukić to him at the entrance to a café called *Kod Pipe* near the *Panos* restaurant.⁴⁶³ At the time, Milan Lukić wore a green camouflage uniform and carried a rifle fitted with a silencer.⁴⁶⁴ VG032's acquaintances had said to him that the man in question was Milan Lukić but had not provided further information about him.⁴⁶⁵ One or two days after the departure of the Užice Corps in May 1992, at around 10 a.m., VG032 saw Milan Lukić outside the Višegrad Health Centre driving Behija Zukić's car, a red Passat.⁴⁶⁶ On this occasion, VG032 learnt that Behija Zukić had been killed.⁴⁶⁷ VG032 recognised Milan Lukić because he had seen him a few times before.⁴⁶⁸ VG032 also testified that he had heard that Milan Lukić worked in Obrenovac, Serbia, and that he was born between 1965 and 1969.⁴⁶⁹

127. VG032 testified that when, in the afternoon on 7 June 1992, he was behind the house of his father-in-law, there was sufficient light for him to recognise Milan Lukić as one of the men who approached the house.⁴⁷⁰ VG032 also testified that Milan Lukić was referred to by name by another soldier in the house where VG032 was detained prior to being taken to the Vilina Vlas hotel with the other six men.⁴⁷¹ Under cross-examination, VG032 disagreed with the proposition of the Milan Lukić Defence that the fact that Milan Lukić was referred to by name was the only reason that

⁴⁶⁰ P184, Table A, lists Ekrem Džafić and Meho Džafić (p. 4) and Amir Kurtalić (p. 10). There is also another "Table A" in this exhibit, which lists Ekrem Džafić and Meho Džafić (p. 6) and Amir Kurtalić and Hasan Kustura (p. 13).

⁴⁶¹ P184, Table B, p. 4.

⁴⁶² P184, Table B, p. 5.

⁴⁶³ VG032, 4 Sep 2008, T. 1210-1212. See also 1D30, T. 226. VG032 testified that he returned to Višegrad on 25 or 26 April 1992, VG032, 4 Sep 2008, T. 1144.

⁴⁶⁴ VG032, 4 Sep 2008, T. 1210-1211.

⁴⁶⁵ VG032, 4 Sep 2008, T. 1210-1212.

⁴⁶⁶ VG032, 4 Sep 2008, T. 1212; 1D30, T. 225. In a statement of 30 September-1 October 1995, VG032 stated that this happened around 18 May 1992 and that Milan Lukić stayed for about 30 minutes at the health centre, 1D31, p. 2.

⁴⁶⁷ VG032, 4 Sep 2008, T. 1152-1153; 1D31, p. 2.

⁴⁶⁸ VG032, 4 Sep 2008, T. 1152-1153; 1D30, T. 226.

⁴⁶⁹ VG032, 4 Sep 2008, T. 1220, also testifying that, while this was "common knowledge", he "knew many people who knew [Milan Lukić] personally and who told [VG032] that he worked in Obrenovac".

⁴⁷⁰ VG032, 4 Sep 2008, T. 1161; 1D30, T. 238.

⁴⁷¹ VG032, 4 Sep 2008, T. 1168, 1D30, T. 246.

VG032 knew it was Milan Lukić.⁴⁷² In VG032's words, the fact that he was referred to by name was rather "a confirmation of everything else".⁴⁷³ VG032 further denied the proposition by the Milan Lukić Defence that, because he "believed that the red Passat was there" and because he associated "the red Passat with Milan Lukić", VG032 thought the man in question was Milan Lukić. On this point, VG032 stressed that until he left the house where he was detained and robbed together with the other men, he had not seen the red Passat that day.⁴⁷⁴

128. When asked by the Prosecution whether he recognised anyone in the courtroom, VG032 recognised Milan Lukić.⁴⁷⁵

(ii) VG014

129. VG014 is approximately the same age as Milan Lukić and went to secondary school with him in 1983 and 1984, though they were not in the same class.⁴⁷⁶ VG014 knew that Milan Lukić was from Rujište and that he studied metal processing.⁴⁷⁷ VG014 would see Milan Lukić during the breaks in the school yard and in the corridors and he testified that that was how they "could see each other and spend time together".⁴⁷⁸ VG014 also testified that Milan Lukić left school after the second year and went to Obrenovac to join the police.⁴⁷⁹ Prior to 7 June 1992, VG014 last saw Milan Lukić in 1984.⁴⁸⁰ As soon as Milan Lukić entered VG014's house on 7 June 1992, VG014 recognised him.⁴⁸¹ Milan Lukić's face was blackened by "some kind of soot" but VG014 could nevertheless see the underlying skin and had no problem recognising him.⁴⁸² VG014 testified that Milan Lukić had a small mole on one side of his face above the lip, which was greyish in colour.⁴⁸³ VG014 also testified that it was daylight and that he observed Milan Lukić at only "an arm-length" distance.⁴⁸⁴ When asked by the Prosecution whether he recognised anyone in the courtroom, VG014 recognised Milan Lukić.⁴⁸⁵

⁴⁷² VG032, 4 Sep 2008, T. 1225-1226.

⁴⁷³ VG032, 4 Sep 2008, T. 1226.

⁴⁷⁴ VG032, 4 Sep 2008, T. 1226.

⁴⁷⁵ VG032, 4 Sep 2008, T. 1230.

⁴⁷⁶ VG014, 10 Jul 2008, T. 297, 302, 348-349.

⁴⁷⁷ VG014, 10 Jul 2008, T. 297.

⁴⁷⁸ VG014, 10 Jul 2008, T. 298, 302.

⁴⁷⁹ VG014, 10 Jul 2008, T. 297.

⁴⁸⁰ VG014, 10 Jul 2008, T. 339. Before being taken from his house on 7 June 1992 by Milan Lukić, VG014 had heard many stories about Milan Lukić, including that he had killed Behija Zukić and taken her red Passat, VG014, 10 Jul 2008, T. 307-309.

⁴⁸¹ VG014, 10 Jul 2008, T. 298.

⁴⁸² VG014, 10 Jul 2008, T. 301.

⁴⁸³ VG014, 10 Jul 2008, T. 299, 11 Jul 2008, T. 390.

⁴⁸⁴ VG014, 10 Jul 2008, T. 300.

⁴⁸⁵ VG014, 10 Jul 2008, T. 335-337, also stating that Milan Lukić was slimmer when he saw him on 7 June 1992 but that he was "clearly recognizable" and that "his features clearly show that that is him", *id.*, T. 337-338.

130. During cross-examination, VG014 testified that he had had occasion to see “Wanted” posters containing photographs of Milan Lukić.⁴⁸⁶ However, he denied that there was a need for him to study the photographs of Milan Lukić.⁴⁸⁷ The Milan Lukić Defence put to VG014, while displaying the sides of Milan Lukić’s face on the screens in the courtroom, that there was no mole on his face.⁴⁸⁸ However, VG014 maintained that he saw moles on Milan Lukić’s face.⁴⁸⁹ He further maintained that the soot which Milan Lukić had applied to his face on 7 June 1992 did not cover his features to such an extent that the mole was not visible.⁴⁹⁰ The Milan Lukić Defence also put to VG014 that he had stated in a previous statement that Milan Lukić had an “impressive and distinct black mole” on his face. However, the Defence later conceded that this was a mistake and that the witness had not stated this.⁴⁹¹

131. In re-examination, VG014 reiterated that he saw a mole on Milan Lukić’s face.⁴⁹² He also stated unequivocally that Milan Lukić is “the person who arrested me in my house, took me to the Drina, and attempted to kill me.”⁴⁹³ In response to a question by the Presiding Judge that a person’s appearance may change between the age of 17 and 25, VG014 stated that “a person can change, but they cannot change so much that they would become unrecognisable”.⁴⁹⁴

(iii) Mitar Vasiljević

132. Mitar Vasiljević testified in the *Vasiljević* case that he and Milan Lukić are related as *kum*, a close relationship between families in Serb culture that involves members of the connected families being godparents to the children of the other family, and being the best man at weddings of members of the other family.⁴⁹⁵ The relationship between the Vasiljević family from Đjurevići and the Lukić family from Rujište goes back several generations.⁴⁹⁶ Mitar Vasiljević described the relationship as being a lifelong commitment to the christened child or to the best man and that it is considered a sin to break it.⁴⁹⁷ Mitar Vasiljević is the godfather of Milan Lukić’s daughter and he was also best man at Milan Lukić’s wedding.⁴⁹⁸ However, Mitar Vasiljević testified that he did not socialise with Milan Lukić and that they belonged to different generations.⁴⁹⁹

⁴⁸⁶ VG014, 10 Jul 2008, T. 340-342.

⁴⁸⁷ VG014, 10 Jul 2008, T. 343.

⁴⁸⁸ VG014, 11 Jul 2008, T. 390.

⁴⁸⁹ VG014, 11 Jul 2008, T. 391.

⁴⁹⁰ VG014, 11 Jul 2008, T. 391.

⁴⁹¹ VG014, 11 Jul 2008, T. 393-394.

⁴⁹² VG014, 11 Jul 2008, T. 412-413.

⁴⁹³ VG014, 11 Jul 2008, T. 422.

⁴⁹⁴ VG014, 11 Jul 2008, T. 408-409.

⁴⁹⁵ P96, clips 1-5.

⁴⁹⁶ 10 Sep 2008, T. 1497-1498; P96, clips 1-2.

⁴⁹⁷ P96, clip 2.

⁴⁹⁸ P96, clips 3-4.

⁴⁹⁹ P256, clip 60 (Mitar Vasiljević’s testimony in the *Vasiljević* case).

133. Mitar Vasiljević recognised Milan Lukić as having been present during the events prior to and during the Drina river incident on 7 June 1992.⁵⁰⁰

134. Mitar Vasiljević testified in the *Vasiljević* case that he was an alcoholic and that there were times when he could not remember what had happened the day before or how he got home.⁵⁰¹ However, there were also periods when he was completely off alcohol.⁵⁰² He testified that his body craved alcohol and that on occasion he would have to go to an out-patient clinic to get infusions in order to prevent him from drinking.⁵⁰³ Mitar Vasiljević testified that on 7 June 1992 he had drunk alcohol “maybe an hour and a half or two” before the events in Sase.⁵⁰⁴

(iv) VG079

135. VG079 testified that he did not know Milan Lukić prior to 7 June 1992.⁵⁰⁵ It was VG079’s brother-in-law who, on that date, told him that the tallest of the three men, who had opened fire on the Muslim men, was Milan Lukić.⁵⁰⁶

2. Defence case

(a) Challenges to the Prosecution case

(i) Testimony of Radomir Simšić

136. On 21 April 2009, the Milan Lukić Defence called a witness named Radomir Šimšić in order to comment on allegations by Prosecution witnesses that he had been involved in the Drina river incident.⁵⁰⁷ The witness testified that he was born in 1945, that he moved from Višegrad in 1959,⁵⁰⁸ that he registered as a permanent resident in Belgrade in 1965 or 1966⁵⁰⁹ and that he has never gone by the nickname Rašo or Raša.⁵¹⁰ He also testified that he visited Višegrad in 1991 for his brother’s funeral but that he was not there in 1992.⁵¹¹ The Prosecution objected to the relevance of the witness’ testimony on the basis that his biographical information differed from the evidence

⁵⁰⁰ P96, clips 23-28, 38; P263, clip 113; P264, clips 115-117, 121-124. See also *e.g.* 10 Sep 2008, T. 1505, 1507.

⁵⁰¹ Mitar Vasiljević, 23 Oct 2001, T. 1859, referenced in 1D182, Linda LaGrange’s report, p. 1. See also 10 Sep 2008, T. 1543, 5 Mar 2009, T. 5156-5157.

⁵⁰² Mitar Vasiljević, 26 Oct 2001, T. 2131. See also 5 Mar 2009, T. 5152.

⁵⁰³ Mitar Vasiljević, 25 Oct 2001, T. 2009. See also 5 Mar 2009, T. 5156.

⁵⁰⁴ Mitar Vasiljević, 26 Oct 2001, T. 2131. See also 10 Sep 2008, T. 1546, 6 Mar 2009, T. 5225-5226, 5281-5282.

⁵⁰⁵ 1D2, p. 3, confirmed during cross-examination in the *Vasiljević* trial, P8, T. 338, and during cross-examination in the present trial, VG079, 11 Jul 2008, T. 439.

⁵⁰⁶ VG079, 11 Jul 2008, T. 439-440; 1D2, p. 3; P8, T. 338. VG079’s brother-in-law, who was not called as a witness in the present case or in the *Vasiljević* case, died after 7 June 1992, VG079, 11 Jul 2008, T. 428.

⁵⁰⁷ Radomir Simšić, 21 Apr 2009, T. 7096.

⁵⁰⁸ Radomir Simšić, 21 Apr 2009, T. 7097, 7105.

⁵⁰⁹ Radomir Simšić, 21 Apr 2009, T. 7116.

⁵¹⁰ Radomir Simšić, 21 Apr 2009, T. 7103.

⁵¹¹ Radomir Simšić, 21 Apr 2009, T. 7098, 7101, 7103, 7104.

in the case as to one of the alleged co-perpetrators of the Drina river killings.⁵¹² Upon questioning by both the Defence and the Prosecution on whether he was aware that someone with his name had been named a co-perpetrator for these killings, Radomir Šimšić testified that he had no knowledge of this and that he had nothing to do with the incident.⁵¹³

(ii) Evidence of Professor Vera Folnegović-Šmalc in the *Vasiljević* case

137. Upon the request of the Milan Lukić Defence, the Trial Chamber admitted into evidence the expert report of Vera Folnegović-Šmalc concerning her psychiatric examination of Mitar Vasiljević in December 2001.⁵¹⁴ The report focused on Mitar Vasiljević's mental situation following his alleged hospitalisation on 15 July 1992, based on the evidence in the *Vasiljević* case relating to his alcoholism, which dated back to the early 1980s.⁵¹⁵ Vera Folnegović-Šmalc concluded that upon his arrival at the Užice hospital, Mitar Vasiljević displayed signs of a "pre-delirious state", which she considered developed into a substance-withdrawal delirium.⁵¹⁶ The delirium lasted until Mitar Vasiljević was discharged from the hospital.⁵¹⁷ Vera Folnegović-Šmalc also concluded that "[a]fter that time, there are no elements which would affect his ability to comprehend and reason."⁵¹⁸ At the time of the psychiatric examination, Mitar Vasiljević's "attention span, powers of deduction and comprehension [were] satisfactory"⁵¹⁹ and he did "not suffer from mental disturbances (mental illness)".⁵²⁰

138. In her report, Vera Folnegović-Šmalc notes having discussed the Drina river incident with Mitar Vasiljević and that he described the events and his experiences on that day in great detail.⁵²¹ She does not state that Mitar Vasiljević told her during the psychiatric examination that he had been drunk on 7 June 1992. However, her report states that Mitar Vasiljević began to drink more during the war period, when his family was in Belgrade and he was left alone in Višegrad,⁵²² and that he drank continuously and for a long time, such that he met "the criteria of chronic alcoholism".⁵²³

139. Upon the Prosecution's request, the Trial Chamber also admitted into evidence Vera Folnegović-Šmalc's testimony in the *Vasiljević* case, which concerned her psychiatric examination

⁵¹² Radomir Šimšić, 21 Apr 2009, T. 7100.

⁵¹³ Radomir Šimšić, 21 Apr 2009, T. 7100-7101, 7105-7106. See *infra* section II.E.4(a).

⁵¹⁴ 1D38.7. See further Decision on the admission into evidence of medical records concerning Mitar Vasiljević, 26 March 2009, p. 11.

⁵¹⁵ 1D38.7, p. 5, referring to Mitar Vasiljević's first hospitalisation at the Užice hospital, and pp 7-9.

⁵¹⁶ 1D38.7, pp 13-14.

⁵¹⁷ 1D38.7, p. 14.

⁵¹⁸ 1D38.7, p. 14.

⁵¹⁹ 1D38.7, p. 12.

⁵²⁰ 1D38.7, p. 12.

⁵²¹ 1D38.7, p. 9.

⁵²² 1D38.7, pp 8-9.

⁵²³ 1D38.7, p. 13.

of Mitar Vasiljević.⁵²⁴ She confirmed her conclusions that Mitar Vasiljević suffered from an alcoholic delirium related to the time after his admission to the Užice hospital on 15 June 1992.⁵²⁵ She testified that Mitar Vasiljević's "description of the shooting on the Drina is a description given by a man who was not mentally ill at the time".⁵²⁶ She further testified that the delirium did not arise as a result of any stress of having seen people being killed at the Drina river.⁵²⁷ The reason for her opinion was that "a stressor like that would lead to a specific clinical picture, specific symptoms" of post-traumatic stress disorder, which Mitar Vasiljević did not describe to her during the examination.⁵²⁸

(iii) Evidence of Professor Linda LaGrange

140. The Milan Lukić Defence called Linda LaGrange, a professor of experimental psychology, to challenge the evidence of Mitar Vasiljević concerning the events on 7 June 1992, specifically in relation to his ability to recollect the events in view of his being an alcoholic.

141. Linda LaGrange had examined parts of Mitar Vasiljević's testimony in the *Vasiljević* proceedings, including that he started drinking early in the morning and drank throughout the day, that he would drink "constantly", but also would engage in binge drinking, and that there would be times when he would not know with whom he had been or who had brought him home.⁵²⁹ She also noted Mitar Vasiljević's testimony that he had been drinking alcohol on 7 June 1992.⁵³⁰ Linda LaGrange stated in her report that "high doses of alcohol have a profound impact on memory" and that may in some instances "even cause complete amnesia for the events that occurred while the individual was intoxicated".⁵³¹ Linda LaGrange had not, however, personally examined Mitar Vasiljević. In her report, Linda LaGrange concluded that:

[g]iven Mr. Vasiljević's self-described drinking patterns (at least a 750ml bottle of brandy per day); it is probable that he maintained a BAC [blood alcohol content] of .10-.20 mg/dL throughout the day.⁵³²

She also went on to state in the report that as a result of his "long term heavy alcohol consumption, Mitar Vasiljević could probably function at an exceedingly high BAC, as high as .3 mg/dL".⁵³³ In

⁵²⁴ P341. See further Decision on Prosecution motion to reconsider or in the alternative certification to appeal the Trial Chamber's decision on the admission into evidence of medical records concerning Mitar Vasiljević, filed confidentially on 9 April 2009, p. 9. By the same decision the Trial Chamber admitted into evidence the *curriculum vitae* of Professor Folnegović-Šmalc, P340.

⁵²⁵ P341, T. 4445.

⁵²⁶ P341, T. 4444.

⁵²⁷ P341, T. 4434.

⁵²⁸ P341, T. 4434-4437.

⁵²⁹ 1D182, p. 1, with references to Mitar Vasiljević's evidence in the *Vasiljević* case.

⁵³⁰ 1D182, p. 1, with references to Mitar Vasiljević's evidence in the *Vasiljević* case.

⁵³¹ 1D182, p. 1.

⁵³² 1D182, p. 1.

⁵³³ 1D182, p. 1.

her professional opinion, at a blood alcohol level “of this magnitude, it is unlikely that Mr. Vasiljević would be able to recall any events that occurred during this period of intoxication”.⁵³⁴

142. In her testimony before the Trial Chamber, Linda LaGrange said that Mitar Vasiljević likely suffered from short- and long-term memory loss as a result of his drinking habits.⁵³⁵ In relation to the events on 7 June 1992, such memory losses would result both from his state of intoxication on that day and from the cumulative effects of brain damage caused by his alcoholism.⁵³⁶ She questioned the accuracy of Mitar Vasiljević’s testimony as to the events of 7 June 1992 on the basis of the “state-dependent learning” theory,⁵³⁷ whereby an intoxicated witness would only be able to recall facts while in a similarly inebriated state. She also stated that alcohol consumption impairs a person’s ability to attend to appropriate details of an event.⁵³⁸ However, she also testified that “someone who was a chronic alcoholic would take considerably more alcohol [than an “alcohol-naïve” person] to experience a similar kind of black-out”.⁵³⁹

143. Under cross-examination, Linda LaGrange conceded that it is important to review all available material in order to arrive at a complete opinion.⁵⁴⁰ She further conceded to not having had access to or considered relevant material, including the Trial Chamber’s judgement or findings in the *Vasiljević* case, and the expert report and testimony of Vera Folnegović-Šmalc.⁵⁴¹ In this respect, Linda LaGrange testified that a forensic psychiatrist who had personally interviewed Mitar Vasiljević would not necessarily be better placed to observe physical signs of chronic alcoholism than someone who had not interviewed him.⁵⁴² However, she conceded that this would be the case if the forensic psychiatrist had performed cognitive testing on Mitar Vasiljević.⁵⁴³

144. Linda LaGrange also testified in cross-examination that she had not taken into consideration certain evidence, such as Mitar Vasiljević’s testimony that he was not drunk when he was at the Drina river on 7 June 1992. However, she maintained that this evidence did not change her analysis.⁵⁴⁴ She also stated that the opinions she had offered had nothing to do with Mitar Vasiljević’s actual blood alcohol level on 7 June 1992, which she agreed that she could not

⁵³⁴ 1D182, p. 1.

⁵³⁵ Linda LaGrange, 20 Mar 2009, T. 5856-5857, 5862, 5864. On cross-examination, she conceded that such brain damage does not occur in all alcoholics, Linda LaGrange, 20 Mar 2009, T. 5905.

⁵³⁶ Linda LaGrange, 20 Mar 2009, T. 5856-5857, 5862, 5864.

⁵³⁷ Linda LaGrange testified that a person who is drunk when an event occurs is less likely to recall the event accurately if that person is sober while recalling the event, Linda LaGrange, 20 Mar 2009, T. 5880.

⁵³⁸ Linda LaGrange, 20 Mar 2009, T. 5880, 5888.

⁵³⁹ Linda LaGrange, 20 Mar 2009, T. 5861.

⁵⁴⁰ Linda LaGrange, 20 Mar 2009, T. 5865-5866, 5877.

⁵⁴¹ Linda LaGrange, 20 Mar 2009, T. 5866-5867, 5872-5873.

⁵⁴² Linda LaGrange, 20 Mar 2009, T. 5873.

⁵⁴³ Linda LaGrange, 20 Mar 2009, T. 5873-5874.

⁵⁴⁴ Linda LaGrange, 20 Mar 2009, T. 5867, 5874.

assess.⁵⁴⁵ In this respect, and with reference to her report, Linda LaGrange agreed with the proposition that she could not “state to a reasonable degree of scientific certainty that Mr. Vasiljević had a blood alcohol concentration of .3” on 7 June 1992.⁵⁴⁶ She further agreed that it was more likely that the level was in the range of 0.10 to 0.20 mg/dL based on his daily consumption.⁵⁴⁷

145. Under cross-examination, Linda LaGrange also expressed the view that Mitar Vasiljević’s ability to recollect repeatedly the events may reflect rehearsal of details that he cannot recall, rather than an independently remembered event.⁵⁴⁸ However, she also agreed with the Prosecution’s proposition that any diminished capacity to recognise an individual at an incident due to the effect of alcohol would be reduced if the intoxicated person knew the individual prior to the incident, particularly if they had known each other for a long time.⁵⁴⁹ Linda LaGrange was not aware that there were two eye-witnesses to the incident on 7 June 1992.⁵⁵⁰ She agreed with the proposition that it would be an indication of Mitar Vasiljević’s clear recollection of the events on 7 June 1992 if he independently described the events in the same way as they had.⁵⁵¹

(b) Milan Lukić’s alibi

146. The Milan Lukić Defence led evidence of five witnesses to support the proffered alibi that Milan Lukić was in Belgrade at the time of the Drina river incident. The evidence of these witnesses covers the period from 7 to 10 June 1992 and is therefore applicable to both the Drina river incident and the Varda factory incident.

147. MLD1, a Muslim who lived in Višegrad, testified that on 4 June 1992, Milan Lukić came with two armed men to his fiancée’s apartment in Višegrad.⁵⁵² Milan Lukić and the two men wore blue police uniforms.⁵⁵³ MLD1 did not know Milan Lukić at that time.⁵⁵⁴ Milan Lukić and the two armed men checked MLD1’s and his fiancée’s identification cards.⁵⁵⁵ Milan Lukić then introduced himself to MLD1 and told MLD1 that he had just returned from Switzerland, that he “had been

⁵⁴⁵ Linda LaGrange, 20 Mar 2009, T. 5881.

⁵⁴⁶ Linda LaGrange, 20 Mar 2009, T. 5894.

⁵⁴⁷ Linda LaGrange, 20 Mar 2009, T. 5894.

⁵⁴⁸ Linda LaGrange, 20 Mar 2009, T. 5902-5903.

⁵⁴⁹ Linda LaGrange, 20 Mar 2009, T. 5882.

⁵⁵⁰ Linda LaGrange, 20 Mar 2009, T. 5876.

⁵⁵¹ Linda LaGrange, 20 Mar 2009, T. 5896-5897.

⁵⁵² MLD1, 22 Jan 2009, T. 4329, 4332-4333, testifying that the armed men arrived in the morning. In cross-examination, and in reference to a statement he gave to the Milan Lukić Defence (1D101; P226; P227), MLD1 testified that they arrived “[a]bout noon, morning, something like that”, *id.* T. 4384-4385. In cross-examination, MLD1 could not give the name of the street on which the apartment was located or the number of the apartment itself, *id.* T. 4379-4380. MLD1 also testified that he “practically lived with her” at her apartment, which he modified slightly, saying that in the last two to three months of their five- to six-month-long relationship, he had stayed at her apartment approximately two or three nights a week, MLD1, 22 Jan 2009, T. 4370-4371. When asked about the names of some of the neighbours, MLD1 stated that the “tenants changed” and that he was “not able to do that”, *id.* T. 4379-4380.

⁵⁵³ MLD1, 22 Jan 2009, T. 4333.

⁵⁵⁴ MLD1, 22 Jan 2009, T. 4333.

mobilised into this – what shall I call it – coalition against his will” and that his mother was sick, which was why he was back in order to take her to Belgrade for treatment.⁵⁵⁶ Milan Lukić knew MLD1’s fiancée because he used to see her at a café in Višegrad where she worked.⁵⁵⁷ When MLD1 asked for Milan Lukić’s help to escape from Višegrad, Milan Lukić said that he would try and told them to go to an abandoned house not far from the apartment.⁵⁵⁸ Milan Lukić then said that he would try to get certain documents for them which were needed in order to leave Višegrad.⁵⁵⁹

148. The Prosecution confronted MLD1 with the fact that in his statement he did not mention his fiancée, but only spoke of a “friend” who worked as a waitress in a bar. MLD1 testified that “it wasn’t that we were ready for marriage. We were just courting, and it was like this, and then towards the end we had agreed to get married, and it was a custom to buy, like, a gold chain or a ring or something like that as an engagement gift”.⁵⁶⁰ MLD1 was cross-examined about the date of their engagement, but was unable to state the date on which he had proposed to his fiancée, saying that it was “about a month” before 4 June 1992.⁵⁶¹ In cross-examination, MLD1 also testified that it was difficult for him to remember that the incident in the apartment happened on 4 June 1992, but that he knows “it was a month before [the engagement], but she was really screaming. I mean, she was afraid, you understand, and then she said, ‘We will not forget this ever, if we do manage to get out, if we get out in two or three days’”.⁵⁶² The Prosecution also questioned MLD1 as to why they had decided to go to Belgrade rather than to an area held by the ABiH. MLD1 responded that taking them to Belgrade was something that Milan Lukić “could do while he was busy with another task”.⁵⁶³ The Prosecution also questioned MLD1 about his arrest and detention for two or three days in the Višegrad police station in May 1992.⁵⁶⁴ MLD1 testified that he was beaten by members of the Užice Corps, who came to the police station, but he denied that any members of the police beat him.⁵⁶⁵

149. MLD1 and his fiancée went to the house that Milan Lukić had told them to go to and spent three days there.⁵⁶⁶ Three days later, on 7 June 1992,⁵⁶⁷ Milan Lukić returned, accompanied by his mother.⁵⁶⁸ He said that he had been unable to obtain documents for MLD1 and his fiancée and that

⁵⁵⁵ MLD1, 22 Jan 2009, T. 4332-4333.

⁵⁵⁶ MLD1, 22 Jan 2009, T. 4334, 4386-4387.

⁵⁵⁷ MLD1, 22 Jan 2009, T. 4334-4335, 4380-4381.

⁵⁵⁸ MLD1, 22 Jan 2009, T. 4334; P228.

⁵⁵⁹ MLD1, 22 Jan 2009, T. 4334-4335.

⁵⁶⁰ MLD1, 22 Jan 2009, T. 4381, referring to 1D101.

⁵⁶¹ MLD1, 22 Jan 2009, T. 4381-4382.

⁵⁶² MLD1, 22 Jan 2009, T. 4382.

⁵⁶³ MLD1, 22 Jan 2009, T. 4390-4391.

⁵⁶⁴ MLD1, 22 Jan 2009, T. 4372-4376.

⁵⁶⁵ MLD1, 22 Jan 2009, T. 4374, 4389.

⁵⁶⁶ MLD1, 22 Jan 2009, T. 4335.

⁵⁶⁷ MLD1, 22 Jan 2009, T. 4336.

⁵⁶⁸ MLD1, 22 Jan 2009, T. 4336.

he “only had documents for himself and his mother”.⁵⁶⁹ However, Milan Lukić did bring some clothes for MLD1’s fiancée, “the sort of clothes worn by Serb women”.⁵⁷⁰ After MLD1’s fiancée had put on the clothes, she, MLD1 and Milan Lukić went in the direction of Priboj, Serbia, stopping at a bridge where there was a checkpoint.⁵⁷¹ Milan Lukić’s mother did not accompany them to this checkpoint.⁵⁷² In cross-examination, MLD1 testified that the checkpoint in question was the border crossing between Bosnia and Herzegovina and Serbia, which is located at Uvac.⁵⁷³ He also testified that they did not have to show passports at Uvac but “just the ID and all that, and the certificates”.⁵⁷⁴ Milan Lukić led MLD1 and his fiancée across the bridge and a few hundred metres further down the road and told them that they were in Serbia.⁵⁷⁵ Milan Lukić said that he would be waiting about a kilometre down the road in a vehicle once he and his mother had crossed the checkpoint as well.⁵⁷⁶ MLD1 and his fiancée walked on and reached the “main road to Priboj and Belgrade”.⁵⁷⁷ After about a kilometre or two, they found Milan Lukić waiting for them in a car with his mother.⁵⁷⁸ Thereafter, the four of them drove towards Belgrade, arriving there in the afternoon.⁵⁷⁹

150. MLD1 and his fiancée stayed in Milan Lukić’s apartment in a white brick building located in Bežanijska Kosa.⁵⁸⁰ Milan Lukić and his mother also stayed there.⁵⁸¹ They stayed four days in this apartment and did not leave it until they set out for Novi Pazar at noon on 10 June 1992.⁵⁸² In cross-examination, MLD1 clarified that he included 7 June 1992 in the four days.⁵⁸³ He further testified in cross-examination that he and his fiancée took the decision to go to Novi Pazar on 10 June 1992.⁵⁸⁴ Milan Lukić drove them to Novi Pazar; Milan Lukić’s mother also accompanied them.⁵⁸⁵ MLD1 testified that they arrived in Novi Pazar at about 8 p.m. on 10 June 1992.⁵⁸⁶ After having dropped off MLD1 and his fiancée, Milan Lukić and his mother drove away.⁵⁸⁷ MLD1 and his fiancée then went to a hotel, which was near the Novi Pazar fortress and the bus terminal.⁵⁸⁸

⁵⁶⁹ MLD1, 22 Jan 2009, T. 4336.

⁵⁷⁰ MLD1, 22 Jan 2009, T. 4336.

⁵⁷¹ MLD1, 22 Jan 2009, T. 4337.

⁵⁷² MLD1, 22 Jan 2009, T. 4337.

⁵⁷³ MLD1, 22 Jan 2009, T. 4391.

⁵⁷⁴ MLD1, 22 Jan 2009, T. 4392.

⁵⁷⁵ MLD1, 22 Jan 2009, T. 4337.

⁵⁷⁶ MLD1, 22 Jan 2009, T. 4337.

⁵⁷⁷ MLD1, 22 Jan 2009, T. 4337.

⁵⁷⁸ MLD1, 22 Jan 2009, T. 4337.

⁵⁷⁹ MLD1, 22 Jan 2009, T. 4337-4338, testifying that they arrived at “[d]usk, thereabouts. Afternoon, anyway”.

⁵⁸⁰ MLD1, 22 Jan 2009, T. 4338.

⁵⁸¹ MLD1, 22 Jan 2009, T. 4339.

⁵⁸² MLD1, 22 Jan 2009, T. 4339-4341.

⁵⁸³ MLD1, 22 Jan 2009, T. 4394, 4400-4401.

⁵⁸⁴ MLD1, 22 Jan 2009, T. 4396.

⁵⁸⁵ MLD1, 22 Jan 2009, T. 4341.

⁵⁸⁶ MLD1, 22 Jan 2009, T. 4340.

⁵⁸⁷ MLD1, 22 Jan 2009, T. 4341-4342.

⁵⁸⁸ MLD1, 22 Jan 2009, T. 4341; 1D101, p. 2.

MLD1 did not know where Milan Lukić and his mother went thereafter.⁵⁸⁹ MLD1 testified that the intention was not for him and his fiancée to remain in Novi Pazar.⁵⁹⁰

151. The following day, MLD1 took a bus from Novi Pazar back to Višegrad in order to try to evacuate his parents to Novi Pazar.⁵⁹¹ He testified that he decided to return so promptly because he felt safe once he had got his fiancée out of Višegrad.⁵⁹² During cross-examination, he stated that it was “not a problem getting into Bosnia or Višegrad specifically”; rather, the problem was “getting out”.⁵⁹³ MLD1 also testified in cross-examination that “if you want to leave Višegrad [...] you have to produce this certificate”.⁵⁹⁴ However, it turned out that it was not possible to take his family to Novi Pazar. The only way to leave Višegrad was to “take the road across Gornja Lijeska to Mededa and then from there to Goražde [where] one needed to obtain some certificates in order to be able to get through Grebak and then on to Suhodol [...] in order to reach Zenica”.⁵⁹⁵

152. MLD1 testified that he did not have occasion to meet his fiancée again, stating that:

I made inquiries how I could find her through all the possible connections. Well, to tell you the truth, I did love her a lot, but what's happened has happened. I mean, I gave her a ring; I got engaged to her, and unfortunately, I found out that she is no longer among the living.⁵⁹⁶

When asked in cross-examination for the date of his fiancée's death, MLD1 said he had asked but that he did not know.⁵⁹⁷

153. Željko Marković met Milan Lukić in 1987 in Studenski Grad, the halls of residence in Belgrade.⁵⁹⁸ Milan Lukić did not live there but often visited his brother Novica, who lived in the same building as Željko Marković.⁵⁹⁹ Željko Marković left Studenski Grad in 1989 and saw Milan Lukić the next time in 1989 or 1990.⁶⁰⁰

154. Željko Marković testified that Milan Lukić called him in the evening⁶⁰¹ on 7 June 1992 at his apartment in Zemun, near Belgrade.⁶⁰² Željko Marković remembered the date because he was

⁵⁸⁹ MLD1, 22 Jan 2009, T. 4341-4342, also testifying that he did not see Milan Lukić again.

⁵⁹⁰ MLD1, 22 Jan 2009, T. 4340.

⁵⁹¹ MLD1, 22 Jan 2009, T. 4342-4344, also testifying that when he returned to Višegrad the situation had changed and that people were hiding in the forest.

⁵⁹² MLD1, 22 Jan 2009, T. 4398.

⁵⁹³ MLD1, 22 Jan 2009, T. 4392, also testifying that he did not have a passport, but that had his identity card with him when he went back to Višegrad.

⁵⁹⁴ MLD1, 22 Jan 2009, T. 4391-4392.

⁵⁹⁵ MLD1, 22 Jan 2009, T. 4344.

⁵⁹⁶ MLD1, 22 Jan 2009, T. 4346.

⁵⁹⁷ MLD1, 22 Jan 2009, T. 4384.

⁵⁹⁸ Željko Marković, 17 Dec 2008, T. 3843.

⁵⁹⁹ Željko Marković, 17 Dec 2008, T. 3843.

⁶⁰⁰ Željko Marković, 17 Dec 2008, T. 3844.

⁶⁰¹ Željko Marković, 17 Dec 2008, T. 3883.

⁶⁰² Željko Marković, 17 Dec 2008, T. 3856-3857.

having dinner with his wife and the best man at his wedding.⁶⁰³ He testified that he and his wife have “lived together since the 7th of June, 1988”.⁶⁰⁴ He further testified that he and his wife “always celebrate our own anniversary either at home or at a restaurant or with my best men in Novi Sad.”⁶⁰⁵ In cross-examination, he testified that his best man was his *kum* and denied the Prosecution’s proposition that his best man, should he testify, would not remember the date because “[e]very year he brings a present to me and my wife”.⁶⁰⁶ Željko Marković did not know where Milan Lukić called from.⁶⁰⁷ Milan Lukić told Željko Marković that he was on a short visit to Belgrade because of his mother and that the two of them should get together at a café called “Index 10”, where they usually met.⁶⁰⁸ Željko Marković declined and suggested that they meet the next morning instead at 10 a.m. at that café.⁶⁰⁹

155. The following morning, on 8 June 1992, Milan Lukić was already at the café drinking a soft drink when Željko Marković arrived.⁶¹⁰ Milan Lukić, who appeared to be in a “big hurry”, explained that he was in a hurry because “he had brought his mother to Belgrade for a medical check-up”.⁶¹¹ Milan Lukić did not tell him where his mother was to have the medical examination.⁶¹² However, on cross-examination, Željko Marković testified that Milan Lukić had said that his mother was “in a bad way” and that he had “found some acquaintance of an acquaintance who is a doctor” and that he “was taking her there”.⁶¹³ Milan Lukić also said that he had “some Muslims” who were “some friends of [his]”, in his apartment in Belgrade.⁶¹⁴ He was taking them to Novi Pazar and wanted to know about the situation on the route from Belgrade to Novi Pazar.⁶¹⁵ Željko Marković thought it was a strange question, but he told Milan Lukić that they would have no problems going to Novi Pazar.⁶¹⁶ Željko Marković also testified that he was to meet

⁶⁰³ Željko Marković, 17 Dec 2008, T. 3856-3857, 3880-3881. At T. 3885-3886, Željko Marković testified that this was the only time he saw Milan Lukić “until the end of the war”.

⁶⁰⁴ Željko Marković, 17 Dec 2008, T. 3842.

⁶⁰⁵ Željko Marković, 17 Dec 2008, T. 3856.

⁶⁰⁶ Željko Marković, 17 Dec 2008, T. 3880-3881.

⁶⁰⁷ Željko Marković, 17 Dec 2008, T. 3882-3884.

⁶⁰⁸ Željko Marković, 17 Dec 2008, T. 3857. In cross-examination, Željko Marković testified that with a good car it would have taken three and a half to four hours to drive from Višegrad to Belgrade, *id.*, T. 3884.

⁶⁰⁹ Željko Marković, 17 Dec 2008, T. 3857-3859.

⁶¹⁰ Željko Marković, 17 Dec 2008, T. 3858-3859. On cross-examination, the Prosecution put to the witness the implausibility that he remembers that Milan Lukić drank a Coke that day and wore a suede jacket, but that the witness could not remember “when a war broke out in your country”, Željko Marković, 17 Dec 2008, T. 3871-3873. Željko Marković explained this with Milan Lukić having worn the jacket “when he was a student at the students’ town” in Belgrade, *id.*

⁶¹¹ Željko Marković, 17 Dec 2008, T. 3858-3859.

⁶¹² Željko Marković, 17 Dec 2008, T. 3874.

⁶¹³ Željko Marković, 17 Dec 2008, T. 3875. Željko Marković testified that he found “it peculiar that he managed to take his mother away from the war zone”, *id.* T. 3885.

⁶¹⁴ Željko Marković, 17 Dec 2008, T. 3859. In cross-examination, Željko Marković he agreed that the Muslim friends may not have been from Višegrad and that they must have known one another well if they were staying in Milan Lukić’s apartment, Željko Marković, 17 Dec 2008, T. 3873-3874.

⁶¹⁵ Željko Marković, 17 Dec 2008, T. 3859. Željko Marković also testified that Novi Pazar is an area which has a significant Muslim population, Željko Marković, 17 Dec 2008, T. 3881-3882.

⁶¹⁶ Željko Marković, 17 Dec 2008, T. 3859.

his uncle at 10.30 a.m. to look for a rental apartment in Belgrade, and that Milan Lukić had left by the time his uncle arrived.⁶¹⁷

156. Milan Lukić was not in contact with Željko Marković on 9 June 1992, something which the latter found “strange”. However, Milan Lukić called Željko Marković on 10 June 1992.⁶¹⁸ They had a brief conversation, during which Milan Lukić said that he was going to Novi Pazar.⁶¹⁹

157. MLD15 testified that he first met Milan Lukić in a restaurant at the end of 1990, and that he saw him a number of times after that.⁶²⁰ He testified that Milan Lukić called him at midday on 7 June 1992.⁶²¹ Milan Lukić said that he was in Belgrade to take his mother for “a physical [examination] at a hospital”.⁶²² MLD15 took the opportunity to invite Milan Lukić to a party he was having that evening.⁶²³ The party was to be a surprise party at the Maca restaurant in Zemun, Belgrade, during which MLD15 would propose to his girlfriend.⁶²⁴ The party was to be “a sit-down dinner, some drinks, and as a gathering of people we liked”.⁶²⁵ In cross-examination, MLD15 testified that as it “was a surprise party” he did not tell Milan Lukić who was coming. When questioned about how far in advance he had invited the guests, MLD15 testified that “[t]his was a place where we – actually, our hang-out, where we were every evening, so that there was no need for me to invite anyone specifically. All my friends would be there every evening, regularly”.⁶²⁶ He further testified in cross-examination that the restaurant “was a place of our usual get-togethers, of us, the young people from Zemun”,⁶²⁷ MLD15 also testified that he did not think that the persons present at the party knew that he was going to propose to his fiancée.⁶²⁸

158. The party was between 8 p.m. and midnight.⁶²⁹ and had already begun when Milan Lukić arrived at the restaurant “perhaps half an hour or later” after it had started.⁶³⁰ When Milan Lukić entered the restaurant, a woman at MLD15’s table, who “had apparently had a quarrel with [Milan Lukić] at some point previously”, stood up and left.⁶³¹ MLD15 testified that this event had been

⁶¹⁷ Željko Marković, 17 Dec 2008, T. 3859.

⁶¹⁸ Željko Marković, 17 Dec 2008, T. 3859-3860.

⁶¹⁹ Željko Marković, 17 Dec 2008, T. 3860.

⁶²⁰ MLD15, 14 Jan 2009, T. 4097-4099.

⁶²¹ MLD15, 14 Jan 2009, T. 4102 and 3 Feb 2009, T. 4665-4666.

⁶²² MLD15, 14 Jan 2009, T. 4102-4103.

⁶²³ MLD15, 14 Jan 2009, T. 4101-4102.

⁶²⁴ MLD15, 14 Jan 2009, T. 4101-4102 and 3 Feb 2009, T. 4670.

⁶²⁵ MLD15, 14 Jan 2009, T. 4101.

⁶²⁶ MLD15, 3 Feb 2009, T. 4670, also testifying that there was no need to reserve a table “because we were regulars there. There was always a table reserved for us, practically, there.”

⁶²⁷ MLD15, 3 Feb 2009, T. 4670.

⁶²⁸ MLD15, 3 Feb 2009, T. 4671-4672.

⁶²⁹ MLD15, 3 Feb 2009, T. 4672.

⁶³⁰ MLD15, 3 Feb 2009, T. 4672.

⁶³¹ MLD15, 14 Jan 2009, T. 4104 and 3 Feb 2009, T. 4673-4674.

memorable because he had been surprised by the woman's reaction.⁶³² MLD15 testified that the woman became upset "because he was joking at her expense" and "knew that he would probably be cracking jokes at her".⁶³³ MLD15 further stated that at this point he had already proposed to his fiancée.⁶³⁴ MLD15 testified that he also left in order to drive this woman home.⁶³⁵ He returned to the party after he had driven her home.⁶³⁶ When cross-examined as to why he decided to drive the woman home, MLD15 said that he "thought it was the right thing to do" and because "we were great friends and socialised daily".⁶³⁷

159. On 9 June 1992, MLD15 met Milan Lukić to play billiards at a café or restaurant in Zemun.⁶³⁸ MLD15 testified that the woman with whom Milan Lukić had quarrelled also came to that café and that she and Milan Lukić made up.⁶³⁹

160. MLD10, a Muslim, testified that she knew Milan Lukić and his family well; she had known him since he was born and they were neighbours.⁶⁴⁰ She had last seen Milan Lukić in 1990.⁶⁴¹

161. MLD10 testified that on 8 June 1992, in the afternoon, she called Milan Lukić's sister in Belgrade from her apartment in Montenegro in order to get hold of Milan Lukić as she wanted to ask him about "what was happening to her family" in BiH.⁶⁴² Milan Lukić's sister said that Milan Lukić was in Belgrade but that he was not with her at that time.⁶⁴³ MLD10 left a message that Milan Lukić should call her, which he did that evening between 8 and 9 p.m.⁶⁴⁴ Milan Lukić asked if MLD10 was married, "how [she] lived", and enquired about her health, after which MLD10 asked if they could meet.⁶⁴⁵ Milan Lukić suggested that they meet in Novi Pazar and MLD10 asked whether any other place would be an option. However, he said that "he was taking some Muslims from Višegrad to Novi Pazar, to get them away from the war zone".⁶⁴⁶ In cross-examination, MLD10 testified that during the phone conversation she asked about her family.⁶⁴⁷ Milan Lukić further told her that he was in Belgrade because his mother "was supposed to undergo some check-

⁶³² MLD15, 14 Jan 2009, T. 4104.

⁶³³ MLD15, 3 Feb 2009, T. 4673-4674.

⁶³⁴ MLD15, 3 Feb 2009, T. 4674.

⁶³⁵ MLD15, 14 Jan 2009, T. 4094.

⁶³⁶ MLD15, 14 Jan 2009, T. 4095.

⁶³⁷ MLD15, 3 Feb 2009, T. 4674, adding that the woman did not take a taxi because "she didn't exactly have taxi fare".

⁶³⁸ MLD15, 14 Jan 2009, T. 4095-4096, 3 Feb 2009, T. 4666-4667.

⁶³⁹ MLD15, 14 Jan 2009, T. 4096.

⁶⁴⁰ MLD10, 18 Dec 2008, T. 3947, 3951.

⁶⁴¹ MLD10, 14 Jan 2009, T. 3997, 4046.

⁶⁴² MLD10, 18 Dec 2008, T. 3953-3954, 4012, 14 Jan 2009, T. 4047-4048; P215, p. 1, stating that this happened "[r]oughly two days before" 10 June 1992.

⁶⁴³ MLD10, 18 Dec 2008, T. 3953-3954. The Trial Chamber notes that the information that Milan Lukić was in Belgrade is not in P215.

⁶⁴⁴ MLD10, 18 Dec 2008, T. 3953-3954; P215, p. 1.

⁶⁴⁵ MLD10, 18 Dec 2008, T. 3953.

⁶⁴⁶ MLD10, 18 Dec 2008, T. 3953-3954.

⁶⁴⁷ MLD10, 18 Dec 2008, T. 4012.

ups or some examinations on the 7th [...]he had to do some ultrasound check-ups” of her kidneys.⁶⁴⁸ MLD10 testified that she “doubted” that the Višegrad health centre had the equipment to carry out ultrasound examinations and stated that for “the smallest thing” people in Višegrad would be referred to hospitals in Užice, Foca or Belgrade.⁶⁴⁹ She further testified that the Užice hospital could not provide all that the Belgrade hospital could offer and that the Užice hospital was “mainly for hospitalization, for maternity, delivery, that sort of stuff”.⁶⁵⁰

162. MLD10 testified that she knows these events took place on 8 and 10 June 1992 because her husband had returned from Germany, where he had been working since 1973, “some seven days before that” and it is her “birthday on the 13th of June”, being “the Feast of St. Anthony of Padua”.⁶⁵¹ On 10 June 1992, around 1 p.m. Milan Lukić called MLD10 and confirmed their meeting in Novi Pazar, after which MLD10 and her husband set out from Montenegro, a trip that took approximately four hours.⁶⁵² She met Milan Lukić near the fortress in Novi Pazar sometime between 7 and 8 p.m.⁶⁵³ Their meeting lasted “15 minutes to half an hour, not more than that”.⁶⁵⁴ During the meeting, at which MLD10’s husband was also present, MLD10 asked Milan Lukić:

whether he saw [her] family, whether he had heard from anyone where they were, and he explained to me that he would do his best to locate them and that he had some knowledge as to the fact that my father had to report to the police station in Višegrad and that he would do his best to find them as soon as he got back from Novi Pazar.⁶⁵⁵

MLD10 gave Milan Lukić a package containing “a pack of cigarettes and maybe a kilo of coffee and 100 Deutschemarks” and asked him to give it to her parents.⁶⁵⁶ Milan Lukić told MLD10 that he would “hand it over to them”, “that he would make a 100-per cent effort to find them, that he would do all he could do to help them, morally and financially and in any other way.”⁶⁵⁷ In cross-examination, MLD10 testified that it was only in the year 2000, when visiting her father and brother that she learnt from them that her package had been delivered by Milan Lukić.⁶⁵⁸ She testified that the reason for this delay was that “they hadn’t really had an opportunity previously, and I didn’t

⁶⁴⁸ MLD10, 18 Dec 2008, T. 3955. MLD10 confirmed the date of the check-ups in cross-examination, MLD10, 18 Dec 2008, T. 4001, also testifying that the reason for the check-up was “something with her kidneys, a stone in the kidneys that needed to be examined by ultra sound”. When questioned if Milan Lukić said why he had taken his mother to Belgrade for an ultra sound examination rather than have it done in Višegrad, MLD10 testified that she was “doubtful that we had that sort of thing in Višegrad”, MLD10, 18 Dec 2008, T. 4001-4002.

⁶⁴⁹ MLD10, 18 Dec 2008, T. 4001-4002.

⁶⁵⁰ MLD10, 18 Dec 2008, T. 4002.

⁶⁵¹ MLD10, 18 Dec 2008, T. 3955.

⁶⁵² MLD10, 18 Dec 2008, T. 3955-3956, testifying that they drove via “Bar, Podgorica, Ivangrad and Rozaje”.

⁶⁵³ MLD10, 18 Dec 2008, T. 3953-3956.

⁶⁵⁴ MLD10, 18 Dec 2008, T. 3957.

⁶⁵⁵ MLD10, 18 Dec 2008, T. 3957.

⁶⁵⁶ MLD10, 18 Dec 2008, T. 3954, 3955, 3957.

⁶⁵⁷ MLD10, 18 Dec 2008, T. 3957.

⁶⁵⁸ MLD10, 14 Jan 2009, T. 4044-4045.

know their whereabouts.”⁶⁵⁹ MLD10 testified that at the end of her meeting with Milan Lukić, she saw Milan Lukić’s mother and spoke with her for five minutes.⁶⁶⁰

163. MLD17 testified that she first met Milan Lukić in Belgrade in April 1992 when she became a tenant in the apartment building where Milan Lukić lived.⁶⁶¹ MLD17 and Milan Lukić would occasionally meet for coffee during the month of April, until the beginning of May 1992.⁶⁶² However, under cross-examination MLD17 said that during April 1992, she and Milan Lukić met “twice or thrice a week and over the weekend”.⁶⁶³

164. MLD17 saw Milan Lukić in Belgrade on 7 June 1992.⁶⁶⁴ She recalls that it was 7 June 1992 because on that date she organised a small party for some friends and relatives to celebrate having bought an apartment on 29 May 1992.⁶⁶⁵ She recalls that she met Milan Lukić between 5 and 6 p.m. when she left her building in order to go and get more drinks for the party. MLD17 saw Milan Lukić, who was wearing a uniform, taking things out of a car.⁶⁶⁶ As MLD17 was happy to see him, she invited him to the party.⁶⁶⁷ Milan Lukić declined because his sick mother and some friends were in his apartment.⁶⁶⁸ MLD17 did not, however, ask to visit his mother because she thought that “she would be staying there for a longer period of time”.⁶⁶⁹

165. At some point on 8 June 1992, MLD17 saw Milan Lukić in a parking lot from her balcony.⁶⁷⁰ In the morning on 9 June 1992, MLD17 met Milan Lukić when she was leaving the apartment building to go and buy breakfast.⁶⁷¹ At around 7.30 a.m. on 10 June 1992, Milan Lukić rang MLD17’s doorbell.⁶⁷² MLD17 invited him in and Milan Lukić accepted though he said that he could only stay briefly because he was in a hurry.⁶⁷³

166. The Milan Lukić Defence tendered into evidence a contract on the building and sale of an apartment at the housing estate at Bežanijska Kosa, Novi Beograd, dated 6 January 1992.⁶⁷⁴ The contract is between Energoprojekt Visokogradnja d.d. and Milan Lukić, as buyer, with address

⁶⁵⁹ Hearing, 14 Jan 2009, T. 4045.

⁶⁶⁰ MLD10, 18 Dec 2008, T. 3958.

⁶⁶¹ MLD17, 4 Feb 2009, T. 4700.

⁶⁶² MLD17, 4 Feb 2009, T. 4700, 4714.

⁶⁶³ MLD17, 4 Feb 2009, T. 4714-4715.

⁶⁶⁴ MLD17, 4 Feb 2009, T. 4702.

⁶⁶⁵ MLD17, 4 Feb 2009, T. 4702, also testifying that she recalls that 7 June 1992 was a Sunday.

⁶⁶⁶ MLD17, 4 Feb 2009, T. 4703. On cross-examination, MLD17 testified that the car was of a dark colour but that she could not remember the make of the car. She did, however, recall that Milan Lukić was taking out “travelling bags with a handle” from the car, MLD17, 4 Feb 2009, T. 4719-4720.

⁶⁶⁷ MLD17, 4 Feb 2009, T. 4703.

⁶⁶⁸ MLD17, 4 Feb 2009, T. 4703.

⁶⁶⁹ MLD17, 4 Feb 2009, T. 4718.

⁶⁷⁰ MLD17, 4 Feb 2009, T. 4705.

⁶⁷¹ MLD17, 4 Feb 2009, T. 4705.

⁶⁷² MLD17, 4 Feb 2009, T. 4706.

⁶⁷³ MLD17, 4 Feb 2009, T. 4706.

⁶⁷⁴ 1D239.

Slobodana Penezića 5, Belgrade, and contains a signature. Pursuant to article 10 of the contract, the “expected completion date for construction of the flat [was] 15 January 1992”.

3. Prosecution alibi rebuttal evidence

(a) Prosecution allegations of interference with Milan Lukić Defence witnesses

(i) Submissions

167. The Prosecution submits that MLD10 was involved in the attempted bribery of two potential Defence witnesses, Hamdija Vilić and MLD2, and that this involvement discredits MLD10’s testimony.⁶⁷⁵ The Prosecution also submits that the Defence attempted to manufacture evidence in support of Milan Lukić’s alibi for the Drina river incident and Varda factory incident.⁶⁷⁶ The Prosecution notes that VG146 testified that he was paid to sign a witness statement for the Milan Lukić Defence that he never read.⁶⁷⁷ The Prosecution also notes that a transcript of an interview with Mr. A, whom the Defence had notified would testify in support of Milan Lukić’s Drina river alibi, indicates that Mr. A was paid 1,000 Euros to sign a witness statement.⁶⁷⁸

168. The Prosecution states that Jelena Rašić, a case manager on the Milan Lukić Defence team, prepared the statements of both VG146, who was initially on the Defence’s witness list,⁶⁷⁹ and MLD1, and further that Hamdija Vilić, MLD10, and MLD15 all were contacted by Milan Lukić directly.⁶⁸⁰ Particularly given Hamdija Vilić’s testimony regarding his interaction with Milan Lukić, the Prosecution submits that evidence that a Defence witness spoke directly with Milan Lukić prior to testifying should be weighed in the Trial Chamber’s assessment of the witness’s credibility. The Prosecution also submits that Milan Lukić’s attempts to manufacture a false alibi or influence potential witnesses are evidence of consciousness of guilt.⁶⁸¹

169. The Milan Lukić Defence submits that the Prosecution has utilised “the ludicrous and despicable practice of insinuating that any contact between the Defense team and witnesses constituted evidence of false testimony”.⁶⁸² The Defence also submits that the Prosecution did not

⁶⁷⁵ Prosecution final trial brief with public and confidential annexes, filed on 12 May 2009 (“Prosecution final trial brief”), paras 486, 497-501.

⁶⁷⁶ Prosecution final trial brief, Annex E, para. E39.

⁶⁷⁷ Prosecution final trial brief, para. 489.

⁶⁷⁸ Prosecution final trial brief, Annex E, para. E39.

⁶⁷⁹ Milan Lukić’s updated witness list pursuant to order of the Trial Chamber, filed confidentially on 2 December 2008 with confidential annex, Annex A; Milan Lukić’s submissions pursuant to 65 *ter*(G), filed confidentially on 19 November 2008 with confidential annexes; Prosecution final trial brief, para. 489.

⁶⁸⁰ Prosecution, paras 497, 502, 506.

⁶⁸¹ Prosecution final trial brief, para. 25.

⁶⁸² Milan Lukić’s final trial brief and submissions, filed on 13 May 2009 (“Milan Lukić final trial brief”), para. 504, where the Defence continues that “[s]uch a reprehensible act of throwing a negative taint on normal Defense obligation and task is indicative of how the Prosecution team, untethered by the Trial Chamber, has gone out of control and

address or rebut MLD10's testimony during cross-examination.⁶⁸³ In its view, the witnesses who testified to the alibi presented for the Drina river and Varda factory incidents provided credible and corroborative evidence.⁶⁸⁴ The Defence did not make any further submissions concerning the Prosecution's allegations.

(ii) Evidence of Hamdija Vilić

170. On 29 August 2008, following a Prosecution motion pursuant to Rule 77, the Trial Chamber ordered the Prosecution to investigate possible contempt charges in relation to an alleged bribery of MLD2 and MLD10.⁶⁸⁵ On 6 October 2008, the Trial Chamber found, pursuant to Rule 77(D), that there were not sufficient grounds to proceed, without prejudice to the Prosecution "making further applications to obtain or introduce evidence relevant to the allegations of attempted bribery in rebuttal of the defence evidence of alibi".⁶⁸⁶ On 6 November 2008, the Trial Chamber granted a Prosecution motion to add Hamdija Vilić to its witness list as an alibi rebuttal witness.⁶⁸⁷

171. Hamdija Vilić testified that MLD10 and her husband contacted him on 4 June 2008 about testifying for Milan Lukić as an alibi witness in relation to the Pionirska street fire in exchange for "everything I might need in life, including assets".⁶⁸⁸ He spoke with Milan Lukić on the phone several times regarding these arrangements.⁶⁸⁹ On 22 June 2008, and upon MLD10's instruction, Hamdija Vilić went to MLD10's home to meet with two persons whom he described as being Milan Lukić's attorneys.⁶⁹⁰ The attorneys were not there when he arrived. MLD10 handed him a piece of paper, on one side of which was written a message for Hamdija Vilić from Milan Lukić and on the other side of which was a message for MLD10, which MLD10 did not allow Hamdija Vilić to

tarnished the proceedings, irrevocably harming due process, the interests of justice, integrity of the proceedings, and all the while infringing upon the rights of the Accused, trying to turn on its head the burden of proof and presumption of innocence." See also *id.* para. 509.

⁶⁸³ Milan Lukić final trial brief, para. 532.

⁶⁸⁴ See e.g. Milan Lukić final trial brief, para. 508.

⁶⁸⁵ Order on Prosecution's urgent motion to investigate potential contempt of the Tribunal, filed confidentially and *ex parte* on 29 August 2008; Prosecution urgent motion for an order directing the Prosecution to investigate potential contempt of the Tribunal with confidential and *ex parte* annexes, filed confidentially and *ex parte* on 13 August 2008. See also Order on Prosecution urgent motion to amend the order to investigate potential contempt of the Tribunal, filed confidentially and *ex parte* on 23 September 2008; Prosecution urgent motion to amend the order to investigate potential contempt of the Tribunal with confidential and *ex parte* annex, filed confidentially and *ex parte* on 12 September 2008. MLD2 was included on the Milan Lukić Defence witness list, but did not testify. MLD10 testified on 18 December 2008.

⁶⁸⁶ Confidential and *ex parte* Decision on Prosecution's submission of report pursuant to order to investigate potential contempt of the tribunal, as amended, and Decision on motion for leave to amend Prosecution's list of witnesses, Decision on third Prosecution urgent motion in connection with contempt proceedings, filed confidentially and *ex parte* on 6 October 2008, which removed the *ex parte* status of most of these filings.

⁶⁸⁷ Decision on Prosecution motion for leave to amend witness list (Hamdija Vilić), filed confidentially on 6 November 2008.

⁶⁸⁸ Hamdija Vilić, 11 Nov 2008, T. 3457-3458.

⁶⁸⁹ Hamdija Vilić, 11 Nov 2008, T. 3460, 3462, 3466.

⁶⁹⁰ Hamdija Vilić, 11 Nov 2008, T. 3461, 3463.

read.⁶⁹¹ The message for Hamdija Vilić instructed him to testify that he had been a military commander of Muslim forces that intercepted a Serb military column in Kopito, killed three Serb officers and encircled Milan Lukić “and his army” there from 13 June to 15 June 1992.⁶⁹²

172. The attorneys arrived soon thereafter and met first with MLD10 and then with Hamdija Vilić.⁶⁹³ Hamdija Vilić testified that the attorneys told him that Milan Lukić was prepared to give him 100,000 Euros.⁶⁹⁴ When he told them that the story that he was expected to testify about was not true and that he would refuse to testify, they did not press him further. Hamdija Vilić affirmed this fact in examination-in-chief and under cross-examination.⁶⁹⁵ Under cross-examination, Hamdija Vilić also stated that he did not join the ABiH until 20 June 1992 and that he was not in Kopito on 14 June 1992.⁶⁹⁶ He also testified that he had no knowledge of any incident between Muslim forces and a Serb military column in Kopito on that date.⁶⁹⁷

173. Hamdija Vilić testified that he believed that his wife and three children perished in the Bikavac incident on 27 June 1992 and that Milan Lukić was responsible for this incident.⁶⁹⁸ He told this to the attorneys when he turned down their offer.⁶⁹⁹ He rejected the suggestion of the Milan Lukić Defence that the attorneys mistakenly believed that he actually had been in Kopito during the alibi period.⁷⁰⁰ However, he stated that only MLD10, MLD10’s husband and Milan Lukić had raised the possibility that he would receive benefit in exchange for his testimony.⁷⁰¹

174. Hamdija Vilić also testified that MLD10 gave her brother, MLD2, 5,000 Euros on behalf of Milan Lukić in exchange for MLD2’s agreement to provide false alibi testimony for Milan Lukić. Hamdija Vilić testified that MLD2 spent the money and then refused to testify because “he knew nothing”,⁷⁰² and that because of his refusal to testify, MLD2 is afraid to answer his phone.⁷⁰³

(iii) Evidence of MLD10

175. MLD10 testified that she was and still is afraid of Hamdija Vilić because “he killed some of his fellow combatants [...] and he’s never sober”,⁷⁰⁴ and that Hamdija Vilić was harassing her

⁶⁹¹ Hamdija Vilić, 11 Nov 2008, T. 3463-3464.

⁶⁹² Hamdija Vilić, 11 Nov 2008, T. 3464-3465.

⁶⁹³ Hamdija Vilić, 11 Nov 2008, T. 3468-3470.

⁶⁹⁴ Hamdija Vilić, 11 Nov 2008, T. 3471.

⁶⁹⁵ Hamdija Vilić, 11 Nov 2008, T. 3472, 3492.

⁶⁹⁶ Hamdija Vilić, 11 Nov 2008, T. 3479, 3486-3487.

⁶⁹⁷ Hamdija Vilić, 11 Nov 2008, T. 3486, 3487.

⁶⁹⁸ Hamdija Vilić, 11 Nov 2008, T. 3456, 3472.

⁶⁹⁹ Hamdija Vilić, 11 Nov 2008, T. 3472.

⁷⁰⁰ Hamdija Vilić, 11 Nov 2008, T. 3492.

⁷⁰¹ Hamdija Vilić, 11 Nov 2008, T. 3507.

⁷⁰² Hamdija Vilić, 11 Nov 2008, T. 3467-3468.

⁷⁰³ Hamdija Vilić, 11 Nov 2008, T. 3468.

⁷⁰⁴ MLD10, 18 Dec 2008, T. 3972.

brother, MLD2, because MLD2 had agreed to testify for the Milan Lukić Defence.⁷⁰⁵ She also testified that she had contacted Hamdija Vilić about testifying for Milan Lukić.⁷⁰⁶ According to her testimony both in-chief and under cross-examination, it was Hamdija Vilić who had asked to meet the attorneys at her house rather than in Sarajevo, which would have been more convenient for the attorneys.⁷⁰⁷ Under cross-examination, MLD10 also testified that she invited Hamdija Vilić to come to her house the night before and stay over until the meeting the following day, but that Hamdija Vilić came at 8 or 9 a.m. instead.⁷⁰⁸ When cross-examined about why, if she feared Hamdija Vilić, she not only accepted him into her house but even invited him to stay over, MLD10 testified that she did not fear him at that time because he had told her when she asked him that he would testify for Milan Lukić.⁷⁰⁹ Under cross-examination, MLD10 testified that the Defence attorneys met with Hamdija Vilić at her house for “maybe five minutes, even less”.⁷¹⁰ She stated that Hamdija Vilić told the attorneys that he would only testify if they paid him money, and the attorneys immediately refused and ended the conversation.⁷¹¹

176. Under cross-examination, MLD10 testified that she and her brother MLD2 had not communicated in the year prior to her testimony because she feared Hamdija Vilić, who is also close to MLD2.⁷¹² She also denied that she and MLD2 had accepted 21,000 Euros in exchange for their testimony.⁷¹³ She further denied that her feud with MLD2 had arisen because she had only given MLD2 5,000 Euros of the 21,000 Euros.⁷¹⁴ Under cross-examination, she also stated that, in her opinion, Hamdija Vilić accused her of accepting money in exchange for giving false evidence because he was a “nationalist” who disapproved of the fact that she, a Muslim, was living with a Serb man.⁷¹⁵

(iv) Evidence of VG146

177. On 10 February 2009, following a Prosecution motion pursuant to Rule 77, the Trial Chamber ordered the Prosecution to investigate a second set of contempt allegations.⁷¹⁶ The Prosecution’s allegations concerned the way in which statements from witnesses of the Milan Lukić Defence, including MLD1, had been obtained. After receiving the Prosecution’s report as to the allegations, the Trial Chamber ordered the parties to file reasoned applications indicating whether

⁷⁰⁵ MLD10, 18 Dec 2008, T. 3988.

⁷⁰⁶ MLD10, 18 Dec 2008, T. 4023-4024 and 14 Jan 2009, T. 4057-4058.

⁷⁰⁷ MLD10, 18 Dec 2008, T. 3973-3974, 4023.

⁷⁰⁸ MLD10, 18 Dec 2008, T. 4023.

⁷⁰⁹ MLD10, 18 Dec 2008, T. 4022, 4024.

⁷¹⁰ MLD10, 14 Jan 2009, T. 4059.

⁷¹¹ MLD10, 18 Dec 2008, T. 3974-3975 and 14 Jan 2009, T. 4059-4060.

⁷¹² MLD10, 18 Dec 2008, T. 4021-4022, 4025 and 14 Jan 2009, T. 4068.

⁷¹³ MLD10, 18 Dec 2008, T. 4026.

⁷¹⁴ MLD10, 18 Dec 2008, T. 4026, 4027.

⁷¹⁵ MLD10, 14 Jan 2009, T. 4065-4066.

they wished to call persons mentioned in the report as witnesses.⁷¹⁷ The Trial Chamber subsequently permitted the Prosecution to call VG145 and VG146,⁷¹⁸ both of whom the Milan Lukić Defence initially had included on its witness list.⁷¹⁹ Neither the Prosecution nor the Milan Lukić Defence requested to call MLD1, who previously had testified on 22 January 2009, in relation to the contempt allegations.

178. VG145 was scheduled to testify on 3 April 2009 but ultimately did not testify.⁷²⁰ VG146 testified that one to two months before New Year's Eve in 2008, VG145 had told VG146 about an opportunity to make some money.⁷²¹ VG146 met VG145 and Mr. A at a café, both of whom took VG146's ID and left for approximately 45 minutes.⁷²² VG145 then took VG146 to the municipal hall where a woman gave VG146 five copies of a document to sign.⁷²³ VG146 testified that he needed to sign the document "in order to be certified for it to become a regular document".⁷²⁴ VG146 never read the document.⁷²⁵ When he had signed five copies of the document, the woman, or another man with her, gave VG146 1,000 Euros. VG146, VG145 and Mr. A shared the money.⁷²⁶ VG146 then gave the woman a false phone number and did not communicate with any of the involved parties, other than VG145, after that day.⁷²⁷

179. During his examination-in-chief, VG146 recognised his signature on a document that the Milan Lukić Defence had disclosed to the Prosecution as VG146's witness statement when VG146 was to appear as a witness for the Defence.⁷²⁸ During his examination-in-chief, VG146 also acknowledged that he was familiar with several persons who are mentioned in the statement, but denied knowing other named individuals.⁷²⁹ However, he denied having been in the ABiH or having been near Goražde between 12 June and 15 June 1992, both of which were recorded in the statement.⁷³⁰

⁷¹⁶ Order on Prosecution's application under Rule 77, filed confidentially and *ex parte* on 10 February 2009.

⁷¹⁷ Hearing, 13 Mar 2009, T. 5512-5513. See *supra* para. 21.

⁷¹⁸ Decision on rebuttal witnesses, filed confidentially on 25 March 2009, pp 5, 10.

⁷¹⁹ Milan Lukić's updated witness list pursuant to order of the Trial Chamber, filed confidentially on 2 December 2008 with confidential annex, Annex A; Milan Lukić's submissions pursuant to 65 *ter*(G), filed confidentially on 19 November 2008 with confidential annexes.

⁷²⁰ Hearing, 3 Apr 2009, T. 6739.

⁷²¹ VG146, 3 Apr 2009, T. 6714.

⁷²² VG146, 3 Apr 2009, T. 6714-6715.

⁷²³ VG146, 3 Apr 2009, T. 6715.

⁷²⁴ VG146, 3 Apr 2009, T. 6715-6716.

⁷²⁵ VG146, 3 Apr 2009, T. 6716.

⁷²⁶ VG146, 3 Apr 2009, T. 6716.

⁷²⁷ VG146, 3 Apr 2009, T. 6717-6718.

⁷²⁸ VG146, 3 Apr 2009, T. 6718-6719, 6737.

⁷²⁹ VG146, 3 Apr 2009, T. 6719-6720.

⁷³⁰ VG146, 3 Apr 2009, T. 6720.

180. In cross-examination, VG146 stated that VG145 initially contacted him and gave him instructions throughout the process.⁷³¹ VG146 denied the Milan Lukić Defence's suggestion that Hamdija Vilić assisted VG145 in offering VG146 payment in exchange for false testimony.⁷³² VG146 also denied the Defence's suggestion that VG146 was in contact with Hamdija Vilić about VG146's dealing with VG145, VG146's interview with the Prosecution, or VG146's appearance at the Tribunal.⁷³³

(v) Challenges to the evidence of MLD1

181. In cross-examination, MLD1 denied having signed a pre-written statement or having discussed payment in exchange for his testimony based on such a statement.⁷³⁴ MLD1 testified that during his first meeting with the Milan Lukić Defence's case manager, the case manager spoke with him, wrote down the statement, gave the statement to MLD1 to read, and then went with MLD1 to the court building "where documents are certified or notarised" to sign the statement before a public official.⁷³⁵ MLD1 did not know when or how the case manager printed the typed statement during that meeting.⁷³⁶ The Prosecution also asked MLD1 about a discrepancy between the photocopy of the original witness statement bearing MLD1's signature and the unofficial English translation of the statement that the Milan Lukić Defence had provided to the Prosecution. The English translation contained a reference to MLD1's place of birth that was not in the original statement. MLD1 could not recall if the statement he signed included a reference to his place of birth.⁷³⁷ On cross-examination, MLD1 asserted the truth of the evidence he had given in support of Milan Lukić's alibi.⁷³⁸

182. In rebuttal, the Prosecution called VG148, with whom MLD1 has a very close relationship.⁷³⁹ VG148 testified that, after the war, he and MLD1 would frequently discuss what happened in Višegrad.⁷⁴⁰ VG148 testified that he did not know about MLD1's "fiancée" or that they lived together.⁷⁴¹ VG148 further testified that he did not know that Milan Lukić saved MLD1 and his "fiancée" by taking them to Belgrade and Novi Pazar.⁷⁴² On cross-examination by the Milan Lukić Defence, VG148 said that he would "defer" to MLD1 with regard to what happened in June

⁷³¹ VG146, 3 Apr 2009, T. 6730.

⁷³² VG146, 3 Apr 2009, T. 6736-6737.

⁷³³ VG146, 3 Apr 2009, T. 6734.

⁷³⁴ MLD1, 22 Jan 2009, T. 4363-4364.

⁷³⁵ MLD1, 22 Jan 2009, T. 4353-4354, 4349-4350. But see MLD1, 22 Jan 2009, T. 4350, 4353.

⁷³⁶ MLD1, 22 Jan 2009, T. 4353-4354.

⁷³⁷ MLD1, 22 Jan 2009, T. 4361-4362.

⁷³⁸ MLD1, 22 Jan 2009, T. 4346-4347.

⁷³⁹ VG148, 6 Apr 2009, T. 6839-6840, 6846.

⁷⁴⁰ VG148, 6 Apr 2009, T. 6843.

⁷⁴¹ VG148, 6 Apr 2009, T. 6844-6845.

⁷⁴² VG148, 6 Apr 2009, T. 6843.

1992 because VG148 had left Višegrad in May 1992.⁷⁴³ However, he also stated that these were matters which he would have expected MLD1 to tell him about when they later reconnected in 1993.⁷⁴⁴ VG148 testified that during the spring of 1992, MLD1 was in a “serious relationship” with a woman from Rogatica.⁷⁴⁵

(b) Alibi rebuttal evidence of VG063

183. VG063 testified that on a day in early June 1992, Milan Lukić, Ljubiša Cvijović and a third man came to a house in Višegrad town where VG063 was staying with, *inter alia*, a young woman who was 15 or 16 years old (“Woman One”), VG063’s sister and her 17-month-old son.⁷⁴⁶ When Milan Lukić entered the house, he indicated his surprise in seeing VG063, his old schoolmate, there.⁷⁴⁷ VG063 noticed that Milan Lukić wore a camouflage uniform and had a black armband on that said “Police”.⁷⁴⁸ Ljubiša Cvijović wore a police uniform with a name tag on it.⁷⁴⁹ Milan Lukić said that they were looking for men and that they would have to search the house.⁷⁵⁰ Milan Lukić also asked for the keys to a car in the garage, after which the three men left.⁷⁵¹

184. Milan Lukić returned to the house a second time after midnight on 4 June 1992⁷⁵² with Ljubiša Cvijović and two other men, and again searched the house.⁷⁵³ Milan Lukić carried a weapon, which he described to the women in the house as a “sniper with a silencer attached”.⁷⁵⁴ At this point in time, another woman (“Woman Two”) was also staying in the house.⁷⁵⁵ Milan Lukić and the men took the television, the videorecord and other items.⁷⁵⁶ Milan Lukić then ordered Woman One and Woman Two to come with them, saying they were needed for questioning.⁷⁵⁷

185. The women were returned to the house later that day “around daybreak”.⁷⁵⁸ Woman Two was reluctant to talk and cried, but Woman One said that they had been raped at the MUP building in Višegrad by Milan Lukić, Ljubiša Cvijović and several other men whom she did not know.⁷⁵⁹

⁷⁴³ VG148, 6 Apr 2009, T. 6848-6849.

⁷⁴⁴ VG148, 6 Apr 2009, T. 6844, 6848.

⁷⁴⁵ VG148, 6 Apr 2009, T. 6845.

⁷⁴⁶ VG063, 17 Sep 2008, T. 1821-1822 and 18 Sep 2008, T. 1834. See also 1D51, p. 5; 2D12, p. 2; 2D13, p. 3.

⁷⁴⁷ VG063, 17 Sep 2008, T. 1822.

⁷⁴⁸ VG063, 17 Sep 2008, T. 1822. See also 1D49, p. 4.

⁷⁴⁹ VG063, 17 Sep 2008, T. 1822.

⁷⁵⁰ VG063, 17 Sep 2008, T. 1822-1823.

⁷⁵¹ VG063, 17 Sep 2008, T. 1823. VG063 gave evidence that on the following day Željko Grujić came to the house and took the car, 1D51, p. 6; 2D12, p. 3; 2D13, p. 3.

⁷⁵² 1D51, p. 6; 2D12, p. 3; 2D13, p. 4.

⁷⁵³ VG063, 17 Sep 2008, T. 1824 and 18 Sep 2008, T. 1834-1835.

⁷⁵⁴ VG063, 18 Sep 2008, T. 1835. See also 1D49, p. 5; 1D51, p. 5; 2D12, p. 3; 2D13, p. 3.

⁷⁵⁵ VG063, 17 Sep 2008, T. 1824.

⁷⁵⁶ VG063, 17 Sep 2008, T. 1824 and 18 Sep 2008, T. 1835; 1D49, p. 5.

⁷⁵⁷ VG063, 17 Sep 2008, T. 1824-1825; 1D51, p. 6; 2D12, p. 3; 2D13, p. 4.

⁷⁵⁸ VG063, 17 Sep 2008, T. 1825 and 18 Sep 2008, T. 1835.

⁷⁵⁹ VG063, 18 Sep 2008, T. 1835.

Woman One's lips were bleeding, she was bruised all over her neck, face and breast and her clothes were torn and wet.⁷⁶⁰ She was in pain and was weeping.⁷⁶¹ Woman Two was in a similar state.⁷⁶²

186. On an evening several days later, Milan Lukić came back to the house with Ljubiša Cvijović and two other soldiers.⁷⁶³ Milan Lukić taunted the women and jeered at them and then ordered Woman One, Woman Two and another woman to come with the men.⁷⁶⁴ Woman One and the other woman returned just before daybreak the following morning.⁷⁶⁵ Both said they had been raped in a room in the MUP building by Milan Lukić, Ljubiša Cvijović and other men, and Woman One confirmed that it was the same room in which she had been raped a few days earlier.⁷⁶⁶ The other woman had bruises on her neck and her mouth was bleeding, and she was in a state of shock.⁷⁶⁷ Woman Two did not return with the other women, and she was never seen again.⁷⁶⁸

187. VG063 knew Milan Lukić from primary school which she attended with him for four years.⁷⁶⁹ She was one year ahead of Milan Lukić and used to help Milan Lukić with his homework during the after-school education activity.⁷⁷⁰

188. In her 2000 statement to the Prosecution, VG063 identified Milan Lukić as follows: "Milan Lukić was born in 1967 or 1968 in the village of Ruišta, Višegrad municipality. He was about 190 cm tall. He had dark complexion. He had two Eagles tattooed on his arm but I do not remember which arm. He had black eyes and black hair little bit curly."⁷⁷¹ VG063 does not remember saying that Milan Lukić had curly hair or had tattoos.⁷⁷² VG063 said she never read the statements she signed.⁷⁷³

189. VG063 was cross-examined on her relationship with the Women Victims of War Association and the monthly payments she receives from that association. The Milan Lukić Defence suggested that these payments were an incentive for testifying against Milan Lukić, to which VG063 answered that she was never influenced by anyone in giving her statements.⁷⁷⁴

⁷⁶⁰ VG063, 18 Sep 2008, T. 1835-1836.

⁷⁶¹ VG063, 18 Sep 2008, T. 1836.

⁷⁶² VG063, 18 Sep 2008, T. 1836.

⁷⁶³ VG063, 18 Sep 2008, T. 1836-1837.

⁷⁶⁴ VG063, 18 Sep 2008, T. 1837.

⁷⁶⁵ VG063, 18 Sep 2008, T. 1837.

⁷⁶⁶ VG063, 18 Sep 2008, T. 1838.

⁷⁶⁷ VG063, 18 Sep 2008, T. 1838.

⁷⁶⁸ VG063, 18 Sep 2008, T. 1837-1838.

⁷⁶⁹ VG063, 17 Sep 2008, T. 1819.

⁷⁷⁰ VG063, 17 Sep 2008, T. 1819-1820 and 18 Sep 2008, 1879-1881.

⁷⁷¹ 1D49, p. 11.

⁷⁷² VG063, 18 Sep 2008, T. 1894-1896.

⁷⁷³ VG063, 18 Sep 2008, T. 1896 and 19 Sep 2008, T. 1936.

⁷⁷⁴ VG063, 19 Sep 2008, T. 1924-1927.

VG063 testified that she would have received payment from the association regardless of whether she would testify before the Tribunal.⁷⁷⁵

190. When asked by the Prosecution if she recognised anyone in the courtroom, VG063 recognised Milan Lukić.⁷⁷⁶

(c) Exhibits P147, P149 and P313

191. Exhibit P147 is an official note of an interview with Milan Lukić, held at the SDB in Užice, Serbia, on 2 November 1992. The document records that Milan Lukić stated during the interview that he resides “in Belgrade, Savski Venac municipality, Slobodana Penezića street 5.”⁷⁷⁷ The document further records that Milan Lukić stated that he bought this apartment “before the war broke out” and that he returned to Belgrade and that apartment after leaving Višegrad in late September 1992.⁷⁷⁸ VG142 testified that he prepared this document.⁷⁷⁹ Exhibit P149 is a statement purportedly given by Milan Lukić to the SUP in Užice on 27 October 1992. VG142 testified that he received this document from a police inspector of the Užice SUP.⁷⁸⁰ Exhibit P313 is a “record of interview” with Milan Lukić on 30 October 1992 before an investigating judge in Užice. Both P149 and P313 record the address of Milan Lukić as being the one mentioned earlier.⁷⁸¹

4. Factual findings in relation to the Drina river incident

(a) Defence challenge of the occurrence of the Drina river incident

192. The Milan Lukić Defence challenged the evidence of VG014 and VG032 by putting to them that someone from the opposite bank of the Drina river had fired at the location where they had been lined up.⁷⁸² Both witnesses denied this. VG032 added that he knew the incident that the Defence was referring to, but was adamant that this was a different incident than the one that he had experienced together with VG014 on 7 June 1992.⁷⁸³ The Trial Chamber, having observed the demeanour of VG014 and VG032 while testifying, attaches great weight to their evidence and accepts them as witnesses of truth that the Drina river incident did take place on 7 June 1992. In this respect, the Trial Chamber recalls that the Milan Lukić Defence called Radomir Simšić.⁷⁸⁴ However, the Trial Chamber finds that as his evidence establishes that he was not involved in the

⁷⁷⁵ VG063, 19 Sep 2008, T. 1946.

⁷⁷⁶ VG063, 18 Sep 2008, T. 1868, 1869.

⁷⁷⁷ P147, p. 2.

⁷⁷⁸ P147, p. 2.

⁷⁷⁹ VG142, 8 Oct 2008, T. 2598.

⁷⁸⁰ VG142, 8 Oct 2008, T. 2600-2601.

⁷⁸¹ P149, p. 1; P313, p. 1.

⁷⁸² *Supra* para. 120.

⁷⁸³ *Supra* para. 120.

⁷⁸⁴ See *supra* section II.E.2(a)(i).

Drina river incident, it lacks relevance; the Trial Chamber has therefore not considered this evidence.

(b) Prosecution evidence concerning Milan Lukić's acts and conduct on 7 June 1992

193. The Prosecution's evidence shows that from the moment that Milan Lukić picked up VG032 in the afternoon on 7 June 1992 until the five men were killed at the river's edge in the evening, Milan Lukić controlled the events and directed the soldiers and the captive Muslim men. Milan Lukić personally brought the men to the house in Bikavac where VG032 had also been brought and he robbed them there at gunpoint, threatening he would kill them. Milan Lukić tore up and stepped on the detained men's identification papers and ordered them to remove their shoes. Two vehicles were available, including the Passat, and Milan Lukić singled out seven men to fit with him and two soldiers in these vehicles. During the drive towards the Vilina Vlas hotel, Milan Lukić made derogatory remarks towards persons he saw on the road indicative of a discriminatory mindset towards Muslims. There is evidence that Milan Lukić looked for keys at the Vilina Vlas hotel reception desk, from which it can be inferred that Milan Lukić wanted to lock up the men. However, once Milan Lukić realised that the keys were not there, he ordered the seven men, the two soldiers and Mitar Vasiljević to get back in the vehicles and then drove off towards Sase near the Drina river.

194. The evidence shows that during the drive towards Sase, Milan Lukić said that he was in a hurry because he wanted to execute the men who remained in the house where Milan Lukić had robbed the detained men. Upon arriving at Sase, Milan Lukić ordered everybody to disembark and he further ordered the captive men to stop some ten metres from the water's edge. Before ordering the captive men to move towards the river, Milan Lukić asked whether any of them could swim. He also warned the men that they would be killed should they try to escape. Importantly, it was to Milan Lukić that one of the soldiers turned for directions as to the manner in which they were to shoot the seven men, directions which Milan Lukić then gave the two soldiers and which were then complied with. Just prior to shooting at the seven Muslim men, the soldiers cursed at them in a derogatory manner. The Prosecution's evidence shows that Milan Lukić also shot at the seven men whom he had lined up along the river.

195. The Trial Chamber notes the submission by the Milan Lukić Defence that Mitar Vasiljević's evidence must be considered as lacking in credibility because he, as a former co-accused of Milan Lukić in respect of the Drina river incident, would have an incentive to give Milan Lukić up.⁷⁸⁵ In light of the credible evidence given by VG014 in respect of Milan Lukić's presence during the

⁷⁸⁵ Milan Lukić final trial brief, paras 202, 206. See also 6 Mar 2009, T. 5210-5212.

events which led up to the incident at Sase, which is corroborated by the evidence of Mitar Vasiljević, the Trial Chamber rejects the Defence's submission.

196. The Trial Chamber notes that there are small differences in the evidence concerning the manner in which the detained men were brought to and from the house where they were robbed and how they were placed in the two cars going to the Vilina Vlas hotel and then to Sase. In this respect, the Trial Chamber considers that VG032 gave significantly more detailed testimony as to what happened when Milan Lukić returned to the house where the men were held. VG032 was also present in that house until Milan Lukić told him and the other men to leave. The Trial Chamber further notes that VG032 observed Milan Lukić leave the house and return twice, that he was robbed by Milan Lukić in the house, and also saw Milan Lukić leave with Meho Džafić in order to get the keys to Osman Džafić's Yugo. For these reasons, the Trial Chamber considers VG032's testimony to be more reliable than that of VG014 concerning these events, including the order of the events, and the manner in which the captured men were ultimately placed in the two vehicles. Nevertheless, the Trial Chamber has not attached any significance to this evidence and considers that the discrepancies between VG014 and VG032 in this respect do not affect the credibility of the substance of their evidence of Milan Lukić's acts and conduct.

197. There are also discrepancies in the evidence of VG014, VG032 and VG079 as to the cars which brought the detained men to the Drina river. Moreover, there are discrepancies in the evidence of VG014, VG032 and Mitar Vasiljević concerning how the captive men crossed the field from the road in Sase to the Drina river. The Trial Chamber also notes that VG079 gave a description of how the armed men were dressed, which partially differs from the evidence of VG014 and VG032. There are also discrepancies in the evidence of VG014 and VG032 concerning how the men crossed the river bank, and went into the water and lined up facing the river. Specifically with regard to how the men were lined up, and in determining the weight to be attributed to the evidence of VG014 and VG032 in this respect, the Trial Chamber takes into account the fact that VG014 and Amir Kurtalić knew each other.⁷⁸⁶ For this reason, the Trial Chamber is disposed to attach more weight to his evidence in this respect than to that of VG032, who did not know Amir Kurtalić.⁷⁸⁷ Nevertheless, the Trial Chamber holds that these discrepancies do not affect the credibility of the substance of the evidence of these witnesses as to Milan Lukić's acts and conduct.

198. The evidence of VG014 and VG032, on the one hand, and that of Mitar Vasiljević on the other, differs concerning whether Mitar Vasiljević was armed when he, Milan Lukić, the two

⁷⁸⁶ VG014, 10 Jul 2008, T. 306.

⁷⁸⁷ VG032, 4 Sep 2008, T. 1180.

soldiers and the seven captured men left the Vilina Vlas hotel and when this group of men was at the Drina river. Specifically, Mitar Vasiljević denies having had any weapon, whereas VG014 and VG032 testified that he carried an automatic rifle. The Trial Chamber considers that it is not of material importance to the charges against Milan Lukić whether Mitar Vasiljević was armed or not.

199. The Trial Chamber has considered the evidence in P119 and P184 as well as that given by Ewa Tabeau and Amor Masović in this respect. It holds that any discrepancies in this body of evidence do not affect the direct and credible evidence of VG014, VG032 and Mitar Vasiljević in respect of the five victims of the Drina river incident.

200. On the basis of the above, the Trial Chamber concludes that the following five Muslim civilian men were killed at the Drina river near Sase on 7 June 1992: Meho Džafić and his son Ekrem Džafić, Hasan Mutapčić, Hasan Kustura and Amir Kurtalić.

(c) Prosecution evidence concerning Milan Lukić's presence on 7 June 1992

201. The evidence presented by the Prosecution shows that Milan Lukić abducted VG014 on 7 June 1992 and brought him to the house in Bikavac where Milan Lukić robbed the other detained men. VG014 knew Milan Lukić from secondary school which they attended together for two years at the ages of 16 and 17 and last saw him in 1984. After Milan Lukić left the school, VG014 saw him some seven years later, on 7 June 1992. VG014 was unequivocal in his evidence in-chief that he immediately recognised Milan Lukić when he entered VG014's house on that day and took him from his family. The Milan Lukić Defence challenged VG014's recognition of Milan Lukić on 7 June 1992 by cross-examining him on whether he had actually seen, as he had claimed to have done, a mole on Milan Lukić's face which was covered by soot. However, VG014 was not shaken in cross-examination. Rather, he maintained that he recognised Milan Lukić on 7 June 1992 and that he had seen a mole on his face on that date. On the basis of his evidence as a whole, including his cross-examination and having observed his demeanour, the Trial Chamber accepts VG014 as a witness of truth as to his recognition of Milan Lukić on 7 June 1992.

202. The evidence establishes that Mitar Vasiljević was a chronic alcoholic in 1992 and that he had been drinking on 7 June 1992, one and a half to two hours before the events in Sase. Professor Vera Folnegović-Šmalc in the *Vasiljević* case performed a psychiatric examination of Mitar Vasiljević in December 2001. Mitar Vasiljević described the Drina river incident in great detail to her and she concluded that his description was not given by a man who had suffered a post-

traumatic stress syndrome as a result of the killings.⁷⁸⁸ She further concluded that at the time of the psychiatric examination, Mitar Vasiljević did not suffer from mental illness.

203. In respect of the Defence expert Linda LaGrange, the Trial Chamber notes that her conclusions are based on only parts of what may be considered relevant material. In particular, Linda LaGrange was unaware of the evidence and expert conclusions of Vera Folnegović-Šmalc as to Mitar Vasiljević's mental state on 7 June 1992. She was also not aware of important parts of Mitar Vasiljević's own evidence as to his condition on that date. Rather, she restricted her examination to certain portions of his testimony in the *Vasiljević* case. Crucially, Linda LaGrange did not perform any personal evaluation of Mitar Vasiljević.

204. On the basis of assumptions as to the blood alcohol level of Mitar Vasiljević on 7 June 1992 in view of the limited material that she had studied, Linda LaGrange proffered that it was "probable" that Mitar Vasiljević maintained a blood alcohol level of 0.10 to 0.20 mg/dL throughout the day. However, notably, in her report she concluded from these figures that Mitar Vasiljević "could probably function" at a blood alcohol level of as high as 0.30 mg/dL, at which level it would be "unlikely that Mr. Vasiljević would be able to recall any events" that occurred while being so intoxicated. Under cross-examination, Linda LaGrange agreed that it was more likely that Mitar Vasiljević's average blood alcohol level was in the range of 0.10 to 0.20 mg/dL. Linda LaGrange further offered a professional opinion, on the basis of the material that she had reviewed, that Mitar Vasiljević likely suffered from short- and long-term memory loss and that his powers of recollection were impaired on the basis of the "state-dependent learning" theory.⁷⁸⁹ Nevertheless, Linda LaGrange agreed that even though an intoxicated person's powers of recollection may be impaired, that any diminished capacity to recognise an individual at an incident due to the effect of alcohol would be reduced if it was a person whom he had known for years and knew well.

205. The Trial Chamber concludes that Linda LaGrange did not present any evidence that would affect adversely its assessment of the credibility of Mitar Vasiljević's evidence.

206. The Trial Chamber notes Mitar Vasiljević's evidence that he did not socialise with Milan Lukić and that they belonged to different generations. However, the Trial Chamber is convinced that Mitar Vasiljević – having known Milan Lukić for a very long time and in view of being Milan Lukić's *kum* – was able to recognise Milan Lukić on 7 June 1992 from the moment that Milan Lukić entered the Vilina Vlas hotel with the detained Muslim men. The Trial Chamber is further convinced that Mitar Vasiljević was able to observe Milan Lukić's actions until and including events that transpired at the river's edge later that evening. Although there is evidence of Mitar

⁷⁸⁸ *Supra* para. 139.

⁷⁸⁹ *Supra* paras 138-139.

Vasiljević's alcoholism and that he drank alcohol on 7 June 1992 prior to being picked up by Milan Lukić at the Vilina Vlas hotel, the Trial Chamber finds that he was able to recognise Milan Lukić and is satisfied that he did recognise Milan Lukić on 7 June 1992.

207. VG032 did not have personal prior knowledge of Milan Lukić before 7 June 1992, but testified that in April or May 1992, acquaintances of his, who knew Milan Lukić, had pointed him out to VG032. He also testified to recognising Milan Lukić at the Višegrad Health Centre on the day that Behija Zukić's body was brought to the morgue, and that Milan Lukić on that occasion was driving Behija Zukić's red Passat. VG032 testified that on 7 June 1992, he had no problems recognising Milan Lukić when Milan Lukić approached the house of VG032's father-in-law.

208. The evidence of VG032 as to Milan Lukić's appearance on 7 June 1992 closely resembles that of VG014, who knew Milan Lukić well and had recognised easily him that day. In particular, both witnesses observed that Milan Lukić's face was blackened with some form of paint or soot and that he wore the blue camouflage uniform of the police. Both witnesses further noted that Milan Lukić wore sneakers and that he had a band-aid on his right arm. Both witnesses also identified the weapon that Milan Lukić was carrying as a sniper rifle fitted with a silencer. On the basis of the very similar evidence of VG032 and VG014 in this respect, the Trial Chamber considers that the evidence shows beyond a reasonable doubt that the man whom VG032 recognised on 7 June 1992 was Milan Lukić.

209. The Trial Chamber notes that VG079 did not have prior knowledge of Milan Lukić before 7 June 1992 and that his evidence is that his brother-in-law, who was with him, told him that the tallest of the three men, who had opened fire on the Muslim men, had been Milan Lukić. The Trial Chamber has not placed any weight on this evidence of VG079. However, the Trial Chamber considers his evidence in other respects as being corroborative of that of VG014, VG032 and Mitar Vasiljević.

(d) Defence evidence concerning Milan Lukić's alibi

210. MLD1, MLD10, MLD15, MLD17 and Željko Marković testified that they met, spoke with, and saw, Milan Lukić in Belgrade and Novi Pazar on various occasions between 7-10 June 1992. MLD1's evidence constitutes the core of the alibi presented and is, as such, of crucial importance to the credibility of the alibi as a whole. MLD1's account provides the basis for Milan Lukić going to Novi Pazar on 10 June 1992, and arranging to meet MLD10 there. In addition, it was a primary subject of conversation between Milan Lukić and Željko Marković during their first meeting, and the subsequent phone call.

211. The Trial Chamber has considered the evidence of VG146 and related evidence, and the allegations by the Prosecution regarding interference with potential Defence witnesses, including MLD1. This evidence and these submissions raise questions concerning the way in which Defence witness evidence may have been obtained. Of the witnesses implicated by the Prosecution's allegations, only MLD1 has given evidence on substantive matters. Therefore, it is only his evidence which may be affected. MLD1 denied under cross-examination having sought or obtained money in exchange for testimony concerning false events in support of Milan Lukić's alibi for the Drina river and Varda factory incidents. However, the Trial Chamber also takes note of MLD1's demeanour while testifying. While the evidence led by the Prosecution as to contemptuous conduct in relation to VG145 and VG146 is insufficient to discredit MLD1's evidence *in toto*, when viewed together with MLD1's demeanour, the Trial Chamber will be particularly cautious in evaluating the credibility of MLD1.

212. After considering MLD1's evidence in its entirety, the Trial Chamber is convinced that it lacks credibility. There are a number of aspects of MLD1's account that are difficult to believe. First, MLD1, a Muslim, who had been detained and beaten by Serb soldiers at the Višegrad police station shortly before he allegedly met Milan Lukić, asked Milan Lukić, a Serb who was dressed as a policeman and whom he had never met before, to take him and his "fiancée" out of Višegrad. Secondly, it is also difficult to believe that MLD1, who was purportedly engaged to this woman and would stay regularly at her apartment, would not know the address of the apartment where she lived. Thirdly, the Trial Chamber notes that, according to MLD1, Milan Lukić decided, in the context of the war and in order to take two Muslims with whom he had little to no relationship, to risk aggravating his mother's ill-health by undertaking a long trip to Belgrade and then to Novi Pazar. Fourthly, it also notes MLD1's evidence that he and his "fiancée" decided to go to Belgrade with Milan Lukić rather than attempt to get to Muslim-controlled territory, and that he was unable to provide a satisfactory explanation for this decision. Fifthly, MLD1 chose to return to Višegrad *immediately* on arriving at Novi Pazar, despite having been so fearful only four days earlier that he chose to leave Višegrad with a Serb he did not know.

213. The Trial Chamber also viewed MLD1's evidence in conjunction with the evidence presented by VG148. VG148 testified that despite their very close relationship, not only did he not know that Milan Lukić saved MLD1 and his "fiancée" by taking them to Belgrade and Novi Pazar, but that, to his knowledge, MLD1 was in a "serious relationship" during the spring of 1992 with a woman from Rogatica. The Trial Chamber finds that VG148's evidence is credible and that it raises serious doubt about the veracity of MLD1's evidence.

214. MLD10's evidence is also of great importance to the alibi presented, particularly in respect of the Varda factory incident.⁷⁹⁰ The Trial Chamber notes the Prosecution's evidence in rebuttal of MLD10's credibility and that while MLD10 and Hamdija Vilić agree on certain points, they differ on other, fundamental matters. Both MLD10 and Hamdija Vilić testified that MLD10 first contacted Hamdija Vilić about testifying for Milan Lukić.⁷⁹¹ MLD10 and Hamdija Vilić also agree that Hamdija Vilić travelled to MLD10's house in June 2008 and met with persons whom he described as being attorneys from the Milan Lukić Defence. However, MLD10 and Hamdija Vilić's testimony diverge on the subject of whether MLD10, her husband or the Defence attorneys offered money to Hamdija Vilić in exchange for his testimony. The Trial Chamber notes that both MLD10 and Hamdija Vilić maintained their accounts of the events on cross-examination.⁷⁹²

215. The Trial Chamber finds Hamdija Vilić to be a witness of truth. The Trial Chamber bases its assessment to a significant degree on Hamdija Vilić's demeanour during his testimony. The Trial Chamber also considers that Hamdija Vilić's personal history, particularly his belief that his family perished in the Bikavac fire for which he holds Milan Lukić responsible, supports his assertion that he would not have testified for Milan Lukić in exchange for payment. In addition, the Trial Chamber notes that Hamdija Vilić had detailed knowledge of Milan Lukić's alibi,⁷⁹³ which cannot be satisfactorily accounted for in light of MLD10's testimony that attorneys for Milan Lukić met with Hamdija Vilić for less than five minutes.⁷⁹⁴ However, in the Trial Chamber's opinion it is explained by Hamdija Vilić's testimony that MLD10 gave him a written message from Milan Lukić that included the details of the alibi evidence that he was requested to give.⁷⁹⁵ In making its assessment, the Trial Chamber also considers that on cross-examination, MLD10 did not provide convincing evidence concerning the inconsistencies in her testimony as to her relationship with MLD2, her fear of Hamdija Vilić and her decision to invite him to stay the night at her house before the meeting with the attorneys.⁷⁹⁶ The Trial Chamber notes the inconsistency in MLD10's evidence concerning why, if Hamdija Vilić was the reason she stopped speaking with MLD2 and if six months prior to her testimony she was on good enough terms with Hamdija Vilić to invite him into her home as a guest, she would have stopped speaking to MLD2 one year prior to her December 2008 testimony.⁷⁹⁷ The Trial Chamber has considered MLD10's evidence as to why Hamdija Vilić would implicate her. However, it determines that Hamdija Vilić gave more credible testimony.

⁷⁹⁰ See *infra* II.F.

⁷⁹¹ Hamdija Vilić, 11 Nov 2008, T. 3457-3458; MLD10, 14 Jan 2009, T. 4057-4058.

⁷⁹² See *e.g.* Hamdija Vilić, 11 Nov 2008, T. 3487-3488, 3492, 3507; MLD10, 18 Dec 2008, T. 4027, 14 Jan 2009, T. 4064-4065.

⁷⁹³ Hamdija Vilić, 11 Nov 2008, T. 3464-3465.

⁷⁹⁴ MLD10, 14 Jan 2009, T. 4059.

⁷⁹⁵ Hamdija Vilić, 11 Nov 2008, T. 3464-3465.

⁷⁹⁶ See *supra*, paras 175-176. See also MLD10, 18 Dec 2008, T. 4023, 4025.

⁷⁹⁷ MLD10, 18 Dec 2008, T. 4025.

216. The Trial Chamber, therefore, considers that the testimony of Hamdija Vilić arising from the allegations of bribery and MLD10's evidence in this respect raise serious questions as to the credibility of MLD10 in general and in respect of her alibi evidence regarding the Drina river and Varda factory incidents. The Trial Chamber has considered these allegations in its final evaluation of MLD10's credibility.

217. Both MLD10 and Željko Marković knew Milan Lukić well and testified that they met Milan Lukić between 7-10 June 1992. However, on the basis of their evidence, the Trial Chamber is not convinced that their contacts and meetings with Milan Lukić necessarily took place in 1992. MLD10 testified that she recalled the dates 8 and 10 June because her husband had returned from work in Germany about seven days before and because her birthday is 13 June. The Trial Chamber considers that there is nothing that links these dates specifically to 1992. Željko Marković was celebrating an anniversary the night that Milan Lukić called him. Although this was to celebrate Željko Marković having "lived together" with his wife since 7 June 1988, his evidence is that this was celebrated annually, rather than being a one-off celebration. Željko Marković further testified in cross-examination that his best man would bring him and his wife presents every year to celebrate their anniversary. On the basis of his evidence, therefore, the Trial Chamber concludes that there is nothing that would specifically tie his recollection of Milan Lukić's phone call to 7 June 1992, as opposed to any other year.

218. The Prosecution submits that the late and inadequate notice pursuant to Rule 67 concerning MLD15, and also concerning MLD17, who will be considered below, raises "serious concerns about the truthfulness of their evidence."⁷⁹⁸ The Prosecution notes in this respect that the Milan Lukić Defence provided notice of these witnesses more than four months after the final deadline set by the Trial Chamber.⁷⁹⁹ The Prosecution also notes that at this point, the Prosecution's case-in-chief, which "pursuant to an earlier Chamber decision, included a substantial part of the Prosecution rebuttal case", had concluded.⁸⁰⁰ The Prosecution submits that the fact that MLD15 testified that he had spoken to Milan Lukić "two or three times while he was in the UNDU" means that he may have been subject to improper influence.⁸⁰¹ As noted earlier, the Milan Lukić Defence submits that there is nothing improper in such contacts being made.⁸⁰² Furthermore, the Defence does not make any submissions as to the sufficiency or timeliness of the notice given.

219. The Trial Chamber recalls its finding at the pre-trial conference that:

⁷⁹⁸ Prosecution final trial brief, para. 486. See also *id.*, paras 508, 511, where the Prosecution refers to the notice filed on 18 July 2008, which does not mention MLD15 or MLD17.

⁷⁹⁹ Prosecution final trial brief, paras 508, 511.

⁸⁰⁰ Prosecution final trial brief, para. 507.

⁸⁰¹ Prosecution final trial brief, para. 506, referring to MLD15, 3 Feb 2009, T. 4664-4665.

⁸⁰² See *supra* para. 169.

The Defence is required to give notice of certain matters. The Defence has proffered certain information. The adequacy, the sufficiency, of that information will ultimately be a matter for the Chamber to decide at the end of the day when it comes to consider whether to accept or reject the defence of alibi.⁸⁰³

Nonetheless, in the circumstances of this case, the Trial Chamber is disinclined to accept the Prosecution's submission that the late notice of MLD15 and MLD17 would affect the reliability of their evidence.

220. MLD15 remembered Milan Lukić was in Belgrade on 7 June 1992 because he came to a surprise dinner that MLD15 organised. MLD15 proposed to his girlfriend in the early stages of the dinner. According to MLD15's testimony during examination-in-chief, Milan Lukić arrived about half an hour to an hour after the party had started, and almost immediately MLD15 had to leave his party to take one of his very good friends home, who wanted to leave because she had at some point previously argued with Milan Lukić.

221. In respect of MLD15, the Trial Chamber notes that it was not clear when the purported argument between Milan Lukić and the woman could have taken place. MLD15 said that the exchange was memorable because he had been surprised by it. The Trial Chamber also notes that, according to the alibi evidence presented, Milan Lukić had just recently arrived in Belgrade. During cross-examination, MLD15 testified that his good friend left because Milan Lukić was joking at her expense, but then said that she got up when Milan Lukić arrived because she anticipated he would make jokes at her expense. This entire episode appears somewhat strange and artificial: a very good friend chooses to disrupt such an important celebration and so soon after MLD15 had proposed to his girlfriend.

222. MLD17 testified that she became acquainted with Milan Lukić in April 1992. During examination-in-chief, she testified that she met him "occasionally" during that month. However, under cross-examination, her testimony changed significantly as to how often she had met Milan Lukić. She testified that she met him "twice or thrice a week and over the weekend". The Trial Chamber notes MLD17 saw Milan Lukić on 7 June 1992 and that she invited him to a celebration, which he declined. MLD17 also testified that she saw him on 8 June 1992 and that she met him and spoke with him on 9 June 1992. However, it was only at about 7.30 a.m. on the day that Milan Lukić was leaving Belgrade that he visited MLD17. In light of MLD17's testimony that, immediately upon making Milan Lukić's acquaintance, she saw Milan Lukić with considerable regularity over the month of April, her evidence that they met only briefly and early in the morning on 10 June 1992 seems unconvincing. While this does not call into question MLD17's evidence in its entirety, the Trial Chamber takes it into account when considering her evidence.

⁸⁰³ Pre-trial conference, 9 Jul 2008, T. 223.

223. The Trial Chamber considers that there are a number of other difficulties with the coherence and credibility of the alibi presented. MLD1 testified that it was not until 10 June 1992 that he and his girlfriend took the decision to go to Novi Pazar. After they had made this decision, they asked Milan Lukić if he would drive them there. However, according to Željko Marković, Milan Lukić asked about getting to Novi Pazar in the morning on 8 June 1992. Furthermore, according to MLD10, she and Milan Lukić arranged in the evening of 8 June 1992 to meet in Novi Pazar on 10 June 1992. In both cases, Milan Lukić told them that he was going to Novi Pazar because he was taking some Muslims there. The Trial Chamber considers that this inconsistency is sufficiently significant to call into question the alibi as a whole, as it casts reasonable doubt on the alibi evidence of MLD10 and Željko Marković, in addition to that of MLD1.

224. MLD1, MLD10, MLD15, MLD17 and Željko Marković all testified that Milan Lukić took his mother to Belgrade for a medical check up. MLD10 testified that she saw Milan Lukić's mother briefly in Novi Pazar. None of the witnesses was able to provide specific information about Milan Lukić's mother's health problems. The only information is from MLD10, who thought that Milan Lukić's mother had needed an ultrasound of her kidneys. In view of the evidence that Milan Lukić's mother was suffering from health problems, it would appear unusual for her to accompany him on the long drive from Višegrad to Belgrade and then across Serbia to Novi Pazar in the south. The Trial Chamber notes that there is no evidence of when Milan Lukić and his mother returned to Višegrad from Novi Pazar. Notably, MLD1, who purportedly, and very quickly, had become so close to Milan Lukić that he managed to convince him to drive him and his fiancée to Belgrade, did not know where Milan Lukić and his mother would have gone after leaving Novi Pazar.

225. MLD10 testified that the reason she was trying to reach Milan Lukić through his sister on 8 June 1992 was to find out from him how her family was doing in Višegrad. The Trial Chamber takes note of her testimony in cross-examination that when Milan Lukić called her that evening she asked about her family. However, only when she eventually met Milan Lukić in Novi Pazar did she ask him in detail about her family's situation. Considering the importance to MLD10 of finding out how her family was doing, it is strange that MLD10 did not press Milan Lukić for information about her family's situation over the phone.

226. Furthermore, the Trial Chamber recalls that MLD24, who provided alibi evidence for the Pionirska street incident, testified that in June 1992 Milan Lukić's parents lived in a tent in Rujište near his military position. He testified under cross-examination to seeing them often and that they did not leave the area during the first half of June 1992.⁸⁰⁴ In assessing this inconsistency in the evidence of MLD24 and MLD1, MLD10, Željko Marković, MLD15 and MLD17, but particularly

⁸⁰⁴ See *infra* section II.G.2(c)(iv)(i).

MLD1 and MLD10, who testified that they saw Milan Lukić's mother between 7 and 10 June 1992, the Trial Chamber recalls its earlier findings with regard to MLD1's evidence, and that, while MLD10 may have seen Milan Lukić's mother in Novi Pazar, she may have been incorrect about the date on which this occurred. The Trial Chamber also finds that this inconsistency resulting from MLD24's evidence casts further doubt upon the veracity of the alibi presented as a whole.

(c) Prosecution alibi rebuttal evidence

227. VG063 gave two statements to the Ministry of the Interior of BiH, one dated 11 January 1994 and another dated 9 April 2004. The Trial Chamber notes that these statements are identical except for the inclusion of further details in the 2004 statement regarding Boban Šimšić's involvement at the Hasan Veletovac school.⁸⁰⁵ The Trial Chamber also notes that the statement given by VG063 to the Women Victims of War Association on 13 April 2004 is identical to the 9 April 2004 statement given to the Ministry of the Interior of BiH.⁸⁰⁶ The Trial Chamber notes that there are several discrepancies in the evidence of VG063, as will be set out in the following.

228. In her 1994 and 2004 statements, VG063 does not mention that a third man came to the house with Milan Lukić at the first visit.⁸⁰⁷ Moreover in her 1994 and 2004 statements, VG063 testifies that the men who were present during the second visit after midnight on 4 June 1992 were Milan Lukić, Ljubiša Cvijović, and Nenad Tanasković.⁸⁰⁸ In her 2000 statement to the Prosecution, VG063 does not mention that Woman Two was staying in the house at this point in time.⁸⁰⁹ The Trial Chamber also notes that VG063 testified that it was Milan Lukić who ordered both Woman One and Woman Two to come with him. However, in her 1994 and 2004 statements, VG063 stated that Milan Lukić ordered Woman One to go with him and that it was Nenad Tanasković who ordered Woman Two to go with him.⁸¹⁰ VG063 testified about the third incident, however she did not describe it in any of her prior statements. Additionally, the Trial Chamber notes that VG063's assertion in her testimony that she never saw Woman Two again would appear to contradict her 1994 and 2004 statements that VG063 attempted to convince Woman Two to leave the house with her and go to Bikavac after these incidents.⁸¹¹

229. The Trial Chamber considers that, while these incidents are significant, they do not affect the credibility and reliability of VG063's evidence as to her observations of Milan Lukić. Based on her prior knowledge of Milan Lukić, the Trial Chamber considers that she had sufficient knowledge

⁸⁰⁵ 1D51, p. 10.

⁸⁰⁶ VG063, 18 Sep 2008, T. 1899-1900; 1D51; 2D12.

⁸⁰⁷ VG063, 17 Sep 2008, T. 1822; 1D51, p. 5; 2D12, p. 2; 2D13, p. 3.

⁸⁰⁸ 1D51, p. 6; 2D12, p. 3; 2D13, p. 4.

⁸⁰⁹ VG063, 17 Sep 2008, T. 1824; 1D49, p. 4.

⁸¹⁰ VG063, 17 Sep 2008, T. 1824-1825; 1D51, p. 6; 2D12, p. 3; 2D13, p. 4.

⁸¹¹ 1D51, p. 7; 2D12, p. 4; 2D13, p. 5.

to recognise him when he entered the house where she was staying, which she also did. However, her evidence is not sufficiently specific in terms of the dates that she saw Milan Lukić in Višegrad. Therefore, the Trial Chamber has not considered this evidence in its overall assessment of the evidence as to Milan Lukić's presence on the dates relevant for the Drina river and Varda factory incidents.

(f) Finding on Milan Lukić's presence, acts and conduct on 7 June 1992

230. The evidence presented by the Prosecution as to Milan Lukić's presence, acts and conduct on 7 June 1992 was provided by credible and reliable witnesses. On the other hand, the Trial Chamber finds that the evidence led in support of Milan Lukić's alibi was characterised by inconsistencies and unreliable testimony. On the basis of the evidence as a whole, that is, the evidence led by the Prosecution and the evidence led by the Defence, the Trial Chamber finds that the alibi is not reasonably possibly true and concludes that the Prosecution has proved beyond reasonable doubt the events that led up to the killings at the Drina river on 7 June 1992, including that Milan Lukić shot at the seven men he had rounded up and detained that day. In sum, the Trial Chamber rejects the alibi as a cynical and callously orchestrated artifice.

F. The Varda factory incident

1. Prosecution case

(a) Events

231. The Varda furniture factory was located in Dušće, south of the town of Višegrad, along the bank of the Drina river.⁸¹²

232. On or about 10 June 1992, at approximately 11 or 11.30 a.m., Milan Lukić arrived at the Varda factory in a red Passat and parked near the guardhouse at the main gate.⁸¹³ VG042 testified that the incident took place on Bajram, a Muslim feast, but she could not remember the exact date.⁸¹⁴ In her statement, she recalled that Bajram was "around 10 June" 1992.⁸¹⁵ VG024 remembered the incident happened on 9 June 1992 because it was the day before Bajram, when the factory would be closed.⁸¹⁶ However, in a statement, VG024 recalled that the events took place on 10 June 1992.⁸¹⁷ VG017 testified that Milan Lukić arrived at the factory "on a day before 18 June

⁸¹² VG017, 9 Oct 2008, T. 2686-2687, 2687-2688; P54; P152; P153.

⁸¹³ VG042, 27 Oct 2008, T. 2788, 2792, 2830.

⁸¹⁴ VG042, 27 Oct 2008, T. 2786-2787, 2792, 2801.

⁸¹⁵ 1D68, p. 3.

⁸¹⁶ VG024, 3 Nov 2008, T. 3225, 3264; 2D34, pp 4-5.

⁸¹⁷ 1D78, p. 3.

1992”, which was the date he left Višegrad.⁸¹⁸ He confirmed in cross-examination that he did not remember the exact date but that the incident took place between May and June 1992.⁸¹⁹

233. Milan Lukić was armed with a rifle.⁸²⁰ During cross-examination, VG017 said that Milan Lukić was dressed in plain clothes.⁸²¹ Also during cross-examination, VG042 stated that Milan Lukić was wearing a camouflage uniform.⁸²²

234. Milan Lukić arrived at the Varda factory with one or several armed men. VG017 testified that Milan Lukić was with two other men.⁸²³ During cross-examination, VG017’s statement was put to him, in which he said that there were three men in camouflage uniforms and “some had the SMB uniform”.⁸²⁴ In response, VG017 testified that he only saw three men.⁸²⁵ VG042 stated that Milan Lukić arrived at the Varda factory with “the driver” of the Passat.⁸²⁶ In her 1998 statement, VG042 stated that the driver waited in the car and that she presumed the driver was Sredoje Lukić because Milan Lukić and Sredoje Lukić were always together.⁸²⁷ However, in her 2008 statement, VG042 said that she could not see who the driver was.⁸²⁸ In cross-examination, she testified that she had said that Sredoje Lukić was present because “[n]obody ever drove that car except for Milan and Sredoje” and that she had presumed that Sredoje Lukić had been in the car but that she had not looked at the driver directly.⁸²⁹ VG024 stated that Milan Lukić came into the factory alone, but that another person, with whom Milan Lukić had arrived, waited for him at the entrance to the factory.⁸³⁰ VG024 testified during cross-examination that she never witnessed an incident involving Sredoje Lukić.⁸³¹ As Sredoje Lukić is not charged with counts 6 and 7, the Trial Chamber does not need to consider further the evidence pertaining to his presence.

235. The evidence of VG017, VG024 and VG042 differs somewhat regarding the events that transpired next.

236. VG017 testified that from behind two barrels approximately 150 metres from the factory gate, where he was hiding,⁸³² he saw Milan Lukić and two other men go into the factory’s workshop

⁸¹⁸ VG017, 9 Oct 2008, T. 2689, 2694.

⁸¹⁹ VG017, 9 Oct 2008, T. 2743. See also 1D63, p. 2; 1D64, p. 2.

⁸²⁰ VG017, 9 Oct 2008, T. 2696; VG042, 27 Oct 2008, T. 2788-2789.

⁸²¹ VG017, 9 Oct 2008, T. 2696, 2733.

⁸²² VG042, 27 Oct 2008, T. 2832. See also VG024, 3 Nov 2008, T. 3208; 2D34, p. 4.

⁸²³ VG017, 9 Oct 2008, T. 2695.

⁸²⁴ 1D63, p. 3.

⁸²⁵ VG017, 9 Oct 2008, T. 2733.

⁸²⁶ 1D69, p. 3.

⁸²⁷ 1D68, p. 3.

⁸²⁸ 1D69, p. 2.

⁸²⁹ VG042, 27 Oct 2008, T. 2798-2799, 2840, 2850, 2852-2853. See also 2D23.

⁸³⁰ 2D34, p. 5.

⁸³¹ VG024, 3 Nov 2008, T. 3279.

⁸³² VG017, 9 Oct 2008, T. 2690; 1D63, p. 2; 1D64, p. 2; P154.

and bring out Nedžad Bektaš, who was then taken to the guardhouse at the factory gate.⁸³³ Milan Lukić and the two men then went back into the factory and brought out another six or seven workers, including Ibrišim Memišević, Nusret Aljušević, Lutvo Tvrđković, Hamed Osmanagić and Sabahudin Velagić, who were also taken to the guardhouse.⁸³⁴ In his 1998 statement, VG017 stated that Milan Lukić also brought out Mušan Čančar, and that he knew Mušan Čančar and recognised him clearly, along with other victims.⁸³⁵ However, in his 2008 statement, VG017 corrected himself, stating that “[a]t that moment I recognised three of the men”, Ibrišim Memišević, Nusret Aljušević and Nedžad Bektaš, but that he learnt of the names of the other men later.⁸³⁶ In cross-examination, VG017 affirmed that he had seen Nedžad Bektaš and Ibrišim Memišević being taken out of the factory, but he testified that, while he knew Mušan Čančar by sight, he had not recognised him that day.⁸³⁷

237. VG024, an employee of the factory, testified that she was inside the factory and that she passed Milan Lukić, who had come from the direction of the sawmill.⁸³⁸ VG024 then came upon Sabahudin Velagić and Lutvo Tabaković, who had been told to wait where they were.⁸³⁹ Three Serb workers told VG024 that they could not let Sabahudin Velagić get away because Milan Lukić had told them to keep an eye on him.⁸⁴⁰ She confirmed this on cross-examination.⁸⁴¹ After a few moments, VG024 saw Milan Lukić return and collect these two men.⁸⁴² Milan Lukić then continued towards the polishing section of the factory, where he collected Hamed Osmanagić and Nusret Aljusević.⁸⁴³ On his way out of the factory, Milan Lukić also picked up Ibrišim Memišević, and he then took the five men towards the sawmill.⁸⁴⁴

238. VG042 testified that from the balcony of her house, which was about 50 metres “as the crow flies” behind the main gate of the Varda factory,⁸⁴⁵ she witnessed Milan Lukić walk towards the administration building, where he selected Nusret Aljušević, Nedžad Bektaš, Mušan Čančar, Ibrišim Memišević, Hamed Osmanagić, Lutvo Turtković, and Sabahudin Velagić.⁸⁴⁶ VG042 knew these seven men; all were her neighbours, except Mušan Čančar, but “he would always come

⁸³³ VG017, 9 Oct 2008, T. 2696.

⁸³⁴ VG017, 9 Oct 2008, T. 2696-2699, 2735, 2736-2737, 2762. See also 1D63, p. 3.

⁸³⁵ 1D63, p. 3.

⁸³⁶ 1D64, p. 3.

⁸³⁷ VG017, 9 Oct 2008, T. 2735-2736.

⁸³⁸ VG024, 3 Nov 2008, T. 3225.

⁸³⁹ VG024, 3 Nov 2008, T. 3225.

⁸⁴⁰ VG024, 3 Nov 2008, T. 3225-3226.

⁸⁴¹ VG024, 3 Nov 2008, T. 3270.

⁸⁴² VG024, 3 Nov 2008, T. 3226; 2D34, p. 5.

⁸⁴³ VG024, 3 Nov 2008, T. 3226.

⁸⁴⁴ VG024, 3 Nov 2008, T. 3226; P190. See also 2D34, p. 5.

⁸⁴⁵ VG042, 27 Oct 2008, T. 2790; C1; 2D22; 2D23.

⁸⁴⁶ VG042, 27 Oct 2008, T. 2788, 2791, 2830; 1D68, p. 3; 2D21.

by”.⁸⁴⁷ Armed with a rifle, Milan Lukić made the men go towards the guardhouse.⁸⁴⁸ When the men who had been collected reached the guardhouse, they were ordered to take off their work clothes and the men threw cigarettes and keys onto Ibrišim Memišević’s shirt.⁸⁴⁹ VG042 confirmed this during cross-examination.⁸⁵⁰

239. The Trial Chamber notes that the witnesses used slightly different names for two of the alleged victims in the indictment listed as Nusret Aljošević and Lutvo Tvrtković. VG017 refers to “Nusret Aljušević” in his testimony and in his statements, VG024 refers to “Nusret Aljušević” in her testimony and in one witness statement,⁸⁵¹ but in another witness statement, she refers to “Nusret Aljošević”,⁸⁵² and VG042 refers to “Nusret Aljušević” in her witness statements.⁸⁵³ In the transcript, it is recorded that she said “Nusreta Jusević”,⁸⁵⁴ which the Trial Chamber considers is an error in the transcript. In respect of Lutvo Tvrtković, VG017 refers to “Lutvo Tvrdković” in his statement.⁸⁵⁵ He did not refer to Lutvo Tvrtković during his testimony. VG024 consistently refers to “Lutvo Tabaković” in her statements and testimony, and VG042 refers to “Lutvo Turtković” in her testimony and her statement.⁸⁵⁶ The Trial Chamber notes these slight differences in the evidence and *vis-à-vis* the indictment. However, it does not consider they call into question the identity of the alleged victims and the Trial Chamber will, from this point on, refer to the alleged victims by the names used in the indictment.

240. Milan Lukić made the seven men walk in front of him towards the river.⁸⁵⁷ At one point, he put his hand on Hamed Osmanagić’s shoulder.⁸⁵⁸ VG042 confirmed this during cross-examination.⁸⁵⁹ At the river, Milan Lukić lined up the men next to one another.⁸⁶⁰ He then shot them one by one.⁸⁶¹ VG042 also confirmed this in cross-examination.⁸⁶²

241. During cross-examination, VG042 was asked about her 1993 MUP statement, in which she stated that 10 men were killed, but listed the names of seven men and stated that she did not

⁸⁴⁷ VG042, 27 Oct 2008, T. 2791.

⁸⁴⁸ VG042, 27 Oct 2008, T. 2788-2789.

⁸⁴⁹ VG042, 27 Oct 2008, T. 2788; 1D68, p. 3; 1D69, p. 3.

⁸⁵⁰ VG042, 27 Oct 2008, T. 2828.

⁸⁵¹ 1D78, p. 3.

⁸⁵² 2D34, p. 5.

⁸⁵³ 1D68, p. 3; 1D69, p. 3.

⁸⁵⁴ VG042, 27 Oct 2008, T. 2788.

⁸⁵⁵ 1D63, p. 3.

⁸⁵⁶ See 1D68, p. 3.

⁸⁵⁷ VG042, 27 Oct 2008, T. 2789, 2828; 1D68, p. 3; 1D69, p. 3; P157.

⁸⁵⁸ VG042, 27 Oct 2008, T. 2828; 1D69, p. 3.

⁸⁵⁹ VG042, 27 Oct 2008, T. 2831.

⁸⁶⁰ VG042, 27 Oct 2008, T. 2789; 1D69, p. 3.

⁸⁶¹ VG042, 27 Oct 2008, T. 2789, 2828-2829; 1D68, p. 3.

⁸⁶² VG042, 27 Oct 2008, T. 2829.

remember the names of the remaining three men.⁸⁶³ VG042 did not know why that was in her statement.⁸⁶⁴ VG042 was also confronted with her 1994 MUP statement, in which she stated that Milan Lukić took the men down to the Drina river in groups, and a proofing note in which she had clarified that Milan Lukić took all the men down to the river in one group.⁸⁶⁵ In response, VG042 testified that she “always said that he took them down to the river all together”.⁸⁶⁶

242. The Trial Chamber notes that on other occasions during VG042’s cross-examination, the Milan Lukić Defence put to her information contained in her 1993 and 1994 MUP statements, which differed from that provided in the statements she gave to the Prosecution and which VG042 said during proofing sessions with the Prosecution was information that had been provided by other people.⁸⁶⁷ During cross-examination, VG042 confirmed that she had given several statements after she had fled Višegrad, but that she did not know to whom, and she also said that she had given a statement in conjunction with another person.⁸⁶⁸ She also testified that some of the information in her 1993 and 1994 MUP statements had been provided by other people.⁸⁶⁹ When asked about discrepancies between her testimony and these statements, VG042 often demonstrated considerable confusion about what was being asked of her.⁸⁷⁰ She was also confused when asked to confirm the veracity of the remaining information in her 1993 MUP statements.⁸⁷¹ In re-examination, the Prosecution asked about the circumstances under which VG042 had given her statements to the MUP. VG042 stated that she gave the statements in classrooms in which there were 20 to 30 other people.⁸⁷² The Prosecution placed her 1993 MUP statement alongside her 2008 Prosecution statement, and asked VG042 which one she signed, to which she replied that she marked the Prosecution statement.⁸⁷³ The Prosecution then showed her the signature on her 1994 MUP statement, and VG042 testified that she was not able to sign like that.⁸⁷⁴ The Trial Chamber further notes that in her 2008 statement, VG042 stated that she recalled giving a statement to the MUP on 14 January 1994, but that it was not read back to her at the time.⁸⁷⁵ She confirmed that a document shown to her by the Prosecution, at the time she gave her 2008 statement, contained a signature that

⁸⁶³ 1D66, p. 6.

⁸⁶⁴ VG042, 27 Oct 2008, T. 2830-2831.

⁸⁶⁵ 1D67, pp 2-3.

⁸⁶⁶ VG042, 27 Oct 2008, T. 2829.

⁸⁶⁷ See 1D66, Statement given to the MUP in Sarajevo, 14 Dec 1993; 1D67, Statement given to the MUP in Sarajevo, 14 Jan 1994; 1D68, Statement given to the Prosecution, 17 Oct 1998; 1D69, Statement given to the Prosecution, 14 and 16 Apr 2008.

⁸⁶⁸ VG042, 27 Oct 2008, T. 2811-2812, 2813-2814.

⁸⁶⁹ VG042, 27 Oct 2008, T. 2812, 2813, 2814, 2815, 2823.

⁸⁷⁰ VG042, 27 Oct 2008, T. 2821, 2824-2827, 2830-2831.

⁸⁷¹ VG042, 27 Oct 2008, T. 2821, 2827.

⁸⁷² VG042, 27 Oct 2008, T. 2856.

⁸⁷³ VG042, 27 Oct 2008, T. 2857-2858.

⁸⁷⁴ VG042, 27 Oct 2008, T. 2858.

⁸⁷⁵ 1D69, p. 2.

was not her own.⁸⁷⁶ On the basis of this evidence, the Trial Chamber is of the view that there is considerable uncertainty as to what information in the 1993 and 1994 MUP statements can properly be ascribed to VG042 and, consequently, can be said to be her evidence. As a result, the Trial Chamber considers that no probative value can be attached to these two exhibits, and the Trial Chamber will not take them into account.

243. Also in cross-examination, VG042 was shown a video by the Sredoje Lukić Defence in which the view from her balcony over the Varda factory and the Drina river could be seen.⁸⁷⁷ When asked whether she agreed that the guardhouse was “quite a distance” from her balcony, VG042 asserted that she had a very good view of events and that she saw the people who were brought there and that she knew each of them.⁸⁷⁸ She reaffirmed her estimate of the distance as 50 metres “as the crow flies”.⁸⁷⁹ When asked about whether, looking at the video, she could see anyone in the car, she indicated that she had not understood the question and believed she was being asked about who she had seen in the car on the day of the incident.⁸⁸⁰ In re-examination, VG042 testified that in 1992 her eyesight was very good.⁸⁸¹

244. Ibrišim Memišević’s wife, Mujesira Memišević, and daughter, Meliha Memišević, were with VG042 on the balcony and witnessed the killings.⁸⁸² When Ibrišim Memišević was about to be shot, his daughter cried out “Father, Father”, which caused Ibrišim Memišević to turn towards her.⁸⁸³ On returning from the river, Milan Lukić shot in the direction of VG042, Mujesira Memišević and Meliha Memišević, causing them to lie down to avoid the bullets.⁸⁸⁴ Milan Lukić then returned to the car and drove away.⁸⁸⁵ Another Serb soldier, Rade Stefanović, took the men’s clothes from the gate and threw them into the river.⁸⁸⁶ A little while later, Ibrišim Memišević’s mother went to the river and collected what she could of Ibrišim Memišević’s personal belongings.⁸⁸⁷

245. VG042 testified that later that day, the water from the dam was released, taking away several of the bodies.⁸⁸⁸ In the morning on the following day, the bodies which remained were buried. VG042 stated that some bodies were buried next to the river and others were buried by

⁸⁷⁶ 1D69, p. 2.

⁸⁷⁷ 2D23.

⁸⁷⁸ VG042, 27 Oct 2008, T. 2850.

⁸⁷⁹ VG042, 27 Oct 2008, T. 2850.

⁸⁸⁰ VG042, 27 Oct 2008, T. 2852.

⁸⁸¹ VG042, 27 Oct 2008, T. 2858.

⁸⁸² VG042, 27 Oct 2008, T. 2790, 2861.

⁸⁸³ VG042, 27 Oct 2008, T. 2790; 1D69, p. 3.

⁸⁸⁴ VG042, 27 Oct 2008, T. 2790; 1D69, p. 3.

⁸⁸⁵ 1D68, p. 3.

⁸⁸⁶ 1D68, p. 3; 1D69, p. 3.

⁸⁸⁷ 1D68, p. 3; 1D69, p. 3.

⁸⁸⁸ VG042, 27 Oct 2008, T. 2792; 1D68, p. 3; 1D69, p. 3.

family members in their gardens or elsewhere.⁸⁸⁹ On the same day, VG042, together with Vahida Memišević and the wife of Ramo Ramić, helped collect Ibrišim Memišević's body and bury the body at his house.⁸⁹⁰ VG042 also recognised the bodies of Mušan Cančar, Nusret Aljošević, and Hamed Osmanagić.⁸⁹¹

246. VG024 testified that after the men were taken out of the factory, they took off their work clothes, and were then taken by Milan Lukić to the Drina river.⁸⁹² During cross-examination, VG024 confirmed that the men took off their work clothes.⁸⁹³ She acknowledged that in her 1994 and 1998 statements she had not mentioned the men taking off their work clothes and being lined up at the river.⁸⁹⁴ She said that the 1998 statement was "given in haste" and that it "rekindled my memory of those events".⁸⁹⁵ With regard to her 1994 statement, she explained that she did not know at the time that these details were important.⁸⁹⁶ VG024 repeated that she, and the colleague she was with, had left the factory, and that they "saw [Milan Lukić] lining up the people to be killed".⁸⁹⁷

247. When VG024 realised what was going to happen, she ran away and then heard a long burst of gunfire.⁸⁹⁸ In her 1994 statement, VG024 only stated that "[a] few minutes after they were taken out of the factory grounds my colleagues and I heard volleys of automatic fire".⁸⁹⁹ In her 1998 statement, VG024 stated that she was on the road behind the factory when she heard "a burst of fire".⁹⁰⁰

248. VG024 returned to the factory after the killings, and she told Suljo Velagić, Sabahudin Velagić's father, that Milan Lukić had taken his son.⁹⁰¹ She confirmed this in cross-examination.⁹⁰² Suljo Velagić went to the river and "saw this for himself".⁹⁰³ He returned, and told VG024 that all seven men had been killed,⁹⁰⁴ and that his life was worth nothing now that his son was gone, following which he went to the MUP building to report the incident.⁹⁰⁵ VG024 testified that Suljo Velagić was never seen again.⁹⁰⁶ According to VG024's 1998 statement, in mid-July 1992, Ibrišim

⁸⁸⁹ 1D68, p. 3.

⁸⁹⁰ VG042, 27 Oct 2008, T. 2792; 1D68, p. 3; 1D69, p. 3.

⁸⁹¹ 1D69, p. 3.

⁸⁹² VG024, 3 Nov 2008, T. 3227; P190; P191. See also 2D34, p. 5.

⁸⁹³ VG024, 3 Nov 2008, T. 3266.

⁸⁹⁴ VG024, 3 Nov 2008, T. 3266-3267.

⁸⁹⁵ VG024, 3 Nov 2008, T. 3267.

⁸⁹⁶ VG024, 3 Nov 2008, T. 3267.

⁸⁹⁷ VG024, 3 Nov 2008, T. 3265.

⁸⁹⁸ VG024, 3 Nov 2008, T. 3228, 3265-3266; 2D34, p. 5.

⁸⁹⁹ 1D78, p. 3.

⁹⁰⁰ 2D34, p. 5.

⁹⁰¹ VG024, 3 Nov 2008, T. 3228; 1D78, p. 3; 2D34, p. 5.

⁹⁰² VG024, 3 Nov 2008, T. 3266.

⁹⁰³ VG024, 3 Nov 2008, T. 3228; 1D78, p. 3; 2D34, p. 5.

⁹⁰⁴ 2D34, p. 5.

⁹⁰⁵ VG024, 3 Nov 2008, T. 3228-3229; 1D78, p. 3; 2D34, p. 5.

⁹⁰⁶ VG024, 3 Nov 2008, T. 3229. See also 1D78, p. 3.

Memišević's wife, Mujesira Memišević, told her that she had found Ibrišim Memišević's body a couple of days after the incident at the place where it had occurred, and that she had buried his body at that spot.⁹⁰⁷

249. VG017 testified that from the guardhouse the men were taken to the river in two groups.⁹⁰⁸ The first group consisted of three workers, one of whom was Nedžad Bektaš.⁹⁰⁹ The three men walked in front of Milan Lukić.⁹¹⁰ At one point, Milan Lukić put his arm around Nedžad Bektaš.⁹¹¹ For a moment, VG017 lost sight of the group and heard automatic fire.⁹¹² VG017 moved from his hiding place behind the barrels to a hen-house.⁹¹³ He then saw that Milan Lukić walked back towards the remaining men, still holding the automatic rifle.⁹¹⁴ Milan Lukić indicated to the men to come to him, which they did.⁹¹⁵ Once again, VG017 could not see what was happening at the river, but he heard automatic fire shortly after the second group of men had gone to Milan Lukić.⁹¹⁶ VG017 then saw Milan Lukić go back to the car and drive with the other armed men towards the centre of Višegrad.⁹¹⁷

250. After the killings, VG017 saw Ibrišim Memišević's mother, Smaila Memišević, walking to the river, crying.⁹¹⁸ He testified that Smaila Memišević retrieved Ibrišim Memišević's body and, the next day, VG017 helped Ismaela Jeta and Mustafa Memišević bury him.⁹¹⁹ He confirmed during cross-examination that he assisted with the burial.⁹²⁰ VG017 testified that Ibrišim Memišević's body was "riddled with bullets".⁹²¹

251. A number of tables were admitted into evidence, which include data regarding the disappearances of the alleged victims of the Varda factory incident. Nusret Aljošević, Nedžad Bektaš, Mušan Cančar, Ibrišim Memišević, Lutvo Tvrtković, and Sabahudin Velagić are included in exhibit P184. However, Hamed Osmanagić is not included and the identifying information pertaining to Nedžad Bektaš and Ibrišim Memišević differs slightly from that provided for in exhibit P119, a table of data collected by Ewa Tabeau; in exhibit P184, Nedžad Bektaš' father's name is "Salkan", and Ibrišim Memišević's father's name is listed as "Malić". Furthermore, exhibit

⁹⁰⁷ 2D34, p. 5.

⁹⁰⁸ VG017, 9 Oct 2008, T. 2700, 2704-2705.

⁹⁰⁹ VG017, 9 Oct 2008, T. 2700, 2735; 1D63, p. 3.

⁹¹⁰ VG017, 9 Oct 2008, T. 2699-2700; 1D63, p. 3.

⁹¹¹ VG017, 9 Oct 2008, T. 2700; 1D63, p. 3.

⁹¹² VG017, 9 Oct 2008, T. 2701; 1D63, p. 3; 1D64, p. 3.

⁹¹³ VG017, 9 Oct 2008, T. 2703; P155.

⁹¹⁴ VG017, 9 Oct 2008, T. 2704; 1D63, p. 4.

⁹¹⁵ VG017, 9 Oct 2008, T. 2704-2705; 1D63, p. 4.

⁹¹⁶ VG017, 9 Oct 2008, T. 2705, 2706, 2707; 1D64, p. 3.

⁹¹⁷ VG017, 9 Oct 2008, T. 2705, 2707; 1D63, p. 4.

⁹¹⁸ VG017, 9 Oct 2008, T. 2708, 2710; 1D64, p. 3.

⁹¹⁹ VG017, 9 Oct 2008, T. 2706, 2710, 2711-2712; 1D63, p. 3.

⁹²⁰ VG017, 9 Oct 2008, T. 2736.

P119 includes a number of inconsistencies with regard to the dates on which Mušan Cančar, Lutvo Tvrtković, and Sabahudin Velagić disappeared from Višegrad.

252. Ewa Tabeau testified that dates often are not reported accurately.⁹²² This is particularly the case where sources are compiled without the use of any identity cards or passports.⁹²³ The accuracy of the information collected is further undermined if it is collected in “chaotic circumstances”.⁹²⁴ Ewa Tabeau acknowledged that in many cases the sources were compiled by non-professionals and information regarding dates of birth or disappearance were incomplete or in error.⁹²⁵

253. Ewa Tabeau further testified that there is an obligation on a family to notify the federal authorities of a death of a family member within three days of that death, following which the death is registered and a death certificate is issued.⁹²⁶ This process did not operate properly during the war, with the effect that many death notifications were not submitted and were, therefore, not archived.⁹²⁷

(b) John Clark

254. John Clark, the Prosecution expert in forensic pathology, was shown an autopsy report for case number 361B, which documented the results of his post-mortem examination on a body uncovered at a site in Slap by the Drina river downstream from Višegrad.⁹²⁸ Based on his examination, John Clark concluded that a man had been killed by a gunshot injury to the chest and that he had been shot from behind.⁹²⁹ The report concludes that there were “no other obvious injuries or significant findings”, although it notes that the skull was fractured on the mandible midline, which probably occurred before the post-mortem was conducted.⁹³⁰ Remains of clothing were found with the body, including dark blue trousers with a stripe and a light and dark blue check shirt.⁹³¹ John Clark stated that following the post-mortem, the body was given to the Bosnian Commission for Missing Persons, which undertook the identification process.⁹³² He testified that a BiH Police record of identification, which bore the same number as his autopsy report, related to the same body.⁹³³ The record of identification states that the body was identified as Hamed

⁹²¹ VG017, 9 Oct 2008, T. 2706, 2711; 1D63, p. 3.

⁹²² Ewa Tabeau, 22 Sep 2009, T. 2094.

⁹²³ Ewa Tabeau, 22 Sep 2009, T. 2094-2095.

⁹²⁴ Ewa Tabeau, 22 Sep 2009, T. 2095.

⁹²⁵ Ewa Tabeau, 22 Sep 2009, T. 2095.

⁹²⁶ Ewa Tabeau, 24 Mar 2009, T. 6123.

⁹²⁷ Ewa Tabeau, 24 Mar 2009, T. 6123.

⁹²⁸ John Clark, 22 Sep 2008, T. 2106-2107.

⁹²⁹ John Clark, 22 Sep 2008, T. 2107; P123.

⁹³⁰ P123, pp 1-2.

⁹³¹ P123, p. 2.

⁹³² John Clark, 22 Sep 2008, T. 2105, 2108.

⁹³³ John Clark, 22 Sep 2008, T. 2108; P124.

Osmanagić by Azra Osmanagić, and that the body had a “pre-mortem nose fracture”.⁹³⁴ It also notes that identification was made on the basis of clothing, including dark trousers with white vertical stripes and a light blue plaid shirt.⁹³⁵

255. During cross-examination, John Clark agreed that there was little information as to exactly where on the Drina river the people who were buried at Slap had been killed, or when.⁹³⁶ John Clark did not know how long the bodies had been in the water before being buried.⁹³⁷ He confirmed that he was not involved in the identification process.⁹³⁸ He was also not involved in the exhumation process, and agreed that he was provided with a number of incomplete skeletons, and this could occur for a number of reasons, including body parts possibly being put in the wrong body bag.⁹³⁹ During re-examination, John Clark said that a local Judge had been present during the exhumations at the Slap 2 site.⁹⁴⁰

256. The Milan Lukić Defence put to John Clark that it was possible that the man referred to as case number 361B was shot from the front, but John Clark testified that he was “confident” that he had been shot from behind.⁹⁴¹ It was not possible to determine whether the man had been shot during combat.⁹⁴² However, John Clark confirmed during re-examination that he did not find any military clothing or firearms on any of the bodies, including number 361B.⁹⁴³

(c) Prosecution identification evidence

257. VG042 testified that she knew Milan Lukić well, and that she had known him since he was a boy and they had taken the same bus in the mornings.⁹⁴⁴ Milan Lukić had also been friends with her sons, who were born around the same time as him.⁹⁴⁵ She knew his parents and his grandfather was a friend of her father.⁹⁴⁶ VG042 stated that she knew Milan Lukić’s family was from Rujište and that he left Višegrad when he was 18 or 20 years old to work in Serbia.⁹⁴⁷ During cross-

⁹³⁴ P124, pp 1-2.

⁹³⁵ P124, p. 1.

⁹³⁶ John Clark, 22 Sep 2008, T. 2110-2111 and 23 Sep 2008, T. 2119-2122.

⁹³⁷ John Clark, 23 Sep 2008, T. 2122.

⁹³⁸ John Clark, 22 Sep 2008, T. 2111.

⁹³⁹ John Clark, 22 Sep 2008, T. 2113.

⁹⁴⁰ John Clark, 23 Sep 2008, T. 2125.

⁹⁴¹ John Clark, 22 Sep 2008, T. 2114.

⁹⁴² John Clark, 22 Sep 2008, T. 2114.

⁹⁴³ John Clark, 23 Sep 2008, T. 2123. John Clark stated that in the Slap 2 site, they had found three unused bullets, but that they were lying loose in the grave site, *id.* T. 2124. See also P11, T. 1548, 1550.

⁹⁴⁴ VG042, 27 Oct 2008, T. 2779-2780, 2782.

⁹⁴⁵ 1D68, p. 3.

⁹⁴⁶ VG042, 27 Oct 2008, T. 2782.

⁹⁴⁷ 1D68, p. 3.

examination, she testified that the last time she saw Milan Lukić prior to the war was when he was a child and before she was married.⁹⁴⁸

258. VG042 testified that she had seen Milan Lukić at the Varda factory shortly before the Varda factory incident. At about 10.30 a.m. on the same day as the Varda factory incident, Milan Lukić arrived at the Varda factory in a red Passat and parked near the guardhouse at the gate to the factory.⁹⁴⁹ VG042 stated that she saw Milan Lukić clearly.⁹⁵⁰ Milan Lukić was armed with a rifle, and he entered the sawmill and forced VG042's husband, Ramiz Karaman, and Ahmed Kasapović to the gate of the Varda factory.⁹⁵¹ At the gate, he ordered the three men to get into the back of the Passat and drove off towards Višegrad.⁹⁵² A few months later, VG042 heard that her husband's body had been found in the Drina river.⁹⁵³ His remains were later identified in Visoko.⁹⁵⁴ VG042 reaffirmed a number of times during cross-examination that her husband had been taken away that morning.⁹⁵⁵

259. VG042 also testified that "one day" she saw Milan Lukić take the Passat from Behija and Džemo Zukić at a place on the macadam road running next to the Drina river and close to the Varda factory.⁹⁵⁶ In cross-examination, VG042 testified that this occurred the day before the Varda factory incident.⁹⁵⁷ The Milan Lukić Defence asked VG042 why she had not provided this account of the taking of the Passat in her 1993 MUP statement. VG042 had difficulty understanding what was being asked and reiterated that she always told what she had seen happen.⁹⁵⁸ The Trial Chamber reiterates its finding that the 1993 MUP statement has no probative value. In her 2008 statement, VG042 stated that Milan Lukić and Sredoje Lukić had seized Behija Zukić's Passat, but she did not indicate when or how she believed this took place.⁹⁵⁹

260. VG042 further testified that she received a phone call from a woman whom she knew, telling her that Behija Zukić had been killed.⁹⁶⁰ VG042 went to Behija Zukić's house to see what had happened and take care of Behija Zukić's body.⁹⁶¹ She saw Behija Zukić lying on the floor of

⁹⁴⁸ VG042, 27 Oct 2008, T. 2816, 2819-2820.

⁹⁴⁹ VG042, 27 Oct 2008, T. 2787-2788, 2790-2791, 2801-2804; 1D68, p. 3; 1D69, p. 2.

⁹⁵⁰ 1D68, p. 3.

⁹⁵¹ VG042, 27 Oct 2008, T. 2787-2788.

⁹⁵² VG042, 27 Oct 2008, T. 2787, 2788, 2830-2831; 1D68, p. 3; 1D69, pp 2, 3.

⁹⁵³ VG042, 27 Oct 2008, T. 2795-2796; 1D68, p. 3; 1D69, pp 3, 4.

⁹⁵⁴ VG042, 27 Oct 2008, T. 2795.

⁹⁵⁵ VG042, 27 Oct 2008, T. 2801-2803.

⁹⁵⁶ VG042, 27 Oct 2008, T. 2778-2779, 2840; 2D24.

⁹⁵⁷ VG042, 27 Oct 2008, T. 2800-2802.

⁹⁵⁸ VG042, 27 Oct 2008, T. 2826-2827.

⁹⁵⁹ 1D69, p. 2.

⁹⁶⁰ VG042, 27 Oct 2008, T. 2783-2784.

⁹⁶¹ VG042, 27 Oct 2008, T. 2783-2784.

her house and that she had been shot in her head.⁹⁶² She was told that Milan Lukić had killed Behija Zukić.⁹⁶³ In VG042's 2008 statement, she stated that Behija Zukić was killed "[b]efore the killings at the sawmill", and recalled that Behija Zukić "was killed in the evening and I saw her body in the morning."⁹⁶⁴ In her 1998 statement, VG042 referred to seeing Behija Zukić's body after Milan Lukić had killed her, but did not specify when she saw this.⁹⁶⁵

261. During cross-examination, the Milan Lukić Defence put a proofing note to VG042, in which she indicated that she thought that the killing of Behija Zukić and the taking of her Passat by Milan Lukić occurred on the same day as the Varda factory incident.⁹⁶⁶ In her initial response, VG042 testified that she may have got the date wrong, and that the car was seized at an earlier time.⁹⁶⁷ The Defence put to VG042 that she did not have to remember specific dates but that it was concerned only about the sequence of events. VG042 said that she could not remember when Behija Zukić was killed, but that she was killed first, then the three men were taken, following which the Varda incident took place.⁹⁶⁸ On being questioned further about when each of these events took place, VG042 indicated that she thought that they happened within the same 24-hour period, although she also demonstrated considerable confusion.⁹⁶⁹ VG042 reaffirmed that her husband was taken away on Bajram.⁹⁷⁰

262. During cross-examination, VG042 said that she was sure Milan Lukić was over 40 years old at the time, but she also said that she did not know exactly what his age was and that she found it difficult to be correct about someone's age.⁹⁷¹ VG042 was 50 to 100 metres away from events when they took place and testified that she saw Milan Lukić clearly.⁹⁷² The Prosecution did not ask VG042 if she recognised anyone in court.

263. VG024 had known Milan Lukić since he was approximately 12 or 13 years old and she knew his family well.⁹⁷³ In 1992, Milan Lukić was an "almost [...] regular visitor" to the Varda factory.⁹⁷⁴ VG024 testified that on the day of the incident, when she was inside the factory, she heard Milan Lukić say to another employee, who was named "Milan", "I'm Milan as well".⁹⁷⁵ In

⁹⁶² VG042, 27 Oct 2008, T. 2784. VG042 confirmed this during cross-examination, see *id.* T. 2801.

⁹⁶³ VG042, 27 Oct 2008, T. 2785, 2786.

⁹⁶⁴ 1D69, p. 4.

⁹⁶⁵ 1D68, p. 3.

⁹⁶⁶ VG042, 27 Oct 2008, T. 2800.

⁹⁶⁷ VG042, 27 Oct 2008, T. 2800.

⁹⁶⁸ VG042, 27 Oct 2008, T. 2800-2801.

⁹⁶⁹ VG042, 27 Oct 2008, T. 2800-2806.

⁹⁷⁰ VG042, 27 Oct 2008, T. 2801.

⁹⁷¹ VG042, 27 Oct 2008, T. 2832. In her 1998 statement, VG042 said that he was about 30 years old, 1D68, p. 3.

⁹⁷² 1D68, p. 3.

⁹⁷³ VG024, 3 Nov 2008, T. 3207-3208, 3212; 1D78, p. 2; 2D34, p. 3.

⁹⁷⁴ VG024, 3 Nov 2008, T. 3222-3223; 2D34, pp 3-4.

⁹⁷⁵ VG024, 3 Nov 2008, T. 3223.

cross-examination, the Milan Lukić Defence focused on the age difference between VG024 and Milan Lukić. VG024 could not say exactly how old Milan Lukić was when she first knew him and the last time she saw him before the war, but testified that it was when he left for military service.⁹⁷⁶ She reiterated a number of times that she knew him well.⁹⁷⁷ The Milan Lukić Defence also put VG024's 18 December 1998 statement to her, in which she stated that she identified Milan Lukić in a number of photos.⁹⁷⁸ VG024 testified that she had been shown four photographs at the time but that they were blurry, and that she was against signing the statement because the pictures were not sharp.⁹⁷⁹ The Trial Chamber also notes the evidence of Ib Jul Hansen, a Prosecution investigator, that it was never established whether the man in the photos "was Milan Lukić or somebody who looked like him."⁹⁸⁰

264. VG024 testified that she saw a red Passat "that Milan Lukić was using at the time" in the area by the gate to the Varda factory.⁹⁸¹ Milan Lukić drove this car after Behija Zukić was killed in May 1992.⁹⁸² When asked by the Prosecution whether she recognised anyone in the courtroom, VG024 recognised Milan Lukić.⁹⁸³

265. During cross-examination, a statement that VG024 had given to the Women Victims of War Association was put to her, in which VG024 recalls seeing Milan Lukić in a jeep with Sredoje Lukić on the road near Omeragići in April 2004.⁹⁸⁴ In cross-examination, VG024 testified that she was in the backseat and did not see Milan Lukić and Sredoje Lukić herself, but her brothers, who were with her, saw them and told her that it was Milan Lukić and Sredoje Lukić.⁹⁸⁵ She confirmed that Bakira Hasečić, the President of the Association, was present when she gave her statement to the Association.⁹⁸⁶ VG024 denied ever being in close contact with Bakira Hasečić.⁹⁸⁷

266. VG017 provided conflicting evidence during examination-in-chief and cross-examination about whether he knew Milan Lukić before the Varda factory incident. He testified that he did not know who it was who had arrived at the guardhouse, but that he later heard it was Milan Lukić.⁹⁸⁸ VG017 also testified that he knew it was Milan Lukić who arrived that day, and said that he had seen Milan Lukić two or three times before this incident, including when Milan Lukić had

⁹⁷⁶ VG024, 3 Nov 2008, T. 3252-3257, 3258-3259. See also *id.* T. 3259, 3262; 2D34, p. 3.

⁹⁷⁷ VG024, 3 Nov 2008, T. 3249, 3256, 3258.

⁹⁷⁸ VG024, 3 Nov 2008, T. 3270-3272; 1D75; 1D80, p. 2.

⁹⁷⁹ VG024, 3 Nov 2008, T. 3272.

⁹⁸⁰ Ib Jul Hansen, 30 Oct 2008, T. 3092.

⁹⁸¹ VG024, 3 Nov 2008, T. 3231; P190. *Cf.* P192.

⁹⁸² VG024, 3 Nov 2008, T. 3218-3219. See also 2D34, p. 3.

⁹⁸³ VG024, 3 Nov 2008, T. 3217-3218.

⁹⁸⁴ 1D81, p. 1.

⁹⁸⁵ VG024, 3 Nov 2008, T. 3275.

⁹⁸⁶ VG024, 3 Nov 2008, T. 3274, 3276-3277.

⁹⁸⁷ VG024, 3 Nov 2008, T. 3277.

⁹⁸⁸ VG017, 9 Oct 2008, T. 2695, 2724, 2731; 1D64, p. 3.

previously come to VG017's house asking for VG017 by name.⁹⁸⁹ In addition, VG017 said that he had known Milan Lukić and members of his family before the war, and he named one member of Milan Lukić's family.⁹⁹⁰ The Prosecution did not ask VG017 if he recognised anyone in court.

267. VG017 testified that the car driven by Milan Lukić did not have any number plates and that he later heard that the car was a Passat.⁹⁹¹ He knew that the car had originally belonged to Behija Zukić.⁹⁹² He had also seen it going to the Varda Factory "all the time" because it had to pass by his house to get there.⁹⁹³ During cross-examination, VG017 agreed that he had first mentioned that Milan Lukić drove past his house on a number of occasions in a proofing session with the Prosecution on 8 October 2008.⁹⁹⁴ In addition, Milan Lukić had been driving the car when he came to VG017's house looking for VG017 some time before 18 June 1992.⁹⁹⁵ He affirmed this during cross-examination, but stated that he did not know it was Milan Lukić at the time.⁹⁹⁶ Also during cross-examination, VG017 confirmed that he had not identified the type or colour of the car in his previous statements, and he testified that the reference in his 1998 statement to the car being "the newest type of limousine" meant that the car was "a new car".⁹⁹⁷

2. Defence case

(a) Defence challenge of Prosecution investigations, including of the Varda factory incident

268. The Milan Lukić Defence investigative expert, Clifford Jenkins, testified with regard to the investigations carried out in Višegrad, including the Varda factory incident, and said that he had "major concerns" with the way the investigations were undertaken.⁹⁹⁸

269. Clifford Jenkins said that the manner in which witness statements had been taken meant, *inter alia*, that "there's no accurate record of what the witnesses have truly said".⁹⁹⁹ However, during cross-examination, he conceded that while he believed that in an investigation of the kind carried out in Višegrad, every interview should have been tape-recorded and transcribed, this was not necessarily the practice in his jurisdiction, New Mexico, United States of America, and that

⁹⁸⁹ VG017, 9 Oct 2008, T. 2695, 2732, 2745. See also 1D63, p. 3.

⁹⁹⁰ VG017, 9 Oct 2008, T. 2724, 2726, 2727-2728.

⁹⁹¹ VG017, 9 Oct 2008, T. 2695, 2717, 2720-2721, 2723; 1D63, p. 3.

⁹⁹² VG017, 9 Oct 2008, T. 2713, 2741-2742, 2743-2744.

⁹⁹³ VG017, 9 Oct 2008, T. 2693.

⁹⁹⁴ VG017, 9 Oct 2008, T. 2723.

⁹⁹⁵ VG017, 9 Oct 2008, T. 2694, 2732.

⁹⁹⁶ VG017, 9 Oct 2008, T. 2731-2732.

⁹⁹⁷ VG017, 9 Oct 2008, T. 2722, 2723, 2737, 2740-2741; 1D63, p. 3; 1D64, p. 3.

⁹⁹⁸ Clifford Jenkins, 26 Mar 2009, T. 6437. See also 1D218.

⁹⁹⁹ Clifford Jenkins, 26 Mar 2009, T. 6437-6438.

there were no standard operating procedures to that effect.¹⁰⁰⁰ In re-examination, Clifford Jenkins stated that in a homicide investigation, witness and suspect interviews would be recorded.¹⁰⁰¹

270. With regard to the identification of Milan Lukić by the witnesses, Clifford Jenkins testified that VG042 was approximately 75 to 100 metres from the scene and that VG017 was approximately 200 to 225 metres away.¹⁰⁰² In his view, taking account of the evidence of the witnesses inside the factory would have made the Prosecution case much more reliable because those witnesses “actually viewed the events that took place, rather than relying on two casual witnesses that are some distance from the scene.”¹⁰⁰³ He stated that the evidence of witnesses who were inside the factory during the incident “was apparently discarded in favour of the statements from” VG017 and VG042.¹⁰⁰⁴ During cross-examination, Clifford Jenkins agreed that he knew that there was another witness who testified in the present case and who saw the events relating to the incident charged from inside the factory.¹⁰⁰⁵ He also agreed that in a situation where a witness knew the alleged perpetrator very well, he would “probably” rely on that witness’s identification of the perpetrator.¹⁰⁰⁶

271. Clifford Jenkins referred to and commented on a statement, which he had been provided by the Milan Lukić Defence, of a person who saw some of the events at the Varda factory from inside the factory, but who was not a witness in the present case.¹⁰⁰⁷ He stated that there were other people implicated in the statement as being perpetrators of the incident, which “impacts tremendously in helping [the Prosecution] sort out exactly what happened at this particular scene.”¹⁰⁰⁸ In cross-examination, he said it was a possibility that the other alleged perpetrators had arrived at the Varda factory before the charged incident, and he confirmed that he had not seen a later statement of the same person, given to Prosecution investigators, in which the person may have clarified aspects of his earlier statement.¹⁰⁰⁹

272. Clifford Jenkins discussed how he would identify the victims of the Varda factory incident,¹⁰¹⁰ and stated that if it is discovered that people were initially erroneously identified as victims, this would “cause you to exercise more due diligence [...] to ensure that as many people as

¹⁰⁰⁰ Clifford Jenkins, 27 Mar 2009, T. 6537-6538, 6544. See also *id.* T. 6558, where Clifford Jenkins concedes that the practice of memorialising interviews differs widely in other jurisdictions, including in the jurisdictions within the USA.

¹⁰⁰¹ Clifford Jenkins, 27 Mar 2009, T. 6576.

¹⁰⁰² Clifford Jenkins, 27 Mar 2009, T. 6489, 6494; 1D216.

¹⁰⁰³ Clifford Jenkins, 27 Mar 2009, T. 6495.

¹⁰⁰⁴ Clifford Jenkins, 27 Mar 2009, T. 6494.

¹⁰⁰⁵ Clifford Jenkins, 27 Mar 2009, T. 6533.

¹⁰⁰⁶ Clifford Jenkins, 27 Mar 2009, T. 6542.

¹⁰⁰⁷ Clifford Jenkins, 27 Mar 2009, T. 6507.

¹⁰⁰⁸ Clifford Jenkins, 27 Mar 2009, T. 6512.

¹⁰⁰⁹ Clifford Jenkins, 27 Mar 2009, T. 6534-6535. Clifford Jenkins further testified that he was not advised that the Bosnian authorities had taken some statements, and the ICTY investigators had taken others, *id.* T. 6568.

possible had been identified as being alive and well.”¹⁰¹¹ During cross-examination, Clifford Jenkins agreed that other witnesses had provided evidence regarding the identification of the victims.¹⁰¹²

273. During cross-examination, Clifford Jenkins conceded that he had never investigated violations of international criminal law, and that he had not been involved in investigations during or immediately after an armed conflict.¹⁰¹³ He stated that there is “probably no comparison” between the general criminal investigative procedures in his jurisdiction and those pertaining to an investigation of international crimes because “it is a different system of justice”.¹⁰¹⁴ During cross-examination, matters of witness protection, the difficulties relating to securing a crime site in a post-conflict situation, and dependence on other entities for security were put to Clifford Jenkins.¹⁰¹⁵ Clifford Jenkins testified in response that he had an understanding of what the circumstances must have been like and that the Albuquerque Police Department did not face the same issues as the Prosecution investigators when carrying out their investigations.¹⁰¹⁶ However, he reaffirmed that problems he had identified could have been addressed.¹⁰¹⁷

274. Clifford Jenkins also conceded during cross-examination that in arriving at his conclusions, he did not have the trial record available to him and, consequently, he was not aware of any corrections that witnesses may have made to their statements in court.¹⁰¹⁸ Clifford Jenkins agreed that it was possible that the factors that caused him concern with regard to the investigation may have been addressed in court, and that if he had reviewed the entire trial record he may have come to different conclusions.¹⁰¹⁹ Furthermore, he agreed with the proposition that an imperfect investigation may still produce enough evidence to prove the guilt of the accused.¹⁰²⁰

(b) Defence evidence concerning the victims of the Varda factory incident

275. The Trial Chamber admitted into evidence from the bar table BiH death certificates issued in 1996 and 1997 for Nedžad Bektaš,¹⁰²¹ Ibrišim Memišević,¹⁰²² and Sabahudin Velagić.¹⁰²³ The death certificates for Nedžad Bektaš and Ibrišim Memišević record the dates and places of death

¹⁰¹⁰ Clifford Jenkins, 27 Mar 2009, T. 6489-6490, 6496.

¹⁰¹¹ Clifford Jenkins, 27 Mar 2009, T. 6490.

¹⁰¹² Clifford Jenkins, 27 Mar 2009, T. 6533.

¹⁰¹³ Clifford Jenkins, 27 Mar 2009, T. 6529.

¹⁰¹⁴ Clifford Jenkins, 27 Mar 2009, T. 6540.

¹⁰¹⁵ Clifford Jenkins, 27 Mar 2009, T. 6541-6542, 6543-6545, 6550-6552.

¹⁰¹⁶ Clifford Jenkins, 27 Mar 2009, T. 6541, 6544, 6549-6551, 6552-6553.

¹⁰¹⁷ Clifford Jenkins, 27 Mar 2009, T. 6555.

¹⁰¹⁸ Clifford Jenkins, 27 Mar 2009, T. 6570-6571.

¹⁰¹⁹ Clifford Jenkins, 27 Mar 2009, T. 6571-6572, 6574.

¹⁰²⁰ Clifford Jenkins, 27 Mar 2009, T. 6574.

¹⁰²¹ 1D241.

¹⁰²² 1D242.

respectively as 10 June 1992, Višegrad, and 9 June 1992, Dušće.¹⁰²⁴ Sabahudin Velagić's death certificate records his date and place of death as 30 May 1992, Višegrad.¹⁰²⁵

276. The Milan Lukić Defence also tendered exhibit 1D226, which lists a number of people who submitted requests for the return of abandoned property in Višegrad. According to this exhibit, a "Ibrišim Memišević (son of Hamed), born on 5 February 1936" submitted a request for the return of property in Omeragići.¹⁰²⁶ In its final trial brief, the Milan Lukić Defence argues that Ibrišim Memišević "is found to be alive and well, living in Sweden".¹⁰²⁷

(c) Milan Lukić's alibi

277. The Milan Lukić Defence presented an alibi for the Varda factory incident. The evidence presented in support of this alibi has been set out in the section above on the Drina river incident.¹⁰²⁸

3. Prosecution alibi rebuttal evidence

(a) VG131

278. VG131 testified that on 9 June 1992, Milan Lukić and Mitar Vasiljević came to an apartment in Višegrad, had a short conversation with the Muslim inhabitants of the apartment, including with VG131, during which time Milan Lukić introduced himself, and then left.¹⁰²⁹ At about midnight of the same day, Milan Lukić came again to the apartment, this time with Sredoje Lukić.¹⁰³⁰ In cross-examination, VG131 testified that she was sure about the date because she recorded all the events that took place in her diary.¹⁰³¹

279. VG131 did not have any knowledge of Milan Lukić prior to 9 June 1992, but she testified that she knew him when the incident took place because he had introduced himself to her the first time he came to her apartment on 9 June 1992.¹⁰³² During cross-examination, she confirmed that he had introduced himself to her.¹⁰³³ When asked by the Prosecution whether she recognised anyone in the courtroom, VG131 recognised Milan Lukić.¹⁰³⁴ As Sredoje Lukić is not charged in relation to

¹⁰²³ 1D243.

¹⁰²⁴ 1D241; 1D242.

¹⁰²⁵ 1D243.

¹⁰²⁶ 1D226, p. 2.

¹⁰²⁷ Milan Lukić final trial brief, para. 236.

¹⁰²⁸ See *supra* section II.E.2(b).

¹⁰²⁹ VG131, 5 Nov 2008, T. 3379-3381.

¹⁰³⁰ VG131, 5 Nov 2008, T. 3381-3382.

¹⁰³¹ VG131, 5 Nov 2008, T. 3396, 3397.

¹⁰³² VG131, 5 Nov 2008, T. 3380; 1D89, p. 3.

¹⁰³³ VG131, 5 Nov 2008, T. 3413.

¹⁰³⁴ VG131, 5 Nov 2008, T. 3404.

the Varda factory incident, and is not part of the alibi presented by the Milan Lukić Defence for this incident, his presence and participation will not be addressed here.¹⁰³⁵

280. When he came to the apartment, Milan Lukić was armed and he issued orders throughout the incident.¹⁰³⁶ Milan Lukić said that VG131, her sister and her friend should go to the SUP building to identify some people.¹⁰³⁷ Milan Lukić took them instead to the Vilina Vlas hotel in a red car.¹⁰³⁸ After taking them to a hotel room, Milan Lukić called over her friend and told another man to interrogate her; Milan Lukić was laughing.¹⁰³⁹ Milan Lukić called over VG131's sister and told her to go with another soldier.¹⁰⁴⁰ Milan Lukić then raped VG131.¹⁰⁴¹ Afterwards, VG131 recalled hearing screaming, and soldiers shouting and cursing.¹⁰⁴² She also heard the voices of her sister and her friend, and her sister screaming to know where VG131 was.¹⁰⁴³ Milan Lukić left VG131 for a while with two soldiers who threatened her.¹⁰⁴⁴ When he returned, he took VG131 to another room. He told her that if anyone tried to come in she was to say that Milan Lukić was in there.¹⁰⁴⁵ Dawn was breaking.¹⁰⁴⁶ Milan Lukić then took her home in the red car.¹⁰⁴⁷ He sexually abused her on the way home.¹⁰⁴⁸ He also told VG131 that he was taking her sister and her friend for exchange, and that if she moved from her house, she might be killed.¹⁰⁴⁹ VG131 never saw her sister or her friend again.¹⁰⁵⁰

(b) VG133 and VG141

281. On 10 June 1992, between 6 and 7 p.m., Milan Lukić arrived in a dark red Passat at an apartment building in Višegrad, where VG141 and VG133 were staying at the time.¹⁰⁵¹

282. According to VG141, Milan Lukić rang the bell of an apartment, and when VG141 came to the door, Milan Lukić asked her whether there were any men in the house and told her that he was looking for a man named "Šehić".¹⁰⁵² A man, Alija Selak, and his son, Nezir Selak, who was a

¹⁰³⁵ See *infra* section II.L.

¹⁰³⁶ VG131, 5 Nov 2008, T. 3382-3383.

¹⁰³⁷ VG131, 5 Nov 2008, T. 3382-3383.

¹⁰³⁸ VG131, 5 Nov 2008, T. 3384.

¹⁰³⁹ VG131, 5 Nov 2008, T. 3384, 3385, 3386-3387.

¹⁰⁴⁰ VG131, 5 Nov 2008, T. 3387.

¹⁰⁴¹ VG131, 5 Nov 2008, T. 3387-3388.

¹⁰⁴² VG131, 5 Nov 2008, T. 3388, 3389-3390.

¹⁰⁴³ VG131, 5 Nov 2008, T. 3388-3389.

¹⁰⁴⁴ VG131, 5 Nov 2008, T. 3390.

¹⁰⁴⁵ VG131, 5 Nov 2008, T. 3390-3391.

¹⁰⁴⁶ VG131, 5 Nov 2008, T. 3391.

¹⁰⁴⁷ VG131, 5 Nov 2008, T. 3391.

¹⁰⁴⁸ VG131, 5 Nov 2008, T. 3391.

¹⁰⁴⁹ VG131, 5 Nov 2008, T. 3391-3392.

¹⁰⁵⁰ VG131, 5 Nov 2008, T. 3393.

¹⁰⁵¹ VG133, 28 Oct 2008, T. 2947, 2972-2973, 2975 and 29 Oct 2008, T. 3066; VG141, 6 Apr 2009, T. 6745, 6763-6764; 1D224.1, p. 2; 1D224.2, p. 9; 1D224.4, p. 2; P161, p. 5.

¹⁰⁵² VG141, 6 Apr 2009, T. 6745-6746, 6767-6768. See also 1D224.2, p. 9; 1D224.4, p. 2.

small boy, came to the door one after the other, and Alija Selak told Milan Lukić that there was no “Sehić” living in the building.¹⁰⁵³ Milan Lukić told both men to come with him and that they would not need their identity papers.¹⁰⁵⁴ Milan Lukić went to the neighbour’s apartment and took the neighbour’s son, Mirsad Hota, as well.¹⁰⁵⁵

283. According to VG133, Milan Lukić then came to the apartment where she was staying.¹⁰⁵⁶ Alija Selak, Nezir Selak, and Mirsad Hota were with him.¹⁰⁵⁷ Milan Lukić asked VG133’s mother-in-law where her sons were, to which she replied that she did not know.¹⁰⁵⁸ VG133 heard Milan Lukić say, “If I come inside and find men in there, I will kill you all”.¹⁰⁵⁹ At this time, Milan Lukić looked at VG133 for 15 to 20 seconds.¹⁰⁶⁰

284. Milan Lukić then put Alija Selak, Nezir Selak, and Mirsad Hota into the Passat.¹⁰⁶¹ At this moment, Huso Hota arrived.¹⁰⁶² VG141 heard Huso Hota telling Milan Lukić to leave his son alone and to take him instead.¹⁰⁶³ VG133 heard Huso Hota asking Milan Lukić if he could hug his son, Mirsad Hota.¹⁰⁶⁴ Milan Lukić ordered Huso Hota to get in the car as well.¹⁰⁶⁵ VG141 testified that she was watching events from the balcony, along with others, and that she saw VG133 and her mother-in-law and father-in-law watching from another balcony.¹⁰⁶⁶ Milan Lukić then drove Alija Selak, Nezir Selak, Mirsad Hota, and Huso Hota down to the “old Višegrad bridge” over the Drina river.¹⁰⁶⁷ VG141 testified that the apartment building was 100 metres away “as a crow flies” from the bridge.¹⁰⁶⁸ According to VG133, her mother-in-law’s apartment was approximately 200 to 300 metres from the bridge.¹⁰⁶⁹

285. From the balconies, VG133 and VG141 saw Nezir Selak wave his arms “as if gesturing to Milan in a conversation”.¹⁰⁷⁰ They then saw Milan Lukić shoot him, and shoot the other three men.¹⁰⁷¹ The bodies were never recovered.¹⁰⁷²

¹⁰⁵³ VG133, 29 Oct 2008, T. 3038; VG141, 6 Apr 2009, T. 6746; 1D224.1, p. 2; 1D224.4, p. 2.

¹⁰⁵⁴ VG141, 6 Apr 2009, T. 6746-6747; 1D224.4, p. 2. Cf. 1D224.2, p. 9.

¹⁰⁵⁵ VG141, 6 Apr 2009, T. 6746-6747; 1D224.1, p. 2; 1D224.2, p. 9; 1D224.4, p. 2.

¹⁰⁵⁶ VG133, 28 Oct 2008, T. 2975; P161, p. 5.

¹⁰⁵⁷ VG133, 28 Oct 2008, T. 2975, 2976-2977.

¹⁰⁵⁸ VG133, 28 Oct 2008, T. 2977; P161, p. 5.

¹⁰⁵⁹ P161, p. 5.

¹⁰⁶⁰ VG133, 28 Oct 2008, T. 2977. See also P161, p. 5.

¹⁰⁶¹ VG133, 28 Oct 2008, T. 2977; VG141, 6 Apr 2009, T. 6747.

¹⁰⁶² VG133, 28 Oct 2008, T. 2977; VG141, 6 Apr 2009, T. 6747.

¹⁰⁶³ VG141, 6 Apr 2009, T. 6747; 1D224.4, p. 2.

¹⁰⁶⁴ VG133, 28 Oct 2008, T. 2977; P161, p. 5.

¹⁰⁶⁵ VG133, 28 Oct 2008, T. 2977; VG141, 6 Apr 2009, T. 6747; 1D224.2, pp 9-10; 1D224.4, pp 2-3; P161, p. 5.

¹⁰⁶⁶ VG141, 6 Apr 2009, T. 6748; 1D224.2, pp 9-10; 1D224.4, pp 2-3.

¹⁰⁶⁷ VG133, 28 Oct 2008, T. 2947, 2972-2973; VG141, 6 Apr 2009, T. 6748-6749; 1D224.1, pp 2-3; 1D224.2, p. 10.

¹⁰⁶⁸ VG141, 6 Apr 2009, T. 6748.

¹⁰⁶⁹ VG133, 28 Oct 2008, T. 2972.

¹⁰⁷⁰ P161, p. 5. See also VG141, 6 Apr 2009, T. 6749; 1D224.1, p. 2; 1D224.2, pp 10-11; 1D224.4, p. 3.

¹⁰⁷¹ 1D224.1, p. 3. Cf. 1D224.2, p. 11; P161, p. 5. See also VG141, 6 Apr 2009, T. 6749.

286. VG133 would see Milan Lukić driving the red Passat that had belonged to Behija Zukić around Višegrad on an “almost daily” basis during the period 20 May 1992 to 17 June 1992.¹⁰⁷³ She first had seen Milan Lukić on 20 May 1992 when the body of Behija Zukić was brought to the Višegrad Health Centre.¹⁰⁷⁴ She also met Milan Lukić at the Višegrad Health Centre in mid-May 1992.¹⁰⁷⁵

287. During cross-examination, it became clear that VG133 was unsure of the date on which she saw Milan Lukić kill the four men. She had testified in direct examination that 10 June 1992 was a Wednesday, and that she knew the killings happened on that day because her mother had gone missing two days earlier and that, on the morning of 10 June 1992, VG133 and her sister had gone to her mother’s village to look for her.¹⁰⁷⁶ During cross-examination, VG133 reaffirmed this, but she also said that she could not remember the exact time or date of the incident.¹⁰⁷⁷ According to VG133, her husband and mother-in-law had “reminded” her that Milan Lukić had arrived on the same day as she went looking for her mother.¹⁰⁷⁸ She also testified during cross-examination that she could never forget 10 June 1992 because it was when her neighbours were killed.¹⁰⁷⁹

288. In her statement, VG133 referred to a Višegrad Health Centre protocol book entry for 7 June 1992, which indicated that Safija Selak, wife and mother of Alija and Nezir Selak, had received treatment for shock on that day.¹⁰⁸⁰ VG133 stated that she could not “be sure of the exact date of these murders but it was certainly around the 7 June [*sic*] and this entry in the Protocol book leads me to believe that it was this date”.¹⁰⁸¹ During cross-examination, VG133 said that she did not say the incident happened on 7 June 1992, but that she had seen Safija Selak’s name in the protocol book for that day and thought that Safija Selak may have “taken ill” that day because her husband and son were killed. She testified that it “might have happened that day, although I didn’t claim that that was actually the case”.¹⁰⁸²

289. During cross-examination, the timeframe in which events occurred was also raised. According to her statement, although she could not recall the exact time, VG133 believed Milan Lukić arrived at her mother-in-law’s apartment mid-morning “because we had already been out of

¹⁰⁷² VG133, 28 Oct 2008, T. 2972; 1D224.2, p. 11; 1D224.4, p. 4; P161, p. 5.

¹⁰⁷³ VG133, 28 Oct 2008, T. 2955-2956.

¹⁰⁷⁴ VG133, 28 Oct 2008, T. 2953; P161, p. 3.

¹⁰⁷⁵ VG133, 28 Oct 2008, T. 2954-2955; P161, p. 3.

¹⁰⁷⁶ VG133, 28 Oct 2008, T. 2972-2973.

¹⁰⁷⁷ VG133, 29 Oct 2008, T. 3024, 3026.

¹⁰⁷⁸ VG133, 29 Oct 2008, T. 3022-3023, 3025.

¹⁰⁷⁹ VG133, 29 Oct 2008, T. 3038-3039.

¹⁰⁸⁰ P161, pp 5-6.

¹⁰⁸¹ P161, p. 5.

¹⁰⁸² VG133, 29 Oct 2008, T. 3011.

bed for sometime and had eaten our breakfast”.¹⁰⁸³ However, VG133 testified that on 10 June 1992, she and her sister had spent the day with their mother in their mother’s village.¹⁰⁸⁴ They had taken a bus to the village at about 9 a.m.¹⁰⁸⁵ and had returned on the bus that left at 5 p.m.¹⁰⁸⁶ VG133 explained that she had been confused and that the reference to “mid-morning” in her statement actually referred to an incident the day before when two men in grey uniforms had come to the apartment, locked VG133 in a room and one of them had tried to rape her.¹⁰⁸⁷ She reaffirmed this in re-examination.¹⁰⁸⁸ She further testified during cross-examination that her confusion arose from the fact that in addition to Milan Lukić coming to the apartment, other groups of people came on three or four other occasions, and “[s]ometimes [...] you mix up a couple of dates or a couple of times a day”.¹⁰⁸⁹

290. When asked by the Prosecution whether she recognised anyone in the courtroom, VG133 recognised Milan Lukić.¹⁰⁹⁰

291. VG141 had not seen Milan Lukić before this evening in June 1992.¹⁰⁹¹ About half an hour after the incident, VG141 was told by VG133 and her mother-in-law and father-in-law that the man who had come to her door was Milan Lukić and she was told how they knew him.¹⁰⁹² She testified that when she first saw Milan Lukić there was still light outside and that she stood about a metre away from him.¹⁰⁹³ He was armed.¹⁰⁹⁴ On cross-examination, she confirmed that Milan Lukić did not introduce himself, and that she was able to look at him for a few minutes.¹⁰⁹⁵ She reaffirmed that she knows it was he.¹⁰⁹⁶

292. VG141 stated during cross-examination that she had also been shown several photographs when she gave her statement in Visoko, and she was told that the man she had recognised as being the man who had come to the apartment in one of those photographs was Milan Lukić.¹⁰⁹⁷ VG141 testified that she had not mentioned this in any of her statements or to the Prosecution because she did not think it was important.¹⁰⁹⁸ VG141 was further asked why the Visoko statement was not

¹⁰⁸³ P161, p. 5. See also VG133, 29 Oct 2008, T. 3022.

¹⁰⁸⁴ VG133, 28 Oct 2008, T. 2972-2973.

¹⁰⁸⁵ VG133, 28 Oct 2008, T. 2973 and 29 Oct 2008, T. 3014-3015, 3017-3018.

¹⁰⁸⁶ VG133, 29 Oct 2008, T. 3019. See also *id.* T. 3014.

¹⁰⁸⁷ VG133, 29 Oct 2008, T. 3024-3025.

¹⁰⁸⁸ VG133, 29 Oct 2008, T. 3065.

¹⁰⁸⁹ VG133, 29 Oct 2008, T. 3022-3023.

¹⁰⁹⁰ VG133, 28 Oct 2008, T. 2981-2982.

¹⁰⁹¹ VG141, 6 Apr 2009, T. 6745, 6766, 6768, 6775.

¹⁰⁹² VG141, 6 Apr 2009, T. 6750; 1D224.4, pp 2, 3.

¹⁰⁹³ VG141, 6 Apr 2009, T. 6745-6747; 1D224.4, p. 2.

¹⁰⁹⁴ VG141, 6 Apr 2009, T. 6745; 1D224.1, p. 2; 1D224.4, p. 2.

¹⁰⁹⁵ VG141, 6 Apr 2009, T. 6766-6767.

¹⁰⁹⁶ VG141, 6 Apr 2009, T. 6772.

¹⁰⁹⁷ VG141, 6 Apr 2009, T. 6776-6780.

¹⁰⁹⁸ VG141, 6 Apr 2009, T. 6778-6779.

mentioned in her other statements. VG141 replied that she had written it herself and signed it in front of people who were present.¹⁰⁹⁹ It was put to VG141 that she was changing her testimony because she had earlier testified that she could not remember whether there was a statement recording her identification of Milan Lukić in a photograph. VG141 said that she remembered that there was a statement.¹¹⁰⁰ During re-examination, VG141 agreed that when she gave her statements, questions were always put to her by different people.¹¹⁰¹

293. VG141 testified that she knew the Passat had belonged to Behija Zukić.¹¹⁰² On cross-examination, she testified that the fact that the man was driving the Passat was a basis for knowing that he was Milan Lukić, together with being told by VG133, and her mother-in-law and father-in-law who he was.¹¹⁰³ She was asked why she had not linked the Passat to Milan Lukić in her statements, to which she said that she did not know it was important.¹¹⁰⁴

294. In relation to her testimony regarding the date of the incident, VG141 testified that after having fled from Višegrad, a friend reported Alija Selak and Nezir Selak's disappearances to the ICRC.¹¹⁰⁵ VG141 later reported Alija Selak and Nezir Selak missing at the Bosnian Commission for Missing Persons.¹¹⁰⁶ At that time, she was shown the register of missing persons and she saw that the date for the men's disappearances was recorded erroneously; it was 16 May 1992, not 10 June 1992.¹¹⁰⁷ She informed the Commission that the correct date was 10 June 1992.¹¹⁰⁸ During cross-examination, she agreed that on 14 May 1992, Alija Selak was arrested and beaten in the police station.¹¹⁰⁹ However, she disagreed that Alija Selak did not return after his arrest.¹¹¹⁰ VG141 further testified that her aunt had provided information recorded in the Sarajevo Household Survey 1994, which records the date of death of Alija Selak and Nezir Selak as 10 June 1992.¹¹¹¹

295. During cross-examination, VG141 confirmed that she was a member of the Women Victims of War Association.¹¹¹² She testified that Bakira Hasečić, the President of that Association, had not contacted her about providing a statement; rather, VG141 had contacted the Association.¹¹¹³ VG141

¹⁰⁹⁹ VG141, 6 Apr 2009, T. 6785.

¹¹⁰⁰ VG141, 6 Apr 2009, T. 6785, 6786.

¹¹⁰¹ VG141, 6 Apr 2009, T. 6793.

¹¹⁰² VG141, 6 Apr 2009, T. 6747. See also 1D224.1, p. 2; 1D224.2, p. 10.

¹¹⁰³ VG141, 6 Apr 2009, T. 6750, 6771-6772.

¹¹⁰⁴ VG141, 6 Apr 2009, T. 6771-6772.

¹¹⁰⁵ VG141, 6 Apr 2009, T. 6752.

¹¹⁰⁶ VG141, 6 Apr 2009, T. 6753.

¹¹⁰⁷ VG141, 6 Apr 2009, T. 6757, 6762.

¹¹⁰⁸ VG141, 6 Apr 2009, T. 6762. See also P327.

¹¹⁰⁹ VG141, 6 Apr 2009, T. 6791-6792.

¹¹¹⁰ VG141, 6 Apr 2009, T. 6792. See also *id.* T. 6794.

¹¹¹¹ VG141, 6 Apr 2009, T. 6763; P327, p. 5.

¹¹¹² VG141, 6 Apr 2009, T. 6781.

¹¹¹³ VG141, 6 Apr 2009, T. 6781.

rejected the implication that she had given her statement to the Association only in order to receive a benefit.¹¹¹⁴

296. VG141 confirmed that Bakira Hasečić had interviewed her for her 2007 statement but denied the suggestion by the Milan Lukić Defence that Bakira Hasečić had “reminded” her of what had happened on 10 June 1992.¹¹¹⁵ VG141 testified that she had not included the same detail in her statement about the incident as she had provided in her testimony because she was providing information in the context of becoming a member of the Association and not in relation to a trial against Milan Lukić.¹¹¹⁶ It was put to her that the statements from the association are tailored to whoever is on trial and that she had also tailored her statement in relation to Milan Lukić’s trial. VG141 stated in response that she gave her statements in order to explain what happened on 10 June 1992.¹¹¹⁷ VG141 further testified that she has never thought of Milan Lukić as a “Chetnik”, and rejected the notion that Bakira Hasečić had forced her to insert “Milan Lukić” into her statement or embellish her statement.¹¹¹⁸

297. The Prosecution did not ask VG141 whether she recognised anyone in the courtroom.

4. Factual findings in relation to the Varda factory incident

(a) Defence challenge of Prosecution investigations, including of the Varda factory incident

298. Clifford Jenkins challenged the credibility of the witness evidence presented by the Prosecution in support of its allegations concerning the Varda factory incident. In the Trial Chamber’s view, evidence that goes only to best practices of investigations is not relevant. It holds that Clifford Jenkins’ evidence is relevant only to the extent that it may demonstrate that there were deficiencies in the manner that the Prosecution conducted its investigation of the Varda factory incident which impact on the Prosecution’s evidence in this case. However, Clifford Jenkins did not demonstrate such deficiencies. With regard to the witness statement of the person who did not appear before the Trial Chamber as a witness, the Trial Chamber observes that it must make its determinations based on the evidence presented during the trial, and considers it irrelevant to its assessment of this evidence that there may be other information about the incidents charged. The Trial Chamber has not considered Clifford Jenkins’ evidence in this respect. Specific observations of Clifford Jenkins regarding the evidence of VG042, VG024 and VG017 are addressed below.

¹¹¹⁴ VG141, 6 Apr 2009, T. 6781, 6787-6789.

¹¹¹⁵ VG141, 6 Apr 2009, T. 6781-6782.

¹¹¹⁶ VG141, 6 Apr 2009, T. 6783.

¹¹¹⁷ VG141, 6 Apr 2009, T. 6787.

¹¹¹⁸ VG141, 6 Apr 2009, T. 6790.

(b) Weight to be placed on witness evidence

299. The Trial Chamber considers that certain discrepancies between VG042, VG024, and VG017's evidence concerning the events that took place at the Varda factory are the result of the differences in their respective vantage points.

300. The Trial Chamber has relied primarily on VG042, who, as noted above, saw the entire incident unfold. The Trial Chamber notes Clifford Jenkins' observation that VG042 was some distance from the factory gate and the Drina river and his expression of doubt as to whether VG042 could have identified Milan Lukić. It also notes that VG042 asserted a number of times in court that she was able to see what happened from her balcony on the top floor of her house. She testified that she had good eye-sight at the time. In addition, the video evidence taken from VG042's balcony demonstrates that her view of the factory, the guardhouse and the road to the river was unobstructed. The Trial Chamber observes that VG042 was watching events involving people she knew well and recognised. Furthermore, Ibrišim Memišević's wife, Mujesira Memišević, and daughter, Meliha Memišević, were on VG042's balcony with her. Meliha Memišević clearly recognised her father when he was at the river bank, and she called to him, causing him to turn around. This supports VG042's evidence that she could see what was happening and that she recognised specific individuals. The Trial Chamber concludes that VG042 had a clear line of sight from the balcony and was able to see what happened at the Varda factory that day.

301. The Trial Chamber notes that VG042 provided an account regarding Milan Lukić taking Behija Zukić's Passat that differs significantly from other evidence presented in this case.¹¹¹⁹ In light of the considerable discrepancy, the Trial Chamber disregards this evidence from VG042. However, the Trial Chamber is of the view that her erroneous recollection of the taking of the Passat does not affect the reliability and credibility of her evidence pertaining to the Varda factory incident.

302. The Trial Chamber further notes VG042's recollection that she saw the dead body of Behija Zukić on the same morning as the Varda factory incident.¹¹²⁰ During cross-examination, VG042 testified that she could not remember when she saw Behija Zukić's body, although she also tied that event to the abduction of her husband. By contrast, in her 2008 statement, she recalled seeing Behija Zukić's body before the Varda factory incident, but did not specify more precisely when this happened and, in her 1998 statement, she did not give any time reference for this incident at all. Other evidence presented in this case indicates that Behija Zukić was killed in May 1992. The Trial

¹¹¹⁹ See *supra* para. 259.

¹¹²⁰ See *supra* paras 260-261.

Chamber considers that VG042's evidence is consistent with regard to her seeing Behija Zukić's body and that this had happened before the Varda factory incident. However, she was clearly confused about exactly when this happened. The Trial Chamber considers that, despite connecting in time the death of Behija Zukić to her husband's abduction and the Varda factory incident during her testimony, VG042 correctly described a clear sequence of events, namely, seeing Behija Zukić's body, the abduction of VG042's husband and the two other men, and the Varda factory incident. The Trial Chamber considers that her testimony that she saw Behija Zukić's body on the same morning as the Varda factory incident, in light of her previous statements, does not affect the reliability or credibility of her evidence about the Varda factory incident itself.

303. The Trial Chamber has also relied on VG024's recollection of events. In this regard, the Trial Chamber notes that Clifford Jenkins questioned the Prosecution's decision to rely on the evidence of VG017 and VG042, rather than evidence of people who had seen Milan Lukić when he was inside the factory. However, in doing so, it appears that Clifford Jenkins disregarded the evidence of VG024, who witnessed the early stages of the incident from inside the factory.

304. In assessing the weight to be given to VG024's evidence, the Trial Chamber notes that VG024 did not observe the incident without interruption and she did not have an unobstructed view to the bank of the Drina river. The Trial Chamber has also taken into account the inconsistencies between VG024's testimony and her prior statements concerning the events. The Trial Chamber does not place any weight on the fact that VG024's statements do not mention Milan Lukić taking the men to the Drina river and lining them up there in light of her confirmation while testifying that she had seen this taking place.¹¹²¹ The Trial Chamber considers VG042's evidence to have greater probative value than that of VG024 with respect to what happened that day, and that VG024's evidence supports VG042's account.

305. In assessing the weight to be attached to VG017's evidence, the Trial Chamber notes that VG017 did not see the incident without interruption. It recalls Clifford Jenkins' view that VG017 was 200 to 225 metres away from events, although it does not consider this determinative. VG017's evidence contains significant inconsistencies regarding his knowledge and recognition of the man he identified as Milan Lukić, and the Passat. In addition, his version of events differs from VG042 and VG024, particularly with regard to how the man he identified as Milan Lukić took the Muslim men down to the Drina river. Unlike VG042 and VG024, VG017 saw Milan Lukić leading the men down to the river in two groups and he heard two bursts of gunfire, one burst after each group of men had been led down to the river. In light of this difference in his recollection of events and VG017's evidence regarding his recognition of Milan Lukić, which is discussed below, the Trial

Chamber places little weight on VG017's evidence, except with regard to his evidence concerning the victims of the incident, which the Trial Chamber will consider in corroboration of other evidence.

(c) Date of the incident

306. The Trial Chamber recalls the Prosecution's allegation that the Varda factory incident took place "on or about 10 June 1992". While VG024 and VG042 did not unequivocally state that the events at the Varda factory took place on either 9 or 10 June 1992, they clearly and consistently recalled that the events occurred on Bajram, a Muslim feast. Their witness statements record them stating that the events took place on 10 June 1992. Moreover, VG042 witnessed her husband's abduction on the same morning as the Varda factory incident. The evidence of VG042 and VG024 shows that the Varda factory incident took place "on or about 10 June 1992" as charged in the indictment.

(d) Prosecution evidence concerning Milan Lukić's acts and conduct at the Varda factory

307. The evidence of VG042 and VG024 establishes that in the late morning of that day, Milan Lukić arrived at the Varda factory in a red Passat, armed with a rifle. He entered the Varda factory and collected seven Muslim men from inside the factory, whom he took to the guardhouse. He ordered them to remove their work clothes. He then took the men down to the bank of the Drina river in front of the Varda factory, where he shot them.

308. The Prosecution alleges that Milan Lukić arrived at the Varda factory with "another uncharged individual". The Trial Chamber notes that VG017 confirmed in court that two men accompanied Milan Lukić, while according to VG024 and VG042, Milan Lukić arrived with only one other person. The Prosecution did not address this evidence in its final trial brief and, in fact, makes no mention of the other "uncharged individual" whom it specifies in the indictment. The Trial Chamber does not consider the discrepancy in the witnesses' testimony to be material; the evidence of VG017, VG024 and VG042 does not implicate any other men in the taking of the Muslim men down to the Drina river and shooting them, and, as such, it is reasonable to conclude that the witnesses would not have attached great significance to this detail. However, the Trial Chamber is satisfied on the basis of the evidence of VG042 and VG024 that Milan Lukić arrived at the Varda factory with one other man.

309. VG042 testified that she saw Nusret Aljošević, Nedžad Bektaš, Mušan Čančar, Ibrišim Memišević, Hamed Osmanagić, Lutvo Tvrtković and Sabahudin Velagić being taken out of the

¹¹²¹ See *supra* para. 246.

factory by Milan Lukić, and she watched as they were taken down to the river and shot. VG042 knew all these men well. The Trial Chamber is further persuaded that VG042 saw the bodies of Ibrišim Memišević, Mušan Cančar, Nusret Aljošević, and Hamed Osmanagić, and that she assisted with the burial of Ibrišim Memišević. In arriving at this conclusion, the Trial Chamber has considered the cross-examination of VG042 concerning her 1993 MUP statement, in which she listed the names of the men noted above, and stated that she did not remember the names of the “remaining three persons who were killed.” The Trial Chamber reiterates its earlier finding that it does not attach probative value to this statement.¹¹²²

310. VG042’s evidence regarding Nedžad Bektaš is also supported by VG017, and her evidence regarding Sabahudin Velagić, Lutvo Tvrtković, and Hamed Osmanagić is supported by VG024. In addition, both VG017 and VG024 corroborate her evidence concerning Nusret Aljošević and Ibrišim Memišević.

311. According to Clifford Jenkins, VG017 was 200 to 225 metres away from the gate of the factory. However, VG017 consistently stated in court that he recognised Nedžad Bektaš, Nusret Aljošević, and Ibrišim Memišević when they were brought out of the factory by Milan Lukić, and he explained how he knew these men. The Trial Chamber finds this evidence credible. VG017 also confirmed his earlier testimony that he had assisted with the burial of Ibrišim Memišević’s body the day after the incident. However, the Trial Chamber is not persuaded that VG017 recognised Lutvo Tvrtković, Hamed Osmanagić, Sabahudin Velagić, and Mušan Čančar being taken out of the factory as it appears that VG017 was told by others after the event that these men were also part of the group.

312. The Trial Chamber notes the inconsistency between VG042 and VG017 as to the man whose shoulder Milan Lukić put his arm around when the men were being taken to the river, and it has considered that both VG042 and VG017 testified that they assisted with the burial of Ibrišim Memišević, but that in their evidence they did not acknowledge the presence of one another. However, it does not consider that these inconsistencies are material and, consequently, they do not affect the credibility of VG042’s and VG017’s evidence with regard to the victims.

313. VG024 saw Milan Lukić collecting Sabahudin Velagić, Lutvo Tvrtković, Hamed Osmanagić, Nusret Aljošević, and Ibrišim Memišević from inside the factory. Furthermore, according to VG024, after the shooting, Sabahudin Velagić’s body was identified among the bodies of other men at the Drina river by his father. The Trial Chamber is further satisfied that VG024 was told by Ibrišim Memišević’s wife, Mujesira Memišević, that Ibrišim Memišević’s body was found

¹¹²² See *supra* para. 242.

after the incident at the site where he was shot. However, the Trial Chamber notes that this hearsay evidence is inconsistent with the evidence of VG017 and VG042 regarding when Ibrišim Memišević's body was found, and where his body was buried. As such, the Trial Chamber will place little weight on this evidence as corroborating the other evidence that Ibrišim Memišević was killed at the Drina river that day.

314. VG042's identification of Nedžad Bektaš and Ibrišim Memišević as victims is further supported by their death certificates.¹¹²³ The Trial Chamber notes the differences between the certificates in respect of the time and place of the deaths. In this respect, the Trial Chamber recalls its earlier finding that it is satisfied that the incident took place on or about 10 June 1992.¹¹²⁴ It considers that these discrepancies do not raise doubt that Nedžad Bektaš and Ibrišim Memišević were killed during the Varda factory incident.

315. With regard to exhibit 1D226, upon which the Milan Lukić Defence relies as evidence that Ibrišim Memišević is, in fact, alive,¹¹²⁵ the Trial Chamber is satisfied that the Ibrišim Memišević named in this exhibit is not the man named as a victim in the Varda factory incident. In arriving at this finding, the Trial Chamber has taken account of the substantial and consistent witness evidence to the contrary.

316. The Trial Chamber notes that while Sabahudin Velagić's death certificate records him as having died on 30 May 1992, the death certificate was issued in 1997 and it is possible that his death may have been notified well after he died. Both VG042 and VG024 identify Sabahudin Velagić as one of the victims of the Varda factory incident. The Trial Chamber does not consider that the date of his death on the death certificate undermines this other consistent evidence that Sabahudin Velagić was a victim of the Varda factory incident.

317. The Trial Chamber recalls that the body referred to in John Clark's autopsy report as case number 361B was identified as being that of Hamed Osmanagić.¹¹²⁶ The Trial Chamber considers that the autopsy report and the record of identification could only be used as corroborating evidence of VG042 and VG024 that Hamed Osmanagić was a victim of the Varda factory incident as neither document specifies the time or place of death. The Trial Chamber notes that there are inconsistencies between the autopsy report and the record of identification in respect of the facial injuries present on the remains. It also notes the evidence of VG024 and VG042 that the men were required to take off their work clothes before being led down to the river, but that there is no

¹¹²³ See *supra* para. 275.

¹¹²⁴ See *supra* para. 306.

¹¹²⁵ See *supra* para. 276.

¹¹²⁶ See *supra* para. 254.

evidence before the Trial Chamber upon which it can conclude that the clothing found with the body was the victim's work clothing. Therefore, and despite the inconsistency regarding the facial injury, the Trial Chamber accepts these documents as corroborating VG042 and VG024's evidence that Hamed Osmanagić was shot during the Varda factory incident.

318. In making its findings regarding the victims, the Trial Chamber has taken account of the discrepancies that exist in exhibit P184, the list of persons from Višegrad who remain missing, and exhibit P119, a table of data collected by Ewa Tabeau, as well as Ewa Tabeau's testimony about the reasons for the inaccuracies of dates of disappearances. From the perspective of determining who were the victims of the Varda factory incident, the Trial Chamber does not consider that the data contained in these tables is sufficiently reliable, and it has instead relied on the consistent and credible witness testimony, as discussed above.

319. The Trial Chamber is satisfied that the seven men who were collected from the Varda factory and shot were Nusret Aljošević, Nedžad Bektaš, Mušan Čančar, Ibrišim Memišević, Hamed Osmanagić, Lutvo Tvrtković and Sabahudin Velagić.

(c) Prosecution evidence concerning Milan Lukić's presence at the Varda factory

320. The Trial Chamber recalls the evidence of VG024 and VG042 that they recognised Milan Lukić at the Varda factory. While VG042 knew Milan Lukić and his family well when he was a boy, at the time the war started she had not seen him for a significant period of time. The Trial Chamber notes the Milan Lukić Defence submission in its final trial brief that VG042's testimony that she saw Milan Lukić on the bus before she was married is "unfathomable, as age differences make this impossible" and that this calls the credibility of VG042 into question.¹¹²⁷ While VG042 testified that she regularly saw Milan Lukić on the bus before she was married, that is, before she turned 15 years old, she also testified that Milan Lukić was born around the same time as her sons, and that they had been friends. She further pointed to her father's friendship with Milan Lukić's grandfather. Therefore, while the Trial Chamber agrees with the Milan Lukić Defence that it was not possible for her to see Milan Lukić as a young boy on the bus before she was married, it is satisfied on the basis of the rest of her evidence that she knew Milan Lukić before the Varda factory incident.

321. It is not clear how regularly VG042 saw Milan Lukić after the war started. However, VG042 consistently stated that the man whom she saw arriving on two different occasions on the morning of the Varda factory incident was Milan Lukić, including when she saw Milan Lukić taking away

¹¹²⁷ See Milan Lukić final trial brief, para. 247.

her husband. The Trial Chamber also notes that VG042 witnessed the entire incident, and so had the time to see Milan Lukić over an extended period of time. The Trial Chamber takes into account VG042's estimation of Milan Lukić's age as 40 years, but also that she appeared uncertain about this estimation, and it considers that her evidence in this regard is not determinative of her recognition of Milan Lukić that day, particularly in light of her other evidence about how she knew him.

322. VG024 testified that she had known Milan Lukić from when he was young, and she reiterated that she knew him well. At the time of the incident, VG024 passed very near to Milan Lukić when he was inside the Varda factory. The Trial Chamber notes that VG024 erroneously identified a man in the photospread presented to her in 1998 as Milan Lukić. However, it does not consider that this undermines VG024's evidence as to her prior knowledge of Milan Lukić and her confirmation that she saw Milan Lukić on the day of the incident. The Trial Chamber is satisfied by VG024's explanation that the photographs were blurry and that she was unable to see properly the man depicted. It further notes Ib Jul Hansen's testimony that it was never established whether the man in the photographs was Milan Lukić. The Trial Chamber is also not persuaded that VG024's statement to the Women Victims of War Association regarding an incident that took place in 2004 has any bearing on her credibility. Furthermore, there is nothing in VG024's evidence to demonstrate that she had any reason to falsify her identification of Milan Lukić and Sredoje Lukić in that statement.

323. The Trial Chamber notes that VG024 recognised Milan Lukić in court. There is sufficient evidence based on VG024's prior knowledge and her recollection of events at the Varda factory to conclude that VG024 knew Milan Lukić at the time of the incident and recognised him inside the Varda factory that day.

324. The Trial Chamber considers that VG017's evidence regarding his recognition of Milan Lukić is unreliable. VG017 contradicted himself a number of times during his testimony, and in relation to his witness statements, with respect to his prior knowledge of Milan Lukić. While he testified that he had known Milan Lukić before the Varda factory incident, he also clearly stated that, on the day of the incident, he did not know that it was Milan Lukić who arrived at the Varda factory and that he was told later that it was Milan Lukić. VG017's evidence regarding seeing Milan Lukić driving the Passat is similarly confused. It is difficult to discern whether VG017 could have recognised Milan Lukić in June 1992, and the Trial Chamber cannot draw any conclusion as to whether VG017 saw Milan Lukić driving the car he was later told was a Passat before the Varda factory incident, and thus whether this was a means by which VG017 had recognised Milan Lukić

on that day. The contradictions and lack of clarity in VG017's evidence call into doubt VG017's ability to recognise Milan Lukić on the day of the incident.

325. The Trial Chamber recalls its finding that another man was with Milan Lukić when he arrived at the Varda factory, but notes that there is no evidence that this man or any other armed persons were with Milan Lukić at the river and could have shot the men.

(f) Defence evidence concerning Milan Lukić's alibi

326. The Trial Chamber turns now to the alibi presented by the Milan Lukić Defence for 7-10 June 1992. The evidence and findings relating to this alibi have been set out in the Drina river incident section.¹¹²⁸

327. Specifically with regard to the Varda factory incident, the Prosecution submits that the discrepancy between the Milan Lukić Defence's initial notice of alibi,¹¹²⁹ which stated that Milan Lukić merely participated in taking the workers from the Varda factory to the police station, and its subsequent 18 July 2008 notice of alibi, which placed Milan Lukić in Belgrade, supports a finding that the alibi is false.¹¹³⁰ The Trial Chamber notes that in its initial notice of alibi, the Milan Lukić Defence stated: "the accused confirms only the participation in bringing men from the Factory to the Police Station which was his job, following the direct order of the Chief of the Police Station in Visegrad."¹¹³¹ The alibi that was presented in this case was set out in the alibi notice filed by the Milan Lukić Defence on 18 July 2008.¹¹³² The Prosecution objected to the new alibi, noting that "the alibi for this incident has changed completely".¹¹³³ The Milan Lukić Defence submitted in response that the "general statement" in its initial notice of alibi was information "that it was part of Milan Lukić's job detail to transport men from the Varda Factory to the Police Station. It was not meant to indicate that he transported the men on the specific day, as he was out of town on that day. There is no changed alibi here".¹¹³⁴

(g) Prosecution alibi rebuttal evidence

328. VG131, VG133 and VG141 are reliable witnesses. They provided credible accounts of two incidents that took place in Višegrad on 9-10 June 1992, in which Milan Lukić participated.

¹¹²⁸ See *supra* paras 146-166, 210-226, 230.

¹¹²⁹ Milan Lukić's Defence notice under Rule 67(A)(i)(a), filed confidentially on 9 January 2008.

¹¹³⁰ Prosecution final trial brief, confidential Annex E, paras 40-41.

¹¹³¹ Milan Lukić's Defence notice under Rule 67(A)(i)(a), filed confidentially on 9 January 2008, p. 7.

¹¹³² Milan Lukić's further submissions in regard to defence of alibi, filed confidentially on 18 July 2008, pp 5-6.

¹¹³³ Prosecution response to Milan Lukić's further submissions in regard to defence of alibi, filed confidentially on 24 July 2008, para. 6.

¹¹³⁴ Milan Lukić's reply to the Prosecution response to Milan Lukić's further submissions in regard to defence of alibi, filed confidentially on 31 July 2008, para. 14.

Particularly, with regard to the incident testified to by VG133 and VG141, the Trial Chamber considers that VG133 displayed confusion as to the date of the incident, and that, while during cross-examination she was uncertain about the timing of the incident, she confirmed that it took place in the evening of 10 June 1992 both during cross-examination and re-examination. VG133 had a clear recollection of the taking of the four men from the apartment building and their deaths on the bridge. Moreover, VG133's account was corroborated by VG141, who also provided convincing evidence that the incident happened in the evening of 10 June 1992. As such, VG131, VG133 and VG141's evidence clearly places Milan Lukić in Višegrad on the evening of 9 June 1992 and on 10 June 1992.

(h) Finding on Milan Lukić's presence, acts and conduct at the Varda factory

329. The evidence presented by the Prosecution as to Milan Lukić's presence, acts and conduct on or about 10 June 1992 was provided by credible and reliable witnesses. Milan Lukić's alibi for this event is the same as that for the Drina river incident, which the Trial Chamber has already rejected as not being reasonably possibly true.¹¹³⁵ On the basis of the evidence as a whole, that is, the evidence of the Prosecution and the Defence in relation to the Varda factory incident, the Trial Chamber again rejects the alibi as not being reasonably possibly true and as a cynical and callously orchestrated artifice.¹¹³⁶ The Trial Chamber concludes that the Prosecution has proved beyond reasonable doubt the occurrence of the events at the Varda factory, namely that on or about 10 June 1992, Milan Lukić selected Nusret Aljošević, Nedžad Bektaš, Mušan Čančar, Ibrišim Memišević, Hamed Osmanagić, Lutvo Tvrtković and Sabahudin Velagić from the Varda factory, and forced them to walk to the bank of the Drina river, where he shot and killed them.

¹¹³⁵ See *supra* para. 230.

¹¹³⁶ See also *supra* para. 230.

G. The Pionirska street incident

1. Prosecution case

(a) The witnesses

330. The Trial Chamber heard evidence from eight witnesses: VG013, VG018, VG038, VG078, VG084, VG101, VG115 and Huso Kurspahić.

331. VG078 and VG101 are sisters.¹¹³⁷ Both gave evidence that they were able to escape just prior to the alleged fire, as the group of victims were being transferred from Jusuf Memić's house into Adem Omeragić's house.¹¹³⁸

332. VG013, VG018, VG038 and VG084 gave evidence that they escaped from Adem Omeragić's house during the alleged fire.¹¹³⁹ VG018 is the mother of VG084, who was about 14 years old in June 1992.¹¹⁴⁰ VG013 is the mother of VG038, who was about 14 ½ years old at the time.¹¹⁴¹

333. VG115 gave evidence that although she was not personally involved in the incident, she was able to witness certain events from a distance.¹¹⁴²

334. Huso Kurspahić left Višegrad on 6 April 1992. However, members of his family remained in the area.¹¹⁴³ Huso Kurspahić gave evidence that his father, Hasib Kurspahić, an elderly survivor of the fire who passed away in 1996, told him of the events that transpired on 14 June 1992.¹¹⁴⁴

(b) The departure from Koritnik and arrival on Pionirska street

335. Prior to 14 June 1992, the village of Koritnik was populated by both Muslims and Serbs. The Muslim area of the Koritnik contained about 20 houses and was populated by approximately 60 people.¹¹⁴⁵

336. On or about 13 June 1992, a number of Serb men from neighbouring villages arrived in the village of Koritnik and informed the Muslim population that they would have to leave their

¹¹³⁷ VG078, 8 Sep 2008, T. 1382; VG101, 9 Sep 2008, T. 1420.

¹¹³⁸ VG078's and VG101's evidence on this issue is set out in further detail at paras 357, 362, 375 *infra*.

¹¹³⁹ VG013's, VG018's, VG038's and VG084's evidence regarding these events is set out further detail at paras 376-387.

¹¹⁴⁰ VG084, 4 Sep 2008, T. 1234 and 5 Sep 2008, T. 1256, 1272, 1276, 1278, 1282; VG018, 8 Sep 2008, 1360.

¹¹⁴¹ VG038, 2 Sep 2008, T. 959; VG013, 3 Sep 2008, T. 1047.

¹¹⁴² VG115's account is set out at paras 374-375.

¹¹⁴³ Huso Kurspahić, 1 Sep 2008, T. 883; P36, p. 2.

¹¹⁴⁴ Huso Kurspahić, 1 Sep 2008, T. 874-875, 878-79, 899; P37, T. 789-796.

¹¹⁴⁵ 1D36, p. 2; P92, p. 2.

homes.¹¹⁴⁶ They were told that they would be transported to an area known as Kladanj as part of an exchange whereby Serbs living in Kladanj would be transferred to Koritnik and the Muslims in Koritnik would be settled in Kladanj.¹¹⁴⁷ One of the men told VG013: “This is ethnic cleansing, and you have to leave here”.¹¹⁴⁸

337. Between 6 and 8 a.m. on 14 June 1992, a group of Muslim residents from Koritnik gathered to await the arrival of the buses.¹¹⁴⁹ The group was comprised exclusively of Muslims,¹¹⁵⁰ all of whom were unarmed civilians, dressed in civilian clothing.¹¹⁵¹

338. When the buses failed to arrive, they walked southwards to the neighbouring village of Greben, where they continued to wait for the buses.¹¹⁵² When the buses still failed to arrive, the group continued southwards on foot to the town of Višegrad.¹¹⁵³ En route between Greben and Višegrad, the group passed through Sase where about seven persons from the area merged with those from Koritnik (“Koritnik group”).¹¹⁵⁴

339. The Koritnik group arrived in Višegrad between noon and 1 p.m.¹¹⁵⁵ and made its way to the SUP building, where they encountered a number of armed Serb policemen and soldiers who told the group to go to the Red Cross office located in a building near the Drina river known as “the new hotel”.¹¹⁵⁶ The group walked to the Red Cross building, found it closed and stood waiting in front of the new hotel.¹¹⁵⁷

340. VG018 and VG084 gave evidence that as the group waited, a young man emerged from the new hotel and told the group that a number of buses destined for Kladanj had left earlier that day,

¹¹⁴⁶ VG013, 2 Sep 2008, T. 1014-1015; VG101, 9 Sep 2008, T. 1421-1422; 1D27, p. 3; 1D32, p. 2; 1D36, p. 2; 1D37, T. 1143-1144; P44, T. 1345-1346; P 62, p. 3; P72, T. 1655-1656; P74, p. 3; P83, pp 4-5; P88, T. 1278-1279; P92, p. 2.

¹¹⁴⁷ VG013, 2 Sep 2008, T. 1014; VG101, 9 Sep 2008, T. 1423; 1D32, p. 2; P83, pp 4-5; P92, p. 2. See also 1D36, p. 2; 1D37, T. 1144; P62, p. 3; P72, T. 1655-1656; P74, p. 3. VG038 gave evidence that the group was told that they would be settled in Zenica, 1D27, p. 3; P44, T. 1345.

¹¹⁴⁸ P62, p. 3. See also VG013, 2 Sep 2008, T. 1014.

¹¹⁴⁹ VG101, 9 Sep 2008, T. 1423; 1D26, p. 2; 1D36, p. 2-3; 2D4, p. 2; P44, T. 1349.

¹¹⁵⁰ VG101, 9 Sep 2008, T. 1423; 1D36, p. 2-3.

¹¹⁵¹ VG101, 9 Sep 2008, T. 1423; P82, T. 1566.

¹¹⁵² VG013, 2 Sep 2008, T. 1015-1017; VG101, 9 Sep 2008, T. 1422-1423; 1D36, p. 3; P44, T. 1350; P72, T. 1656; P82, T. 1567, 1605; P83, p. 6; P88, T. 1279.

¹¹⁵³ VG013, 2 Sep 2008, T. 1018-1019; VG101, 9 Sep 2008, T. 1423-1424; 1D37, T. 1147-1148; P44, T. 1352-1353, 1356-1357; P62, p. 3; P72, T. 1656-1657; P82, T. 1567, 1605, P83, p. 6; P88, T. 1279-1280.

¹¹⁵⁴ P44, T. 1354; P82, T. 1568-1569; P88, T. 1280; P40, P41, p. 4. P40. VG018 identified four of the persons from Sase who merged with the group from Koritnik as Mujo Halilović, Meho Halilović, Meho Halilović’s wife Murka and Igbala Kurspahić, P82, T. 1568-1569. In a transcript of an interview given by Hasib Kurspahić shortly after 14 June 1992, Hasib Kurspahić identified six of the persons from Sase as Mujo Halilović, Meho Halilović, Meho Halilović’s wife, Murka Verić, Murka Verić’s daughter and Igbala Kurspahić, P40; P41, p. 4. See also Huso Kurspahić, 1 Sep 2008, T. 875-876 (confirming that the man being interviewed on the video, exhibit P40, is his father, Hasib Kurspahić).

¹¹⁵⁵ P72, T. 1657; P88, T. 1280.

¹¹⁵⁶ VG101, 9 Sep 2008, T. 1427; 1D33, p. 5; 1D36, p. 3; P60, p. 3; P72, T. 1657; P74, p. 3; P82, T. 1569-1570; P83, p. 6.

that the next set of buses were scheduled to arrive the following day between 8 a.m. and 12 p.m., and that the group should spend the night in one of the empty Muslim-owned houses on Pionirska street.¹¹⁵⁸ VG013, VG038, VG078 and VG101 gave evidence that the person who gave the group those instructions was Mitar Vasiljević.¹¹⁵⁹ VG038 who observed Mitar Vasiljević from a distance of no more than five metres, described Mitar Vasiljević as dressed in a large black hat and a black uniform.¹¹⁶⁰

341. The journey between the new hotel and Pionirska street took between 15 minutes and one hour.¹¹⁶¹ VG115 testified that between 4 and 5 p.m., as she was walking home from work along Pionirska street, she saw Milan Lukić and Sredoje Lukić, armed and dressed in camouflage uniforms, moving a group of approximately 60 civilians along the street.¹¹⁶² She further testified that she saw Mitar Vasiljević with a plaster cast on one of his legs, astride a white horse, as the group was being herded along.¹¹⁶³ Under cross-examination during the *Vasiljević* trial, when questioned as to the first time she recalled seeing Mitar Vasiljević with a cast on his leg, VG115 responded, "I think it was in the autumn. It was colder. Maybe September or October".¹¹⁶⁴ When questioned as to whether he had seen Mitar Vasiljević with a cast on his leg, riding a white horse, VG084 responded that "there was no white horse there".¹¹⁶⁵

342. When the Koritnik group arrived on Pionirska street, they gathered at a vacant house owned by Jusuf Memić.¹¹⁶⁶ Mitar Vasiljević addressed the group. He informed the group that a convoy would be available early the next morning to transport them out of Višegrad, and directed them to spend the night in the house in front of which they had assembled.¹¹⁶⁷ Mitar Vasiljević wrote on a piece of paper which he handed to a man in the group named Mujo Halilović, who was from Sase. Mujo Halilović subsequently told others in the group that Mitar Vasiljević assured him that the paper was a guarantee of the group's safety while they spent the night inside the house, and that they were to present it to anyone who questioned the group's presence in the house as proof that

¹¹⁵⁷ VG013, 2 Sep 2008, T. 1019-1020; VG101, 9 Sep 2008, T. 1427-1428; 1D33, p. 5; P88, T. 1280; 1D36, p. 3; P44, T. 1358; P60, p. 3; P72, T. 1657-1658; P74, p. 3; P83, p. 6.

¹¹⁵⁸ 1D32, p. 2; P72, T. 1658; P74, p. 3; P82, T. 1571-1572.

¹¹⁵⁹ VG013, 2 Sep 2008, T. 1021; VG101, 9 Sep 2008, T. 1429-1430; 1D36, p. 3; 1D37, T. 1158; P44, T. 1359, 1363-1364; P88, T. 1283-1285.

¹¹⁶⁰ 2D4, p. 2; P44, T. 1363.

¹¹⁶¹ VG013, 2 Sep 2008, T. 1022; VG101, 9 Sep 2008, T. 1429; P44, T. 1366; P72, T. 1659; P88, T. 1286.

¹¹⁶² VG115, 27 Aug 2008, T. 682-684, 685-686, 28 Aug 2008, T. 758, 767, 29 Aug 2008, T. 795-796; 1D22; 1D23.

¹¹⁶³ VG115, 28 Aug 2008, T. 763-764, 767.

¹¹⁶⁴ 1D19, T. 1029. See also 1D19, T. 1067.

¹¹⁶⁵ VG084, 5 Sep 2008, T. 1269.

¹¹⁶⁶ VG013, 2 Sep 2008, T. 1022-1023; P44, T. 1366; P82, T. 1573-1574; P88, T. 1286, 1292-1293. VG101 testified about gathering at a vacant house, but was not sure who owned the house, VG101, 9 Sep 2008, T. 1430.

¹¹⁶⁷ VG101, 9 Sep 2008, T. 1430; P72, T. 1663; P82, T. 1578-1579, 1611-1613, 1618-1619; P83, p. 7; P88, T. 1283, 1286-1287; P89, T. 1313.

they were entitled to be there and were not to be harmed.¹¹⁶⁸ The Koritnik group entered Jusuf Memić's house.¹¹⁶⁹ Mitar Vasiljević subsequently left the house.¹¹⁷⁰

(c) The robbery in Jusuf Memić's house

343. Approximately 45 minutes to one hour later, Milan Lukić,¹¹⁷¹ who was armed,¹¹⁷² and Sredoje Lukić,¹¹⁷³ who was also armed,¹¹⁷⁴ arrived at the house. Both Milan Lukić and Sredoje Lukić were dressed in the olive-green uniform of the former JNA, which bore a Serbian tricolour flag.¹¹⁷⁵ The men wore caps with cockades, which prevented VG018 from seeing their hair clearly.¹¹⁷⁶ An individual named Milan Šušnjar, also known as "Laco", arrived with Milan Lukić and Sredoje Lukić.¹¹⁷⁷ He was of medium build, had a moustache,¹¹⁷⁸ and was armed with an automatic rifle as well as a bayonet.¹¹⁷⁹ The men also were accompanied by Mitar Vasiljević, who had returned to the house and, on this occasion, was armed with an automatic weapon.¹¹⁸⁰ The Trial Chamber in the *Vasiljević* case accepted Mitar Vasiljević's alibi that on 14 June 1992, he fell from a horse breaking his leg, that he was admitted to the Užice Hospital at 9.35 p.m. for treatment, and that he was not present on Pionirska street during the period of the transfer and the house burning.¹¹⁸¹

344. Inside Jusuf Memić's house, the Koritnik group was subsequently ordered to surrender their valuables, which included money and jewellery. However, witnesses gave conflicting evidence as to how the robbery was committed.

¹¹⁶⁸ VG013, 2 Sep 2008, T. 1029-1030; VG078, 8 Sep 2008, T. 1379-1380; 2D8, T. 1432, 1435; P40, P41, p. 4; P44, T. 1367-1368, 1405-1406; P72, T. 1663-1664; P73, T. 1760-1761; P74, p. 4; P82, T. 1578-157, 1611-1613, 1618-1619; P83, p. 7; P88, T. 1286-1287; P89, T. 1321.

¹¹⁶⁹ VG013, 2 Sep 2008, T. 1022-1023; VG101, 9 Sep 2008, T. 1430; P44, T. 1366; P72, T. 1661; P74, p. 3; P82, T. 1574, 1579, 1611-1613, 1618-1619, P83, p. 7; P88, T. 1286.

¹¹⁷⁰ VG013, 2 Sep 2008, T. 1030; VG101, 9 Sep 2008, T. 1431; 2D8, T. 1432, 1435; P44, T. 1368, 1406-1407; P72, T. 1663; P88, T. 1286-1287.

¹¹⁷¹ VG038, 1 Sep 2008, T. 946; VG013, 2 Sep 2008, T. 1031; VG101, 9 Sep 2008, T. 1432; P44, T. 1369-1371, 1408; P72, T. 1664-1666; P82, T. 1581-1582; P83, p. 7; P88, T. 1287.

¹¹⁷² VG013, 2 Sep 2008, T. 1031; P44, T. 1372; P83, p. 7.

¹¹⁷³ VG038, 1 Sep 2008, T. 946; VG013, 2 Sep 2008, T. 1031; P44, T. 1369-1371, 1408; P72, T. 1664-1665; P82, T. 1581-1582; P83, p. 7.

¹¹⁷⁴ P44, T. 1372; P83, p. 7.

¹¹⁷⁵ 1D33, p. 6; P83, p. 7. See also P44, T. 1372.

¹¹⁷⁶ 1D33, p. 6; P83, p. 7.

¹¹⁷⁷ VG038, 1 Sep 2008, T. 946; VG013, 2 Sep 2008, T. 1031; 2D6, p. 1; P44, T. 1369-1371, 1408; P82, T. 1582; P83, p. 7.

¹¹⁷⁸ 2D8, T. 1502; P44, T. 1408.

¹¹⁷⁹ P44, T. 1372.

¹¹⁸⁰ P44, T. 1371. See also VG038, 2 Sep 2008, T. 946-47; 2D4, p. 3; 2D6, p. 1.

¹¹⁸¹ *Vasiljević* Trial Judgement, paras 129-131, 136-140, 147-148, 154, 166. The Trial Chamber will consider this issue in sections II.G.2(a) and 11.G.5(c) *infra*.

(d) The removal of the Koritnik group's valuables

345. VG101 testified that Milan Lukić kicked open the door and entered Jusuf Memić's house.¹¹⁸² VG013, VG078 and VG101 stated that Milan Lukić ordered the Koritnik group to hand over their valuables.¹¹⁸³ He demanded that the group place its valuables into a bag which he had placed on a table,¹¹⁸⁴ and threatened to sever the fingers, cut the throats and put a bullet in the head of anyone who withheld their valuables.¹¹⁸⁵

346. According to VG013, during the robbery, Sredoje Lukić was outside, "somewhere around the house".¹¹⁸⁶

347. In her *Vasiljević* trial testimony, VG018 stated that Sredoje Lukić removed a knife from his boot and threatened to use it on anyone who withheld their valuables.¹¹⁸⁷ This also was echoed in a 1998 witness statement, in which VG018 stated that Sredoje Lukić threatened that if he found a penny on anyone he would slaughter them "with the blunt edge of his knife".¹¹⁸⁸ However, during her testimony-in-chief, VG018 stated that it was Milan Lukić who removed a knife from his boot and threatened to use it on anyone who withheld their valuables.¹¹⁸⁹ In her description of this particular moment, VG018 stated as follows: "I would say Milan. He was in the forefront. I'm not sure. Sredoje was there, but it was Milan who did this".¹¹⁹⁰ In her 1998 witness statement, VG018 recounted that Sredoje Lukić at one point accosted a child who had money hidden on his person, pulled at the child's ears and threatened him.¹¹⁹¹ However, in her *Vasiljević* trial testimony, VG018 stated that it was Milan Lukić who accosted and hit the child.¹¹⁹²

348. VG084 testified that Sredoje Lukić ordered the group to surrender their jewellery and money, produced a knife, displayed the blunt side of it and threatened that if he found a penny on anyone, he would use the knife on them.¹¹⁹³

¹¹⁸² VG101, 9 Sep 2008, T. 1432.

¹¹⁸³ VG013, 2 Sep 2008, T. 1031, 3 Sep 2008, T. 1058; VG078, 8 Sep 2008, T. 1383; VG101, 9 Sep 2008, T. 1434-1435; 1D36, p. 4; 2D8, T. 1439; P62, p. 3; P88, T. 1288; P92, p. 4. See also 1D37, T. 1165; 2D6, pp 1-2; P37, T. 790-791, P41, p. 5.

¹¹⁸⁴ VG013, 2 Sep 2008, T. 1031; VG101, 9 Sep 2008, T. 1434; 1D37, T. 1165; 2D8, T. 1439; P62, p. 3. See also P37, T. 791.

¹¹⁸⁵ VG013, 2 Sep 2008, T. 1031; VG078, 8 Sep 2008, T. 1383; VG101, 9 Sep 2008, T. 1434; 1D37, T. 1165; 2D8, T. 1439; P88, T. 1288; P92, p. 4.

¹¹⁸⁶ VG013, 2 Sep 2008, T. 1031, 1035.

¹¹⁸⁷ P82, T. 1583.

¹¹⁸⁸ P83, p. 7.

¹¹⁸⁹ VG018, 5 Sep 2008, T. 1306.

¹¹⁹⁰ VG018, 5 Sep 2008, T. 1306.

¹¹⁹¹ P83, p. 7.

¹¹⁹² P82, T. 1586.

¹¹⁹³ 1D32, p. 2; P72, T. 1667; P74, p. 4.

349. VG038 testified that while Milan Lukić and Sredoje Lukić both participated in the robbery,¹¹⁹⁴ it was Sredoje Lukić and Milan Šušnjar who entered Jusuf Memić's house and demanded that the group of men, women and children hand over their jewellery and money.¹¹⁹⁵ VG038 stated that Milan Šušnjar threatened to put a bullet in the head of anyone who failed to surrender all their valuables.¹¹⁹⁶ In the interim, Sredoje Lukić stood in the middle of the house.¹¹⁹⁷ VG038 insisted under cross-examination that Sredoje Lukić was inside the house with Milan Šušnjar while Milan Lukić and Mitar Vasiljević stood outside the house near the windows "looking to see if anyone was going to throw anything out of the window".¹¹⁹⁸

350. Huso Kurspahić testified that according to his father, Hasib Kurspahić, Milan Lukić, Sredoje Lukić and Mitar Vasiljević entered the house, issued an order that no one in the group should leave the house and told the group to hand over their valuables.¹¹⁹⁹

(i) The strip search

351. The women and children in the group subsequently were segregated from the men, divided into groups of between three and four persons, and ordered into an adjacent room where they were strip searched.¹²⁰⁰

352. VG018 testified that subsequent to collecting the group's valuables, Milan Lukić ordered members of the Koritnik group to enter a neighbouring room in groups of three.¹²⁰¹ However, in a 1993 witness statement, VG018 stated that it was Sredoje Lukić who ordered groups of four women into another room to be strip searched.¹²⁰² VG018 testified in this case and in the *Vasiljević* trial that upon entering the room, she saw a man whom she did not know sitting on a chair with a rifle next to him. The man told her and the two other persons who had entered the room with her that they were to remove their clothes.¹²⁰³ The man referred to VG018 and other persons strip searched along with her as *balija*.¹²⁰⁴ The man was identified to her by a neighbour as "Lalco".¹²⁰⁵ He had black hair and

¹¹⁹⁴ VG038, 1 Sep 2008, T. 946.

¹¹⁹⁵ VG038, 1 Sep 2008, T. 946, 2 Sep 2008, T. 978; P44, T. 1374.

¹¹⁹⁶ P44, T. 1373.

¹¹⁹⁷ P44, T. 1373.

¹¹⁹⁸ VG038, 2 Sep 2008, T. 978. See also P44, T. 1374.

¹¹⁹⁹ P37, T. 791.

¹²⁰⁰ VG013, 2 Sep 2008, T. 1033-1034, 3 Sep 2008, T. 1058; VG101, 9 Sep 2008, T. 1435-1437; 1D33, p. 6; 1D36, p. 4; 2D8, T. 1439-1440; P41, p. 5; P83, p. 8.

¹²⁰¹ VG018, 5 Sep 2008, T. 1306-1307.

¹²⁰² 1D33, p. 6.

¹²⁰³ VG018, 5 Sep 2008, T. 1306-1307.

¹²⁰⁴ VG018, 5 Sep 2008, T. 1307.

¹²⁰⁵ VG018, 5 Sep 2008, T. 1303. VG018 gave evidence that the strip search was conducted by "Laco" who, armed with a rifle, moved into neighbouring room, sat down and "made the sign of three, telling three people to come in". P82, T. 1583-1584. "Laco" raised a finger and told the women, "you see this finger, you have to be as naked as this finger", P83, p. 8.

a short black beard.¹²⁰⁶ In her May 1993 witness statement, VG018 said that after she entered the room, she saw a man who had a cropped beard, whom she described as Sredoje Lukić's brother, in the room. She further stated that that "Lukić" ordered the women "to strip naked and wheel around before him".¹²⁰⁷

353. VG018 testified that VG078 was one of the women who was in the room with her as she was being strip searched. VG078 refused to remove her clothing, and said that the man could kill her. At this point, another of the women held VG078 as VG018 unbuttoned her clothing.¹²⁰⁸

354. VG084, who was about 14 years old at the time, was among those who were strip searched.¹²⁰⁹ His evidence was that the strip search was conducted by a soldier whom he did not know, who sat in an armchair and was armed with an automatic rifle that rested on his knee.¹²¹⁰ In a 1995 witness statement, VG084 stated that the group was taken to a neighbouring room "where they had to strip naked in front of Milan Lukić".¹²¹¹

355. VG013 and VG038 gave evidence that the strip search was conducted by Milan Šušnjar.¹²¹² VG101 gave evidence that the strip search was undertaken by a "moustached Serb with black curly hair".¹²¹³

(ii) The removal of women among the Koritnik group

356. VG-013, VG-018, VG-078, VG-084, VG-101 and Huso Kurspahić gave evidence that Milan Lukić removed a number of women from the house, including Jasmina Vila, Ifeta Kurspahić and Mujesira Kurspahić.¹²¹⁴ VG078 gave evidence that after gathering the Koritnik group's valuables, Milan Lukić recognised Jasmina Vila and addressed her saying, "How come you're here?" Milan Lukić then hugged her and took her out of the house.¹²¹⁵ VG078 was one of the other women who entered the room with VG018 during the strip search.¹²¹⁶ In her *Vasiljević* trial testimony and in her 1993 and 1998 witness statements, VG018 stated that it was Sredoje Lukić who called to Jasmina Vila and the young woman in the leather jacket and ordered them to leave

¹²⁰⁶ P83, p. 7.

¹²⁰⁷ 1D33, p. 6.

¹²⁰⁸ P82, T. 1585.

¹²⁰⁹ P72, T. 1668.

¹²¹⁰ P72, T. 1668-1669. See also VG084, 5 Sep 2008, T. 1280.

¹²¹¹ 1D32, p. 2.

¹²¹² VG013, 2 Sep 2008, T. 1034-1035, 3 Sep 2008, T. 1058; 2D8, T. 1439-1440; P44, T. 1374. See also VG038, 2 Sep 2008, T. 978.

¹²¹³ VG101, 9 Sep 2008, T. 1435-1436. See also 1D36, p. 4.

¹²¹⁴ VG013, 2 Sep 2008, T. 1035; VG018, 5 Sep 2008, T. 1308-1309; VG078, 8 Sep 2008, T. 1383-1384; VG101, 9 Sep 2008, T. 1437-1439; 1D32, p. 2; 1D36, p. 4. See also P37, T. 791.

¹²¹⁵ VG078, 8 Sep 2008, T. 1383-1384.

¹²¹⁶ VG018, P82, T. 1584-1585.

the house.¹²¹⁷ However, in her testimony in this case, VG018 stated that it was Milan Lukić who stood by the door of the house and told Jasmina Vila, who was standing beside her, and another young woman in a leather jacket to accompany him.¹²¹⁸

357. The women were returned to the house about an hour later.¹²¹⁹ They were crying, and one of the women told persons in the group that they had been raped.¹²²⁰ VG018 testified that when the women were returned, they “looked terrible”.¹²²¹ VG013 stated that, “[t]hey wouldn’t say anything, neither Ifeta nor Mujesira, and Jasmina Vila only asked for a pill to treat her headache”.¹²²² During the *Vasiljević* trial, VG013 testified as follows:

The girls were taken out, and when they returned, they didn't look quite in shape. Jasmina wanted me to give her a tablet. And we asked them what had happened, and they said, Well, you know what happened. They didn't want to tell anything. And Ifeta, when she came back, she also looked bad, she was crying, and she said, Your turn will also come. [...] they managed to tell us that they had been raped, and we could see for ourselves, you know, how they looked after they had been mistreated. And she told -- they told -- they told us to try and escape, because apparently Milan Lukić and others told them that we would all be raped.¹²²³

VG078 and VG101 also gave evidence that one of the women who returned after being raped told them that they would be raped eventually as well.¹²²⁴ VG078 and VG101 resolved at that point to escape for fear of being raped themselves.¹²²⁵ VG101 testified:

So I decided to flee and let them kill me. I didn’t know - - I wasn’t sure whether I would succeed in escaping or not, but I decided to try, just to avoid falling into their hands. I wasn’t afraid of dying; I was afraid of being raped.¹²²⁶

358. The men subsequently announced that they were going to drink and get something to eat, after which they left Jusuf Memić’s house.¹²²⁷

(e) Transfer to Adem Omeragić’s house

359. The men, including Milan Lukić, Sredoje Lukić and Mitar Vasiljević, returned to Jusuf Memić’s house between 9.30 and 11.30 p.m.¹²²⁸ It was getting dark and there was no light inside

¹²¹⁷ 1D33, p. 6; P82, T. 1587; P83, p. 8. In a 1995 witness statement, VG038 stated that Sredoje Lukić and Milan Šušnjar led the women out of the house. 1D26, p. 3.

¹²¹⁸ VG018, 5 Sep 2008, T. 1308-1309.

¹²¹⁹ VG013, 2 Sep 2008, T. 1036-1037.

¹²²⁰ VG101, 9 Sep 2008, T. 1437-1439; 1D29, p. 2; 2D8, T. 1441; P89, T. 1294-1295; 1D26, p. 3; 1D36, p. 4. See also VG018, 5 Sep 2008, T. 1308-1309; 1D32, p. 2; 2D6, p. 2;

¹²²¹ P82, T. 1589. See also P83, p. 8.

¹²²² VG013, 2 Sep 2008, T. 1036.

¹²²³ 2D8, T. 1441.

¹²²⁴ 1D37, T. 1166, 1173; P89, T. 1294-1295.

¹²²⁵ 1D36, p. 5; 1D37, T. 1173; P89, T. 1294.

¹²²⁶ 1D37, T. 1173.

¹²²⁷ VG013, 2 Sep 2008, T. 1033; VG018, 5 Sep 2008, T. 1308-1309; VG101, 9 Sep 2008, T. 1440; 1D36, p. 4; 1D37, T. 1167; P44, T. 1376; P72, T. 1669-1670; P82, T. 1589, 1619-1620; P83, p. 8.

Jusuf Memić's house.¹²²⁹ The group inside the house was ordered to move to another house which was owned by an individual named Adem Omeragić.¹²³⁰ They were told that the transfer was necessary for their safety,¹²³¹ and that they did not need to put on their shoes.¹²³² VG078 testified that the group was also told to leave their luggage so that it could be searched for weapons.¹²³³ Adem Omeragić's house was about 20 to 30 metres away¹²³⁴ and situated next to a creek that runs in the area of Pionirska street.¹²³⁵

360. VG013 testified that Milan Lukić instructed the group to move to Adem Omeragić's house.¹²³⁶ Milan Lukić stood in the doorway of Jusuf Memić's house, yelling at the group to move faster.¹²³⁷ VG013 passed Milan Lukić as she walked through the doorway of Jusuf Memić's house.¹²³⁸ VG084 gave evidence that Sredoje Lukić ordered the transfer and that he was accompanied by Milan Lukić.¹²³⁹ In the *Vasiljević* trial, VG084 stated that both were wearing camouflage uniforms, but that Sredoje Lukić had a sniper rifle, whereas Milan Lukić had an automatic weapon.¹²⁴⁰ In the instant case, VG084 testified that Sredoje Lukić had an automatic weapon and that Milan Lukić was armed with a sniper rifle.¹²⁴¹ VG018 was unable to specifically identify the man who approached the door, and stated that it was either Milan Lukić or Sredoje Lukić.¹²⁴² VG078 and VG101 stated that a "man with a moustache" stood at the door, and that Mitar Vasiljević stood behind him.¹²⁴³

¹²²⁸ VG038, 1 Sep 2008, T. 954; VG013, 2 Sep 2008, T. 1037-1038; VG018, 5 Sep 2008, T. 1312-1313; VG101, 9 Sep 2008, T. 1442-1443; 1D27, p. 4; 1D32, p. 2; 1D33, p. 6; 1D34, p. 3; 1D37, T. 1168; 2D4, p. 3; P37, T. 791-792; P44, T. 1370, 1376-1377; P74, p. 4; P82, T. 1590; P83, p. 8; P88, T. 1288-1290.

¹²²⁹ VG013, 2 Sep 2008, T. 1039; VG018, 8 Sep 2008, T. 1348; P82, T. 1622-1623, 1625; P83, p. 8.

¹²³⁰ VG013, 3 Sep 2008, T. 1038; VG018, 5 Sep 2008, T. 1312-1313; VG078, 8 Sep 2008, T. 1384; VG101, 9 Sep 2008, T. 1443; 1D32, p. 2; 1D37, T. 1168; 2D8, T. 1442-1443; P37, T. 791; P44, T. 1377; P72, T. 1671; P74, p. 4; P82, T. 1591-1592; P83, p. 8; P88, T. 1290.

¹²³¹ VG013, 2 Sep 2008, T. 1038; VG078, 8 Sep 2008, T. 1384; 1D32, p. 2; 1D35, p. 2; 2D8, T. 1443; P37, T. 792-793; P41, p. 5; P44, T. 1377; P72, T. 1671-1673; P74, p. 4; P82, T. 1591.

¹²³² VG013, 3 Sep 2008, T. 1055-1056; VG078, 8 Sep 2008, T. 1384, 1412; 1D36, p. 5; 2D8, T. 1444; P82, T. 1591-1592; P83, p. 8.

¹²³³ VG078, 8 Sep 2008, T. 1384; 1D35, p. 2; P88, T. 1290. VG018 and VG101 also gave evidence that they were told to leave their belongings. VG018, 5 Sep 2008, T. 1312-1313; 1D37, T. 1168; P82, T. 1591; P83, p. 8.

¹²³⁴ VG084, 5 Sep 2008, T. 1247-1248; VG018, 5 Sep 2008, T. 1315-1316; P74, p. 4; P82, T. 1593; P83, pp 8-9.

¹²³⁵ VG101, 9 Sep 2008, T. 1451; 1D32, p. 2; P72, T. 1673.

¹²³⁶ VG013, 2 Sep 2008, T. 1038, 2D8, T. 1443.

¹²³⁷ VG013, 2 Sep 2008, T. 1038.

¹²³⁸ VG013, 2 Sep 2008, T. 1039.

¹²³⁹ 1D32, p. 2.

¹²⁴⁰ P72, T. 1666.

¹²⁴¹ VG084, 5 Sep 2008, T. 1261-1262.

¹²⁴² VG018, 5 Sep 2008, T. 1312-1313; 1D33, p. 6; 1D34, p. 3; P83, p. 8. See also P82, T. 1591.

¹²⁴³ VG101, 9 Sep 2008, T. 1443-1444. See also 1D37, T. 1169; P88, T. 1290; P89, T. 1307.

361. VG013 testified that Sredoje Lukić escorted the group between the two houses.¹²⁴⁴ As the group was being transferred, a member of the group named Edhem Kurspahić shouted to others in the group that Sredoje Lukić was following alongside the column of people.¹²⁴⁵

362. As the group was being transferred, VG078 saw Milan Lukić and Mitar Vasiljević walking between the two houses and the man with the moustache standing in front of Jusuf Memić's house.¹²⁴⁶ VG101 also stated that the man with the moustache stood in the doorway of Jusuf Memić's house, shone a light on the path and directed her and the group to move towards Adem Omeragić's house.¹²⁴⁷ VG078 and VG101 managed to escape during the transfer by crawling behind a shed and down to the creek.¹²⁴⁸ Just as VG078 and VG101 were about to escape, they saw Milan Lukić and Mitar Vasiljević standing close to the house into which the group was being herded.¹²⁴⁹ Huso Kurspahić testified that according to his father, the men, including Milan Lukić, Sredoje Lukić and Mitar Vasiljević, stood in a row between the two houses and escorted the Koritnik group into the second house.¹²⁵⁰

363. It was raining during the transfer.¹²⁵¹ Light came from a number of Serb houses and street lighting in the surrounding neighbourhood.¹²⁵² The men also had two or three flashlights.¹²⁵³ There were no lights on in Adem Omeragić's house.¹²⁵⁴ There was electricity in the garage or shed in front of Adem Omeragić's house and that area was lit up.¹²⁵⁵

364. The group was herded into a room on the ground floor.¹²⁵⁶ VG018 was one of the last people to enter the room.¹²⁵⁷ She was shoved into the room by one of the Serbs who pushed the butt of his rifle against her back and said, "Get in, *balija*. What are you waiting for? Where is Alija now to help you?"¹²⁵⁸ VG018 testified that either Milan Lukić or Sredoje Lukić said this.¹²⁵⁹ However,

¹²⁴⁴ VG013, 3 Sep 2008, T. 1058.

¹²⁴⁵ VG013, 2 Sep 2008, T. 1039, 3 Sep 2008, T. 1042, 1052, 1121.

¹²⁴⁶ P88, T. 1290.

¹²⁴⁷ VG101, 9 Sep 2008, T. 1443-1444. She noted that the blonde Serb was also among the men who had robbed the group inside Jusuf Memić's house earlier that day. VG101, 9 Sep 2008, T. 1445.

¹²⁴⁸ VG101, 9 Sep 2008, T. 1466, 1469; 1D36, p. 5; P83, p. 8; P92, p. 5.

¹²⁴⁹ VG101, 9 Sep 2008, T. 1446; P88, T. 1290, P89, T. 1294; P94.

¹²⁵⁰ P37, T. 793.

¹²⁵¹ VG018, 5 Sep 2008, T. 1319; VG101, 9 Sep 2008, T. 1470-1471; 1D33, p. 6.

¹²⁵² VG038, 2 Sep 2008, T. 977-978, 980; VG013, 2 Sep 2008, T. 1040, 3 Sep 2008, 1042-1043, 1085-1087, 1088, 1094; VG084, 5 Sep 2008, T. 1248; VG101, 9 Sep 2008, T. 1460-1461; 1D36, p. 5; P57; P82, T. 1592-1593, 1625-1626; P88, T. 1290.

¹²⁵³ VG038, 2 Sep 2008, T. 980; VG101, 9 Sep 2008, T. 1444; 1D37, T. 1169; P44, T. 1410-1411; P72, T. 1673-1674.

¹²⁵⁴ VG013, 2 Sep 2008, T. 1039; P45, T. 1410-1411.

¹²⁵⁵ VG101, 9 Sep 2008, T. 1460-1461; 1D36, p. 5; P94.

¹²⁵⁶ VG013, 3 Sep 2008, T. 1043; P44, T. 1378-1380; P74, p. 4. See also 2D8, T. 1447-1448.

¹²⁵⁷ VG018, 5 Sep 2008, T. 1315.

¹²⁵⁸ VG018, 5 Sep 2008, T. 1315. See also P82, T. 1592, 1594. VG018 did not see who said this and was unable to identify the voice, VG018, 5 Sep 2008, T. 1315, 1317.

¹²⁵⁹ VG018, 5 Sep 2008, T. 1317.

when asked to clarify further, VG018 testified that she did not look at any of the men in the face.¹²⁶⁰ VG084 was also one of the last people to leave Jusuf Memić's house, and one of the last persons to enter Adem Omeragić's house.¹²⁶¹ He testified that Sredoje Lukić was standing by the door to Adem Omeragić's house.¹²⁶² As VG084 entered Adem Omeragić's house, Sredoje Lukić smiled at him and patted him on the shoulder.¹²⁶³ At this point, Sredoje Lukić was carrying a sniper rifle and had bombs around his belt.¹²⁶⁴ Huso Kurspahić's father, Hasib Kurspahić, was the last person to enter.¹²⁶⁵ As he did so he was shoved inside by Milan Šušnjar, also known as "Laco", who closed the door behind him.¹²⁶⁶

365. Once the entire group was in the room, the door was closed.¹²⁶⁷ There is evidence that Milan Lukić and Mitar Vasiljević closed the door to the room.¹²⁶⁸

(f) The events at Adem Omeragić's house

366. The room into which the Koritnik group had been herded had two windows situated next to each other.¹²⁶⁹ In the room there was a cupboard, a table, and a sofa.¹²⁷⁰ There was light coming into the room from the street lights outside.¹²⁷¹ VG013 noticed that carpets on the floor of the room were covered with a sticky substance that smelled foul and caused some persons inside the room to choke.¹²⁷² The room was extremely crowded with persons.¹²⁷³

(i) The fire

367. After approximately half an hour, the door opened and an explosive device was placed into the room.¹²⁷⁴ VG013 testified that Milan Lukić and Mitar Vasiljević opened the door to the room.¹²⁷⁵ Milan Lukić held the device,¹²⁷⁶ which VG013 described as "something like a bomb" that had "a fuse".¹²⁷⁷ Milan Lukić said, "[l]ight it and put it down next to the door".¹²⁷⁸ The device was

¹²⁶⁰ VG018, 5 Sep 2008, T. 1317-1318.

¹²⁶¹ VG084, 5 Sep 2008, T. 1284; P72, T. 1673.

¹²⁶² VG084, 5 Sep 2008, T. 1284.

¹²⁶³ VG084, 5 Sep 2008, T. 1284; P72, T. 1674.

¹²⁶⁴ P72, T. 1673-1674.

¹²⁶⁵ P37, T. 793. See also VG013, 3 Sep 2008, T. 1049.

¹²⁶⁶ P37, T. 793.

¹²⁶⁷ VG018, 5 Sep 2008, T. 1318; P72, T. 1675; P74, p. 4; P82, T. 1594, P83, p. 9.

¹²⁶⁸ VG013, 3 Sep 2008, T. 1049.

¹²⁶⁹ VG013, 3 Sep 2008, T. 1043; 2D8, T. 1498.

¹²⁷⁰ VG013, 3 Sep 2008, T. 1043; P44, T. 1381; P72, T. 1675.

¹²⁷¹ VG013, 3 Sep 2008, T. 1043.

¹²⁷² VG013, 3 Sep 2008, T. 1043; 2D8, T. 1446-1447, 1448; P62, p. 4. See also P82, T. 1596.

¹²⁷³ VG013, 3 Sep 2008, T. 1093.

¹²⁷⁴ VG013, 3 Sep 2008, T. 1047, 1049; 1D29, p. 2; 1D32, p. 2; 2D4, p. 3; 2D6, p. 2; P62, p. 4; P74, p. 4.

¹²⁷⁵ 2D8, T. 1449.

¹²⁷⁶ 2D8, T. 1449-1450.

¹²⁷⁷ VG013, 3 Sep 2008, T. 1047. See also 2D8, T. 1450.

¹²⁷⁸ VG013, 2D8, T. 1449.

burning when Milan Lukić set it down.¹²⁷⁹ As the device was placed into the room, Milan Lukić “fired bursts at the floor next to the front door so that people should not try to run away”.¹²⁸⁰

368. VG013 testified that at this point in time, she was unaware of Sredoje Lukić’s whereabouts as she had “lost track of him” and “never thought of him again” after Edhem Edhem Kurspahić told the group that Sredoje Lukić was following alongside the group.¹²⁸¹ However, in a 1998 witness statement, VG013 stated that Sredoje Lukić and Mitar Vasiljević stood armed behind Milan Lukić as Milan Lukić placed the explosive device by the door of Adem Omeragić’s house.¹²⁸²

369. VG038, who had fallen asleep, was woken by the sound screaming. He heard a female voice coming from the direction of the door say “[t]hey are going to set light to us”.¹²⁸³ According to VG013, she and VG038 pushed their way through the crowded room to the window through which they eventually would escape.¹²⁸⁴

370. The device exploded and the carpets immediately caught fire.¹²⁸⁵ The flames were “[u]p to the ceiling” and “[e]verything was burning. The screaming was deafening”.¹²⁸⁶ VG084, who was sitting on a table in the centre of the room, became aware of a flame spreading from the door into the room.¹²⁸⁷ In his 1995 witness statement, VG084 stated, “[a]fter a half an hour the door opened and I saw fire and smoke, then somebody from that group threw a hand grenade among the people”.¹²⁸⁸ In his 2001 witness statement, he recalled that approximately half an hour after the group was locked in the room “[t]he next thing I heard was a big explosion and the door [*sic*] in flames”.¹²⁸⁹

371. VG018 had been moving towards one of the windows in the room.¹²⁹⁰ When she reached the window, or a few moments before she reached the window,¹²⁹¹ the door opened and “a flame

¹²⁷⁹ 2D8, T. 1449-50.

¹²⁸⁰ 1D29, p. 2.

¹²⁸¹ VG013, 3 Sep 2008, T. 1052, 1057-1058.

¹²⁸² P60, p. 6.

¹²⁸³ P44, T. 1383.

¹²⁸⁴ VG013, 3 Sep 2008, T. 1094; 2D6, p. 2. VG013 stated that she and VG038 were near the window prior to the fire. VG038 stated that they moved towards the window after seeing the flames, P44, T. 1383-1384.

¹²⁸⁵ VG013, 3 Sep 2008, T. 1047, 1050; 2D8, T. 1453.

¹²⁸⁶ VG013, 3 Sep 2008, T. 1050.

¹²⁸⁷ P73, T. 1754.

¹²⁸⁸ 1D32, p. 2.

¹²⁸⁹ P74, p. 4.

¹²⁹⁰ P82, T. 1597; P83, p. 9.

¹²⁹¹ P82, T. 1597; P83, p. 9.

appeared as large as the door itself”.¹²⁹² She stated, “I did not see who was holding the flame; all the people were standing up. It was like a flame coming from a gas bottle”.¹²⁹³

372. When VG038 saw the flames, he rushed towards one of the windows, which he saw VG018 trying to break.¹²⁹⁴ He described feeling suffocated by the smoke, which smelt like a mixture of paint, dye or turpentine, that was filling the room.¹²⁹⁵

373. VG038 stated that before the fire started, Sredoje Lukić opened the door to the room and threw in a pail of turpentine that was already on fire.¹²⁹⁶ However, in a 1998 witness statement, VG038 indicated that he “did not see who threw the burning material into the house”.¹²⁹⁷

374. In her 2000 witness statement, VG115 stated as follows:

It was in the evening close to the curfew time and I was walking towards the house where I was staying. I saw a large number of people /women, children and old men/ from the nearby villages, majority were from the village of Koritnik, as well as Muslims from Pionirska street who were arrested earlier, forced into a house of Adem Omeragić which was some 7-8 metres from the road. I could see a lot of members of Lukić's group, him included, around the house. I saw that they were throwing various devices for setting fire into the house including hand grenades and gasoline. I went to my house very fast. They were also shooting bursts of fire into the house and that could be heard for more than an hour. From the balcony I could see smoke and fire and I could hear the screams.¹²⁹⁸

In her testimony in this case, VG115 stated that as she walked home from work along Pionirska street, she saw Milan Lukić, Sredoje Lukić and Mitar Vasiljević, who was mounted on the white horse with a cast on his leg, herding the Koritnik group along Pionirska street.¹²⁹⁹ She testified that about an hour to an hour and a half later, “things became silent”. She was already inside her house. VG115 then heard screaming and a big explosion, she could smell smoke and see fire from the windows in her house.¹³⁰⁰ Similarly, during the *Vasiljević* trial, VG115 testified that about an hour after entering her house, she heard powerful explosions, shooting, cries and screams, and that she could smell the smoke. She noted that “[t]hese activities didn't start immediately”.¹³⁰¹ When cross-examined as to whether she was able to see the area where the sounds were coming from, VG115 responded, “[t]he house that I was in is on the right-hand side, and the sounds were coming from the left-hand side, very near by”.¹³⁰² When further cross-examined as to whether she was able to see

¹²⁹² VG018, 5 Sep 2008, T. 1318-1319. See also P82, T. 1597-1598; P83, p. 9.

¹²⁹³ P83, p. 9.

¹²⁹⁴ P44, T. 1383.

¹²⁹⁵ P44, T. 1384; 1D26, p. 5; 2D4, p. 3.

¹²⁹⁶ 1D26, p. 5.

¹²⁹⁷ 2D4, p. 3.

¹²⁹⁸ 1D18, p. 10-11.

¹²⁹⁹ See *supra* para. 341 above.

¹³⁰⁰ VG115, 27 Aug 2008, T. 686-687.

¹³⁰¹ 1D19, T. 1024-1025.

¹³⁰² 1D19, T. 1025.

Milan Lukić during this period, VG115 replied, “I couldn’t. I couldn’t recognise anyone from among the people who were doing this. I could not recognise anyone. It was already dark”.¹³⁰³

375. While VG078 and VG101 were hiding in the shed, they could hear shots coming from Adem Omeragić’s house. VG101 said to VG078: “These people are killing our mother, our mother-in-law, and our brother’s two children. They didn’t do anything wrong”.¹³⁰⁴

(ii) Escape

376. VG018 was choking on the smoke from the fire, and she tried to break the window furthest away from the door¹³⁰⁵ in order to let in some air.¹³⁰⁶ She eventually smashed one of the window panes.¹³⁰⁷ As she tried to get out of the room through the window, her movement was obstructed by mesh in the window.¹³⁰⁸ At this point her son, VG084, pushed her from behind and out of the window.¹³⁰⁹ When half of VG018’s body was out of the window, she heard a grenade explode.¹³¹⁰ She felt something wet on her hand and felt as though her hand was “a bit paralysed”.¹³¹¹ Shrapnel from the grenade that had been thrown into the room hit VG018 in the neck and on her head and hand. She stated: “I couldn’t feel my body [...] I sort of felt as if half my face was missing”.¹³¹²

377. VG084 moved towards the window after the fire started.¹³¹³ When he was pushing VG018 out of the window, there was an explosion and a piece of shrapnel hit him on the forehead.¹³¹⁴ VG084 followed VG018 out of the window.¹³¹⁵ Once they were out of the house, VG018 was unable to run so VG084 pulled her away from the house to the creek below Adem Omeragić’s house.¹³¹⁶ VG018 saw men with flashlights between the house and the creek.¹³¹⁷ Under cross-examination, VG018 testified that after she had escaped through the window, she turned around, saw the light from a flashlight shining behind her and thought that she was being

¹³⁰³ 1D19, T. 1026-1027.

¹³⁰⁴ VG101, 9 Sep 2008, T. 1451. See also 1D36, p. 5.

¹³⁰⁵ P44, T. 1383.

¹³⁰⁶ VG018, 5 Sep 2008, T. 1318. See also P82, T. 1598-1599.

¹³⁰⁷ VG018, 5 Sep 2008, T. 1318; P82, 1598-1599. See also VG013, 3 Sep 2008, T. 1050.

¹³⁰⁸ VG018, 5 Sep 2008, T. 1318.

¹³⁰⁹ VG018, 5 Sep 2008, T. 1318-1319; P82, T. 1598.

¹³¹⁰ VG018, 5 Sep 2008, T. 1318; P73, T. 1754-1755. In her testimony during the *Vasiljević* trial, VG018 described the incendiary device more generally as “a bomb”, P82, T. 1598. See also P83, p. 9.

¹³¹¹ VG018, 5 Sep 2008, T. 1318.

¹³¹² P82, T. 1598. See also 1D33, p. 7; P83, p. 9.

¹³¹³ P73, T. 1754. VG084 testified that it was “three steps to the window” from where he had been sitting, *ibid.*

¹³¹⁴ P73, T. 1754-1755. VG084 states that “at one point” after he had moved towards VG084, a hand grenade was thrown into the room, P74, p. 4. See also VG018, 5 Sep 2008, T. 1318-1319.

¹³¹⁵ P73, T. 1755; P74, p. 4.

¹³¹⁶ VG018, 5 Sep 2008, T. 1318-1319; P82, T. 1598.

¹³¹⁷ P82, T. 1602.

pursued.¹³¹⁸ She was unable to identify the person who held the flashlight “because when he was flashing the light, you couldn’t see him”.¹³¹⁹

378. VG084 recalled that he hid with VG018 behind a tree because the men outside had moved around to the side of the house where the windows were, and they were shining their flashlights at the windows and shooting at them.¹³²⁰ According to VG013, Milan Lukić and Mitar Vasiljević noticed that VG018 and VG084 had escaped, and Milan Lukić grabbed his rifle and began shooting at both windows.¹³²¹

379. VG018 and VG084 moved 20 metres along the creek until they came to a bridge under which they spent the night in the sewage water that flowed through the creek.¹³²² For between an hour to an hour and a half after they escaped from Adem Omeragić’s house, VG018 and VG084 could hear screams and the sound of gunshots.¹³²³

380. Before the fire started, VG013 and her son, VG038, were at the same window through which VG018 and VG084 had escaped.¹³²⁴ A few minutes after they had escaped, VG013 pushed VG038 out of the window.¹³²⁵ She believed that at this time she sustained a shrapnel wound to her leg above the knee, although she did not feel it at the time.¹³²⁶ She then escaped from the house herself.¹³²⁷

381. VG038 testified that he escaped through the same window through which VG018 and VG084 had escaped.¹³²⁸ While VG018 could not recall precisely which window she escaped through,¹³²⁹ VG084 gave evidence that he escaped through the second of the two windows, which was farther from the door.¹³³⁰ VG038 testified that he escaped through the window farther from the door and that it was the same window through which VG018 and VG084 had escaped.¹³³¹ However,

¹³¹⁸ P82, T. 1634.

¹³¹⁹ P82, T. 1635.

¹³²⁰ P73, T. 1755.

¹³²¹ VG013, 3 Sep 2008, T. 1049. It is not clear from VG013’s evidence whether VG018 and VG084 escaped before or after the fire started, *id.* T. 1047, 1049. However, it is clear that VG018 and VG084 escaped before VG013 and VG038, and that VG013 and VG038 escaped after the explosion, *id.* T. 1047, 1049, 1052.

¹³²² P82, T. 1601.

¹³²³ P74, p. 4; P82, T. 1601; P83, p. 9.

¹³²⁴ VG038, 1 Sep 2008, T. 955; VG013, 3 Sep 2008, T. 1047, 1050. See also 2D6, p. 2.

¹³²⁵ VG013, 3 Sep 2008, T. 1052; P37, T. 788, 804. Huso Kurspahić testified during cross-examination that VG013 arrived on an unspecified date at the police station at which Huso Kurspahić worked and recounted to him her escape from the fire by jumping “out on the lower end through a window with [VG038]”. He testified under cross-examination that VG013 recounted the events to him approximately ten to 11 days after the incident, P37, T. 803.

¹³²⁶ VG013, 3 Sep 2008, T. 1047, 1052. See also 1D26, p. 5; 1D29, p. 2; 2D6, p. 2, 2D8, T. 1455-1456; P62, p. 4.

¹³²⁷ VG013, 3 Sep 2008, T. 1051-1052.

¹³²⁸ P45, T. 1411-1412.

¹³²⁹ P82, T. 1628. See also VG018, 5 Sep 2008, T. 1318.

¹³³⁰ VG084, 5 Sep 2008, T. 1249-1250, 1555-155; P78.

¹³³¹ P44, T. 1385; P45, T. 1411-1412.

VG013 gave evidence that she escaped through the window closer to the door.¹³³² She testified that VG018 and VG084 escaped through the window “to the left of the door”, which was “a bit [further] away from the door, but not much”.¹³³³ She testified that she was unable to access “this window next to the first one” because of the number of persons crowded around it.¹³³⁴ She further testified that VG038 escaped through the left window as the men outside fired at the right window. As she was unable to follow VG038 immediately through the window, “because of the shooting”, VG013 waited “[t]wo or three minutes after” VG038 had gone through the window, until the men outside the windows turned the rifle away from that window, and then she followed VG038 through the window.¹³³⁵

382. VG013’s evidence was that Milan Lukić was shooting at both of the windows from the left side of the house.¹³³⁶ Mitar Vasiljević was shining a flashlight on the windows of the house as Milan Lukić was shooting at the windows.¹³³⁷ Both men were standing next to each other,¹³³⁸ by a pillar of Adem Omeragić’s house.¹³³⁹ VG013 estimated that she landed “no more than two or three metres from them”.¹³⁴⁰ During her escape, VG013 was shot by Milan Lukić. Her upper left arm was wounded as a result.¹³⁴¹

383. In her 1998 witness statement, VG013 stated that, in addition to Milan Lukić and Mitar Vasiljević, she “could clearly see” Sredoje Lukić “outside the windows”, and that they were about two or three metres away from her. She further stated that “Sredoje Lukić was also shooting” at persons trying to escape through the windows.¹³⁴²

384. There was a sewerage ditch about ten metres from the house, and VG013 remained there for three days and nights.¹³⁴³ She saw the house burn. During this time, she did not know where VG038 was.¹³⁴⁴ VG013 then escaped over the Drina river, ultimately to Zenica.¹³⁴⁵

385. According to VG038, VG018 had broken one window pane and he broke the other. After VG018 pulled off the netting that was covering the windows,¹³⁴⁶ VG038 went to jump out but he

¹³³² VG013, 3 Sep 2008, T. 1065-1066, 1088; P58.

¹³³³ 2D8, T. 1454.

¹³³⁴ VG013, 3 Sep 2008, T. 1090. See also 2D8, T. 1498-1499.

¹³³⁵ VG013, 3 Sep 2008, T. 1090; 2D8, T. 1454-1555.

¹³³⁶ VG013, 3 Sep 2008, T. 1051-1052; 1088, 1090; 2D8, T. 1450.

¹³³⁷ VG013, 3 Sep 2008, T. 1088; 2D8, T. 1450, 1452, 1504; P62, p. 4.

¹³³⁸ VG013, 3 Sep 2008, T. 1073; 2D6, p. 2, 2D8, T. 1499.

¹³³⁹ VG013, 3 Sep 2008, T. 1088.

¹³⁴⁰ VG013, 3 Sep 2008, T. 1051, 1073. In her testimony during the *Vasiljević* case, VG013 estimated that the distance between herself and Milan Lukić and Mitar Vasiljević as they were shooting at the escapees was “about three or four steps only”, 2D8, T. 1455.

¹³⁴¹ VG013, 3 Sep 2008, T. 1051-1052. See also 1D26, p. 5; 1D29, p. 2; 2D6, p. 2, 2D8, T. 1455-1456; P62, p. 4

¹³⁴² P60, p. 6.

¹³⁴³ VG013, 3 Sep 2008, T. 1048, 1059; P62, p. 4. See also 1D26, p. 5.

¹³⁴⁴ VG013, 3 Sep 2008, T. 1054.

saw Milan Šušnjar standing outside next to the other window, so VG038 came back into the house.¹³⁴⁷ He saw Milan Šušnjar clearly due to the light of the fire in the room.¹³⁴⁸ At that point, Milan Šušnjar threw “a bomb” that had already been lit into the room through the window closest to the door.¹³⁴⁹ The bomb exploded.¹³⁵⁰ In his 1998 witness statement, VG038 described the incendiary device that Milan Šušnjar threw into the room as a grenade.¹³⁵¹ However, in the *Vasiljević* case, he described it as a “bomb” that “had already been on fire before he threw it in”.¹³⁵²

386. VG038 jumped out of the window and hid in the bushes approximately 20-25 metres away from the house at the rear of Adem Omeragić’s house, from where he “watched the house burn and could hear people cry” and saw automatic weapons firing.¹³⁵³ VG038 stated that he was with VG013 in the house while it was on fire, and that she was injured.¹³⁵⁴ He did not see her again that night and believed she had died.¹³⁵⁵ He learned later that VG013 also had escaped out of the window.¹³⁵⁶ According to VG018, when the men saw that VG013 and VG038 had escaped the house, the men pursued them.¹³⁵⁷

387. Hasib Kurspahić escaped during an explosion which blew open the door next to which he was standing.¹³⁵⁸ According to Huso Kurspahić, his father was thrown outside by the impact of the explosion and landed on his back.¹³⁵⁹ Hasib Kurspahić then managed to roll down into a nearby creek.¹³⁶⁰ He made his way to a mound from which he could see persons attempting to escape being fired upon and killed.¹³⁶¹ In a television interview given in 1992 by Hasib Kurspahić shortly after the fire,¹³⁶² he stated that the explosion, which started the fire, caused the door to open slightly.¹³⁶³ He stood up and pulled at the door, which was hot and in flames, and then ran through the flames

¹³⁴⁵ P62, p. 4.

¹³⁴⁶ VG038 testified that the netting was similar to that in which vegetables are sold in, and was plastic with a tight mesh through which “a mosquito could get by, but that’s all”, P44, T. 1380-1381.

¹³⁴⁷ 2D4, p. 3; P44, T. 1383.

¹³⁴⁸ P45, T. 1417.

¹³⁴⁹ 1D26, p. 5; 1D27, p. 4; P44, T. 1383-1385.

¹³⁵⁰ P44, T. 1383.

¹³⁵¹ 2D4, p. 3.

¹³⁵² P44, T. 1385.

¹³⁵³ P44, T. 1383, 1385-1386.

¹³⁵⁴ VG038, 1 Sep 2008, T. 955-956.

¹³⁵⁵ P44, T. 1385, 1388. VG038 also stated that he “didn’t know anything about what was going on with [VG013] at the time I jumped out”, P44, T. 1385.

¹³⁵⁶ VG038, 2D4, p. 3. He states that he knows that VG013 escaped out of the same window but he was not aware of it at the time and he thought VG013 had remained inside the house, *ibid.* See also 1D27, p. 4-5. But see 1D26, p. 5.

¹³⁵⁷ P82, T. 1598, 1601-1602.

¹³⁵⁸ P37, T. 794.

¹³⁵⁹ P37, T. 794.

¹³⁶⁰ P37, T. 794. See also VG013, 3 Sep 2008, T. 1049.

¹³⁶¹ P37, T. 794.

¹³⁶² P40, P41. See also Huso Kurspahić, 1 Sep 2008, T. 875.

¹³⁶³ P41, p. 6. This account is consistent with adjudicated fact no. 78 (“VG061’s father ran through the flames and escaped through the front door when the explosion which caused the fire blasted the door open”).

and out of the door.¹³⁶⁴ Hasib Kurspahić was shot at as he ran out, but he reached the creek and stayed there until the next morning.¹³⁶⁵ In his 1992 television interview, Hasib Kurspahić stated that while in the creek, “[t]hen the [sic] set in fire the house where our things were, Josip Memić’s, they put it in fire as well”.¹³⁶⁶

(g) CW1’s encounter with Milan Lukić in May 1992

388. CW1 testified that on 29 May 1992, due to the war, she fled her home in Višegrad and settled elsewhere in Europe. Prior to leaving Višegrad, CW1 went to the local SUP building in order to obtain an exit pass. While there, she encountered Milan Lukić. CW1 used to see Milan Lukić when they went to school together. He was seven years younger than she.¹³⁶⁷ Milan Lukić was very angry and aggressive and, according to CW1’s testimony, he “started cursing why we were all there. [...] He cursed our god and Alija, as well, why didn’t we go seek help from Alija if we needed it”.¹³⁶⁸ Milan Lukić subsequently approached CW1. He asked her what family she had married into, to which she responded that she had married into the Kurspahić family. Milan Lukić responded, “I’m very sorry to hear that because we got orders that not an ear should remain of the Kurspahić family”.¹³⁶⁹ CW1 said that this statement frightened her a great deal, and when asked what she understood the statement to mean, she responded, “How else could I understand it? The worst, that we are not going to be anymore. I was seized by fear that he would kill me.”¹³⁷⁰

(h) The victims

389. Prosecution witnesses gave evidence that persons listed as victims in Annex A to the indictment died in the fire at Adem Omeragić’s house.¹³⁷¹ The Prosecution did not tender death certificates for the 70 persons listed as deceased, but tendered several tables prepared by Prosecution demographics expert Ewa Tabeau containing pieces of data from various sources indicating persons who remain missing.¹³⁷² The Trial Chamber heard evidence from VG013, VG018, VG038, and VG084, the survivors of the fire, as well as VG078, VG101, VG115, Huso Kurspahić and CW001.

¹³⁶⁴ P41, p. 6.

¹³⁶⁵ P41, p. 6.

¹³⁶⁶ P41, p. 6.

¹³⁶⁷ CW1, 17 Mar 2009, T. 5547.

¹³⁶⁸ CW1, 17 Mar 2009, T. 5548.

¹³⁶⁹ CW1, 17 Mar 2009, T. 5548.

¹³⁷⁰ CW1, 17 Mar 2009, T. 5593.

¹³⁷¹ VG013, VG018, VG038, VG078, VG084, VG101, Huso Kurspahić. See also CW1.

¹³⁷² P119. See also P300.

390. The Trial Chamber heard evidence that all the victims of the fire at Adem Omeragić's house were Muslims. The victims were men, women and children ranging in age from approximately two or three days old to 70 years old.¹³⁷³

391. On 18 March 2009, the Trial Chamber received an oral application by the Prosecution to amend the indictment, pursuant to Rule 50, and strike the names Latifa Kurspahić, Lejla Kurspahić, and Meva Kurspahić from Annex A.¹³⁷⁴ The Trial Chamber notes that the Prosecution's application was tendered approximately nine weeks before the close of evidence. The Trial Chamber denies the Prosecution's application to amend the indictment, and will consider the evidence before it in deciding whether on the basis of the evidence each of the persons listed in Annex A of the indictment has been proven.¹³⁷⁵

392. The Trial Chamber heard evidence that the following persons listed as victims in the fire died at Adem Omeragić's house on 14 June 1992: Mula Ajanović (approximately 75 years old),¹³⁷⁶ Adis Delija (approximately 2 years old),¹³⁷⁷ Ajnija Delija (approximately 50 years old),¹³⁷⁸ Jasmina Delija (approximately 24 years old),¹³⁷⁹ Hasena LNU,¹³⁸⁰ Tima Jasarević,¹³⁸¹ Hajra Jasarević (approximately 35 years old),¹³⁸² Meho Jasarević (approximately 42 years old),¹³⁸³ Mujo Jasarević (approximately 47 years old),¹³⁸⁴ Aiša Kurspahić (approximately 49 years old),¹³⁸⁵ Aida Kurspahić (approximately 12 years old),¹³⁸⁶ Ajka Kurspahić (approximately 62 years old),¹³⁸⁷ Alija Kurspahić (approximately 55 years old),¹³⁸⁸ Almir Kurspahić (approximately 10 years old),¹³⁸⁹ Aner

¹³⁷³ VG101, 9 Sep 2008, T. 1423; 1D33, p. 7; 1D36, p. 3; P83, p. 5.

¹³⁷⁴ CW1, 18 Mar 2009, T. 5626-5633.

¹³⁷⁵ See *infra* paras 567-568.

¹³⁷⁶ Huso Kurspahić, 1 Sep 2008, T. 877-878 (referring to P39), 7 Apr 2009, T. 6943; VG078, 8 Sep 2008, T. 1388 (referring to P90); 1D26, p. 6; 1D29, p. 3; 1D33, p. 7; 1D36, p. 6; P60, p. 8; P83, p. 5; P90, p. 1; P92, p. 6; P119, p. 2; P175, p. 1; P184, p. 1; P333, p. 1. See also CW1, 17 Mar 2009, T. 5558-5559.

¹³⁷⁷ Huso Kurspahić, 7 Apr 2009, T. 6943-6944; VG078, 8 Sep 2008, T. 1388 (referring to P90); 1D36, p. 6; P90, p. 1 (referred to the son of Jasmina Delija); P92, p. 6; P119, p. 2; P175, p. 5; P184, p. 3P333, p. 1.

¹³⁷⁸ Huso Kurspahić, 7 Apr 2009, T. 6944; VG078, 8 Sep 2008, T. 1388 (referring to P90); 1D36, p. 6; P90, p. 1; P92, p. 6; P119, p. 2; P175, p. 5; P184, p. 3; P333, p. 1.

¹³⁷⁹ Huso Kurspahić, 7 Apr 2009, T. 6944; VG078, 8 Sep 2008, T. 1388 (referring to P90); 1D36, p. 6; P90, p. 1; P92, p. 6; P119, p. 2; P175, p. 5; P184, p. 3; P300, p. 14; P333, p. 1.

¹³⁸⁰ 1D36, p. 6.

¹³⁸¹ 1D36, p. 6; P119, p. 2.

¹³⁸² Huso Kurspahić, 1 Sep 2008, T. 877-878 (referring to P39); P60, p. 8; P119, p. 2.

¹³⁸³ Huso Kurspahić, 1 Sep 2008, T. 877-878 (referring to P39); P60, p. 8; P119, p. 2; P300, pp 14-15.

¹³⁸⁴ Huso Kurspahić, 1 Sep 2008, T. 877-878 (referring to P39); 1D29, p. 3; 1D37, T. 65; P60, p. 8; P119, p. 2.

¹³⁸⁵ Huso Kurspahić, 1 Sep 2008, T. 877-878 (referring to P39), 7 Apr 2009, T. 6946; 1D29, p. 3; 1D33, p. 7; P60, p. 8; P82, T. 50-51 (referring to P85); P83, p. 5; P119, p. 2; P175, p. 12; P184, p. 9; P300, p. 15; P333, p. 1.

¹³⁸⁶ Huso Kurspahić, 1 Sep 2008, T. 877-878 (referring to P39), 7 Apr 2009, T. 6946; VG078, 8 Sep 2008, T. 1388 (referring to P90); 1D26, p. 6; 1D29, p. 3; 1D36, p. 6; 2D8, T. 59; P60, p. 8; P61, p. 6; P90, p. 1; P92, p. 6; P119, p. 2; P175, p. 12; P184, p. 9; P333, p. 2.

¹³⁸⁷ Huso Kurspahić, 1 Sep 2008, T. 877-878 (referring to P39), 7 Apr 2009, T. 6946; VG078, 8 Sep 2008, T. 1388 (referring to P90); 1D27, p. 5; 1D29, p. 3; 1D33, p. 7; 1D36, p. 6; 2D8, T. 59; P60, p. 8; P61, p. 6; P83, p. 5; P90, p. 1; P92, p. 6; P119, p. 2; P175, p. 12; P184, p. 9; P333, p. 1.

¹³⁸⁸ Huso Kurspahić, 1 Sep 2008, T. 877-878 (referring to P39), 7 Apr 2009, T. 6946; VG078, 8 Sep 2008, T. 1388 (referring to P90); 1D26, p. 6; 1D29, p. 3; 1D33, p. 7; 1D36, p. 6; P60, p. 7; P83, p. 5; P90, p. 1; P92, p. 5; P175, p. 12; P333, p. 1.

Kurspahić (approximately 6 years old),¹³⁹⁰ Becar Kurspahić (approximately 52 years old),¹³⁹¹ Bisera Kurspahić (approximately 50 years old),¹³⁹² Bula Kurspahić (approximately 58 years old),¹³⁹³ Dzheva Kurspahić (approximately 22 years old),¹³⁹⁴ Enesa Kurspahić (approximately 2 years old),¹³⁹⁵ FNU Kurspahić (approximately 2 days old),¹³⁹⁶ Hasa Kurspahić (approximately 18 years old),¹³⁹⁷ Hajrija Kurspahić (approximately 60 years old),¹³⁹⁸ Halida Kurspahić (approximately 10 years old),¹³⁹⁹ Hana Kurspahić (approximately 30 years old),¹⁴⁰⁰ Hasan Kurspahić (approximately 50 years old),¹⁴⁰¹ Hasiba Kurspahić,¹⁴⁰² Hasnija Kurspahić (approximately 62 years old),¹⁴⁰³ Hata Kurspahić (approximately 68 years old),¹⁴⁰⁴ Ifeta Kurspahić (approximately 17 years old),¹⁴⁰⁵ Igabala Kurspahić (approximately 58 years old),¹⁴⁰⁶ Ismet Kurspahić (approximately

¹³⁸⁹ Huso Kurspahić, 1 Sep 2008, T. 877-878 (referring to P39), 7 Apr 2009, T. 6946-6947; VG078, 8 Sep 2008, T. 1388 (referring to P90); 1D26, p. 6; 1D29, p. 3; 1D36, p. 6; 2D8, T. 59; P60, p. 8; P61, p. 6; P83, p. 5; P90, p. 1; P92, p. 6; P119, p. 2; P175, p. 12; P184, p. 9; P333, p. 2.

¹³⁹⁰ P60, p. 8.

¹³⁹¹ Huso Kurspahić, 1 Sep 2008, T. 877-878 (referring to P39), 7 Apr 2009, T. 6947; VG078, 8 Sep 2008, T. 1388 (referring to P90); 1D26, p. 6; 1D33, p. 7; 1D36, p. 5; P60, p. 8; P61, p. 3; P83, p. 5; P90, p. 1; P92, p. 5; P119, p. 3; P175, p. 12; P184, p. 9; P333, p. 1.

¹³⁹² Huso Kurspahić, 1 Sep 2008, T. 877-878 (referring to P39), 7 Apr 2009, T. 6947; VG078, 8 Sep 2008, T. 1388 (referring to P90); 1D27, p. 5; 1D29, p. 3; 1D33, p. 7; P60, p. 8; P83, p. 5; P90, p. 1; P92, p. 6; P119, p. 3; P175, p. 12; P184, p. 9; P333, p. 1.

¹³⁹³ Huso Kurspahić, 1 Sep 2008, T. 877-878 (referring to P39), 7 Apr 2009, T. 6947; VG078, 8 Sep 2008, T. 1388 (referring to P90); 1D26, p. 6; 1D29, p. 3; 1D33, p. 7; 1D36, p. 5; 2D8, T. 60; P60, p. 8; P61, p. 11; P83, p. 5; P90, p. 1; P92, p. 5; P119, p. 3; P175, p. 12; P184, p. 9; P333, p. 2.

¹³⁹⁴ Huso Kurspahić, 1 Sep 2008, T. 877-878 (referring to P39), 7 Apr 2009, T. 6947; VG078, 8 Sep 2008, T. 1388 (referring to P90); 1D26, p. 6 as “Dehva”; 1D29, p. 3; 1D33, p. 7; 1D36, p. 5 “Dehva”; 2D8, T. 61 as “Djehva”; P60, p. 8; P61, p. 12 as “Džehva”; P82, T. 50-51 (referring to P85) as “Dzehra”; P83, p. 5; P90, p. 1 as “Dehva”; P92, p. 5 as “Dehva”; P175, p. 12 as “Džehva”; P184, p. 9; P333, p. 2 as “Džehva”.

¹³⁹⁵ Huso Kurspahić, 1 Sep 2008, T. 877-878 (referring to P39), 7 Apr 2009, T. 6947-6948; VG078, 8 Sep 2008, T. 1388 (referring to P90); 1D26, p. 6; 1D29, p. 3; 1D33, p. 7; 1D36, p. 5-6; P60, p. 8; P61, p. 10 as “Enisa”; P82, T. 50-51 (referring to P85) as “Enisa”; P83, p. 5; P90, p. 1; P92, p. 6; P119, p. 3; P175, p. 12; P184, p. 9; P333, p. 1.

¹³⁹⁶ Huso Kurspahić, 1 Sep 2008, T. 877-878 (referring to P39), 7 Apr 2009, T. 6948; VG018, P82, 8 Oct 2001, T. 1566-1567; VG078, 8 Sep 2008, T. 1388 (referring to P90); 1D29, p. 3; 1D33, p. 7; 1D36, pp 5-6; P60, p. 8; P90, p. 1; P333, p. 1. This is the child of Sadeta Kurspahić, CW1, 17 Mar 2009, T. 5565, 5574; Huso Kurspahić, 7 Apr 2009, T. 6948; VG101, 27 Sep 2001, T. 1149; 1D29, p. 3; 1D33, p. 7; 1D36, p. 6; P41, p. 6; P60, p. 8.

¹³⁹⁷ Huso Kurspahić, 7 Apr 2009, T. 6948; VG078, 8 Sep 2008, T. 1388 (referring to P90); 1D26, p. 6; 1D36, p. 5; P83, p. 5; P90, p. 1; P92, p. 5; P119, p. 3; P175, p. 12, as “Haša”; P184, p. 9 as “Hasa-Hasnija”; P300, pp 15-16; P333, p. 1.

¹³⁹⁸ Huso Kurspahić, 1 Sep 2008, T. 877-878 (referring to P39), 7 Apr 2009, T. 6948; VG078, 8 Sep 2008, T. 1388 (referring to P90); 1D26, p. 6; 1D36, p. 5; P60, p. 8; P61, p. 3; P83, p. 5; P90, p. 1; P92, p. 5; P119, p. 3; P175, p. 12; P184, p. 9; P333, p. 1.

¹³⁹⁹ Huso Kurspahić, 7 Apr 2009, T. 6948; VG078, 8 Sep 2008, T. 1388 (referring to P90); 1D26, p. 6; 1D29, p. 3; 1D36, p. 5-6; P60, p. 7; P61, p. 10; P83, p. 5; P90, p. 1; P92, p. 6; P119, p. 3; P175, p. 12; P184, p. 9; P333, p. 1.

¹⁴⁰⁰ VG078, 8 Sep 2008, T. 1388 (referring to P90); 1D26, p. 6; 1D29, p. 3; 1D33, p. 7; 1D36, p. 6; P60, p. 8; P83, p. 5; P90, p. 1; P92, p. 5.

¹⁴⁰¹ Huso Kurspahić, 1 Sep 2008, T. 877-878 (referring to P39), 7 Apr 2009, T. 6950; VG078, 8 Sep 2008, T. 1388 (referring to P90); 1D26, p. 6; 1D29, p. 3; 1D33, p. 7; 1D36, p. 5; 2D8, T. 59; P60, p. 8; P83, p. 5; P90, p. 1; P92, p. 5; P175, p. 12; P184, p. 9; P300, p. 16; P333, p. 1. See also CW1, 17 Mar 2009, T. 5544-5545.

¹⁴⁰² Huso Kurspahić, 7 Apr 2009, T. 6949-6950; 1D27, p. 5; P61, p. 2; P82, T. 50-51 (referring to P85); P175, p. 12.

¹⁴⁰³ VG078, 8 Sep 2008, T. 1388 (referring to P90); P90, p. 1; P92, p. 5; P184, p. 9 as “Hasa-Hasnija”; P300, p. 17 as “Hasnia.”

¹⁴⁰⁴ Huso Kurspahić, 1 Sep 2008, T. 877-878 (referring to P39), 7 Apr 2009, T. 6951; 1D27, p. 5; 1D29, p. 3; 1D33, p. 7; 1D36, p. 6; P60, p. 8; P61, p. 3; P83, p. 5; P119, p. 4; P184, p. 9; P333, p. 1.

¹⁴⁰⁵ Huso Kurspahić, 1 Sep 2008, T. 877-878 (referring to P39), 7 Apr 2009, T. 6951; VG078, 8 Sep 2008, T. 1388 (referring to P90); 1D26, p. 6; 1D33, p. 7; 1D36, p. 5; 2D8, T. 60; P60, p. 8; P61, p. 9; P83, p. 5; P90, p. 1; P92, p. 5; P119, p. 4; P175, p. 12; P184, p. 9; P333, p. 1.

¹⁴⁰⁶ Huso Kurspahić, 1 Sep 2008, T. 877-878 (referring to P39), 7 Apr 2009, T. 6951; 1D29, p. 3; 1D27, p. 5; 1D33, p. 7; 1D36, p. 6; P60, p. 8; P119, p. 4; P175, p. 12; P184, p. 9 as “Igbala”; P333, p. 2.

3 years old),¹⁴⁰⁷ Ismeta Kurspahić (approximately 26 years old),¹⁴⁰⁸ Izeta Kurspahić (approximately 24 years old),¹⁴⁰⁹ Kada Kurspahić (approximately 40 years old),¹⁴¹⁰ Latifa Kurspahić (approximately 23 years old),¹⁴¹¹ Lejla Kurspahić (approximately 4 years old),¹⁴¹² Maida Kurspahić,¹⁴¹³ Medina Kurspahić (approximately 28 years old),¹⁴¹⁴ Medo Kurspahić (approximately 50 years old),¹⁴¹⁵ Mejra Kurspahić (approximately 47 years old),¹⁴¹⁶ Meva Kurspahić (approximately 45 years old),¹⁴¹⁷ Mina Kurspahić (approximately 20 years old),¹⁴¹⁸ Mirela Kurspahić (approximately 3 years old),¹⁴¹⁹ Mujesira Kurspahić (approximately 35 years old),¹⁴²⁰ Munevera Kurspahić (approximately 20 years old),¹⁴²¹ Munira Kurspahić (approximately 55 years old),¹⁴²² Osman Kurspahić (approximately 67 years old),¹⁴²³ Pasana or Pašija Kurspahić (approximately 56 years old),¹⁴²⁴ Ramiza Kurspahić (approximately 57 years old),¹⁴²⁵ Sabiha

¹⁴⁰⁷ Huso Kurspahić, 1 Sep 2008, T. 877-878 (referring to P39), 7 Apr 2009, T. 6951-6952; VG078, 8 Sep 2008, T. 1388 (referring to P90); 1D26, p. 6; 1D29, p. 3; 1D36, p. 5; 2D8, T. 61; P60, p. 8; P61, p. 12; P83, p. 5; P90, p. 1; P92, p. 5; P119, p. 4; P175, p. 12; P184, p. 9; P300, p. 17; P333, p. 2.

¹⁴⁰⁸ Huso Kurspahić, 1 Sep 2008, T. 877-878 (referring to P39), 7 Apr 2009, T. 6952; VG078, 8 Sep 2008, T. 1388 (referring to P90); 1D26, p. 6; 1D29, p. 3; 1D33, p. 7; 1D36, p. 6; 2D8, T. 59; P60, p. 8; P61, p. 6; P83, p. 5; P90, p. 1; P92, p. 6; P119, p. 4; P175, p. 12; P184, p. 9; P300, pp 17-18; P333, p. 2.

¹⁴⁰⁹ VG078, 8 Sep 2008, T. 1388 (referring to P90); P90, p. 1; P92, p. 5.

¹⁴¹⁰ Huso Kurspahić, 1 Sep 2008, T. 877-878 (referring to P39), 7 Apr 2009, T. 6952, 6961; VG078, 8 Sep 2008, T. 1388 (referring to P90); 1D36, p. 6; 90, p. 1; P92, p. 5.

¹⁴¹¹ P60, p. 8.

¹⁴¹² P60, p. 8.

¹⁴¹³ P82, T. 50-51 (referring to P85); P83, p. 5.

¹⁴¹⁴ Huso Kurspahić, 1 Sep 2008, T. 877-878 (referring to P39), 7 Apr 2009, T. 6953; VG078, 8 Sep 2008, T. 1388 (referring to P90); 1D26, p. 6; 1D29, p. 3; 1D33, p. 7; 1D36, p. 6; P60, p. 7; P83, p. 5; P90, p. 1; P92, p. 5; P119, p. 5; P175, p. 12; P184, p. 9; P333, p. 1.

¹⁴¹⁵ Huso Kurspahić, 1 Sep 2008, T. 877-878 (referring to P39), 7 Apr 2009, T. 6954; VG078, 8 Sep 2008, T. 1388 (referring to P90); 1D26, p. 6; 1D29, p. 3; 1D33, p. 7; 1D36, p. 6; P60, p. 7; P83, p. 5; P90, p. 1; P92, p. 5; P119, p. 5; P175, p. 12; P184, p. 9; P333, p. 1.

¹⁴¹⁶ Huso Kurspahić, 7 Apr 2009, T. 6954; VG078, 8 Sep 2008, T. 1388 (referring to P90); 1D26, p. 6; 1D29, p. 3; 1D33, p. 7; 1D36, p. 5; P60, p. 8; P83, p. 5; P90, p. 1; P92, p. 5.

¹⁴¹⁷ P60, p. 8.

¹⁴¹⁸ Huso Kurspahić, 1 Sep 2008, T. 877-878 (referring to P39); 1D27, p. 5; 1D29, p. 3; P82, T. 50-51 (referring to P85).

¹⁴¹⁹ Huso Kurspahić, 1 Sep 2008, T. 877-878 (referring to P39), 7 Apr 2009, T. 6955; VG078, 8 Sep 2008, T. 1388 (referring to P90); 1D26, p. 6; 1D29, p. 3; 1D33, p. 7; 1D36, p. 5; P60, p. 8; P61, p. 12; P90, p. 1; P92, p. 5; P119, p. 5; P175, p. 13; P184, p. 9; P333, p. 2.

¹⁴²⁰ Huso Kurspahić, 1 Sep 2008, T. 877-878 (referring to P39), 7 Apr 2009, T. 6955; VG078, 8 Sep 2008, T. 1388 (referring to P90); 1D29, p. 3; 1D33, p. 7; 1D26, p. 6; 1D36, p. 6; 2D8, T. 60; P60, p. 7; P61, p. 10; P83, p. 5; P90, p. 1; P92, p. 6; P119, p. 5; P175, p. 13; P184, p. 9; P333, p. 1.

¹⁴²¹ Huso Kurspahić, 1 Sep 2008, T. 877-878 (referring to P39), 7 Apr 2009, T. 6955; VG078, 8 Sep 2008, T. 1388 (referring to P90); 1D26, p. 6; 1D29, p. 3; 1D33, p. 7; P60, p. 7; P83, p. 5; P90, p. 1; P92, p. 5; P119, p. 6; P175, p. 13; P184, p. 9; P333, p. 1.

¹⁴²² Huso Kurspahić, 7 Apr 2009, T. 6955-6956; VG078, 8 Sep 2008, T. 1388 (referring to P90); 1D26, p. 6; 1D29, p. 3; 1D33, p. 7; 1D36, p. 6; P60, p. 7; P83, p. 5; P90, p. 1; P92, p. 5; P119, p. 6; P175, p. 13; P184, p. 9.

¹⁴²³ Huso Kurspahić, 1 Sep 2008, T. 877-878 (referring to P39), 7 Apr 2009, T. 6956; VG078, 8 Sep 2008, T. 1388 (referring to P90); 1D26, p. 6; 1D29, p. 3; 1D33, p. 7; 1D36, p. 6; 2D8, T. 59; P60, p. 8; P61, pp 6, 7; P83, p. 5; P90, p. 1; P92, p. 6; P119, p. 6; P175, p. 13; P184, p. 10; P333, p. 1.

¹⁴²⁴ Huso Kurspahić, 1 Sep 2008, T. 877-878 (referring to P39), 7 Apr 2009, T. 6956-6957 as "Pasija"; 1D26, p. 6; 1D29, p. 3; 1D33, p. 7; 1D36, p. 6; P60, p. 7; P83, p. 5; P90, p. 1; P119, p. 6; P175, p. 13; P184, p. 10 as "Pasija"; P333, p. 1 as "Pašija".

¹⁴²⁵ Huso Kurspahić, 1 Sep 2008, T. 877-878 (referring to P39), 7 Apr 2009, T. 6957; VG078, 8 Sep 2008, T. 1388 (referring to P90); 1D29, p. 3; 1D26, p. 6; 1D33, p. 7; 1D36, p. 5; 2D8, T. 61; P60, p. 8; P61, p. 3; P83, p. 5; P90, p. 1; P92, p. 5; P119, p. 6; P175, p. 13; P184, p. 10; P300, p. 19; P333, p. 1.

Kurspahić (approximately 14 years old),¹⁴²⁶ Sadeta Kurspahić (approximately 18 years old),¹⁴²⁷ Safa Kurspahić (approximately 50 years old),¹⁴²⁸ Saha Kurspahić (approximately 70 years old),¹⁴²⁹ Sajma Kurspahić (approximately 20 years old),¹⁴³⁰ Seila Kurspahić (approximately 2 years old),¹⁴³¹ Seniha Kurspahić (approximately 9 years old),¹⁴³² Sumbula Kurspahić (approximately 62 years old),¹⁴³³ Vahid Kurspahić (approximately 8 years old),¹⁴³⁴ Fazila Memisević (approximately 54 years old),¹⁴³⁵ Redžo Memisević (approximately 57 years old),¹⁴³⁶ Rabija Sadiković (approximately 52 years old),¹⁴³⁷ Enver Šehić (approximately 13 years old),¹⁴³⁸ Faruk Šehić (approximately 12 years old),¹⁴³⁹ Haraga Šehić,¹⁴⁴⁰ Kada Šehić (approximately 39 years old),¹⁴⁴¹ Nurka Velić (approximately 70 years old),¹⁴⁴² Tima Velić (approximately 35 years old),¹⁴⁴³ Jasmina Vila (approximately 20 years old).¹⁴⁴⁴

¹⁴²⁶ Huso Kurspahić, 1 Sep 2008, T. 877-878 (referring to P39), 7 Apr 2009, T. 6957; VG078, 8 Sep 2008, T. 1388 (referring to P90) as “Sabija”; 1D26, p. 6; 1D29, p. 3; 1D33, p. 7 as “Sabih”; 1D36, p. 5; P60, p. 8; P83, p. 5; P90, p. 1; P92, p. 5; P119, p. 6; P175, p. 13; P184, p. 10; P333, p. 1.

¹⁴²⁷ Huso Kurspahić, 1 Sep 2008, T. 877-878 (referring to P39), 7 Apr 2009, T. 6957; 1D26, p. 6; 1D29, p. 3; 1D33, p. 7; 1D36, p. 6; P60, p. 8; P83, p. 5; P119, p. 6; P175, p. 13; P184, p. 10; P333, p. 1.

¹⁴²⁸ Huso Kurspahić, 1 Sep 2008, T. 877-878 (referring to P39), 7 Apr 2009, T. 6957; VG078, 8 Sep 2008, T. 1388 (referring to P90); 1D26, p. 6; 1D29, p. 3; 1D33, p. 7; 1D36, p. 6; P60, p. 7; P83, p. 5; P90, p. 1; P92, p. 5; P119, p. 6; P175, p. 13; P184, p. 10; P333, p. 1.

¹⁴²⁹ 1D26, p. 6; 1D29, p. 3; P60, p. 8; P119, p. 6.

¹⁴³⁰ Huso Kurspahić, 1 Sep 2008, T. 877-878 (referring to P39), 7 Apr 2009, T. 6958-6959, where the witness describes that “Sajmija” was her full name and “Sajma” was her nickname; VG078, 8 Sep 2008, T. 1388 (referring to P90); 1D26, p. 6 as “Sajmija”; 1D36, p. 5 as “Sajmija”; P82, T. 50-51 (referring to P85); P83, p. 5 as “Sajmija”; P90, p. 1; P92, p. 5 as “Sajmija”; P119, p. 7; P184, p. 10 as “Sajmija”; P333, p. 1 as “Sajmija”.

¹⁴³¹ Huso Kurspahić, 7 Apr 2009, T. 6959; P60, p. 8; P119, p. 7.

¹⁴³² Huso Kurspahić, 7 Apr 2009, T. 6959; 1D29, p. 3; P82, T. 50-51 (referring to P85); P83, p. 5; P175, p. 13; P119, p. 7; P184, p. 10; P333, p. 1.

¹⁴³³ Huso Kurspahić, 1 Sep 2008, T. 877-878 (referring to P39), 7 Apr 2009, T. 6959; VG078, 8 Sep 2008, T. 1388 (referring to P90); 1D26, p. 6; 1D29, p. 3; 1D36, p. 6; P60, p. 7; P83, p. 5; P90, p. 1; P92, p. 6; P119, p. 7; P175, p. 13; P184, p. 10; P333, p. 1.

¹⁴³⁴ Huso Kurspahić, 1 Sep 2008, T. 877-878 (referring to P39), 7 Apr 2009, T. 6959; VG078, 8 Sep 2008, T. 1388 (referring to P90); 1D26, p. 6; 1D29, p. 3; 1D33, p. 7; 1D36, p. 6; 2D8, T. 59; P60, p. 8; P61, pp 6, 7; P83, p. 5; P90, p. 1; P92, p. 6; P119, p. 7; P175, p. 13; P184, p. 10; P333, p. 2.

¹⁴³⁵ Huso Kurspahić, 1 Sep 2008, T. 877-878 (referring to P39), 7 Apr 2009, T. 6959; VG078, 8 Sep 2008, T. 1388 (referring to P90); 1D26, p. 6; 1D29, p. 3; 1D33, p. 7; 1D36, p. 6; P60, p. 8; P83, p. 5; P90, p. 2; P92, p. 6; P119, p. 7; P175, p. 15, as “Fazila Memišević”; P184, p. 11; P333, p. 2.

¹⁴³⁶ Huso Kurspahić, 1 Sep 2008, T. 877-878 (referring to P39), 7 Apr 2009, T. 6959-6960; VG078, 8 Sep 2008, T. 1388 (referring to P90); 1D26, p. 6; 1D29, p. 3 as “Redo”; 1D33, p. 7; 1D36, p. 6; P60, p. 8; P83, p. 5; P90, p. 2; P92, p. 6; P119, p. 7; P175, p. 15, as “Redžo Memišević”; P184, p. 11; P333, p. 2.

¹⁴³⁷ Huso Kurspahić, 7 Apr 2009, T. 6960; 1D27, p. 5 as “Rabina”; 1D36, p. 6; P61, p. 5; P82, T. 50-51 (referring to P85); P119, p. 7; P175, p. 19; P300, pp 19-20; P333, p. 2.

¹⁴³⁸ P119, p. 7; P175, p. 21; P184, p. 15.

¹⁴³⁹ Huso Kurspahić, 1 Sep 2008, T. 877-878 (re: P39), 7 Apr 2009, T. 6960; 1D26, p. 6; 1D29, p. 3; P60, p. 8; P61, p. 2; P82, T. 50-51 (re: P85); P119, p. 7; P175, p. 21 as “Faruk Šehić”; P184, p. 15; P300, p. 20; P333, p. 2.

¹⁴⁴⁰ P83, p. 5; P184, p. 15.

¹⁴⁴¹ 1D27, p. 5; 1D29, p. 3; 1D33, p. 7; 2D8, T. 70; P60, p. 8; P61, p. 4; P82, T. 50-51 (referring to P85); P83, p. 5; P175, p. 21; P184, p. 15; P333, p. 2.

¹⁴⁴² Huso Kurspahić, 1 Sep 2008, T. 877-878 (referring to P39), 7 Apr 2009, T. 6961 as “Murka”; 1D27, p. 5 as “Murka”; 1D29, p. 3; 1D33, p. 7 as “Murka”; 1D37, T. 65; P60, p. 8; P82, T. 50-51 (referring to P85); P119, p. 7; P175, p. 24, as “Murka”; P333, p. 2 as “Murka”.

¹⁴⁴³ Huso Kurspahić, 1 Sep 2008, T. 877-878 (referring to P39), 7 Apr 2009, T. 6944-6945; 1D27, p. 5; 1D29, p. 3 as “Timka”; 1D33, p. 7; 1D37, T. 65; P60, p. 8; P82, T. 50-51 (referring to P85); P119, p. 7; P300, p. 20; P333, p. 2 as “Fatima”.

¹⁴⁴⁴ Huso Kurspahić, 1 Sep 2008, T. 877-878 (referring to P39), 7 Apr 2009, T. 6961-6962; 1D26, p. 6; 1D29, p. 3; 1D33, p. 7; P60, p. 8; P61, p. 1; P82, T. 50-51 (referring to P85); P119, p. 7; P175, p. 24; P184, p. 18; P333, p. 2.

393. The Trial Chamber heard no evidence that Munira Kurspahić (approximately 12 years old), listed as number 47 in Annex A of the indictment, died in the fire at Adem Omeragić's house.

394. The Trial Chamber received evidence that the following names in Annex A of the indictment are incorrect: Hajra Jasarević¹⁴⁴⁵ in the indictment, was in fact named Hajra Halilović,¹⁴⁴⁶ Meho Jasarević¹⁴⁴⁷ in the indictment, was in fact named Meho Halilović,¹⁴⁴⁸ and Mujo Jasarević¹⁴⁴⁹ in the indictment, was in fact named Mujo Halilović.¹⁴⁵⁰

395. The Trial Chamber heard evidence that the names listed in Annex A as Tima Jasarević¹⁴⁵¹ and Tima Velić¹⁴⁵² refer to the same person.¹⁴⁵³ The Trial Chamber also heard evidence that the names listed in Annex A as Kada Kurspahić¹⁴⁵⁴ and Kada Schić¹⁴⁵⁵ refer to one person.¹⁴⁵⁶ There is also evidence that the names listed in Annex A as Hana Kurspahić¹⁴⁵⁷ and Hasiba Kurspahić¹⁴⁵⁸ refer to one person.¹⁴⁵⁹ The Trial Chamber is satisfied that the names Tima Jasarević and Tima Velić listed in Annex A refer to one individual, that the names Kada Kurspahić and Kada Schić refer to one individual, and that the names Hana Kurspahić and Hasiba Kurspahić refer to one individual.

396. The Trial Chamber received evidence as to the existence of two persons named Hasan Kurspahić. The first person known as Hasan Kurspahić was married to Meva Kurspahić, and was the father of Omer Kurspahić and grandfather to Aner Kurspahić.¹⁴⁶⁰ The second person known as Hasan Kurspahić was married to Mejra Kurspahić, and was the son of Hajrija Kurspahić.¹⁴⁶¹ The Trial Chamber also notes that there are two Hasan Kurspahić's listed in Exhibit P119, a table of data collected by Ewa Tabeau.¹⁴⁶² The Trial Chamber is satisfied that the Hasan Kurspahić referred

¹⁴⁴⁵ Hajra Jasarević is listed at number 7 in Annex A of the indictment.

¹⁴⁴⁶ Huso Kurspahić, 7 Apr 2009, T. 6945.

¹⁴⁴⁷ Meho Jasarević is listed at number 8 in Annex A of the indictment.

¹⁴⁴⁸ Huso Kurspahić, 7 Apr 2009, T. 6945-6946.

¹⁴⁴⁹ Mujo Jasarević is listed at number 9 in Annex A of the indictment.

¹⁴⁵⁰ Huso Kurspahić, 7 Apr 2009, T. 6946. See also P61, p. 8.

¹⁴⁵¹ Tima Jasarević is listed at number 6 in Annex A of the indictment.

¹⁴⁵² Tima Velić is listed at number 69 in Annex A of the indictment. See also Huso Kurspahić, 7 Apr 2009, T. 6961.

¹⁴⁵³ Huso Kurspahić, 7 Apr 2009, T. 6944-6945.

¹⁴⁵⁴ Kada Kurspahić is listed at number 35 in Annex A of the indictment.

¹⁴⁵⁵ Kada Schić is listed at number 67 in Annex A of the indictment. Kada Schić's maiden name was Kurspahić, CW1, 17 Mar 2009, T. 5576; Huso Kurspahić, 7 Apr 2009, T. 6952, 6961.

¹⁴⁵⁶ CW1, 17 Mar 2009, T. 5576; Huso Kurspahić, 7 Apr 2009, T. 6952, 6961. She was Huso Kurspahić's sister.

¹⁴⁵⁷ Hana Kurspahić is listed at number 25 in Annex A of the indictment.

¹⁴⁵⁸ Hasiba Kurspahić is listed at number 27 in Annex A of the indictment.

¹⁴⁵⁹ Huso Kurspahić, 7 Apr 2009, T. 6949-6950. She was also Huso Kurspahić's sister.

¹⁴⁶⁰ CW1, 17 Mar 2009, T. 5552-5553.

¹⁴⁶¹ CW1, 17 Mar 2009, T. 5571-5572; 1D33, p. 7; P60, p. 8; P90, p. 1; P92, p. 5.

¹⁴⁶² P119, pp 3-4.

to in Annex A of the indictment is the Hasan Kurspahić who was married to Mejra Kurspahić, and who was the son of Hajrija Kurspahić.¹⁴⁶³

397. The Trial Chamber heard evidence that there are persons listed as deceased who were never involved in the Pionirska Street incident. Latifa Kurspahić¹⁴⁶⁴ and Lejla Kurspahić¹⁴⁶⁵ have been confirmed as currently alive. Meva Kurspahić died in 2003.¹⁴⁶⁶

398. The Trial Chamber also heard evidence that the following persons listed as deceased, did not in fact perish in the Pionirska Street incident: Aner Kurspahić,¹⁴⁶⁷ Hasnija Kurspahić,¹⁴⁶⁸ Izeta Kurspahić,¹⁴⁶⁹ Maida Kurspahić,¹⁴⁷⁰ Mina Kurspahić,¹⁴⁷¹ Saha Kurspahić,¹⁴⁷² and Enver Šehić.¹⁴⁷³

(i) Prosecution identification evidence

(i) VG018

399. VG018 had no prior contact with either Milan Lukić or Sredoje Lukić.¹⁴⁷⁴

400. VG018 testified that when Milan Lukić and Sredoje Lukić came to Jusuf Memić's house and ordered the Koritnik group to surrender their valuables, they introduced themselves to the group by name.¹⁴⁷⁵ During cross-examination, when questioned as to whether she was looking at the men as they introduced themselves, VG018 responded:

¹⁴⁶³ CW1, 17 Mar 2009, T. 5571-5572; 1D33, p. 7; P60, p. 8; P90, p. 1; P92, p. 5.

¹⁴⁶⁴ CW1, 17 Mar 2009, T. 5539-5549, 5546-5547, 5555-5557. See also Huso Kurspahić, 7 Apr 2009, T. 6953; P333, p. 3. Latifa Kurspahić is listed at number 36 in Annex A of the indictment.

¹⁴⁶⁵ CW1, 17 Mar 2009, T. 5544-5545. See also Huso Kurspahić, 7 Apr 2009, T. 6953. Lejla Kurspahić is listed at number 37 in Annex A of the indictment.

¹⁴⁶⁶ CW1, 17 Mar 2009, T. 5571-5572. See also Huso Kurspahić, 7 Apr 2009, T. 6954. Meva Kurspahić is listed at number 42 in Annex A of the indictment.

¹⁴⁶⁷ Huso Kurspahić, 7 Apr 2009, T. 6947; P333, p. 2. Aner Kurspahić is listed at number 15 in Annex A of the indictment.

¹⁴⁶⁸ Huso Kurspahić, 7 Apr 2009, T. 6950-6951. The witness testified that he did not know a person named Hasnija Kurspahić who was also 65 years old. There was, however, a Hasnija Kurspahić who was the 35 year old daughter of Pasnija Kurspahić and the 35 year old Hasnija Kurspahić did not die in the Pionirska Street incident. Hasnija Kurspahić is listed at number 28 in Annex A of the indictment.

¹⁴⁶⁹ CW1, 17 Mar 2009, T. 5570. See also Huso Kurspahić, 7 Apr 2009, T. 6952. Izeta Kurspahić is listed at number 34 in Annex A of the indictment.

¹⁴⁷⁰ CW1, 17 Mar 2009, T. 5570-5571, 5580-5581. See also Huso Kurspahić, 7 Apr 2009, T. 6953. Maida Kurspahić is listed at number 38 in Annex A of the indictment.

¹⁴⁷¹ CW1, 17 Mar 2009, T. 5572. See also Huso Kurspahić, 7 Apr 2009, T. 6955. Mina Kurspahić is listed at number 43 in Annex A of the indictment.

¹⁴⁷² Huso Kurspahić, 7 Apr 2009, T. 6957-6958. The witness testified that he saw Saha Kurspahić after the Pionirska Street incident. The witness states that she passed away after 14 June 1992 and the witness attended her funeral in Sarajevo. Saha Kurspahić is listed at number 55 in Annex A of the indictment.

¹⁴⁷³ Huso Kurspahić, 7 Apr 2009, T. 6960. The witness testified that Enver Šehić was killed prior to 14 June 1992. The witness alleges that Enver Šehić and his father were taken away by Milan Lukić, after which the witness never saw him again. Enver Šehić is listed at number 64 in Annex A of the indictment.

¹⁴⁷⁴ VG018, 8 Sep 2008, T. 1360; P82 p. 1582; P83, p. 7.

¹⁴⁷⁵ VG018, 5 Sep 2008, T. 1303.

Perhaps I would have looked had I been nearby, but I was in the room. They went into the general sitting area first. I just heard it. [...] No, I didn't see him, but when we went into another room, we all had to go to this other room, then I saw them, but I didn't know who was who.¹⁴⁷⁶

401. When questioned as to the identity of the men who returned to Jusuf Memić's house, approached the door and ordered the transfer, VG018 responded:

Well, who else but Sredoje and Milan. One of the two approached the door only, but they were the only ones that knew that we were there. They were the ones who left us there. By their voice, by the sound of the car, and by the story he that told us politely, we knew who he was.¹⁴⁷⁷

VG018 further testified that she knew that Milan Lukić and Sredoje Lukić had returned to the house that night by the sound of the car in which they had arrived at the time of the robbery¹⁴⁷⁸ and because other persons in the house shouted, "[t]he Lukićs. Here. The Lukićs are coming again".¹⁴⁷⁹

402. As the Koritnik group was being transferred to Adem Omeragić's house, VG018 was unable to identify the men who escorted the group as she did not dare to look directly at them.¹⁴⁸⁰ As VG018 entered Adem Omeragić's house, she was unable to identify the man who said, "Get in, *balija*"¹⁴⁸¹ and then pushed her inside.¹⁴⁸²

(ii) VG084

403. VG084 had not seen Milan Lukić or Sredoje Lukić prior to 14 June 1992.¹⁴⁸³

404. In a 2001 witness statement, VG084 stated that at the start of the robbery Sredoje Lukić, dressed in a camouflage uniform and armed with a sniper rifle, entered the kitchen of Jusuf Memić's house and introduced himself as Sredoje Lukić.¹⁴⁸⁴ VG084 maintained under cross-examination that Sredoje Lukić introduced himself upon entering Jusuf Memić's house.¹⁴⁸⁵ He also stated that he was two metres from the person who introduced himself as Sredoje Lukić.¹⁴⁸⁶ However, when asked whether he was able to clearly see the face of the person who introduced himself as Sredoje Lukić, VG084 responded that he did not remember.¹⁴⁸⁷ Also, when questioned as to his distance at that point in time from VG018, VG084 responded that he was right by her side.¹⁴⁸⁸

¹⁴⁷⁶ VG018, 8 Sep 2008, T. 1367.

¹⁴⁷⁷ VG018, 5 Sep 2008, T. 1313.

¹⁴⁷⁸ VG018, 5 Sep 2008, T. 1309, 1312.

¹⁴⁷⁹ VG018, 5 Sep 2008, T. 1313.

¹⁴⁸⁰ VG018, 5 Sep 2008, T. 1315.

¹⁴⁸¹ VG018, 5 Sep 2008, T. 1315-1317. See also P82, T. 1592, 1594.

¹⁴⁸² VG018, 5 Sep 2008, T. 1315.

¹⁴⁸³ P72, T. 1665-1667.

¹⁴⁸⁴ P74, p. 4.

¹⁴⁸⁵ VG084, 5 Sep 2008, T. 1274-1276.

¹⁴⁸⁶ VG084, 5 Sep 2008, T. 1277.

¹⁴⁸⁷ VG084, 5 Sep 2008, T. 1277.

¹⁴⁸⁸ VG084, 5 Sep 2008, T. 1277.

405. VG084 further testified that when the men entered Jusuf Memić's house, persons among the group inside the house identified "[b]oth Sredoje and Milan". VG084 estimated that "between 20 to 25 per cent of those who were in the house knew the two men who came into the room".¹⁴⁸⁹ VG084 testified that two girls inside Jusuf Memić's house, who had gone to school with Milan Lukić, identified him as Milan Lukić.¹⁴⁹⁰

406. VG084 also testified that a number of his relatives knew Sredoje Lukić as a policeman and identified him by name.¹⁴⁹¹ VG084 testified that he heard from someone in Jusuf Memić's house that Sredoje Lukić was working in Belgrade.¹⁴⁹² VG084 testified that, judging by their appearances, Milan Lukić was about seven years younger than Sredoje Lukić.¹⁴⁹³

407. VG084 stated that the man who stood by the door of Adem Omeragić's house, smiled at him and patted him on the shoulder as he entered was Sredoje Lukić, the same man "who introduced himself, who said Sredoje Lukić was his name when he looted us".¹⁴⁹⁴ However, when pressed under cross-examination, VG084 testified that "[w]hether it was him or Milan, there were two or three of them in front of the house".¹⁴⁹⁵

(iii) VG013

408. During examination-in-chief, VG013 stated that the first time that she saw Milan Lukić was on 14 June 1992.¹⁴⁹⁶ However, under cross-examination she testified that she had seen Milan Lukić prior to the incident in the area in which she lived, and that the last time she saw him "[h]e was around 20, maybe a little bit over 20".¹⁴⁹⁷ She sometimes saw Milan Lukić about twice a year "in passing" when she would go to the *Panos* hotel.¹⁴⁹⁸ However, VG013 stated, "I have no specific personal knowledge about Milan Lukić. He was a neighbour who was growing up in our proximity, and I cannot say anything else".¹⁴⁹⁹

409. VG013 knew Sredoje Lukić as a policeman who had grown up in the neighbouring village of Rujište.¹⁵⁰⁰ She would see him occasionally at dances, which she would attend almost every

¹⁴⁸⁹ VG084, 5 Sep 2008, T. 1245.

¹⁴⁹⁰ VG084, 5 Sep 2008, T. 1246.

¹⁴⁹¹ VG084, 5 Sep 2008, T. 1244-1245, 1274-1275, 1280; P72, T. 1665; P74, p. 4.

¹⁴⁹² VG084, 5 Sep 2008, T. 1287.

¹⁴⁹³ VG084, 5 Sep 2008, T. 1281-1282.

¹⁴⁹⁴ P72, T. 1673. See also VG084, 5 Sep 2008, T. 1284-1285.

¹⁴⁹⁵ VG084, 5 Sep 2008, T. 1284.

¹⁴⁹⁶ VG013, 3 Sep 2008, T. 1055.

¹⁴⁹⁷ VG013, 3 Sep 2008, T. 1104.

¹⁴⁹⁸ VG013, 3 Sep 2008, T. 1101-1103.

¹⁴⁹⁹ VG013, 3 Sep 2008, T. 1105.

¹⁵⁰⁰ VG013, 2 Sep 2008, T. 1000-1002; 1D29, p. 2.

Saturday between the ages of 13 and 23 years old.¹⁵⁰¹ VG013 also would see Sredoje Lukić on the bus service between Žepa and Višegrad town and when he would patrol through the village of Koritnik.¹⁵⁰²

410. During the robbery at Jusuf Memić's house, VG013 had no difficulty in seeing Milan Lukić's face as there was adequate light in the room.¹⁵⁰³ Also, when Milan Lukić placed the bag on the table and demanded that the group put their valuables in it, VG013 was standing approximately one or two metres away from the table.¹⁵⁰⁴ With regard to Sredoje Lukić, VG013 testified that "Sredoje Lukić was somewhere around the house. He was seen".¹⁵⁰⁵

411. During the transfer from Jusuf Memić's house, VG013 was present when Kada Schić, who referred to Milan Lukić by name, asked him whether she could put on her shoes, to which Milan Lukić responded, "[y]ou don't need them".¹⁵⁰⁶ Kada Schić then told VG013 that Milan Lukić had taken away her husband and her son.¹⁵⁰⁷ VG013 passed Milan Lukić at a distance of no more than about 30 centimetres as she walked through the doorway of Jusuf Memić's house.¹⁵⁰⁸

412. Regarding Sredoje Lukić, VG013 testified that as the Koritnik group was being transferred, a member of the group, Edhem Kurspahić, shouted that they were being followed by Sredoje Lukić, who was walking alongside the group.¹⁵⁰⁹ VG013 testified that she supposed that Edhem Kurspahić knew Sredoje Lukić.¹⁵¹⁰ During cross-examination, VG013 agreed in her examination-in-chief that she had not seen Sredoje Lukić that day at Pionirska street, and that instead, she heard about the Accused's presence there from Edhem Kurspahić. When asked whether she knew if Edhem Kurspahić had prior knowledge of Sredoje Lukić, VG013 responded, "[w]ell since Edhem recognised him, he must have known him, I suppose".¹⁵¹¹ During re-examination, VG013 was of the view that Edhem Kurspahić would have known Sredoje Lukić because Sredoje Lukić "passed by on patrol more than once" in Višegrad.¹⁵¹² According to VG018, Edhem Kurspahić only had

¹⁵⁰¹ VG013, 2 Sep 2008, T. 1000, 1002-1003.

¹⁵⁰² VG013, 2 Sep 2008, T. 1004, 1005-1006.

¹⁵⁰³ VG013, 2 Sep 2008, T. 1032-1033. VG013 described Milan Lukić as having been dressed in a "green-brown camouflage military uniform", VG013, 3 Sep 2008, T. 1098-1099. See also VG013, 2 Sep 2008, T. 1011.

¹⁵⁰⁴ VG013, 2 Sep 2008, T. 1032.

¹⁵⁰⁵ VG013, 2 Sep 2008, T. 1031.

¹⁵⁰⁶ VG013, 3 Sep 2008, T. 1055-1056.

¹⁵⁰⁷ VG013, 2 Sep 2008, T. 1038, 3 Sep 2008, T. 1055-1056; 2D8, T. 1443-1444.

¹⁵⁰⁸ VG013, 2 Sep 2008, T. 1039.

¹⁵⁰⁹ VG013, 2 Sep 2008, T. 1039, 3 Sep 2008, T. 1042, 1052, 1058.

¹⁵¹⁰ VG013, 3 Sep 2008, T. 1121.

¹⁵¹¹ VG013, 3 Sep 2008, T. 1121.

¹⁵¹² VG013, 3 Sep 2008, T. 1121-1122. See also VG013, 3 Sep 2008, T. 1132.

prior knowledge of the man called “Lalco” and did not know Sredoje Lukić, and he only got to know Sredoje Lukić when he introduced himself in the afternoon.¹⁵¹³

413. While inside Adem Omeragić’s house, VG013 saw Milan Lukić lighting and placing the explosive device at the door of the room.¹⁵¹⁴ Under cross-examination she admitted that at the time she had not been concerned with the door, but rather was focusing on the window in order to try to escape.¹⁵¹⁵ Nevertheless, VG013 rejected the suggestion by the Milan Lukić Defence that this would have prevented her from seeing the face of the person who set the explosive device because people were sitting down.¹⁵¹⁶

414. VG013 testified that after Edhem Kurspahić told the group that Sredoje Lukić was following alongside the group, she “lost track of him” and “never thought of him again”.¹⁵¹⁷ During cross-examination VG013 said that while she believed Sredoje Lukić had been “around the house”, she had not seen him.¹⁵¹⁸ When specifically asked to indicate what Sredoje Lukić’s activities were over the course of the night, VG013 responded that “Sredoje Lukić was outside of the house, and when we were to be driven from Jusuf Memić’s house to Omeragić’s house, he escorted us. I can’t tell you anything else”.¹⁵¹⁹ However, in her 1998 witness statement, VG013 gave evidence that she “clearly” saw Sredoje Lukić and Mitar Vasiljević standing behind Milan Lukić as he set the bomb by the door of Adem Omeragić’s house.¹⁵²⁰ Despite the fact that there were no lights inside Adem Omeragić’s house, she was able to see the men by “lights coming in from the street”.¹⁵²¹

415. When asked by the Prosecution whether she recognised the person whom she described in her testimony as Sredoje Lukić, VG013 recognised Sredoje Lukić.¹⁵²² VG013 also recognised Milan Lukić.¹⁵²³

(iv) VG038

416. VG038 indicated that although he had no prior knowledge of Milan Lukić, persons among the group inside Jusuf Memić’s house, who were very well acquainted with Milan Lukić, including

¹⁵¹³ VG018, 8 Sep 2008, T. 1360-1361.

¹⁵¹⁴ VG013, 3 Sep 2008, T. 1047; 2D8, T. 1449-1450.

¹⁵¹⁵ VG013, 3 Sep 2008, T. 1095.

¹⁵¹⁶ VG013, 3 Sep 2008, T. 1095. Huso Kurspahić testified that VG013 had told him who the perpetrators of the fire were, specifically naming Milan Lukić, Sredoje Lukić, Milan Šušnjar, known as “Laco”, and Mitar Vasiljević, P37, T. 804-805.

¹⁵¹⁷ VG013, 3 Sep 2008, T. 1052. See also VG013, 3 Sep 2008, T. 1057-1058.

¹⁵¹⁸ VG013, 3 Sep 2008, T. 1099.

¹⁵¹⁹ VG013, 3 Sep 2008, T. 1058.

¹⁵²⁰ P60, p. 6.

¹⁵²¹ P60, p. 6.

¹⁵²² VG013, 2 Sep 2008, T. 1010-1011.

¹⁵²³ VG013, 2 Sep 2008, T. 1010-1011.

some who had gone to school with him, identified Milan Lukić by name.¹⁵²⁴ On cross-examination, VG038 agreed with the description of Milan Lukić put to him by the Defence, which was based on the description VG013 gave of Milan Lukić in her 1998 witness statement. VG038 agreed that Milan Lukić had been “around 30, perhaps less, tall, neither stout nor thin, and his hair was light brown”.¹⁵²⁵

417. VG038 testified that Sredoje Lukić was a police officer in Višegrad.¹⁵²⁶ He occasionally saw Sredoje Lukić dressed in uniform on the streets of Višegrad, as he went to and from school.¹⁵²⁷ He agreed with the description of Sredoje Lukić as having been about 40 years old with dark hair, of medium height and “stoutish”.¹⁵²⁸ Under cross-examination, VG038 insisted, “[y]es. I knew Sredoje Lukić. I knew Mitar Vasiljević. I knew Milan Šušnjar. I only didn’t know Milan Lukić but there were other people who did know him. They even went to school with him”.¹⁵²⁹ However, under further cross-examination, VG038 agreed to the suggestion that his knowledge of Sredoje Lukić did not pre-date the night of the incident.¹⁵³⁰ In a 1998 witness statement, VG038 stated that two hours after the Koritnik group arrived at Jusuf Memić’s house:

[...] four Serb men came. They were Milan Lukić, Sredoje Lukić, Mitar Vasiljević and Šušnjar Milan, aka “Lalko”. I did not know Sredoje and Milan Lukić but the other people told me who they were. The two others I knew by sight.¹⁵³¹

Also, in her 1995 witness statement, VG013 described Sredoje Lukić as having worked at a place called the UNIS wire factory.¹⁵³²

418. VG038 gave evidence that Milan Lukić, Sredoje Lukić, Milan Šušnjar and Mitar Vasiljević returned to the house that night.¹⁵³³ However, he was unable to identify who had ordered the Koritnik group to move to Adem Omeragić’s house.¹⁵³⁴

419. As the Koritnik group was being transferred to Adem Omeragić’s house, Milan Lukić, Sredoje Lukić, Milan Šušnjar and Mitar Vasiljević took up positions between Jusuf Memić’s house

¹⁵²⁴ VG038, 1 Sep 2008, T. 947, 2 Sep 2008, T. 967; 2D4, p. 3; P44, T. 1369-1370, 1409.

¹⁵²⁵ VG038, 2 Sep 2008, T. 983-984. The exact description given by VG013 is that “Milan Lukić is tall, not fat but not thin, with brownish or light brown hair. He was about thirty years old, maybe less”, P60, p. 4.

¹⁵²⁶ VG038, P44, T. 1370; VG038, 1 Sep 2008, T. 948-949.

¹⁵²⁷ VG038, 1 Sep 2008, T. 949.

¹⁵²⁸ VG038, 2 Sep 2008, T. 983-984. The Sredoje Lukić Defence also put this description to VG038 on cross-examination and stated that it was the description given by VG013 in her 1998 witness statement. She stated that “Sredoje Lukić was about forty years old, with black hair, darker than Milan. He was of medium height, on the chubby side”, P60, p. 4.

¹⁵²⁹ VG038, 2 Sep 2008, T. 977.

¹⁵³⁰ VG038, 2 Sep 2008, T. 986.

¹⁵³¹ 2D4, p. 3

¹⁵³² 1D26, p. 4.

¹⁵³³ VG038, 1 Sep 2008, T. 954; P44, T. 1370, 1376-1377.

¹⁵³⁴ P44, T. 1377.

and Adem Omeragić's house. VG038 was unable to see where they were actually standing.¹⁵³⁵ VG038 also conceded that he was unable to look closely at the men.¹⁵³⁶ When questioned as to who transferred the group to Adem Omeragić's house, VG038 responded, "[t]he same four men", namely Milan Lukić, Sredoje Lukić, Mitar Vasiljević and Milan Šušnjar.¹⁵³⁷ All four men were armed with automatic weapons, grenades and bayonets.¹⁵³⁸

420. While he was inside Adem Omeragić's house, VG038 was unable to see what Milan Lukić and Sredoje Lukić were doing.¹⁵³⁹ However, he insisted that he knew that Milan Lukić and Sredoje Lukić set the house on fire and that he knew that they shot at the house.¹⁵⁴⁰

(v) VG078

421. VG078 and Milan Lukić, who is one year older than VG078, were schoolmates in Prelovo.¹⁵⁴¹ VG078 attended school with Milan Lukić for seven years and would see him in the hallways during breaks as well as around the school building.¹⁵⁴²

422. When Milan Lukić arrived at Jusuf Memić's house and ordered the Koritnik group to surrender their valuables, VG078 initially did not recognise him. It was when VG101 reminded VG078 that the individual who had arrived was Milan Lukić, who had gone to school with them, that VG078 saw who he was.¹⁵⁴³ There was still light outside when Milan Lukić arrived at the house. VG078 was standing about a metre and a half away from him when she saw him, and there was light inside the house by which she could view him.¹⁵⁴⁴ VG078 also was standing about ten steps away from Milan Lukić when, after the strip search, he approached Jasmina Vila and removed her from Jusuf Memić's house.¹⁵⁴⁵

423. During the transfer from Jusuf Memić's house to Adem Omeragić's house, VG078 saw Milan Lukić and Mitar Vasiljević walking between the houses and then standing near the latter house.¹⁵⁴⁶ VG078 saw Milan Lukić in profile at a distance of about 30 steps.¹⁵⁴⁷ She testified that

¹⁵³⁵ 2D4, p. 3; P44, T. 1378.

¹⁵³⁶ VG038, 2 Sep 2008, T. 980.

¹⁵³⁷ VG038, 1 Sep 2008, T. 954.

¹⁵³⁸ VG038, 2 Sep 2008, T. 984.

¹⁵³⁹ VG038, 1 Sep 2008, T. 955.

¹⁵⁴⁰ VG038, 1 Sep 2008, T. 955.

¹⁵⁴¹ 1D35, p. 2; P88, T. 1287; P92, p. 4.

¹⁵⁴² VG078, 8 Sep 2008, T. 1378.

¹⁵⁴³ VG078, 8 Sep 2008, T. 1382-1383.

¹⁵⁴⁴ VG078, 8 Sep 2008, T. 1380-1381; P88, T. 1288.

¹⁵⁴⁵ VG078, 8 Sep 2008, T. 1383-1384.

¹⁵⁴⁶ P88, T. 1290; P89, T. 1294.

¹⁵⁴⁷ VG078, 8 Sep 2008, T. 1385-1386, 1412.

“[t]here was a light and you could see everything; it was lit up”.¹⁵⁴⁸ VG078 stated, “there is no doubt in my mind” that Milan Lukić and Mitar Vasiljević were there.¹⁵⁴⁹

424. When asked by the Prosecution whether she recognised anyone in the courtroom, VG078 recognised Milan Lukić.¹⁵⁵⁰

(vi) VG101

425. VG101 and Milan Lukić went to primary school and secondary school together for 11 years, during which time she saw him daily in the hallways and on the school grounds.¹⁵⁵¹ VG101 completed secondary school when she was 18 years old, and she was 23 years old in June 1992.¹⁵⁵² When she was between the ages of 18 and 23 years, VG101 would see Milan Lukić at dances and parties.¹⁵⁵³

426. VG101 saw Milan Lukić during the robbery in Jusuf Memić’s house when he kicked open the door and entered the house.¹⁵⁵⁴ In a prior statement, VG101 stated that VG013 and VG018 had said at the time that they recognised Sredoje Lukić as being in the group of armed men at Jusuf Memić’s house.¹⁵⁵⁵

427. During the transfer to Adem Omeragić’s house, VG101 saw Milan Lukić and Mitar Vasiljević standing in a lit area near that house.¹⁵⁵⁶ She testified that although there was no electricity in Jusuf Memić’s house, there was electricity in a garage or shed situated in front of Adem Omeragić’s house. She maintained that “the entire area was lit up”, although she was unable to identify the specific sources of light.¹⁵⁵⁷ VG101 further stated that the pathway between the first and second houses was lit by the flashlights carried by the men, and that “there were Serb homes on Pionirska street, and some of the light came from those homes.”¹⁵⁵⁸

428. When asked by the Prosecution whether she recognised anybody in the courtroom, VG101 recognised Milan Lukić.¹⁵⁵⁹

(vii) VG115

¹⁵⁴⁸ P88, T. 1290.

¹⁵⁴⁹ P92, p. 4-5.

¹⁵⁵⁰ VG078, 8 Sep 2008, T. 1387.

¹⁵⁵¹ VG101, 9 Sep 2008, T. 1433-1434. See also 1D36, p. 4.

¹⁵⁵² VG101, 9 Sep 2008, T. 1433-1434. See also 1D36, p. 4.

¹⁵⁵³ VG101, 9 Sep 2008, T. 1433-1434, 1476.

¹⁵⁵⁴ VG101, 9 Sep 2008, T. 1432.

¹⁵⁵⁵ 1D36, p. 4.

¹⁵⁵⁶ VG101, 9 Sep 2008, T. 1446; 1D37, T. 1172-1173; P94. See also 1D36, p. 5.

¹⁵⁵⁷ VG101, 9 Sep 2008, T. 1461.

¹⁵⁵⁸ VG101, 9 Sep 2008, T. 1447-1450, 1460-1461; P94. See also 1D36, p. 5.

¹⁵⁵⁹ VG101, 9 Sep 2008, T. 1453-1455.

429. Prior to 14 June 1992, VG115 occasionally saw Milan Lukić when he would visit his cousin at the company where VG115 worked.¹⁵⁶⁰ VG115 knew that Milan Lukić was born in the village of Rujište, and testified that during the war Milan Lukić and his father, mother and brother, Gojko, moved into a house on Pionirska street.¹⁵⁶¹ VG115 regularly would encounter Milan Lukić and his mother on Pionirska street.¹⁵⁶² On 14 June 1992, Milan Lukić was about 24 or 25 years old, tall and thin.¹⁵⁶³

430. VG115 testified that she knew Sredoje Lukić personally and that he had been a regular police officer.¹⁵⁶⁴ On 14 June 1992, he was about 30 years old and had partially-shaved dark brown hair and brown eyes.¹⁵⁶⁵

431. On 14 June 1992, VG115 witnessed the events on Pionirska street from a house less than 100 metres from Adem Omeragić's house.¹⁵⁶⁶ She testified that she saw Milan Lukić and Sredoje Lukić herding the Koritnik group along Pionirska street to Jusuf Memić's house and also standing outside Adem Omeragić's house.¹⁵⁶⁷ It was dark when the fire took place. However, she testified that she saw Milan Lukić at a distance of about seven metres.¹⁵⁶⁸ She insisted under cross-examination that from her location she was able to hear and see what transpired because the house she was in had windows facing Adem Omeragić's house.¹⁵⁶⁹ However, in the *Vasiljević* case, VG115 testified that while she had seen Milan Lukić and Mitar Vasiljević earlier as the Koritnik group was being herded along Pionirska street,¹⁵⁷⁰ she was unable to see Milan Lukić during the period when Adem Omeragić's house was set on fire because it had become too dark.¹⁵⁷¹

432. VG115 also saw that Sredoje Lukić had "some stocking on his head".¹⁵⁷² Under cross-examination, VG115 maintained that even with a sock on his head, his eyes were visible and that she was able to identify him because she knew Sredoje Lukić personally.¹⁵⁷³

433. When asked by the Prosecution whether she recognised anyone in the courtroom, VG115 recognised Milan Lukić and Sredoje Lukić.¹⁵⁷⁴

¹⁵⁶⁰ VG115, 27 Aug 2008, T. 671.

¹⁵⁶¹ VG115, 27 Aug 2008, T. 671-672.

¹⁵⁶² VG115, 27 Aug 2008, T. 672.

¹⁵⁶³ VG115, 27 Aug 2008, T. 684, 795. See also 1D18, p. 18.

¹⁵⁶⁴ VG115, 28 Aug 2008, T. 718.

¹⁵⁶⁵ 1D18, p. 15.

¹⁵⁶⁶ VG115, 27 Aug 2008, T. 686, 688.

¹⁵⁶⁷ VG115, 27 Aug 2008, T. 685-686; 1D18, p. 11.

¹⁵⁶⁸ VG115, 27 Aug 2008, T. 718; 1D18, p. 11.

¹⁵⁶⁹ VG115, 28 Aug 2008, T. 757.

¹⁵⁷⁰ 1D19, T. 1020-1021.

¹⁵⁷¹ 1D19, T. 1026-1027.

¹⁵⁷² VG115, 27 Aug 2008, T. 686, 29 Aug 2008, T. 780-781.

¹⁵⁷³ VG115, 29 Aug 2008, T. 780-782.

(viii) Huso Kurspahić

434. Hasib Kurspahić, father of Huso Kurspahić, was not personally acquainted with Milan Lukić.¹⁵⁷⁵ However, Hasib Kurspahić was personally acquainted with Sredoje Lukić and also knew his father.¹⁵⁷⁶ Huso Kurspahić was also personally acquainted with Sredoje Lukić. Both men worked together and were neighbours between 1982 and 1983. Sredoje Lukić often visited Huso Kurspahić's home.¹⁵⁷⁷ Sredoje Lukić frequently had lunch with Huso Kurspahić at Hasib Kurspahić's home.¹⁵⁷⁸

435. Hasib Kurspahić saw Milan Lukić, Sredoje Lukić and Mitar Vasiljević return to Jusuf Memić's house.¹⁵⁷⁹ Milan Lukić, Sredoje Lukić and Mitar Vasiljević were among several armed men who escorted the Koritnik group to Adem Omeragić's house.¹⁵⁸⁰ Huso Kurspahić testified that his father told him that he had been able to identify Milan Lukić because Sredoje Lukić and Mitar Vasiljević expressly addressed him as "Milan". Huso Kurspahić further testified that his father had told him that a woman in the group had told him that the person in question was Milan Lukić, something she knew because she had gone to school with him in Prelovo.¹⁵⁸¹

436. When the Prosecution asked Huso Kurspahić whether Sredoje Lukić was present in the courtroom, Huso Kurspahić testified that he was.¹⁵⁸²

2. Milan Lukić Defence case(a) Defence challenge of Mitar Vasiljević's presence at Pionirska street on 14 June 1992

437. The Milan Lukić Defence and the Sredoje Lukić Defence challenged the credibility of VG013, VG038, VG078, VG101 and Huso Kurspahić, whose evidence placed Mitar Vasiljević on Pionirska street after 4 p.m. at times relevant to the charges in the indictment.

438. The Defence evidence presented is that on 14 June 1992, Mitar Vasiljević had a drink with Mujo Halilović, who was part of a large group of people outside a house on Pionirska street.¹⁵⁸³ At approximately 4 p.m. that day, Mitar Vasiljević fell off a horse in the centre of Višegrad,¹⁵⁸⁴

¹⁵⁷⁴ VG115, 29 Aug 2008, T. 794-795.

¹⁵⁷⁵ P37, T. 806.

¹⁵⁷⁶ Huso Kurspahić, 1 Sep 2008, T. 913-914.

¹⁵⁷⁷ Huso Kurspahić, 1 Sep 2008, T. 913-917.

¹⁵⁷⁸ P37, T. 805.

¹⁵⁷⁹ P37, T. 791-792.

¹⁵⁸⁰ P37, T. 793.

¹⁵⁸¹ P37, T. 806.

¹⁵⁸² Huso Kurspahić, 1 Sep 2008, T. 886-887.

¹⁵⁸³ Huso Kurspahić, 5 Mar 2009, T. 5158 and 6 Mar 2009, 5282-5283.

¹⁵⁸⁴ Huso Kurspahić, 5 Mar 2009, T. 5159, 5187-5188 and 6 Mar 2009, T. 5237.

breaking two bones in one of his legs.¹⁵⁸⁵ He was taken to the Višegrad Health Centre and, following an initial check-up was transferred to Užice hospital in an ambulance, driven by Zivorad Savić.¹⁵⁸⁶ He was admitted to Užice hospital at 9.35 p.m.¹⁵⁸⁷ The Defence argues that Mitar Vasiljević could not, therefore, have been present at Pionirska street or the surrounding areas after 4 p.m.¹⁵⁸⁸

439. The Defence presented documentary evidence, consisting of various medical records and a case history from the Užice Hospital, in support of its case.¹⁵⁸⁹ These documents show that Mitar Vasiljević was taken to the Višegrad health centre,¹⁵⁹⁰ before being transferred to the Užice hospital by ambulance.¹⁵⁹¹ They clarify that he was admitted to the hospital's orthopaedics department at 9.35 p.m.,¹⁵⁹² and that at the hospital he was diagnosed with a fractured tibia.¹⁵⁹³

440. The Trial Chamber has already set out in detail the evidence of Prosecution witnesses VG013, VG038, VG078, VG101 and Huso Kurspahić. As such, it will now recall only the pertinent aspects of their testimony.

441. VG013 stated that she was able to recognise Mitar Vasiljević as she had prior knowledge of him as a waiter in the new hotel, and the *Panos* restaurant, who had waited on her table on a number of occasions.¹⁵⁹⁴ VG013 testified that on 14 June 1992, Mitar Vasiljević addressed the group in front of the new hotel and instructed them to go to Pionirska street.¹⁵⁹⁵ She was unclear as to whether Mitar Vasiljević escorted the Koritnik group to Pionirska street.¹⁵⁹⁶ During the *Vasiljević* proceedings, VG013 testified that a man named Brana Tesović, whom she described as "a waiter

¹⁵⁸⁵ Huso Kurspahić, 5 Mar 2009, T. 5159, 5176.

¹⁵⁸⁶ Huso Kurspahić, 5 Mar 2009, T. 5185. See also Huso Kurspahić, 5 Mar 2009, T. 5174.

¹⁵⁸⁷ Huso Kurspahić, 5 Mar 2009, T. 5161, 5174; 1D38.6.

¹⁵⁸⁸ Milan Lukić final trial brief, para. 201, referencing 10 Sep 2008, T. 1529, although note that no reference to 4 p.m. is made on this transcript page; Adjudicated Facts Decision, 12 Nov 2008, facts nos. 1-2, which state that Mitar Vasiljević was on Pionirska street for a substantial part of the afternoon, for about four hours from midday on 14 June 1992 and that VG087 had Mitar Vasiljević within his sight on Pionirska street for a substantial part of the period from noon to 4 p.m. on 14 June 1992.

¹⁵⁸⁹ 1D38.1; 1D38.2; 1D38.3; 1D38.4; 1D38.5; 1D38.6; 1D38.7; 1D38.8; 1D39; Adjudicated Facts Decision, 22 Aug 2008, facts nos. 1-3, which state: "(i) 'The medical records from the Užice hospital, were accurate and 'these records give rise, at least, to the reasonable possibility that the Accused [Vasiljević] was present at the Užice hospital as stated in those records'; (ii) '[T]here was no evidence to suggest that these hospital records had been interfered with'; (iii) '[T]he Accused [Vasiljević] was in hospital on the date and at the time recorded in the protocol of patients from the war zone admitted to the Užice hospital'", Notice of withdrawal of "Sredoje Lukić's motion for judicial notice of adjudicated facts" from 9 September 2008 and submission of "Sredoje Lukić's amended motion for judicial notice of adjudicated facts with annex A," Annex A, filed on 11 September 2008.

¹⁵⁹⁰ 1D39.

¹⁵⁹¹ 1D38.6.

¹⁵⁹² 1D38.6.

¹⁵⁹³ 1D38.1; 1D38.6.

¹⁵⁹⁴ VG013, 2 Sep 2008, T. 1029.

¹⁵⁹⁵ VG013, 2 Sep 2008, T. 1021-1022.

¹⁵⁹⁶ VG013, 2 Sep 2008, T. 1022. She testified that someone in the group shouted that Mitar Vasiljević had been escorting the group.

and a worker at Hidrogradnja”, instructed the group to go to Pionirska street.¹⁵⁹⁷ Under cross-examination, VG013 agreed to the suggestion that the person who instructed the group in front of the new hotel was Borjo Perzević.¹⁵⁹⁸ VG013’s first mention of Mitar Vasiljević during her *Vasiljević* trial testimony was when he arrived on Pionirsa Street after the group’s arrival, and gave the piece of paper certifying the group’s safety to Mujo Halilović.¹⁵⁹⁹

442. VG013’s evidence was that Mitar Vasiljević was present during the robbery of the group at Jusuf Memić’s house.¹⁶⁰⁰ She testified that as the men were about to leave after the robbery and strip search, Milan Lukić told Mitar Vasiljević that the men should all go out to drink.¹⁶⁰¹ VG013 further testified that Mitar Vasiljević and Milan Lukić closed the door to the Omeragić house once the group was inside.¹⁶⁰² VG013 also gave evidence that Milan Lukić and Mitar Vasiljević thereafter opened the door, and that he was present as Milan Lukić placed a lighted device into the room.¹⁶⁰³ When she jumped through the window of Adem Omeragić’s house, VG013 saw Mitar Vasiljević outside Adem Omeragić’s house shining a flashlight at the windows of the house.¹⁶⁰⁴ He was standing next to Milan Lukić, and VG013 estimated that she landed no more than two or three metres from them.¹⁶⁰⁵

443. VG038 also knew Mitar Vasiljević before the 14 June 1992. He testified that Mitar Vasiljević worked as a waiter with a relative of his in the *Panos* restaurant, and sometimes, the Vilina Vlas hotel.¹⁶⁰⁶ VG038 testified that on 14 June 1992, Mitar Vasiljević was present at Piorniska street before 4 p.m. and that he later returned to Jusuf Memić’s house and stood outside while the robbery took place.¹⁶⁰⁷ VG038 testified that Mitar Vasiljević also took part in the transfer of the group to the Omeragić house.¹⁶⁰⁸ However, during the transfer VG038 was only able to identify Mitar Vasiljević because he recognised the hat and uniform Mitar Vasiljević had worn earlier that day when he addressed the Koritnik group outside the new hotel upon their arrival in Višegrad.¹⁶⁰⁹

¹⁵⁹⁷ 2D8, T. 1429, 1431.

¹⁵⁹⁸ 2D8, T. 1483.

¹⁵⁹⁹ 2D8, T. 1432-1433.

¹⁶⁰⁰ VG013, 2 Sep 2008, T. 1031, 3 Sep 2008, T. 1058; 2D6, p. 1.

¹⁶⁰¹ VG013, 2 Sep 2008, T. 1033.

¹⁶⁰² 1D29, p. 2; P62, p. 4. See also VG013, 3 Sep 2008, T. 1048-1049.

¹⁶⁰³ 2D8, T. 1449-1450.

¹⁶⁰⁴ VG013, 3 Sep 2008, T. 1052, 1088, 1090; 2D8, T. 1450, 1452, 1504; P62, p. 4.

¹⁶⁰⁵ VG013, 3 Sep 2008, T. 1051-1052; 2D8, T. 1455.

¹⁶⁰⁶ 2D4, p. 2; P44, T. 1359-1360.

¹⁶⁰⁷ VG038, 2 Sep 2008, T. 975, 978.

¹⁶⁰⁸ VG038, 2 Sep 2008, T. 978.

¹⁶⁰⁹ VG038, 2 Sep 2008, T. 980.

444. VG078 knew Mitar Vasiljević before the 14 June 1992 as a waiter at *Panos* in Višegrad,¹⁶¹⁰ and she knew his wife by sight.¹⁶¹¹ VG078 also sometimes saw Mitar Vasiljević on a bus between Greben and Prelovo.¹⁶¹² On 14 June 1992, VG078 saw Mitar Vasiljević at a close distance of about 10 to 20 paces, as she was escaping during the transfer of the group from Jusuf Memić's house to the Omeragić house.¹⁶¹³ VG078 also testified that Mitar Vasiljević was "standing together with Milan and others."¹⁶¹⁴

445. VG101 had previous knowledge of Mitar Vasiljević from her school days in Prelovo,¹⁶¹⁵ where Mitar Vasiljević lived and where she often saw him.¹⁶¹⁶ She also knew that he worked as a waiter in Višegrad, where she saw him occasionally.¹⁶¹⁷ VG101 testified that on the day of the incident, she "recognised him immediately"¹⁶¹⁸ when he instructed the group to walk to Jusuf Memić's house in Pionirska street.¹⁶¹⁹ She also testified that later that day she saw Mitar Vasiljević for "a brief moment" at the entrance to Jusuf Memić's house, when the group was being transferred to the Omeragić house.¹⁶²⁰ In addition, as she escaped, she saw Mitar Vasiljević with Milan Lukić outside the Omeragić house as the Koritnik group was herded inside.¹⁶²¹

446. It is unclear whether Hasib Kurspahić had knowledge of Mitar Vasiljević prior to 14 June 1992. However, he recounted to his son, Huso Kurspahić, that Mitar Vasiljević was present on the 14 June 1992, and returned that evening, with Milan Lukić and Sredoje Lukić.¹⁶²² He also said that Mitar Vasiljević was among several perpetrators who escorted the Koritnik group to the Omeragić house.¹⁶²³

447. VG115 knew that prior to 14 June 1992 Mitar Vasiljević worked in catering at the *Panos* restaurant. Although she rarely went to the restaurant, she would "see him often" on the streets in Višegrad.¹⁶²⁴ VG115 insisted under cross-examination that on 14 June 1992, she saw Mitar Vasiljević astride a white horse as Milan Lukić and Sredoje Lukić herded the Koritnik group along Pionirska street.¹⁶²⁵ He had a plaster cast on one of his legs.¹⁶²⁶ However, during the *Vasiljević*

¹⁶¹⁰ VG078, 8 Sep 2008, T. 1411, P92, p. 3.

¹⁶¹¹ P88, T. 1280-1281.

¹⁶¹² P88, T. 1280-1281.

¹⁶¹³ P89, T. 1294.

¹⁶¹⁴ P89, T. 1307; P92, pp 4-5.

¹⁶¹⁵ VG101, 9 Sep 2008, T. 1431; 1D36, p. 3.

¹⁶¹⁶ VG101, 9 Sep 2008, T. 1431; 1D36, p. 3.

¹⁶¹⁷ VG101, 9 Sep 2008, T. 1431; 1D36, p. 3.

¹⁶¹⁸ VG101, 9 Sep 2008, T. 1431; 1D36, p. 3.

¹⁶¹⁹ VG101, 9 Sep 2008, T. 1431; 1D36, p. 3.

¹⁶²⁰ VG101, 9 Sep 2008, T. 1444; 1D37, T. 1169.

¹⁶²¹ VG101, 9 Sep 2008, T. 1446.

¹⁶²² P37, T. 791-792.

¹⁶²³ P37, T. 793.

¹⁶²⁴ 1D19, T. 1013. See also VG115, 28 Aug 2008, T. 732.

¹⁶²⁵ VG115, 28 Aug 2008, T. 762-767.

proceedings, VG115 testified that the first time she saw Mitar Vasiljević with a cast on his leg was “in the autumn”, possibly in either September or October 1992, and that at this point he was riding a horse.¹⁶²⁷

448. In addition to the witness testimony placing Mitar Vasiljević at Piorniska street after 4 p.m., the Prosecution questioned the identity of the person who was treated in the Užice hospital on the night of 14 June 1992.¹⁶²⁸ In doing so, the Prosecution relied on the testimony of Dr. Raby from the *Vasiljević* proceedings.¹⁶²⁹ The expert report of Dr. Raby from the *Vasiljević* proceedings, was also admitted into evidence in the current case.¹⁶³⁰ Dr. Raby’s *Vasiljević* testimony and expert report question the veracity of x-rays that were allegedly taken of Mitar Vasiljević’s leg on 14 June 1992.¹⁶³¹

449. In his *Vasiljević* testimony and expert report, Dr. Raby compares two x-rays, the first an alleged x-ray of Mitar Vasiljević’s leg taken on 14 June 1992, and the second an x-ray of Mitar Vasiljević’s leg on 15 August 2001 taken at the United Nations Detention Unit. Dr. Raby concluded that there were significant differences between the two x-rays.¹⁶³² In particular, he noted that the size of the fracture margins, the distance from the talar dome to the lateral fracture line anterior fracture margin, and the distance of the tibial dome to the anterior fracture margin were all significantly different.¹⁶³³ He also noted that the configuration of the fractures was different, and that there were fundamental differences in the appearance of respective bones.¹⁶³⁴ As a result, he concluded that the x-ray taken in 2001 was not of the fracture demonstrated on the 1992 x-ray,¹⁶³⁵ and said that the radiographs were of two different people.¹⁶³⁶ He further noted that the different radiographic projections could not account for the discrepancies he found,¹⁶³⁷ and he regarded as “untenable” the proposition that a hypothetical second fracture one year after a first fracture could mask any findings, thereby leading to an erroneous conclusion.¹⁶³⁸

¹⁶²⁶ VG115, 28 Aug 2008, T. 764.

¹⁶²⁷ 1D19, T. 1029-1030, 1067.

¹⁶²⁸ 6 Mar 2009, T. 5288, 5295-5300.

¹⁶²⁹ P344. See also P342.

¹⁶³⁰ 1D38.8.

¹⁶³¹ P342.

¹⁶³² In particular he noted that the size of the fracture margins, the distance of from the talar dome to the lateral fracture line anterior fracture margin, and the distance of the tibial dome to the anterior fracture margin was significantly different in each x-ray, 1D138.8, p. 2; P343, pp 3-4. He also noted that the configuration of the fractures was different, and that there were fundamental differences in the appearance of respective bones, 1D138.8, p. 2; P343, p. 1; P344, T. 4231-4234, 4237-4239, 4242-4243, 4243-4245, 4253-4254.

¹⁶³³ 1D38.8, p. 2; P343, pp 3-4.

¹⁶³⁴ 1D38.8, p. 2; P343, p. 1.

¹⁶³⁵ 1D38.8, p. 2.

¹⁶³⁶ P344, T. 4227-4245, 4251-4253; P343, pp 3-4; 1D38.8, p. 2.

¹⁶³⁷ 1D38.8, p. 2.

¹⁶³⁸ 1D38.8, p. 3. See also P344, T. 4255, 4258-4259, 4260-4261, 4262-4264, 4281.

(b) Defence evidence challenging the occurrence of the 14 June 1992 fire

450. The Milan Lukić Defence presented the expert evidence of two fire and arson investigators, Benjamin Dimas¹⁶³⁹ and Martin McCoy¹⁶⁴⁰, who worked under Benjamin Dimas's supervision,¹⁶⁴¹ an explosives expert, Stephen O'Donnell,¹⁶⁴² and a criminal investigations expert, Clifford Jenkins,¹⁶⁴³ to prove that the 14 June 1992 fire did not occur. The experts examined the Pionirska street site in January 2009.¹⁶⁴⁴

(i) Physical description of Adem Omeragić's house

451. The lower storey of Adem Omeragić's house, which is where the fire allegedly occurred, comprised one room and was accessible through a door located to the south. The room was between 22 and 36 square metres.¹⁶⁴⁵ There were two windows on the western wall. The window closest to the door is referred to as the "first window" and the window furthest from the door is called the "second window". There was a portico or porch immediately outside the door, which ran along the southern side of the house. The concrete floor of the first storey extended over the porch.¹⁶⁴⁶ The room's walls and ceiling were largely concrete¹⁶⁴⁷ and the remnants of the floor were wooden.¹⁶⁴⁸ Two or three steps to the right of the door, there was a vertical opening which will be referred to as "vent".¹⁶⁴⁹

(ii) General conclusions of the experts

452. Martin McCoy concluded that there was no evidence that a high-intensity fire had ever occurred at the site.¹⁶⁵⁰ Benjamin Dimas also concluded that the "room was not involved in a fully involved room fire".¹⁶⁵¹ In Martin McCoy's view, had such a fire taken place, every surface would have been charred and discoloured.¹⁶⁵² On the locations where Martin McCoy found evidence of discolouration, he concluded that it was a result of the high level of moisture in the room.¹⁶⁵³ He further testified that the longer an investigation of a crime scene is delayed, the less reliable are the

¹⁶³⁹ 1D183.

¹⁶⁴⁰ 1D160; 1D161.

¹⁶⁴¹ Hearing, 23 Mar 2009, T. 5922, 5982.

¹⁶⁴² 1D133; 1D134; 1D135.

¹⁶⁴³ 1D208.

¹⁶⁴⁴ Benjamin Dimas, 23 Mar 2009, T. 5941-5942; Clifford Jenkins, 26 Mar 2009, T. 6433, 6435; Martin McCoy, 19 Mar 2009, T. 5684-5685; Stephen O'Donnell, 12 Mar 2009, T. 5465.

¹⁶⁴⁵ Stephen O'Donnell, 12 Mar 2009, T. 5427 (20 by 20 feet which is 6 by 6 metres or 36sqm); 1D183, p. 1 (13 by 18 feet which is 4 by 5.5 metres or 22 sqm).

¹⁶⁴⁶ Martin McCoy, 19 Mar 2009; 1D195, p. 1; P296.

¹⁶⁴⁷ Martin McCoy, 19 Mar 2009; 1D179; 1D195; P275; P276; P277; P278; P297.

¹⁶⁴⁸ Martin McCoy, 19 Mar 2009, T. 5694-5696, 5698; 1D180; P294; P295; P297.

¹⁶⁴⁹ Martin McCoy, 19 Mar 2009, T. 5707-5708.

¹⁶⁵⁰ Martin McCoy, 19 Mar 2009, T. 5688-5689; 1D195, pp 1-4.

¹⁶⁵¹ 1D183, p. 2.

¹⁶⁵² Martin McCoy, 19 Mar 2009, T. 5689, 5725-5726.

conclusions that can be drawn.¹⁶⁵⁴ However, he also testified that this would “not mean that evidence completely disappears”,¹⁶⁵⁵ though he was open to the possibility that the site may have been tampered with, including by the perpetrators.¹⁶⁵⁶

453. Clifford Jenkins generally observed that the interior and exterior of the site had severely deteriorated and were seeped with moisture and covered with mould.¹⁶⁵⁷ He concluded that evidence would have been lost due to the moisture and the resulting degradation of the walls.¹⁶⁵⁸

454. Stephen O'Donnell testified that certain kinds of evidence, such as explosive residue, may be destroyed by weather conditions, including by air humidity.¹⁶⁵⁹ He further testified that none of the wood in the basement with which he came in contact showed evidence of fire damage.¹⁶⁶⁰ He also testified that on-site investigations of locations where explosive devices have been detonated are best conducted as soon as possible following an incident.¹⁶⁶¹

(iii) The door

455. Both Martin McCoy and Benjamin Dimas observed that the door, door frame and threshold showed no fire damage.¹⁶⁶² On the basis of this, both experts concluded that there could not have been a fire inside the room of the kind alleged.¹⁶⁶³ Also Clifford Jenkins, though not a fire expert,¹⁶⁶⁴ expressed the opinion that there was no fire damage to the door frame.¹⁶⁶⁵

456. Martin McCoy held the view that the door was the same door that was present on 14 June 1992.¹⁶⁶⁶ When, under cross-examination, he was asked whether the fact that the lock and doorknob were on the same side as the hinges was not unequivocal evidence that the door was not the same door that had been present on 14 June 1992,¹⁶⁶⁷ Martin McCoy failed to answer the question, stating instead:

Again, I don't know if this room was ever tenable. I don't know if they used it as a barn. I don't know what this room was used for. If this was the original door, it could have been a

¹⁶⁵³ Martin McCoy, 19 Mar 2009, T. 5694-5696, 5698, 5701; 1D165; 1D195, pp 1-2.

¹⁶⁵⁴ Martin McCoy, 19 Mar 2009, T. 5728, 5730-5731.

¹⁶⁵⁵ Martin McCoy, 19 Mar 2009, T. 5729.

¹⁶⁵⁶ Martin McCoy, 19 Mar 2009, T. 5731-5732, 5742, 5744.

¹⁶⁵⁷ 1D219, pp 1-5.

¹⁶⁵⁸ Clifford Jenkins, 27 Mar 2009, T. 6456, 6458.

¹⁶⁵⁹ Stephen O'Donnell, 12 Mar 2009, T. 5453-5453.

¹⁶⁶⁰ Stephen O'Donnell, 12 Mar 2009, T. 5440, 5444, 5484.

¹⁶⁶¹ Stephen O'Donnell, 12 Mar 2009, T. 5451. See also *id.* T. 5457.

¹⁶⁶² Benjamin Dimas, 23 Mar 2009, T. 5964; Martin McCoy, 19 Mar 2009, T. 5735.

¹⁶⁶³ Martin McCoy, 19 Mar 2009, T. 5704-5705. See also Benjamin Dimas, 23 Mar 2009, T. 5964; Martin McCoy, 19 Mar 2009, T. 5701.

¹⁶⁶⁴ Clifford Jenkins, 27 Mar 2009, T. 6479-6480; 1D208.

¹⁶⁶⁵ Clifford Jenkins, 1D219, p. 2.

¹⁶⁶⁶ Martin McCoy, 19 Mar 2009, T. 5759-5760, 5763, 5773; P278.

¹⁶⁶⁷ Martin McCoy, 19 Mar 2009, T. 5761-5766; P277; P279. See also Martin McCoy, 19 Mar 2009, T. 5772-5773; P282.

remanufactured door. I mean, if you go to this area, you know these people are not wealthy. They use old bricks to - ¹⁶⁶⁸

Benjamin Dimas was open to the possibility that the door may have been replaced since 14 June 1992, but concluded that there would still have been damage to the concrete surrounding the door frame, which there was not. ¹⁶⁶⁹

457. Martin McCoy and Benjamin Dimas were also examined in relation to a photograph showing a darkened piece of wood in the wall near the upper left corner of the door. ¹⁶⁷⁰ Martin McCoy testified under cross-examination that the discolouration on one side of the wood was not the result of fire damage but rather of mould, though he did admit to not being an expert on mould. ¹⁶⁷¹ Benjamin Dimas agreed during his examination-in-chief that the darkened piece of wood lacked burn damage. ¹⁶⁷²

458. When presented with a photograph of the door frame, Stephen O'Donnell testified that he did not notice any fire damage on the door frame. ¹⁶⁷³ He further conceded that an explosive blast could have pushed out the door and the door frame. However, in his opinion, it would have been more likely that the door would have been torn off its hinges without removing the door frame. ¹⁶⁷⁴ He agreed with the hypothetical proposition that a person of smaller stature could have been blown out an open doorway by blast pressure, including such as that produced by a grenade. ¹⁶⁷⁵

(iv) The windows and the interior walls

459. Martin McCoy observed that neither window had frames or glass and that there was a lack of discolouration over the top and sides of the windows. ¹⁶⁷⁶ He further observed that the second window was filled with concrete blocks. ¹⁶⁷⁷ These were factors in his overall conclusion that there had never been a high-intensity fire in the room. ¹⁶⁷⁸ With respect to a horizontal piece of wood below the first window, which the Prosecution submitted was a furring strip onto which a wall surface may have been attached, Martin McCoy maintained that it was not burnt, which it would have been, if there had been a high-intensity fire in the room. ¹⁶⁷⁹ In respect of the blocks in the

¹⁶⁶⁸ Martin McCoy, 19 Mar 2009, T. 5762-5763.

¹⁶⁶⁹ Benjamin Dimas, 23 Mar 2009, T. 6006.

¹⁶⁷⁰ P280.

¹⁶⁷¹ Martin McCoy, 19 Mar 2009, T. 5766, 5769-5771; P280.

¹⁶⁷² Benjamin Dimas, 23 Mar 2009, T. 5958.

¹⁶⁷³ Stephen O'Donnell, 12 Mar 2009, T. 5483; P265, p. 17.

¹⁶⁷⁴ Stephen O'Donnell, 12 Mar 2009, T. 5478-5479, 5506-5507.

¹⁶⁷⁵ Stephen O'Donnell, 12 Mar 2009, T. 5508.

¹⁶⁷⁶ Martin McCoy, 19 Mar 2009, T. 5754-5757; P275; P276.

¹⁶⁷⁷ Martin McCoy, 19 Mar 2009, T. 5758; P276.

¹⁶⁷⁸ Martin McCoy, 19 Mar 2009, T. 5691-5692; 1D162.

¹⁶⁷⁹ Martin McCoy, 19 Mar 2009, T. 5784-5785. Martin McCoy also testified about a phenomenon known as "flash-over", whereby "[t]he surface of everything that can ignite will [...] floor to ceiling, wall to wall," T. 5696-5698.

second window, Martin McCoy conceded that they were “a concrete indication that [...] someone, either innocently or maliciously, changed the room.”¹⁶⁸⁰

460. Benjamin Dimas observed melted wire insulation in a number of locations on the walls in the room, including near the first window, though the grooves into which the wires had been plastered were not burnt.¹⁶⁸¹ He was also referred by the Prosecution to three locations in the room where he agreed there was charred wood: (1) on the upper part of the wall opposite the two windows,¹⁶⁸² (2) behind the door¹⁶⁸³ and (3) along the wall of the room near the basement door.¹⁶⁸⁴ Benjamin Dimas agreed with the Prosecution that if a fire, which had charred wood in one of the three locations, had spread, there could have been a “fully involved fire in that room”.¹⁶⁸⁵ However, he disagreed with the Prosecution’s proposition that, given the small size of the room, the charred wood and the melted wire insulation were evidence that there had been “a fully involved fire in this room”.¹⁶⁸⁶ He testified that such a conclusion was “not consistent with the overall exam, the witness statements, and how their statements stated it happened.”¹⁶⁸⁷

461. Stephen O’Donnell testified that had the glass in the windows been intact at the time of the explosion, the blast pressure could have blown out the entire framework of the window. However, this would not have happened if the glass had been broken as any blast pressure would have been vented through the window.¹⁶⁸⁸ Stephen O’Donnell did, however, agree that the absence of window frames could have been caused by persons having removed them at some point after the blast.¹⁶⁸⁹

462. Stephen O’Donnell observed that the interior walls were in a deteriorated condition as a result of the presence of moisture in the room over a long period of time.¹⁶⁹⁰ He observed 30 “impact marks” on the interior walls of the room.¹⁶⁹¹ 80 per cent of the impact marks were located at shoulder level and approximately five or six marks were located between shoulder and waist level.¹⁶⁹² In examination-in-chief, Stephen O’Donnell testified that he was unable to state unequivocally the specific causes of the marks.¹⁶⁹³ However, when cross-examined, he agreed with the Prosecution’s proposition that, based on “a level of scientific certainty commensurate with his

¹⁶⁸⁰ Martin McCoy, 19 Mar 2009, T. 5757-5758; P275.

¹⁶⁸¹ Benjamin Dimas, 24 Mar 2009, T. 6030-6032. Benjamin Dimas also testified that he failed to mention the melted wire insulation in his report, *id.* T. 6031, 6075-6076; P308.

¹⁶⁸² Benjamin Dimas, 24 Mar 2009, T. 6049; P308.

¹⁶⁸³ Benjamin Dimas, 24 Mar 2009, T. 6049-6050; P308.

¹⁶⁸⁴ Benjamin Dimas, 24 Mar 2009, T. 6076, P308.

¹⁶⁸⁵ Benjamin Dimas, 24 Mar 2009, T. 6050.

¹⁶⁸⁶ Benjamin Dimas, 24 Mar 2009, T. 6077.

¹⁶⁸⁷ Benjamin Dimas, 24 Mar 2009, T. 6077.

¹⁶⁸⁸ Stephen O’Donnell, 12 Mar 2009, T. 5478; P265, p. 9.

¹⁶⁸⁹ Stephen O’Donnell, 12 Mar 2009, T. 5478; P265, p. 9.

¹⁶⁹⁰ Stephen O’Donnell, 12 Mar 2009, T. 5426, 5428. See also Stephen O’Donnell, 12 Mar 2009, T. 5424.

¹⁶⁹¹ Stephen O’Donnell, 12 Mar 2009, T. 5458-5459, 5461; 1D137, p. 2; 1D148.

¹⁶⁹² Stephen O’Donnell, 12 Mar 2009, T. 5461, 5463-5464.

experience and expertise”, an explosive device had detonated in the room.¹⁶⁹⁴ He further testified that the impact marks could have been the result of any type of device, including a grenade, an improvised explosive device or weapons fire.¹⁶⁹⁵

463. When cross-examined, Stephen O'Donnell also testified that fragments from an explosion travelling at trajectories below shoulder height would have become embedded in the bodies of the people in the room, whereas fragments travelling at higher trajectories would have left impact marks on the surrounding walls.¹⁶⁹⁶ He noted that fragments from an explosive device can move through the soft tissue of persons and thereafter hit the surrounding walls.¹⁶⁹⁷ Stephen O'Donnell agreed with the Prosecution's proposition that the fact that more impact marks were situated above shoulder indicates that the room may have been crowded when the explosive device detonated.¹⁶⁹⁸ However, in his opinion, the patterns of the impact marks indicate that there were, in fact, fewer people in the room at the time of the explosion than alleged by the Prosecution.¹⁶⁹⁹

464. Stephen O'Donnell was also cross-examined as to the capacity of a grenade to start a fire. He testified that while a grenade would not cause a fire, an incendiary device, including a Molotov cocktail, likely would.¹⁷⁰⁰ Nevertheless, it would be possible for a grenade to start a fire were it to detonate in an environment containing petrol vapors or on a carpet soaked with a flammable liquid.¹⁷⁰¹

(v) The floor in the room

465. Martin McCoy observed that there were “large portions of wooden floor that were untouched” but which showed areas of dark discolouration.¹⁷⁰² He also observed that approximately one-third of the floor behind the door was missing and that all that remained in this area was dirt.¹⁷⁰³ Behind the door and under the first window, he observed fire damage consistent with a small fire lit for warmth or cooking purposes.¹⁷⁰⁴ With regard to the dark discolouration on the remaining floor, Martin McCoy concluded that it was the result of excess moisture over time and that there was no evidence of charring.¹⁷⁰⁵ In Martin McCoy's opinion, the darkening resulting

¹⁶⁹³ Stephen O'Donnell, 12 Mar 2009, T. 5427.

¹⁶⁹⁴ Stephen O'Donnell, 12 Mar 2009, T. 5494.

¹⁶⁹⁵ Stephen O'Donnell, 12 Mar 2009, T. 5459-5461, 5492-5493.

¹⁶⁹⁶ Stephen O'Donnell, 12 Mar 2009, T. 5442, 5461-5462. See also *id.* T. 5423.

¹⁶⁹⁷ Stephen O'Donnell, 12 Mar 2009, T. 5463.

¹⁶⁹⁸ Stephen O'Donnell, 12 Mar 2009, T. 5464.

¹⁶⁹⁹ Stephen O'Donnell, 12 Mar 2009, T. 5442.

¹⁷⁰⁰ Stephen O'Donnell, 12 Mar 2009, T. 5418, 5443.

¹⁷⁰¹ Stephen O'Donnell, 12 Mar 2009, T. 5469-5471.

¹⁷⁰² Martin McCoy, 19 Mar 2009, T. 5694.

¹⁷⁰³ Martin McCoy, 19 Mar 2009, T. 5743.

¹⁷⁰⁴ Martin McCoy, 19 Mar 2009, T. 5789; 1D195, pp 2, 4.

¹⁷⁰⁵ Martin McCoy, 19 Mar 2009, T. 5695, 5697.

from moisture, as well as the wear and damage, led him to conclude that the floor was the original flooring dating back to June 1992.¹⁷⁰⁶ Under cross-examination, he maintained his conclusion that there was no evidence of a high intensity fire based on the fire damage behind the door and the fact that the majority of the floor was intact.¹⁷⁰⁷

466. Under cross-examination, Martin McCoy conceded that it was possible that wooden flooring under a carpet, onto which accelerant had been thrown, would show varying degrees of fire damage: where the accelerant had fully soaked into the carpet, the floor would show high intensity fire damage, there would be moderate damage in areas further away from those soaked with petrol, and there would possibly be no burning in areas farthest from where the accelerant had been thrown.¹⁷⁰⁸

467. Benjamin Dimas observed some “fire debris” on the floor behind the door. He concluded that this was evidence of a small-scale fire as opposed to a fire capable of engulfing the entire room.¹⁷⁰⁹ He also observed that the area of the wooden floor at the north-western corner of the room was “the darkest and blackest area” and “appeared to be fire damage[d]”.¹⁷¹⁰ However, he concluded that most of the darkening was due to mould and moisture.¹⁷¹¹ He did note there were certain sections where there was very limited moisture and that these sections did not exhibit any of the signs normally resulting from large-scale fires.¹⁷¹² He further concluded that the areas of burnt wood could have been the result of campfire.¹⁷¹³ When questioned as to the effects of water on wood, Benjamin Dimas testified that moisture helps preserve wood and would help to preserve fire damage.¹⁷¹⁴ Benjamin Dimas expressed the opinion that had there been a high-intensity fire in the room, at least some traces of that fire would remain.¹⁷¹⁵

(vi) The ceiling

468. Benjamin Dimas was unable to detect any damage consistent with a fire of great intensity having taken place underneath it.¹⁷¹⁶ However, he noted that the ceiling was extremely moist and that there was water dripping from it.¹⁷¹⁷

¹⁷⁰⁶ Martin McCoy, 19 Mar 2009, T. 5693-5694.

¹⁷⁰⁷ Martin McCoy, 19 Mar 2009, T. 5791.

¹⁷⁰⁸ Martin McCoy, 20 Mar 2009, T. 5810-5812.

¹⁷⁰⁹ Benjamin Dimas, 23 Mar 2009, T. 5975-5976.

¹⁷¹⁰ Benjamin Dimas, 23 Mar 2009, T. 5967.

¹⁷¹¹ Benjamin Dimas, 23 Mar 2009, T. 5967, 5972.

¹⁷¹² Benjamin Dimas, 23 Mar 2009, T. 5973-5974.

¹⁷¹³ Benjamin Dimas, 23 Mar 2009, T. 5968-5971; 1D190; 1D191.

¹⁷¹⁴ Benjamin Dimas, 23 Mar 2009, T. 5973.

¹⁷¹⁵ Benjamin Dimas, 23 Mar 2009, T. 5965-5966.

¹⁷¹⁶ Benjamin Dimas, 23 Mar 2009, T. 5972.

¹⁷¹⁷ Benjamin Dimas, 23 Mar 2009, T. 5972.

(vii) The vent

469. Martin McCoy observed that the vent was in “pristine” condition, which he considered as proof that Adem Omeragić’s house had never been the site of a major fire.¹⁷¹⁸ However, he was unsure of the intended function of the vent, noting that it could have been for wires, or for sewer gas or a wood stove.¹⁷¹⁹ He observed that the vent was unobstructed and that it was not discoloured by smoke or soot, something which he would have expected had there been a fire, due to the porous nature of the material of the vent.¹⁷²⁰ However, Martin McCoy conceded that the vent may have been clean due to the following three possibilities: the fact that it had never been used, that 17 years of rain could have washed away any soot residue, and that someone could have cleaned it.¹⁷²¹ Notably, Martin McCoy observed that the vent did not have a cap or cover.¹⁷²²

(viii) The exterior walls

470. Martin McCoy observed that the exterior walls were discoloured but that there were no smoke patterns on them. He concluded that the discolouration was mould but allowed for the possibility that the absence of soot and smoke discolouration might have been the result of 17 years of weather exposure.¹⁷²³

471. Martin McCoy also observed remnants of wood attached to the upper section of the concrete exterior wall in the porch area and fire damage, known as alligatoring, on these remnants of wood.¹⁷²⁴ Martin McCoy described the fire damage as ranging from “light alligatoring” to “larger diameter alligatoring”, noting that there were also areas of “clean wood”.¹⁷²⁵ Martin McCoy concluded that the fire damage to the wooden remnants could not have been the result of a fire from inside the room because a “fire would have damaged the door, the threshold, the door jam, the door frame to get to this point”.¹⁷²⁶ Martin McCoy agreed under cross-examination that if there had been a finished wooden wall on top of the exterior concrete wall, the fire could have burned off sections of that wall, leaving only the wooden remnants.¹⁷²⁷

472. Benjamin Dimas observed that there were no signs of fire having come out through the door or the two windows.¹⁷²⁸ He explained that where high intensity fires affect a structure, fire moves

¹⁷¹⁸ Martin McCoy, 19 Mar 2009, T. 5707-5708, 5753; P273; P274.

¹⁷¹⁹ Martin McCoy, 19 Mar 2009, T. 5708-5709.

¹⁷²⁰ Martin McCoy, 19 Mar 2009, T. 5708.

¹⁷²¹ Martin McCoy, 19 Mar 2009, T. 5751.

¹⁷²² Martin McCoy, 19 Mar 2009, T. 5751.

¹⁷²³ Martin McCoy, 19 Mar 2009, T. 5698, 5725; 1D165.

¹⁷²⁴ Martin McCoy, 19 Mar 2009, T. 5705; 1D169.

¹⁷²⁵ Martin McCoy, 19 Mar 2009, T. 5705; 1D169.

¹⁷²⁶ Martin McCoy, 19 Mar 2009, T. 5705; 1D169. See also Martin McCoy, 19 Mar 2009, T. 5701.

¹⁷²⁷ Martin McCoy, 19 Mar 2009, T. 5778-5779; P283; P284.

¹⁷²⁸ 1D83, p. 2.

upward through available openings in the structure, such as doors and windows, leaving evidence of fire damage on exterior surfaces.¹⁷²⁹ Benjamin Dimas also observed that parts of the exterior walls above the door and the door frame were darkly discoloured, which he concluded was due to mould.¹⁷³⁰ Clifford Jenkins also observed certain darkened sections on the exterior wall above the door, and concluded that they were not smoke or fire damage, but rather mould.¹⁷³¹

(ix) The upper floors of Adem Omeragić's house

473. Martin McCoy and Benjamin Dimas agreed that the upper floors of Adem Omeragić's house were affected by fire damage.¹⁷³² During cross-examination, Martin McCoy appeared to accept that a piece of wood protruding from the exterior wall on one of the upper floors was burnt.¹⁷³³ However, he was unable to indicate the smoke plume effect, which exists where there is fire damage.¹⁷³⁴ In this context, he testified that it would be possible that smoke and soot could disappear over time, if exposed to the elements.¹⁷³⁵

474. During re-examination, however, Martin McCoy testified that there was, in fact, smoke damage visible in a V-pattern above the piece of wood despite the fact that it had been exposed to the elements for so many years.¹⁷³⁶ Martin McCoy also testified to the existence of discolouration elsewhere on the exterior of the upper floors, which was caused by smoke. He agreed that the uniformity of the damage observed on the upper floor areas was not present in the room where the 14 June 1992 fire was alleged to have occurred.¹⁷³⁷

475. Benjamin Dimas was cross examined as to whether he saw any smoke plume damage from fires, which the Prosecution submitted had occurred on the first and second floors. However, he testified that he could not, and further that, in his opinion, 17 years of weather conditions could not have erased any such evidence.¹⁷³⁸

(x) The effects of fire and smoke on human beings

476. Martin McCoy testified that in a room of the size under consideration, crowded with 60 to 70 persons, the flash-over effect would have caused every ignitable object in the room, including

¹⁷²⁹ Benjamin Dimas, 23 Mar 2009, T. 5960.

¹⁷³⁰ Benjamin Dimas, 23 Mar 2009, T. 5955-5957, 1D187.

¹⁷³¹ 1D219, p. 1.

¹⁷³² Martin McCoy, 20 Mar 2009, T. 5823-5824; Benjamin Dimas, 24 Mar 2009, T. 6059; 1D174; 1D175; 1D176.

¹⁷³³ Martin McCoy, 19 Mar 2009, T. 5718-5725; 1D174; 1D176.

¹⁷³⁴ Martin McCoy, 19 Mar 2009, T. 5720.

¹⁷³⁵ Martin McCoy, 19 Mar 2009, T. 5720-5721, 20 Mar 2009, 5823-5824; 1D174; 1D176.

¹⁷³⁶ Martin McCoy, 20 Mar 2009, T. 5824.

¹⁷³⁷ Martin McCoy, 20 Mar 2009, T. 5828-5829.

¹⁷³⁸ Benjamin Dimas, 24 Mar 2009, T. 6060-6061; P306.

the alleged victims themselves, to catch fire.¹⁷³⁹ Benjamin Dimas also testified that human body tissue, fat, skin, hair and clothing would have fuelled any fire in the room and would have added to charring and sooting patterns on the room's surfaces.¹⁷⁴⁰

477. Martin McCoy testified that many fire victims die as a result of suffocation due to the lack of oxygen in an intense fire environment, or from smoke inhalation, something which would transpire within five to 20 minutes.¹⁷⁴¹ When questioned as to the plausibility of survivor accounts that they heard crying and screaming from Adem Omeragić's house for between half an hour to an hour after their escape, Benjamin Dimas testified that it would have been impossible to survive for that long in a room "fully engulfed" by fire.¹⁷⁴² Stephen O'Donnell also testified that such accounts would be inconsistent with the use of "mass amounts" of accelerant as, once ignited, the accelerant would have caused the victims to "succumb to smoke inhalation within a matter of minutes".¹⁷⁴³

(c) Milan Lukić's alibi

(i) Factual summary

478. Milan Lukić's alibi is that between 13 June and 15 June 1992, he and other members of the reserve police and various military personnel were deployed to an area outside the town of Višegrad known as Kopito.¹⁷⁴⁴

479. Višegrad town is situated east of Rogatica.¹⁷⁴⁵ The asphalt road from Višegrad town to Rogatica goes through an area known as Borika.¹⁷⁴⁶ Between Višegrad town and Borika lie the areas of Tabla, which is closest to Višegrad, Gornja Lijeska and Kopito. Situated above Kopito is an area known as Sjemeć, where the Sjemeć mountain is located.¹⁷⁴⁷ There is evidence that this road was of strategic importance to the Serb forces in Rogatica and Višegrad.¹⁷⁴⁸ Žepa is situated north-east of Borika, and Goražde is to the south of Rogatica. A small, unpaved road connects Žepa to the north with Goražde to the south and located near the main Goražde-Višegrad road.¹⁷⁴⁹ This small road intersects with the Višegrad-Rogatica road near Borika.¹⁷⁵⁰

(ii) Milan Lukić's membership in the reserve police

¹⁷³⁹ Martin McCoy, 20 Mar 2009, T. 5829-5831.

¹⁷⁴⁰ Benjamin Dimas, 24 Mar 2009, T. 6098-6099.

¹⁷⁴¹ Benjamin Dimas, 24 Mar 2009, T. 6100.

¹⁷⁴² Benjamin Dimas, 24 Mar 2009, T. 6100-6101.

¹⁷⁴³ Stephen O'Donnell, 12 Mar 2009, T. 5421.

¹⁷⁴⁴ Milan Lukić final trial brief, paras 539-583.

¹⁷⁴⁵ P233.

¹⁷⁴⁶ MLD4, 26 Jan 2009, T. 4547.

¹⁷⁴⁷ MLD4, 27 Jan 2009, T. 4558-4562, P223; P218.

¹⁷⁴⁸ Goran Đerić, 14 Jan 2009, T. 4103-4104, 15 Jan 2009, T. 4145-4146.

480. Defence witnesses Željko Marković, MLD21, MLD22, MLD23 and MLD24 testified that Milan Lukić was mobilised into the reserve police force in Višegrad in May 1992 and that he became part of the guard of commander Dragan Tomić, together with Vidoje Andrić and Mladen Andrić.¹⁷⁵¹ Milan Lukić was often seen with Dragan Tomić, Vidoje Andrić and other police officers at the police station and in and around Višegrad, wearing a blue or camouflage police uniform.¹⁷⁵² Milan Lukić's tasks in the police included handing out call-out papers.¹⁷⁵³ In August 1992, Milan Lukić was part of a group of reserve police officers present after a massacre in the village of Jelasiće.¹⁷⁵⁴ Further, the military booklet of Milan Lukić indicates that he participated in the war from 26 April 1992 until 1 July 1994 and that he was in the military records of Višegrad since "26 [month illegible] 1992".¹⁷⁵⁵

(iii) Evidence presented in support of Milan Lukić's alibi

481. Between 9 and 10 a.m. on 13 June 1992, MLD4, a member of the TO, came to the military command at the Bikavac hotel.¹⁷⁵⁶ In front of the hotel, he saw approximately 20 soldiers and policemen, including his neighbour Milan Lukić, whom MLD4 greeted.¹⁷⁵⁷ Milan Lukić was in the company of a group of men wearing camouflage uniforms with "*milicija*" written on the left shoulder.¹⁷⁵⁸ The men received orders to board vehicles which were to transport them to Kopito.¹⁷⁵⁹ MLD4 testified under cross-examination that he did not see Vlatko Trifković or Novica Savić outside the Bikavac hotel before the departure for Kopito and that he did not know Vlatko Trifković.¹⁷⁶⁰ MLD7, a commander in the communications squad of the TO stationed at the Bikavac hotel, was present at the hotel on that day and witnessed 40 to 50 men being dispatched to conduct reconnaissance and to set up ambushes in the area of Kočari, Gornja and Donja Lijeska, Han Brdo and Kopito, where Muslim forces were expected to launch attacks.¹⁷⁶¹ MLD7 testified that the

¹⁷⁴⁹ Goran Đerić, 15 Jan 2009, T. 4145; MLD4, 26 Jan 2009, T. 4547.

¹⁷⁵⁰ Goran Đerić, 15 Jan 2009, T. 4145-4146; P218; P223, p. 1. See also Goran Đerić, 15 Jan 2009, T. 4133, 4135-4136.

¹⁷⁵¹ Željko Marković, 17 Dec 2008, T. 3846-3847, 3855, 3923; MLD21, 25 Feb 2009, T. 4751-4752; MLD22, 26 Feb 2009, T. 4823-4824; MLD23, 3 Mar 2009, T. 4929-4930, 4954-4955; MLD24, 4 Mar 2009, T. 5032.

¹⁷⁵² MLD21, 25 Feb 2009, T. 4751-4752; MLD19, 25 Feb 2009, T. 4799-4801; MLD22, 25 Feb 2009, T. 4816, 26 Feb 2009, T. 4824-4825; MLD23, 3 Mar 2009, T. 4933-4934; MLD24, 4 Mar 2009, T. 5068-5070; Stoja Vujičić, 2 Apr 2009, T. 6671-6672. See also MLD7, 19 Jan 2009, T. 4250-4251.

¹⁷⁵³ MLD19, 25 Feb 2009, T. 4788; MLD23, 3 Mar 2009, T. 4929-4930.

¹⁷⁵⁴ MLD21, 25 Feb 2009, T. 4753.

¹⁷⁵⁵ 1D240, pp 2, 5.

¹⁷⁵⁶ MLD4, 26 Jan 2009, T. 4543; P236, p. 1.

¹⁷⁵⁷ MLD4, 26 Jan 2009, T. 4543-4545; P236, p. 1; P238, p. 1.

¹⁷⁵⁸ MLD4, 26 Jan 2009, T. 4544-4545.

¹⁷⁵⁹ MLD4, 26 Jan 2009, T. 4545.

¹⁷⁶⁰ MLD4, 27 Jan 2009, T. 4568.

¹⁷⁶¹ MLD7, 19 Jan 2009, T. 4245, 4247-4248, 4254-4255, 20 Jan 2009, T. 4281.

dispatched force included reserve police personnel as well as Milan Lukić, Perica Marković and Vlatko Trifković.¹⁷⁶²

482. MLD4 testified that the men were met at Kopito by Vlatko Trifković, commander for the area, and Novica Savić.¹⁷⁶³ Novica Savić ordered the men to assume positions along the Žepa-Goražde road for the purpose of an ambush on Muslim soldiers.¹⁷⁶⁴ The men were informed that they might have to remain in Kopito for three to five days.¹⁷⁶⁵ Vlatko Trifković then departed for Višegrad, leaving Perica Marković in charge.¹⁷⁶⁶ In the car that Vlatko Trifković drove to Višegrad was the communications equipment of the forces at Kopito.¹⁷⁶⁷

483. On 14 June 1992, at about 10 a.m.,¹⁷⁶⁸ Goran Đerić arrived in Kopito, having been ordered by the Rogatica Brigade command to inform the forces in Kopito that the car in which Vlatko Trifković had travelled had been ambushed and that Vlatko Trifković, Novica Savić and a third man, whose name Goran Đerić did not know, had been killed in the ambush.¹⁷⁶⁹ Goran Đerić was told that the incident took place near “a repeater” or transmission antenna at Gornja Lijeske, that the road was blocked and that communications were severed.¹⁷⁷⁰ Goran Đerić also informed the forces in Kopito that the communications equipment in Vlatko Trifković’s car had been destroyed, that a road clearing operation would be carried out from the direction of Višegrad on 15 June 1992 and that a similar operation was to be conducted from the direction of Kopito.¹⁷⁷¹ When Goran Đerić arrived, he saw a large number of soldiers, including MLD4 and Milan Lukić who approached

¹⁷⁶² MLD7, 19 Jan 2009, T. 4246, 4247, 4255-4256, 20 Jan 2009, T. 4308.

¹⁷⁶³ MLD4, 27 Jan 2009, T. 4568.

¹⁷⁶⁴ MLD4, 26 Jan 2009, T. 4546-4547, 27 Jan 2009, T. 4567; P238, p. 1.

¹⁷⁶⁵ MLD4, 26 Jan 2009, T. 4547; P236, p. 1; P238, p. 1.

¹⁷⁶⁶ MLD4, 26 Jan 2009, T. 4546, 27 Jan 2009, T. 4568-4569.

¹⁷⁶⁷ MLD4, 26 Jan 2009, T. 4549; Goran Đerić, 14 Jan 2009, T. 4108. MLD7 testified that an “RU12” radio device was in the vehicle and that they manually connected the radio devices to the batteries of passenger vehicles because it was difficult to source electricity for the radio equipment. MLD7, 19 Jan 2009, T. 4256-4257.

¹⁷⁶⁸ MLD4, 26 Jan 2009, T. 4550.

¹⁷⁶⁹ Goran Đerić, 14 Jan 2009, T. 4102-4103, 4105, 4107. See also MLD4, 26 Jan 2009, T. 4548-4451; P236, p. 1; P238, p. 1. The smoke from the wreck could be seen from Višegrad and the Višegrad Brigade had contacted the Rogatica Brigade’s commander Rajko Kusić and informed him what had happened, MLD4, 26 Jan 2009, T. 4549. Goran Đerić testified that the Višegrad-Rogatica road was the only road available to Serb forces as other roads were under ABiH control. There were frequent clashes with Muslim forces who also used the road, Goran Đerić, 14 Jan 2009, T. 4104, 15 Jan 2009, T. 4145-4146. MLD7 testified that Vlatko Trifković, Novica Savić and Veljko Mirković were killed on 13 June 1992 in Kazimjece, near Višegrad, MLD7, 19 Jan 2009, T. 4252-4253, 4257-4258. 1D229 contains, *inter alia*, “the complete military and personnel file of Vlatko Trifković” and includes as a last page a document entitled “Findings and opinion of specialist”. The document is dated 15 June 1992 and contains a stamp of the “Out patient medical centre Foča, Višegrad Health Centre, visiting-nurse service”. It is signed by Dr. Nebojša M. Maljević and reads: “Following an examination, herewith are the findings and opinion about the diagnosis, further treatment and ability to work of the subject. Vlatko Trifković, violent death due to gunshot wounds and exposure to flames resulting in charring, i.e. carbonisation”, 1D229, pp 1, 12.

¹⁷⁷⁰ Goran Đerić, 14 Jan 2009, T. 4104-4105, 4107; P223, p. 1.

¹⁷⁷¹ Goran Đerić, 14 Jan 2009, T. 4107; MLD4, 26 Jan 2009, T. 4548-4549.

him.¹⁷⁷² MLD4 testified that Goran Đerić told them that Vlatko Trifković had been killed near Tabla and that a transmission antenna was blocking the road.¹⁷⁷³ MLD4 and MLD7 testified that the incident had occurred as Vlatko Trifković returned to Kopito from Višegrad.¹⁷⁷⁴ Milan Lukić and MLD4 then walked with Goran Đerić to the house in which Perica Marković was staying and conveyed the news.¹⁷⁷⁵

484. MLD7 was questioned with regard to evidence of other witnesses that the Gornja and Donja Lijeska, Sjemeć and Kopito road was not blocked and had been used for convoys transporting civilians from Višegrad in June 1992.¹⁷⁷⁶ MLD7 testified that:

[t]he blockade was not on the road. It was a soldier standing by the road. As for a convoy leaving Višegrad on that day, I don't know. I know that there were ambushes along the road. The lie of the land was such that no one would be rolling any stones in order to reveal their position. They would be waiting behind a tree. You can only drive very slowly there, about 10 kilometres per hour. The road was blocked, and one couldn't take it until the soldiers made sure it was safe and clear again.¹⁷⁷⁷

485. Goran Đerić remained in Kopito for the night and spent the evening in Milan Lukić's company because they were previously acquainted.¹⁷⁷⁸ Goran Đerić testified that he left for Rogatica at about 9 a.m. on 15 June 1992, "around the time when the action started to clear the road".¹⁷⁷⁹ The road clearing operation from the direction of Kopito commenced between 9 and 9.30 a.m. and the forces from Kopito walked along the side of the road towards Višegrad.¹⁷⁸⁰ MLD4 testified that at one point he saw the burned remains of Vlatko Trifković's car.¹⁷⁸¹ At about noon on 15 June 1995, the forces advancing from Kopito encountered those coming from the direction of Višegrad.¹⁷⁸² The men eventually were transported from that meeting point to the command at the Bikavac hotel, where they arrived at between 1 and 2 p.m.¹⁷⁸³

486. In cross-examination, the Prosecution showed Goran Đerić regular combat reports from the Rogatica Brigade dated 13, 14 and 15 June 1992.¹⁷⁸⁴ Goran Đerić confirmed the authenticity of

¹⁷⁷² Goran Đerić, 14 Jan 2009, T. 4108; MLD4, 26 Jan 2009, T. 4546, 4549; P223, p. 1; P236, p. 1; P238, p. 1. Milan Lukić was dressed in a camouflage uniform which bore the insignia "milicija" on the left arm, Goran Đerić, 14 Jan 2009, T. 4109.

¹⁷⁷³ MLD4, 26 Jan 2009, T. 4546, 4549; P236, p. 1; P238, p. 1.

¹⁷⁷⁴ MLD7, 19 Jan 2009, T. 4252-4253, 4257-4258; P238, p. 1.

¹⁷⁷⁵ Goran Đerić, 14 Jan 2009, T. 4108; MLD4, 26 Jan 2009, T. 4549.

¹⁷⁷⁶ MLD7, 20 Jan 2009, T. 4284-4285. See also MLD7, 20 Jan 2009, T. 4282.

¹⁷⁷⁷ MLD7, 20 Jan 2009, T. 4284-4285. It is not clear from this evidence whether the witness is referring to blockades allegedly mounted by way of ambush by Muslim forces along the road, or whether he is referring to the alleged blockage of the road by the downed antenna and wreckage of Vlatko Trifković's car, as mentioned in MLD4's and Goran Đerić's evidence.

¹⁷⁷⁸ Goran Đerić, 14 Jan 2009, T. 4109-4110.

¹⁷⁷⁹ Goran Đerić, 14 Jan 2009, T. 4109, 4111; P223, p. 1. See also MLD4, 26 Jan 2009, T. 4550; P238, p. 1-2.

¹⁷⁸⁰ MLD4, 26 Jan 2009, T. 4550; P238, p. 2.

¹⁷⁸¹ MLD4, 26 Jan 2009, T. 4550-4551; P236, p. 1; P238, p. 2.

¹⁷⁸² MLD4, 26 Jan 2009, T. 4550.

¹⁷⁸³ MLD4, 26 Jan 2009, T. 4551-4552; MLD7, 20 Jan 2009, T. 4307.

¹⁷⁸⁴ Goran Đerić, 15 Jan 2009, T. 4151-4158; P220; P221, P222.

these combat reports.¹⁷⁸⁵ In respect of the report dated 14 June 1992, the Prosecution put to Goran Đerić that it read that “[t]hree soldiers from Višegrad were killed in yesterday’s attacks by enemy sabotage groups” in the area of Kopito-Gornja Lijeska.¹⁷⁸⁶ Goran Đerić testified that he believed this referred to the incident in which Vlatko Trifković and the other two men were killed because the report related to Gornja Lijeska, the area in which he had heard Vlatko Trifković had been killed.¹⁷⁸⁷ The Prosecution asked Goran Đerić why, in his view, these reports did not mention a blocked road or interrupted communications. In response, Goran Đerić stated that this would “maybe [...] be mentioned” in the reports of the Višegrad Brigade.¹⁷⁸⁸

487. The Prosecution further cross-examined Goran Đerić as to his statement that “[a]s the campaign [to secure the Kopito-Višegrad road] was getting underway towards Višegrad, I returned to Rogatica and informed the command of Rogatica that I have fulfilled my missions [*sic*]”.¹⁷⁸⁹ The Prosecution put to Goran Đerić that there was no mention at all of the road-clearing operation. Goran Đerić replied that this would have been reported in the reports of the Višegrad Brigade because “Rogatica Brigade personnel did not take part in that action” as the Rogatica Brigade’s area of responsibility ended at Sjemeć and did not reach to Kopito.¹⁷⁹⁰

488. MLD24 testified that he met Milan Lukić’s parents on 13 June 1992. He testified that, for security reasons and fear of Muslim forces in Žepa across the Drina river, civilians in the area of Rujište would sleep in tents next to tents occupied by Serb military personnel.¹⁷⁹¹ Milan Lukić’s parents stayed in one such civilian tent.¹⁷⁹² MLD24 testified that he met Milan Lukić’s parents often because they stayed in the tent close to where he was posted, and that they did not go anywhere “in the first part of June”.¹⁷⁹³ On 13 June 1992, while on his way home for a bath, MLD24 passed their tent at 4 p.m. and noticed that they were crying.¹⁷⁹⁴ They told him that Milan Lukić was involved in an operation in Kopito and that they were concerned that he might have been killed because there had been fighting there.¹⁷⁹⁵ When MLD24 arrived home, his wife told him that three men, including Vlatko Trifković, had been killed in Gornja Lijeska.¹⁷⁹⁶ MLD24 also testified that the men who had been dispatched to Kopito were unable to return before 15 June 1992 because the road was only

¹⁷⁸⁵ Goran Đerić, 15 Jan 2009, T. 4151-4153.

¹⁷⁸⁶ Goran Đerić, 15 Jan 2009, T. 4153; P221

¹⁷⁸⁷ Goran Đerić, 15 Jan 2009, T. 4153.

¹⁷⁸⁸ Goran Đerić, 15 Jan 2009, T. 4157.

¹⁷⁸⁹ Goran Đerić, 15 Jan 2009, T. 4157-4158, quoting P223, p. 1.

¹⁷⁹⁰ Goran Đerić, 15 Jan 2009, T. 4158.

¹⁷⁹¹ MLD24, 4 Mar 2009, T. 5031-5032, 5 Mar 2009, T. 5101.

¹⁷⁹² MLD24, 4 Mar 2009, T. 5031-5032, 5039.

¹⁷⁹³ MLD24, 5 Mar 2009, T. 5101-5102.

¹⁷⁹⁴ MLD24, 4 Mar 2009, T. 5079, 5 Mar 2009, T. 5101.

¹⁷⁹⁵ MLD24, 4 Mar 2009, T. 5039-5040, 5079. See also P254, p. 1.

¹⁷⁹⁶ MLD24, 4 Mar 2009, T. 5039-5040, 5079.

opened on that day.¹⁷⁹⁷ In cross-examination, MLD24 testified that he had not been present when the men were dispatched to Kopito.¹⁷⁹⁸ He conceded that the only reason he knew that Milan Lukić was in Kopito was that Milan Lukić's parents told him that he had been sent there.¹⁷⁹⁹ He also testified under cross-examination that there were communications in Rujište but that there were no communications in his village of Greben.¹⁸⁰⁰

(iv) Milan Lukić Defence identification evidence

a. Željko Marković

489. Željko Marković met Milan Lukić in 1987 in Belgrade during his studies, when Milan Lukić came to visit his brother Novica Lukić.¹⁸⁰¹ Željko Marković testified that on 6 May 1992 he drove Milan Lukić to Višegrad where Milan Lukić was mobilised into the police. He described in considerable detail the meeting he had with Milan Lukić at Café Index on 5 May 1992 and the trip that he took with Milan Lukić from Belgrade to Višegrad on 6 May 1992 in order to retrieve Milan Lukić's sick mother.¹⁸⁰² At a checkpoint in Višegrad, which was manned by police officers, Milan Lukić was told to go to the police station and register.¹⁸⁰³ When Milan Lukić emerged 45 minutes after having entered the police station, he was dressed in a police uniform, with a belt but no weapons.¹⁸⁰⁴ Milan Lukić told Željko Marković that he had been mobilised into the reserve police. When Željko Marković asked what he was going to do about his mother, Milan Lukić answered that he had to stay in Višegrad and that he would be in the security detail of commander Tomić.¹⁸⁰⁵ According to Željko Marković, Milan Lukić was "rather upset".¹⁸⁰⁶ Milan Lukić then went back into the police station and Željko Marković returned to Belgrade.¹⁸⁰⁷

490. The Prosecution challenged the credibility of Željko Marković in cross-examination on the basis that he recalled the event in "implausible" detail.¹⁸⁰⁸ Željko Marković replied that it was easy for him to remember 6 May, St. George's Day, because St. George is the patron of the Marković family. Željko Marković recalled St. George's Day in 1992 because that year he was unable to

¹⁷⁹⁷ MLD24, 4 Mar 2009, T. 5040.

¹⁷⁹⁸ MLD24, 4 Mar 2009, T. 5082.

¹⁷⁹⁹ MLD24, 4 Mar 2009, T. 5083-5084.

¹⁸⁰⁰ MLD24, 4 Mar 2009, T. 5083, 5 Mar 2009, T. 5100.

¹⁸⁰¹ Željko Marković, 17 Dec 2008, T. 3843, 3865-3870.

¹⁸⁰² Željko Marković, 17 Dec 2008, T. 3846-3853.

¹⁸⁰³ Željko Marković, 17 Dec 2008, T. 3853.

¹⁸⁰⁴ Željko Marković, 17 Dec 2008, T. 3855.

¹⁸⁰⁵ Željko Marković, 17 Dec 2008, T. 3855-3856.

¹⁸⁰⁶ Željko Marković, 17 Dec 2008, T. 3856.

¹⁸⁰⁷ Željko Marković, 17 Dec 2008, T. 3856.

¹⁸⁰⁸ Željko Marković, 17 Dec 2008, T. 3871.

attend the family celebration.¹⁸⁰⁹ When the Prosecution asked Željko Marković whether he recalled when the war broke out in BiH, Željko Marković stated that he did not know what year the war started and added that he did not want to recall.¹⁸¹⁰

491. Under further cross-examination, Željko Marković testified that he decided to drive Milan Lukić to Višegrad instead of attending the family celebration because he considered it more important to help Milan Lukić retrieve his sick mother, as Milan Lukić was not able to get a car on his own, although he admitted that his relationship to Milan Lukić was not very deep.¹⁸¹¹ Under cross-examination, Željko Marković further stated that he did not know whether Milan Lukić was required to serve with the reserve police or the army.¹⁸¹²

492. When the Prosecution put to Željko Marković a statement by Milan Lukić that he had been in Višegrad and its surroundings since 10 April 1992 as the commander of a group called “Avengers”,¹⁸¹³ Željko Marković averred that Milan Lukić had told him in Belgrade that he had arrived a few days earlier from Switzerland.¹⁸¹⁴ However, Željko Marković conceded that he did not know whether Milan Lukić had been in the territory of BiH before 6 May 1992.¹⁸¹⁵

493. Željko Marković recognised Milan Lukić in court.¹⁸¹⁶

b. MLD7

494. MLD7 worked at a petrol station in Višegrad. He first encountered Milan Lukić following the outbreak of the war, because Milan Lukić “would come by” the petrol station.¹⁸¹⁷ MLD7 did not know Milan Lukić’s name at that time, but came to know it subsequently because he used to go to a restaurant in Bikavac, where he also saw Milan Lukić.¹⁸¹⁸ On the occasions that MLD7 saw Milan Lukić at the Bikavac command he was in the company of reserve police and was dressed in their camouflage uniform.¹⁸¹⁹

495. MLD7 testified that he had a familial relationship with Vlatko Trifković.¹⁸²⁰

¹⁸⁰⁹ Željko Marković, 17 Dec 2008, T. 3847-3848, 3867.

¹⁸¹⁰ Željko Marković, 17 Dec 2008, T. 3870.

¹⁸¹¹ Željko Marković, 17 Dec 2008, T. 3867.

¹⁸¹² Željko Marković, 17 Dec 2008, T. 3923.

¹⁸¹³ Željko Marković, 17 Dec 2008, T. 3930-3931, referring to P150, p. 1.

¹⁸¹⁴ Željko Marković, 17 Dec 2008, T. 3868, 3931.

¹⁸¹⁵ Željko Marković, 17 Dec 2008, T. 3968-3969.

¹⁸¹⁶ Željko Marković, 17 Dec 2008, T. 3866.

¹⁸¹⁷ MLD7, 19 Jan 2009, T. 4240, 4249.

¹⁸¹⁸ MLD7, 19 Jan 2009, T. 4249.

¹⁸¹⁹ MLD7, 19 Jan 2009, T. 4250-4251.

¹⁸²⁰ MLD7, 19 Jan 2009, T. 4252.

496. MLD7 also testified that he was approached by two men who introduced themselves as members of the Milan Lukić Defence and asked if he would be willing to testify. MLD7 conceded that had these men not mentioned 13 June 1992, it would have been difficult for him to remember that date, although the event of Vlatko Trifković's death itself was memorable.¹⁸²¹

c. MLD4

497. MLD4 had known Milan Lukić as a child and also was acquainted with Milan Lukić's family in Rujište.¹⁸²² MLD4 was in Milan Lukić's company when they arrived in Kopito on 13 June 1992 and testified that they "socialised a bit" and "decided to stick together" because they knew each other.¹⁸²³ MLD4 testified that the events between 13 June and 15 June 1992, including his interaction with Milan Lukić, were memorable for him because of Vlatko Trifković's death.¹⁸²⁴ He testified that "this was the first time [he] had ever seen anything like this, a car on fire, the one in which Vlatko Trifković and Novica Savić were incinerated."¹⁸²⁵

d. Goran Đerić

498. Goran Đerić¹⁸²⁶ first met Milan Lukić in late 1991 or early 1992 in a square outside of the municipality building in Obrenovac.¹⁸²⁷ Milan Lukić was in the company of one Bozo Ivanovac, a relative of Goran Đerić, who introduced him to Milan Lukić.¹⁸²⁸ Bozo Ivanovac said that Milan Lukić was his relative and that he was working abroad.¹⁸²⁹ After the introduction, the three men went to the hotel in Obrenovac where they talked and drank for 45 minutes to an hour.¹⁸³⁰ Goran Đerić's next encounter with Milan Lukić was when he met him on 14 June 1992 in Kopito.¹⁸³¹ Goran Đerić's birthday falls on 15 June and on that date in 1992 he was supposed to go on home leave to his family.

e. MLD19

¹⁸²¹ MLD7, 20 Jan 2009, T. 4279-4280.

¹⁸²² MLD4, 26 Jan 2009, T. 4534-4535.

¹⁸²³ MLD4, 26 Jan 2009, T. 4546. See also P236, p. 1; P238, p. 1.

¹⁸²⁴ MLD4, 27 Jan 2009, T. 4563; P236, p. 1; P238, p. 2.

¹⁸²⁵ MLD4, 27 Jan 2009, T. 4563.

¹⁸²⁶ On 29 May 2008, Goran Đerić was found guilty by the Obrenovac municipal court of the crime of slander under Article 171 of the Criminal Code of Serbia, P225, pp 1, 4.

¹⁸²⁷ Goran Đerić, 14 Jan 2009, T. 4100-4101.

¹⁸²⁸ Goran Đerić, 14 Jan 2009, T. 4101.

¹⁸²⁹ Goran Đerić, 14 Jan 2009, T. 4101.

¹⁸³⁰ Goran Đerić, 14 Jan 2009, T. 4101.

¹⁸³¹ Goran Đerić, 14 Jan 2009, T. 4103, 15 Jan 2009, T. 4121.

499. MLD19 did not know Milan Lukić prior to meeting him on or about 20 or 22 June 1992 when Milan Lukić and Vidoje Andrić came to MLD19's apartment in Užice, Serbia, to summon MLD19 for mobilisation in Višegrad.¹⁸³² MLD19 testified that he was acquainted with Vidoje Andrić and that Milan Lukić introduced himself to MLD19.¹⁸³³ During cross-examination, MLD19 testified that Milan Lukić and Vidoje Andrić wore uniforms like the one worn by Serb police units.¹⁸³⁴ Despite the summons, MLD19 did not return to Višegrad.¹⁸³⁵

500. MLD19 stated that he was able to recall the timeframe during which this encounter with Milan Lukić took place because on 13 June 1992, Vlatko Trifković, the husband of a woman who had been a witness at his wedding, was killed.¹⁸³⁶

501. In 1996, MLD19 encountered Milan Lukić when he did construction work at his father's house in Višegrad and when he "sometimes" went to a pub owned by Milan Lukić.¹⁸³⁷

f. MLD21

502. MLD21 had no prior knowledge of Milan Lukić.¹⁸³⁸ He first met Milan Lukić during the war "on a Wednesday" when he passed by the police station in Višegrad on the way to the market. Milan Lukić was with Vidoje Andrić and Mladen Andrić.¹⁸³⁹ MLD21 asked Vidoje Andrić whether certain police officers were on duty as he wanted to send some sugar and coffee to his parents-in-law who lived in the same village from which those police officers came. Vidoje Andrić answered that those men would not be on duty before the next day. He then introduced Milan Lukić to MLD21. MLD21 recalled that Milan Lukić, Vidoje Andrić and Mladen Andrić all were wearing the same "winter-type" blue police uniform.¹⁸⁴⁰ MLD21 then encountered Milan Lukić in August 1992 in MLD21's village, "Jelasice", as a member of a group of reserve police officers.¹⁸⁴¹ MLD21 was in charge of a group of 15 to 20 soldiers who were sent to bury bodies.¹⁸⁴² Milan Lukić slept in the house of MLD21's late father.¹⁸⁴³

¹⁸³² MLD19, 25 Feb 2009, T. 4788-4791, 4799-4800. MLD19 knew Vidoje Andrić from school. MLD19 did not return to Višegrad until 1994, MLD19, 25 Feb 2009, T. 4791-4792.

¹⁸³³ MLD19, 25 Feb 2009, T. 4788, 4789-4790.

¹⁸³⁴ MLD19, 25 Feb 2009, T. 4799-4801.

¹⁸³⁵ MLD19, 25 Feb 2009, T. 4791-4792.

¹⁸³⁶ MLD19, 25 Feb 2009, T. 4788-4789.

¹⁸³⁷ MLD19, 25 Feb 2009, T. 4792-4793.

¹⁸³⁸ MLD21, 25 Feb 2009, T. 4751.

¹⁸³⁹ MLD21, 25 Feb 2009, T. 4751-4752.

¹⁸⁴⁰ MLD21, 25 Feb 2009, T. 4751-4752.

¹⁸⁴¹ MLD21, 25 Feb 2009, T. 4752-4753.

¹⁸⁴² MLD21, 25 Feb 2009, T. 4753.

¹⁸⁴³ MLD21, 25 Feb 2009, T. 4753.

503. In cross-examination, it was put to MLD21 that he recalled with “incredible detail” the first time he met Milan Lukić, including the day of the week. MLD21 replied that his power of recollection was serving him well.¹⁸⁴⁴ When asked by the Prosecution whether he saw any paramilitary formations or people who appeared to be individual paramilitaries when he regularly passed the centre of Višegrad in spring and summer 1992, MLD21 answered that he never saw any.¹⁸⁴⁵

g. MLD22

504. MLD22 had no prior knowledge of Milan Lukić. MLD22’s evidence is that he knew Milan Lukić as a reserve police officer and that he would see Milan Lukić when Milan Lukić was visiting his parents in Rujište, where MLD22 was deployed to replace a nurse.¹⁸⁴⁶ At “some point in 1992”, MLD22 saw Milan Lukić, dressed in the blue police uniform worn by the ordinary police and the reserve police and wearing a beret with a three-coloured flag. The uniform bore the word “*milicija*” on the shoulder.¹⁸⁴⁷ Under cross-examination, he testified that he saw Milan Lukić for the first time in 1992, in the company of police commander Dragan Tomić and other policemen, in a blue police uniform.¹⁸⁴⁸ He confirmed that he was told by a neighbour, who himself was a member of the police, that Milan Lukić was in the reserve police.¹⁸⁴⁹

505. In cross-examination it was put to MLD22 that he arrived in Rujište not earlier than September 1992, and MLD22 replied that he was not sure about the time.¹⁸⁵⁰ Further, MLD22 conceded under cross-examination that he signed a typed witness statement at the municipality building and that this was the first occasion that he met with members of the Milan Lukić Defence.¹⁸⁵¹

h. MLD23

506. MLD23 had no prior knowledge of Milan Lukić. He was a member of the reserve police himself,¹⁸⁵² and in cross-examination he testified that Milan Lukić became a member of the reserve

¹⁸⁴⁴ MLD21, 25 Feb 2009, T. 4760.

¹⁸⁴⁵ MLD21, 25 Feb 2009, T. 4763-4764.

¹⁸⁴⁶ MLD22, 25 Feb 2009, T. 4814, 4815-4816, 26 Feb 2009, 4823-4824.

¹⁸⁴⁷ MLD22, 26 Feb 2009, T. 4824-4825.

¹⁸⁴⁸ MLD22, 25 Feb 2009, T. 4816, 26 Feb 2009, T. 4824.

¹⁸⁴⁹ MLD22, 26 Feb 2009, T. 4823-4824.

¹⁸⁵⁰ MLD22 testified that he replaced Stevan Grujić who was killed in the area of Klačnik on 28 August 1992, MLD22, 25 Feb 2009, T. 4814, 26 Feb 2009, T. 4832-4833; P246 (entry no. 59).

¹⁸⁵¹ MLD22, 26 Feb 2009, T. 4841-4847.

¹⁸⁵² MLD23, 3 Mar 2009, T. 4916-4919.

police in May 1992.¹⁸⁵³ He recalled this because he remembered sharing “the same trench in Okolišta when the Turks attacked”, during which time Milan Lukić gave the witness a cigarette from his rations.¹⁸⁵⁴ MLD23 also said that they had gone there by night in the same car, and stayed there the whole night.¹⁸⁵⁵ He did not know which month it was, but said that it was “right at the beginning”.¹⁸⁵⁶

507. During cross-examination, the Prosecution put to MLD23 that Milan Lukić is not listed in the financial records of the Višegrad police, while Vidoje Andrić, Mladen Andrić and MLD23 appear on the lists for reserve police officers.¹⁸⁵⁷ MLD23 replied that he did not know why Milan Lukić is not listed and stated that “[i]f this were the original list, he certainly would have been on the list”.¹⁸⁵⁸

508. In 2004, MLD23 was convicted of inflicting bodily injury and was sentenced to a fine.¹⁸⁵⁹

i. MLD24

509. MLD24 was personally acquainted with Milan Lukić and his family.¹⁸⁶⁰ MLD24, who is significantly older than Milan Lukić, used to see him when his children attended school with Milan Lukić in Prelovo, between grades four and eight.¹⁸⁶¹

¹⁸⁵³ MLD23, 3 Mar 2009, T. 4954-4955.

¹⁸⁵⁴ MLD23, 3 Mar 2009, T. 4954-4955.

¹⁸⁵⁵ MLD23, 3 Mar 2009, T. 4955.

¹⁸⁵⁶ MLD23, 3 Mar 2009, T. 4955.

¹⁸⁵⁷ P209 (regarding permanent and reserve police salaries for June 1992); P212 (regarding reserve police salaries for July 1992); P213 (regarding permanent and reserve police salaries for July 1992).

¹⁸⁵⁸ MLD23, 3 Mar 2009, T. 4992; P209. See also Zoran Uščumlić’s evidence that the stamp on P209 and on P213 was never used, Zoran Uščumlić, 2 Apr 2009, T. 6615. But see Zoran Uščumlić, 2 Apr 2009, 6620-6621.

¹⁸⁵⁹ MLD23, 4 Mar 2009, T. 5005; P251.

¹⁸⁶⁰ MLD24, 4 Mar 2009, T. 5031.

¹⁸⁶¹ MLD24, 4 Mar 2009, T. 5031. Milan Lukić was younger than MLD24’s children. Of relevance to MLD24’s credibility, is the account which he gave of his interaction with the Koritnik group on 14 June 1992 at Sase. MLD24 gave evidence that at around 11 a.m. on Sunday, 14 June 1992, a group of persons from Koritnik arrived at MLD24’s home. The group included witnesses VG018 and VG084. The group informed MLD24 that a bus was scheduled to transport them to Kladanj and asked MLD24 to escort them to Sase, which he eventually agreed to do. When they arrived at Sase, they found a bus that was broken down and stuck in a canal. They waited for the arrival of a new vehicle. MLD24 went to a nearby house and called asked a female occupant to call the SUP in order to inquire when a bus would arrive to transport the group. The woman called, and relayed a message from the SUP that a bus would eventually arrive and that the group was to be instructed to wait. However, the bus failed to arrive. The woman told MLD24 that the SUP called and instructed that the group should walk to the town, and that a bus would arrive there to transport them to Kladanj. MLD24 then left the group in Sase, *id.*, T. 5042-5043; P255, p. 1. VG038’s evidence contradicts MLD24’s account. VG038 recounted that after in arriving in Greben, the Koritnik group waited approximately half an hour for the arrival of the buses. VG038 testified that during that time, Dusan Gavrilović entered a house owned by MLD24, whom VG038 had known prior to 14 June 1992. About three minutes after Dusan Gavrilović entered the house, MLD24 came out of the house and informed the Koritnik group that because the buses had not arrived, they would have to continue on foot to the town of Višegrad. MLD24 assured them that once they arrived in the town of Višegrad, they would be transported to Zenica. VG038 also indicated that MLD24 escorted the group straight into the town of Višegrad. P44, T. 1351-1353, 1357-1358.

510. MLD24 testified that Milan Lukić was a member of the reserve police from May 1992.¹⁸⁶² Milan Lukić was Dragan Tomić's escort and he would be in the company of Željko Tasić and Vidoje Andrić.¹⁸⁶³ On these occasions, Milan Lukić would drive a "Gulf Passat".¹⁸⁶⁴ MLD24 saw Milan Lukić in the company of these men on several occasions in June 1992.¹⁸⁶⁵ During cross-examination he testified that Milan Lukić was wearing the police camouflage uniform.¹⁸⁶⁶ He also testified that he was not sure about the exact dates in June 1992 when he saw Milan Lukić, but that he would see Milan Lukić when MLD24 had a day off from the frontline, which occurred "at least three to four times [in] June 1992", and that he saw Milan Lukić on several occasions in July 1992, as well.¹⁸⁶⁷

¹⁸⁶² MLD24, 4 Mar 2009, T. 5032; P254, p. 1. See also MLD24, 4 Mar 2009, T. 5029-5030, 5064-5065.

¹⁸⁶³ MLD24, 4 Mar 2009, T. 5032.

¹⁸⁶⁴ MLD24, 4 Mar 2009, T. 5032, 5068, 5070; P254, p. 1.

¹⁸⁶⁵ MLD24, 4 Mar 2009, T. 5068-5070.

¹⁸⁶⁶ MLD24, 4 Mar 2009, T. 5068.

¹⁸⁶⁷ MLD24, 4 Mar 2009, T. 5069-5071.

j. Stoja Vujičić

511. Stoja Vujičić comes from a village close to Rujište and knows that Milan Lukić grew up in Rujište.¹⁸⁶⁸ She testified that she saw Milan Lukić at the police station in Višegrad, wearing a blue camouflage police uniform, when she returned to Višegrad from Serbia in June 1992 to work in the police station.¹⁸⁶⁹ During cross-examination, Stoja Vujičić testified that she remembered that she came back to Višegrad on the holiday of Holy Trinity, 15 June 1992, and went back to work on the following Monday.¹⁸⁷⁰

k. Testimony of Wilhelmus Fagel in relation to exhibit 1D25

512. 1D25 is a document listing the names of 15 police officers who were sent to Kopito. The name Milan Lukić appears on the list.¹⁸⁷¹ The document is dated 13 June 1992 and bears a stamp and the signature of Risto Perišić. According to Huso Kurspahić, a former police officer, 1D25 looks like an authentic police document.¹⁸⁷² However, he testified that he did not believe that the stamp on the document was in use in April 1992.¹⁸⁷³ Wilhelmus Fagel, a Prosecution handwriting expert, compared the signature on 1D25 with reference signatures of Risto Perišić provided by the Prosecution.¹⁸⁷⁴ He noticed several differences between the signatures.¹⁸⁷⁵ Based on the Prosecution's assertion that the reference signatures were original signatures of Risto Perišić, he concluded that the signature on 1D25 was not originally written by Risto Perišić.¹⁸⁷⁶ The Milan Lukić Defence put to Wilhelmus Fagel that signatures can change over time. Wilhelmus Fagel replied that while there can be fluctuations, signatures do not change very much during a normal adult lifetime.¹⁸⁷⁷ He testified during cross-examination that he cannot exclude the use of a stamp for the signature on 1D25.¹⁸⁷⁸

¹⁸⁶⁸ Stoja Vujičić, 2 Apr 2009, T. 6680.

¹⁸⁶⁹ Stoja Vujičić, 2 Apr 2009, T. 6671-6672.

¹⁸⁷⁰ Stoja Vujičić, 2 Apr 2009, T. 6684.

¹⁸⁷¹ The other names are Perica Marković, Vidoje Andrić, Željko Tasić, Milan Josipović, Spasoje Vidaković, Novica Savić, Mladen Andrić, Nedeljko Gogić, Timotije Joksimović, Mirko Lakić, Goran Zečević, Sladjan Simić, Miodrag Božić, and Mile Lakić, 1D25.

¹⁸⁷² Huso Kurspahić, 1 Sep 2008, T. 910.

¹⁸⁷³ Huso Kurspahić, 1 Sep 2008, T. 910, 929. According to the witness, in April 1992, there were two round stamps used in his police administration, one larger and one smaller stamp. The smaller stamp was used to cancel internal documents and the larger stamp was placed on all official documents issued by the police, *id.* T. 930.

¹⁸⁷⁴ Wilhelmus Fagel, 19 May 2009, T. 7139. There were two alleged original signatures of Risto Perišić. P317, p. 4; P350, p. 1. See also P347; P349. Wilhelmus Fagel did not conduct any research as to whether the provided signatures were bona fide signatures, T. 7145, 7149. See also P348 (Wilhelmus Fagel's methodology report).

¹⁸⁷⁵ Wilhelmus Fagel, 19 May 2009, T. 7141.

¹⁸⁷⁶ Wilhelmus Fagel, 19 May 2009, T. 7142.

¹⁸⁷⁷ Wilhelmus Fagel, 19 May 2009, T. 7144. He also explained that a signature is called autoforgery when someone purposely changes his handwriting in order to disguise his own signature, *id.* T. 7148.

¹⁸⁷⁸ Wilhelmus Fagel, 19 May 2009, T. 7149.

3. Sredoje Lukić Defence case

(a) Sredoje Lukić's alibi

513. Sredoje Lukić has raised an alibi that on 14 June 1992 he was in Obrenovac, Serbia, visiting his brother-in-law during the Serbian Orthodox holiday known as the Holy Trinity.

514. Veroljub Živković gave evidence that on 14 June 1992, at around 7 p.m., he went to a local shop in a settlement known as Mladost close to Obrenovac to have a beer.¹⁸⁷⁹ In the shop, he was socialising and drinking with a number of his neighbours when Sredoje Lukić entered. Sredoje Lukić told Veroljub Živković that he was visiting Milojko Popadić at his home and ordered him a drink.¹⁸⁸⁰ Sredoje Lukić came to the shop by car in order to buy a crate of beer and take it to Milojko Popadić's house.¹⁸⁸¹ When the shop-keeper did not want to give it to Sredoje Lukić because he had not brought empty bottles as a replacement, a verbal altercation started.¹⁸⁸² The shop-keeper refused to sell the beer; he did not want to have problems with his company because of selling beer without having a replacement.¹⁸⁸³ Veroljub Živković characterised the nature of the altercation between Sredoje Lukić and the shop-keeper as a minor one, "more like persuasion" than a violent dispute.¹⁸⁸⁴

515. After Sredoje Lukić's altercation with the shopkeeper, Sredoje Lukić and Veroljub Živković went outside the shop where they sat and talked for about two hours.¹⁸⁸⁵

516. Milojko Popadić then arrived at the shop in order to verify the whereabouts of Sredoje Lukić.¹⁸⁸⁶ Veroljub Živković and Sredoje Lukić discussed the altercation with Milojko Popadić. The latter asked Sredoje Lukić why he had not brought empty bottles.¹⁸⁸⁷ Sredoje Lukić and Milojko Popadić subsequently left and went to Milojko Popadić's house in Sredoje Lukić's red Aleko car.¹⁸⁸⁸ Upon leaving, Sredoje Lukić mentioned that he would be returning to Višegrad the following day.¹⁸⁸⁹

¹⁸⁷⁹ 2D41, p. 2; 2D53 (videotaped interview is P204), pp 73, 74, 80-90.

¹⁸⁸⁰ 2D41, p. 2.

¹⁸⁸¹ 2D41, p. 2; 2D53, pp 101-103, 105-106.

¹⁸⁸² 2D41, p. 2, stating that "he did not have the packaging for it". See also 2D53, pp 103-104.

¹⁸⁸³ 2D53, p. 103.

¹⁸⁸⁴ Veroljub Živković, 1 Dec 2008, T. 3656; 2D53, pp 110-111.

¹⁸⁸⁵ 2D41, p. 2; 2D53, pp 104, 108-109, 111-113. During the conversation, Sredoje Lukić was quite interested in Veroljub Živković's work as a mechanic. They also exchanged "niceties" about their families.

¹⁸⁸⁶ 2D41, p. 2.

¹⁸⁸⁷ 2D53, p. 115.

¹⁸⁸⁸ 2D53, pp 115-116, 125-126.

¹⁸⁸⁹ 2D41, p. 2; 2D53, pp 125-126.

517. Branimir Bugarski recounted that in the evening of the church holiday of Holy Trinity in 1992, he was sitting outside on his terrace with some guests.¹⁸⁹⁰ It was already getting dark when Sredoje Lukić, Miloško Popadić and his son, Dejan Popadić, pulled up outside the gate of his house in Sredoje Lukić's red Aleko car.¹⁸⁹¹ Miloško Popadić, who drove the car,¹⁸⁹² recounted to Branimir Bugarski that the shopkeeper had refused to sell beer to Sredoje Lukić.¹⁸⁹³ Miloško Popadić thereafter said that he would "drive Sredoje to the house where he lived".¹⁸⁹⁴ The whole conversation lasted for about 10 minutes.¹⁸⁹⁵

(b) Sredoje Lukić Defence identification evidence

(i) Veroljub Živković

518. Veroljub Živković was acquainted with Sredoje Lukić for approximately 20 years; he had met Sredoje Lukić and his wife during a visit at the home of his neighbour, Miloško Popadić.¹⁸⁹⁶ Although he was not a close friend of Sredoje Lukić, they were "sound acquaintances".¹⁸⁹⁷ As Veroljub Živković would fix trucks, particularly over the weekend, in Miloško Popadić's yard, he would often see Sredoje Lukić visiting Miloško Popadić's home.¹⁸⁹⁸

519. Veroljub Živković stated that he was able to remember 14 June 1992 because it was a Sunday and the Orthodox holiday of the Holy Trinity, which was a feast day in the village.¹⁸⁹⁹ Veroljub Živković insisted under cross-examination that he was able to remember the year because it fell on the first feast of the Holy Trinity to have occurred after the start of the war in BiH.¹⁹⁰⁰ In response to the Prosecution suggestion that the commencement date of the war was in fact 14 June 1991 – as initiated by the conflict that occurred in Borovo Selo, Croatia on the 2 May 1991 – the witness stated that, in his mind, "the real war started in Bosnia. That was the most serious war."¹⁹⁰¹ He said that he looked up the church calendar for that year.¹⁹⁰² Veroljub Živković further claimed that in the two or three years following the incident, he discussed the altercation with friends.¹⁹⁰³

¹⁸⁹⁰ Branimir Bugarski, 2 Dec 2008, T. 3740.

¹⁸⁹¹ Branimir Bugarski, 2 Dec 2008, T. 3740-3741; 2D47, p. 2.

¹⁸⁹² Branimir Bugarski, 2 Dec 2008, T. 3740. See also 2D53, pp 115-116.

¹⁸⁹³ Branimir Bugarski, 2 Dec 2008, T. 3740-3741. See also 2D47, p. 2.

¹⁸⁹⁴ Branimir Bugarski, 2 Dec 2008, T. 3741.

¹⁸⁹⁵ Branimir Bugarski, 2 Dec 2008, T. 3740.

¹⁸⁹⁶ 2D41, p. 2. See also 2D53, pp 9-10.

¹⁸⁹⁷ Veroljub Živković, 1 Dec 2008, T. 3615.

¹⁸⁹⁸ Veroljub Živković, 1 Dec 2008, T. 3619; 2D41, p. 2; 2D53, pp 32-35.

¹⁸⁹⁹ 2D41, p. 2.

¹⁹⁰⁰ Veroljub Živković, 1 Dec 2008, T. 3654-3655; 2D53, pp 79-80.

¹⁹⁰¹ Veroljub Živković, 1 Dec 2008, T. 3655.

¹⁹⁰² Veroljub Živković, 1 Dec 2008, T. 3660.

¹⁹⁰³ Veroljub Živković, 1 Dec 2008, T. 3656-3657.

520. The Prosecution suggested that it was implausible that the shop in question would have been opened for business on 14 June 1992 and referred Veroljub Živković to an interview he gave to the Office of the Prosecutor in June 2008 in which he stated that the shop was closed during the inflation as there were not enough goods to sell.¹⁹⁰⁴ Veroljub Živković responded that “inflation was not felt immediately” and that “[i]nflation did not peak then”.¹⁹⁰⁵ He insisted that the shop was opened for business on 14 June 1992.¹⁹⁰⁶

521. The Prosecution also questioned Veroljub Živković about whether he recalled the year during which Sredoje Lukić worked in Belgrade. Veroljub Živković indicated that it might have been in 1988 or 1989 and that he was not sure.¹⁹⁰⁷

522. During cross-examination, the Prosecution questioned Veroljub Živković as to whether he had a prior criminal record. The witness’ response was that he only recalled traffic violations and that he did not remember “any more serious offences”.¹⁹⁰⁸ When confronted with records from the Obrenovac Municipality Court showing that he was convicted for violent behaviour,¹⁹⁰⁹ Veroljub Živković ultimately responded, “Well, I simply don’t remember, I cannot tell you honestly very precisely. I remember something happened, but whether I was convicted how I was sentenced, I don’t remember”.¹⁹¹⁰ Later, when the Prosecution put to him character evidence that the Obrenovac Municipality Court relied upon, he added that he was wrongfully convicted, that the entire affair was in fact trivial and that the character reference was not reliable.¹⁹¹¹

(ii) Branimir Bugarski

523. Branimir Bugarski knows Sredoje Lukić since 1982 or 1983. Sredoje Lukić regularly visited Branimir Bugarski and Milojko Popadić in Obrenovac.¹⁹¹² Sredoje Lukić’s wife and Milojko Popadić’s wife are sisters.¹⁹¹³ Branimir Bugarski stated that he had “an excellent relationship” with

¹⁹⁰⁴ Veroljub Živković, 1 Dec 2008, T. 3651, referring to 2D53, p. 86.

¹⁹⁰⁵ Veroljub Živković, 1 Dec 2008, T. 3651-3652.

¹⁹⁰⁶ Veroljub Živković, 1 Dec 2008, T. 3653.

¹⁹⁰⁷ Veroljub Živković, 1 Dec 2008, T. 3625-3626. See also 2D53, pp 58-63.

¹⁹⁰⁸ Veroljub Živković, 1 Dec 2008, T. 3630.

¹⁹⁰⁹ P199. Veroljub Živković was convicted in the Obrenovac Municipal Court on 11 April 2001 of the offence of violent behaviour. He had driven his motor vehicle into a fence, thereby damaging it, and thereafter became involved in a physical altercation with other persons on the scene. See also P205, wherein are listed, *inter alia*, the offences of 1) “Rude, insolent or impudent behaviour endangers the peace of citizens or public order”, sentenced to a 500 dinar fine on 29 March 2001, 2) “Violent behaviour perpetrated within a group of people or if, a slight bodily injury is inflicted upon a person, or if a serious humiliation of citizens is caused”, committed 20 May 2000, sentenced to 6 months imprisonment, 3 years parole – conviction subsequently expunged on 29 October 2007 by Municipal Court in Obrenovac.

¹⁹¹⁰ Veroljub Živković, 1 Dec 2008, T. 3632.

¹⁹¹¹ P199, p. 4; Veroljub Živković, 1 Dec 2008, T. 3638-3640.

¹⁹¹² Branimir Bugarski is the brother-in-law of Milojko Popadić, Branimir Bugarski, 2 Dec 2008, T. 3731.

¹⁹¹³ 2D47, p. 2.

Sredoje Lukić and his family.¹⁹¹⁴ Branimir Bugarski gave Sredoje Lukić's family a place to live in Obrenovac.¹⁹¹⁵

524. Branimir Bugarski was also acquainted with Veroljub Živković and knew him from birth. He was "on good business terms" with him.¹⁹¹⁶

525. During cross-examination, Branimir Bugarski testified that the precise date of the feast of Holy Trinity varies from year to year, but that it always falls on a Sunday.¹⁹¹⁷ When questioned as to how he came to know that in 1992 the holiday fell on 14 June 1992, Branimir Bugarski responded that Counsel for the Sredoje Lukić Defence had showed him a copy of an Orthodox Church calendar for the year 1992 when they met in August 2008.¹⁹¹⁸ Branimir Bugarski further testified under cross-examination that he was able to precisely recall that it was the year 1992 because 1992 had been a particularly memorable year owing to the fact that his family was in mourning for two recently-deceased family members.¹⁹¹⁹

526. Under further cross-examination, Branimir Bugarski was pressed with regard to his vivid memory, after 16 years, of so minor an incident as a dispute over beer bottles in a shop that he had not witnessed personally, and which was recounted to him during a brief a ten-minute conversation by other persons. Branimir Bugarski insisted that his recollection was facilitated by the fact that when Milojko Popadić and Sredoje Lukić arrived at the house that evening, they did not enter his house to join in the festivities.¹⁹²⁰ When further pressed as to whether he could recall the weather conditions on that day, Branimir Bugarski responded that he could not remember.¹⁹²¹

527. When the Prosecution asked Branimir Bugarski whether he was mistaken about the year and whether he was not remembering Holy Trinity in 1999 after a bomb fell not far from his village, Branimir Bugarski replied:

I know what you mean and what you want to ask me. Well, the beginning of something is the most tragic thing, and then people grow used to their circumstances, and we did. Together with the start of the war, I -- my wife lost her brother's son, I had lost my brother, so these stick out in my memory. I do remember those events that you refer to, but we'd grown accustomed to such events.¹⁹²²

¹⁹¹⁴ 2D47, p. 3.

¹⁹¹⁵ 2D47, p. 3.

¹⁹¹⁶ Branimir Bugarski, 2 Dec 2008, T. 3731.

¹⁹¹⁷ Branimir Bugarski, 2 Dec 2008, T. 3734.

¹⁹¹⁸ Branimir Bugarski, 2 Dec 2008, T. 3735-3736, 3759-3760. See also 2D43.

¹⁹¹⁹ Branimir Bugarski, 2 Dec 2008, T. 3738-3739.

¹⁹²⁰ Branimir Bugarski, 2 Dec 2008, T. 3742, also testifying that "we spent more time arguing about why he wouldn't come out than about the incident itself".

¹⁹²¹ Branimir Bugarski, 2 Dec 2008, T. 3742-3743.

¹⁹²² Branimir Bugarski, 2 Dec 2008, T. 3748.

528. When it was put to Branimir Bugarski that he has a criminal record, he explained the background of the convictions.¹⁹²³ When asked to explain his failure to go to an interview scheduled with the Prosecution, Branimir Bugarski said that he had a great workload and that he was not “in the greatest health” at the time. He added that it was his fault that he did not take the matter seriously.¹⁹²⁴ When asked whether he had discussed the case with Miloško Popadić, Branimir Bugarski responded that “maybe we talked”.¹⁹²⁵

4. Prosecution alibi rebuttal evidence

(a) Ferid Spahić and VG136

529. On 14 June 1992, at between 7 and 8 a.m., Ferid Spahić and VG136 were on a bus that was part of a larger convoy and had stopped outside the Višegrad hotel.¹⁹²⁶ VG136 testified that she knew the date because what happened on that day changed her life.¹⁹²⁷ Esad Kustura was also on the bus.¹⁹²⁸ As the buses were getting ready to leave Višegrad, Milan Lukić came onto the bus.¹⁹²⁹ Milan Lukić told Esad Kustura to come with him, but he was prevented from taking him by Ljupko Tasić and did not stay on the bus.¹⁹³⁰

530. The bus eventually left Višegrad, initially travelling in the direction of Užice, but it then took the Rogatica road in the direction of Sjemeć mountain, ostensibly for security reasons.¹⁹³¹ Late in the afternoon of 14 June 1992, the men on the buses were separated from the women, children and elderly, who were left to continue on foot.¹⁹³² The men were driven to another location, where they were shot.¹⁹³³

¹⁹²³ Branimir Bugarski had two prior convictions. The first conviction was imposed for “serious criminal offences against public safety equipment causing the death of one or more persons and damaging of safety equipment at working sites out of negligence”. Branimir Bugarski explained that this arose out of an incident in which a worker at a factory, in respect of which he was a manager, was injured on an improperly installed conveyer belt. The witness was not fatally injured and received a two-year suspended sentence. The second conviction, issued on 18 November 1993, involved “[f]orest theft with the aim of selling the timber cut”. Branimir Bugarski willingly conceded that he incurred a three month sentence, and was placed on parole for a further two years. The witness noted that he was convicted for cutting trees which were in fact his own. However, he had failed to register the timber hewn, Branimir Bugarski, 2 Dec 2008, T. 3757-3759.

¹⁹²⁴ Branimir Bugarski, 2 Dec 2008, T. 3761-3762.

¹⁹²⁵ Branimir Bugarski, 2 Dec 2008, T. 3764.

¹⁹²⁶ VG136, 6 Apr 2009, T. 6799-6801, 6805; P15, T. 366-367; P20, p. 4; P21, p. 2; P331, p. 6; 1D6, p. 1; 1D7, p. 3.

¹⁹²⁷ VG136, 6 Apr 2009, T. 6797.

¹⁹²⁸ VG136, 6 Apr 2009, T. 6799-6800; P20, p. 4; P15, T. 387-388.

¹⁹²⁹ P20, p. 4; P15, T. 368.

¹⁹³⁰ Ferid Spahić, 26 Aug 2009, T. 530; VG136, 6 Apr 2009, T. 6801-6802, 6804-6805; P15, T. 368-369; P20, p. 4; P21, pp 2-3; P331, p. 6.

¹⁹³¹ Ferid Spahić, 26 Aug 2009, T. 531-533; P20, p. 5; P15, T. 371; P21, pp 3-4; P22; 1D7, p. 3.

¹⁹³² Ferid Spahić, 26 Aug 2009, T. 532; P20, p. 5.

¹⁹³³ P15, T. 386-398; P20, p. 8; P331, pp 6-7.

531. Ferid Spahić had no prior knowledge of Milan Lukić prior to 14 June 1992.¹⁹³⁴ However, he had “heard stories about his actions” at the beginning of the war in Višegrad.¹⁹³⁵ Esad Kustura, who had gone to school with Milan Lukić, told Ferid Spahić during the journey that the man who had come onto the bus was Milan Lukić.¹⁹³⁶

532. VG136 also had no prior knowledge of Milan Lukić. She was told that the man who had come onto the bus was Milan Lukić by Ferid Spahić, Esad Kustura, Musan Celik and women and girls who, VG136 thought, knew him from school.¹⁹³⁷ VG136 recalled that Milan Lukić had a bandage on his hand, and that he was wearing dark navy blue trousers and a light blue shirt.¹⁹³⁸ VG136 also testified during cross-examination that she had heard stories implicating Milan Lukić “in terrible acts”, and this had led her to be fearful of the harm he may cause Esad Kustura.¹⁹³⁹ In this respect, during cross-examination, VG136 stated that Ferid Spahić, who was standing next to her on the bus, identified Milan Lukić to her by name as soon as he boarded the bus.¹⁹⁴⁰ Ferid Spahić’s testimony, that he did not become aware of the identity of the man who boarded the bus until after the incident, was put to VG136, to which she said that she did not want to change her testimony.¹⁹⁴¹

(b) VG089

533. On 12 June 1992, VG089 and his friend Amir Dervišević stood on the bank of the Rzav river, when Milan Lukić, who was armed with “a light machine gun” and another man named Budimir Kovačević, approached a 55 year-old man named Kasim Fehrić who was standing nearby VG089 and his friend. The men took Kasim Fehrić away from the site, towards 22 December street. VG089 and his friend set off towards their homes on 22 December street, where they saw Milan Lukić remove the cap that was on Kasim Fehrić’s head, and throw it in a puddle in the road. VG089 “later heard” that Kasim Fehrić had been killed by two brothers named Dragan Tomić and Boban Tomić.¹⁹⁴²

534. Also “at one point during this period”, VG089 and his friends Almir Dervišević and Samir Dervisević witnessed an incident during which Milan Lukić arrived in the Nova Mahala area in a Passat car, alighted from the vehicle armed with an automatic rifle and entered the house of a pensioner of about 60 years old named Mujo Šutrović. VG089 heard a shot, and saw Milan Lukić

¹⁹³⁴ P15, T. 370; P20, p. 4; P21, p. 2.

¹⁹³⁵ Ferid Spahić, 26 Aug 2009, T. 556-557.

¹⁹³⁶ Ferid Spahić, 26 Aug 2009, T. 529-530; P15, T. 368-369; P21, p. 3.

¹⁹³⁷ VG136, 6 Apr 2009, T. 6803, 6816-6817.

¹⁹³⁸ VG136, 6 Apr 2009, T. 6802, 6804.

¹⁹³⁹ VG136, 6 Apr 2009, T. 6819-6821.

¹⁹⁴⁰ VG136, 6 Apr 2009, T. 6814-6815.

¹⁹⁴¹ VG136, 6 Apr 2009, T. 6815.

exit the house, after which he returned to the vehicle and left the area. After Milan Lukić left the house, VG089 could hear Mujo Šutrović's wife crying. She was found dead a few days later. VG089 did not know how or where she was killed or by whom.¹⁹⁴³

535. At about 2.30 p.m. on 14 June 1992, VG089, Almir Dervišević, Samir Dervišević and Ajvaz left Zijo and Hajra Korić's house on 22 December street, and went to Taib Dervišević's house.¹⁹⁴⁴ They arrived in the area of Taib Dervišević's house at about 3.30 p.m.¹⁹⁴⁵ Almir Dervišević, who walked a number of metres ahead of the others, entered Taib Dervišević's house.¹⁹⁴⁶

536. As the remaining boys continued their approach to the house, Milan Lukić and three other men arrived at the house in a dark red Passat.¹⁹⁴⁷ Milan Lukić was driving and was armed with a sniper rifle fitted with a silencer.¹⁹⁴⁸ The three other men, a local Serb of about 30 years old and two men in camouflage uniforms, were also armed.¹⁹⁴⁹ After a brief exchange, Milan Lukić ordered the boys to get into the back seat.¹⁹⁵⁰ He drove to the old bridge in Višegrad.¹⁹⁵¹ There were people on the bridge and the man in the passenger seat suggested that they go to the new bridge, which they did, arriving at approximately 4.15 p.m.¹⁹⁵² Along the way, Milan Lukić had asked the boys if they could swim.¹⁹⁵³

537. Milan Lukić stopped the car in the centre of the new bridge, stating that the car had run out of fuel and that, "[w]e'll have to use the Drina. Sure, it's a bit cold, but never mind".¹⁹⁵⁴ He told the two men in the backseat that "the faint-hearted should stay in the car".¹⁹⁵⁵ Milan Lukić and the man in the passenger seat ordered the boys to get out of the car, and told them to stand by the railing of the bridge.¹⁹⁵⁶ VG089 stood in the middle facing Milan Lukić with Samir Dervišević on his right, and Ajvaz on his left.¹⁹⁵⁷ A Serb soldier on the bridge challenged Milan Lukić, asking him what he was doing with the children. Milan Lukić and the man accompanying him yelled and pointed their guns at the soldier, who withdrew.¹⁹⁵⁸ VG089 saw large blood stains and various shoes on the

¹⁹⁴² 1D47, p. 5.

¹⁹⁴³ 1D47, pp 5-6.

¹⁹⁴⁴ VG089, 17 Sep 2008, T. 1754; 1D47, p. 6; 1D48, p. 3. Ajvaz's surname is unknown. In VG089's 31 January 2001 statement, he is referred to as Anes, 1D48, p. 2.

¹⁹⁴⁵ VG089, 17 Sep 2008, T. 1754.

¹⁹⁴⁶ VG089, 17 Sep 2008, T. 1754-1755; 1D47, p. 6; 1D48, p. 3.

¹⁹⁴⁷ VG089, 17 Sep 2008, T. 1755; 1D47, p. 6; 1D48, p. 3.

¹⁹⁴⁸ VG089, 17 Sep 2008, T. 1758, 1801; 1D47, p. 6; 1D48, p. 4.

¹⁹⁴⁹ 1D47, p. 6; 1D48, p. 3.

¹⁹⁵⁰ VG089, 17 Sep 2008, T. 1757; 1D47, p. 6; 1D48, p. 3.

¹⁹⁵¹ VG089, 17 Sep 2008, T. 1759; 1D47, p. 7; 1D48, pp 3-4.

¹⁹⁵² VG089, 17 Sep 2008, T. 1759; 1D47, p. 7; 1D48, p. 4.

¹⁹⁵³ VG089, 17 Sep 2008, T. 1759; 1D47, p. 7; 1D48, p. 3.

¹⁹⁵⁴ VG089, 17 Sep 2008, T. 1759-1760; 1D47, p. 7; 1D48, p. 4.

¹⁹⁵⁵ VG089, 17 Sep 2008, T. 1760, 1795; 1D47, p. 7; 1D48, p. 4.

¹⁹⁵⁶ VG089, 17 Sep 2008, T. 1760, 1795.

¹⁹⁵⁷ VG089, 17 Sep 2008, T. 1760-1761; 1D47, pp 7-8; 1D48, p. 4.

¹⁹⁵⁸ VG089, 17 Sep 2008, T. 1760; 1D47, pp 7-8; 1D48, p. 4.

bridge.¹⁹⁵⁹ After asking the boys whether they had any gold or money on them, Milan Lukić ordered VG089 to climb over the bridge's safety fence.¹⁹⁶⁰ While VG089 was frozen with fear, Milan Lukić simply grabbed Samir Dervišević by the shoulders and threw him into the Drina river.¹⁹⁶¹ Samir Dervišević surfaced and made a few strokes but Milan Lukić, having leaned his sniper rifle on the railing, shot him with a single shot.¹⁹⁶² Samir Dervišević sank and two or three seconds later blood appeared in the water.¹⁹⁶³ Milan Lukić turned to Ajvaz who, crying and pleading with Milan Lukić, started taking out some small coins from his pocket, but they fell in a puddle on the bridge because he was shaking so much.¹⁹⁶⁴ Milan Lukić said that he would not hurt him and that he did not need to worry, but then suddenly grabbed Ajvaz and threw him into the river.¹⁹⁶⁵ As Ajvaz came up to the surface, the man accompanying Milan Lukić shot Ajvaz with burst of fire and Ajvaz sank.¹⁹⁶⁶ The man said, "what did he lie for, saying he couldn't swim".¹⁹⁶⁷

538. Milan Lukić grabbed VG089 and shoved him back into the Passat's backseat, and then drove to the MUP, where he handed VG089 to a policeman nicknamed Razonoda.¹⁹⁶⁸ Milan Lukić left the station at around 5 p.m. and VG089 was transferred to a cell.¹⁹⁶⁹ Milan Lukić returned at about 11 p.m. on 14 June 1992, at which time VG089 saw him threaten to slit the throat of a man who was locked in VG089's cell.¹⁹⁷⁰ He remained at the MUP for three days.¹⁹⁷¹ VG089 testified that he did not see Milan Lukić again on 14 June 1992.¹⁹⁷² Early in the morning of 15 June 1992, after more Muslim men were brought into the cell, Milan Lukić came in and demanded that the men sing "Chetnik songs".¹⁹⁷³ He also interrogated a man about the whereabouts of his son.¹⁹⁷⁴ According to one of VG089's statements, this incident took place at approximately 10 p.m. on 14 June 1992.¹⁹⁷⁵ VG089 saw Milan Lukić again on the afternoon of 15 June 1992 and on 16 June 1992 or 17 June 1992.¹⁹⁷⁶

¹⁹⁵⁹ 1D47, pp 7-8, also stating that he saw two lifeless bodies floating in the Drina river.

¹⁹⁶⁰ VG089, 17 Sep 2008, T. 1761; 1D47, p. 8; 1D48, p. 4.

¹⁹⁶¹ VG089, 17 Sep 2008, T. 1761; 1D47, p. 8; 1D48, p. 4.

¹⁹⁶² VG089, 17 Sep 2008, T. 1762-1764; 1D47, p. 8; 1D48, p. 4.

¹⁹⁶³ VG089, 17 Sep 2008, T. 1763-1764; 1D47, p. 8; 1D48, p. 4.

¹⁹⁶⁴ VG089, 17 Sep 2008, T. 1763; 1D47, p. 8; 1D48, p. 4.

¹⁹⁶⁵ VG089, 17 Sep 2008, T. 1763; 1D47, p. 8; 1D48, p. 4.

¹⁹⁶⁶ VG089, 17 Sep 2008, T. 1763-1764; 1D47, pp 8-9; 1D48, p. 4.

¹⁹⁶⁷ 1D47, p. 9; 1D48, p. 4.

¹⁹⁶⁸ VG089, 17 Sep 2008, T. 1765-1766, 1775, 1809-1810; 1D47, p. 9; 1D48, pp 4-5, 8; P104; P105.

¹⁹⁶⁹ VG089, 17 Sep 2008, T. 1767; 1D48, p. 5; P106.

¹⁹⁷⁰ 1D48, p. 6.

¹⁹⁷¹ VG089, 17 Sep 2008, T. 1766-1767, 1772, 1774-1775.

¹⁹⁷² VG089, 17 Sep 2008, T. 1767.

¹⁹⁷³ VG089, 17 Sep 2008, T. 1768.

¹⁹⁷⁴ VG089, 17 Sep 2008, T. 1768.

¹⁹⁷⁵ 1D48, p. 6.

¹⁹⁷⁶ VG089, 17 Sep 2008, T. 1769-1770, 1772-1773, 1774, 1791-1792; 1D47, pp 11-12; 1D48, pp 6-7.

539. VG089 first saw Milan Lukić at Behija Zukić's funeral on 21 May 1992, but he did not know at the time that this was Milan Lukić.¹⁹⁷⁷ VG089 had heard that Milan Lukić murdered Behija Zukić.¹⁹⁷⁸ At one point during the funeral, a truck and a smaller vehicle arrived at the cemetery.¹⁹⁷⁹ Milan Lukić exited with other Serb men and proceeded to round up some 15 of the Muslims who were leaving the funeral, and then drove them away in the truck. VG089 never saw those individuals again.¹⁹⁸⁰ Subsequently, during the first week of June 1992, he and his mother were waiting for buses to take them to Macedonia, when Milan Lukić arrived in a Passat.¹⁹⁸¹ Almir and Samir Dervišević's sister was also there. Milan Lukić approached her and she greeted Milan Lukić by name.¹⁹⁸² VG089 was standing next to Milan Lukić, and he recognised him as the man who had been at Behija Zukić's funeral.¹⁹⁸³ However, according to both of VG089's previous statements, Milan Lukić boarded the bus.¹⁹⁸⁴ After Milan Lukić had left, Mukadesa Dervišević, who went to school with Milan Lukić, told VG089 that the man was Milan Lukić.¹⁹⁸⁵ Shortly thereafter, the buses arrived.¹⁹⁸⁶ Milan Lukić followed the convoy in the Passat, and eventually stopped the bus on which VG089 was travelling. From the bus, VG089 saw Milan Lukić lining a number of men along the side of the road. The bus was then forced to return to Višegrad.¹⁹⁸⁷

540. VG089 stated that he knew that the incident took place on 14 June 1992 because it was during the European Football Championship 1992 and, in the evening, there was a match involving Germany that he had wanted to see on TV.¹⁹⁸⁸ During cross-examination, it was put to him that there was no match played involving Germany on the 14 June 1992, although matches involving Germany were played on the 12, 15, 18 and 21 of June 1992.¹⁹⁸⁹ VG089 responded that he could not state with certainty that Germany played that evening.¹⁹⁹⁰ What he had meant was that the events occurred at some point during the European Championship, when he was supporting Germany.¹⁹⁹¹ He testified that 14 June 1992 was also a memorable day for him as it was the day his mother stopped working.¹⁹⁹² In addition, the Milan Lukić Defence put to VG089 his statement in

¹⁹⁷⁷ VG089, 17 Sep 2008, T. 1738, 1796; 1D47, p. 4.

¹⁹⁷⁸ VG089, 17 Sep 2008, T. 1735.

¹⁹⁷⁹ VG089, 17 Sep 2008, T. 1737-1738; 1D47, p. 4.

¹⁹⁸⁰ VG089, 17 Sep 2008, T. 1740; 1D47, p. 4.

¹⁹⁸¹ VG089, 17 Sep 2008, T. 1740-1742.

¹⁹⁸² VG089, 17 Sep 2008, T. 1743-1744.

¹⁹⁸³ VG089, 17 Sep 2008, T. 1743-1744, 1797-1798.

¹⁹⁸⁴ 1D47, pp 12-13; 1D48, p. 3.

¹⁹⁸⁵ 1D47, pp 12-13; 1D48, p. 3.

¹⁹⁸⁶ VG089, 17 Sep 2008, T. 1744-1745.

¹⁹⁸⁷ VG089, 17 Sep 2008, T. 1746-1747; 1D48, p. 3.

¹⁹⁸⁸ 1D48, p. 2.

¹⁹⁸⁹ 1D92.

¹⁹⁹⁰ VG089, 17 Sep 2008, T. 1785, also testifying that when he gave the statements he did not speak any English; someone was interpreting and VG089 did not know what they were saying.

¹⁹⁹¹ VG089, 17 Sep 2008, T. 1786.

¹⁹⁹² VG089, 17 Sep 2008, T. 1784-1785.

which he said that 14 June 1992 was a Sunday.¹⁹⁹³ VG089 indicated that he could not remember the exact day, but when he was asked again what day it was, VG089 said it was Saturday.¹⁹⁹⁴

(c) Mirsada Kahrman

541. Mirsada Kahrman had no knowledge of Milan Lukić prior to the war. Her first encounter with him occurred at the Drina bridge, when he introduced himself to her by name, told her he was 25 years old and that “he was there to cut some Muslim throats”.¹⁹⁹⁵ Milan Lukić was dressed in a military uniform with an armband bearing an insignia with two white eagles.¹⁹⁹⁶ Mirsada Kahrman had knowledge of Sredoje Lukić prior to the war. Although she never had contact with Sredoje Lukić, she would see him two or three times a day before the war started.¹⁹⁹⁷

542. On 18 May 1992, Mirsada Kahrman witnessed events surrounding the murder by Milan Lukić and Sredoje Lukić of Behka Zukić, her next door neighbour. She also witnessed Milan Lukić steal Behija Zukić’s red Passat.¹⁹⁹⁸ Mirsada Kahrman insisted that Milan Lukić killed Behka Zukić, and that Sredoje Lukić was present when she was killed.¹⁹⁹⁹ During cross-examination, she conceded that while she did not see Milan Lukić shoot Behija Zukić, when she entered Behka Zukić’s house, she saw Milan Lukić holding a rifle and “his trigger at the switch”.²⁰⁰⁰ Milan Lukić pushed her away, saying that it was none of her business and that she would be next.²⁰⁰¹ During this incident, Milan Lukić was dressed in military clothing which had “an emblem of the White Eagles” sewn onto the sleeve.²⁰⁰² Sredoje Lukić wore the same type of military clothing that Milan Lukić wore and carried a rifle on his shoulder.²⁰⁰³

543. Mirsada Kahrman saw Milan Lukić and Sredoje Lukić “carrying a *Chetnik* flag with skulls on it”.²⁰⁰⁴ On 18 May 1992 and thereafter, she also witnessed Milan Lukić driving in Behka Zukić’s red Passat.²⁰⁰⁵ On some of these occasions, while Milan Lukić drove the red Passat, he would display a black “Chetnik” flag.²⁰⁰⁶

¹⁹⁹³ 1D48, p. 2.

¹⁹⁹⁴ VG089, 17 Sep 2008, T. 1787.

¹⁹⁹⁵ Mirsada Kahrman, 29 Aug 2008, T. 803-804, 834; P34, p. 3.

¹⁹⁹⁶ Mirsada Kahrman, 29 Aug 2008, T. 804.

¹⁹⁹⁷ Mirsada Kahrman, 29 Aug 2008, T. 805.

¹⁹⁹⁸ Mirsada Kahrman, 29 Aug 2008, T. 806-808; P34, p. 4; P35, pp 2-3; 1D23, p. 4.

¹⁹⁹⁹ Mirsada Kahrman, 29 Aug 2008, T. 810.

²⁰⁰⁰ Mirsada Kahrman, 29 Aug 2008, T. 842.

²⁰⁰¹ P34, p. 4.

²⁰⁰² Mirsada Kahrman, 29 Aug 2008, T. 807.

²⁰⁰³ Mirsada Kahrman, 29 Aug 2008, T. 807.

²⁰⁰⁴ Mirsada Kahrman, 29 Aug 2008, T. 820-821.

²⁰⁰⁵ Mirsada Kahrman, 29 Aug 2008, T. 821; P34, p. 4; 1D23, p. 8.

²⁰⁰⁶ Mirsada Kahrman, 29 Aug 2008, T. 821-822.

544. Mirsada Kahrman's husband was murdered on 10 June 1992.²⁰⁰⁷ Between 10 June and 14 June 1992, while attempting to make funeral arrangements for her husband, she crossed the old bridge in Višegrad up to six times a day.²⁰⁰⁸ Every time she crossed the bridge in that period, she saw the red Passat parked by the bridge.²⁰⁰⁹ She further stated that "[e]very time I passed, I saw Milan Lukić, Sredoje Lukić and Mitar Vasiljević often killing people on the bridge".²⁰¹⁰ On 11 June 1992, she watched Milan Lukić drive up to the bridge in the red Passat and together with several other Serbs kill 49 people in the space of 20 minutes.²⁰¹¹ Mirsada Kahrman stated that on the following day, 14 June 1992:

I set off for their main command at Bikavac. One of the commanders told me that I could not bury my husband and that the Serbs would do it because Muslims were not obliged to bury their own dead. [...] When I got home, I found my father-in-law who said: "Why did you come? They've driven them all out, why didn't you stay?" I said I had come to see why they had thrown them out. At that moment we heard the squeal of car brakes. I went outside and saw the red Passat and Milan Lukić getting out of it. When he saw me, he told me to come over to the car, he wanted to tell me something. I told him he had nothing to say to me, and pulled away from him. I ran towards the hollow near the house. He fired and ran after me, but didn't hit me. He gave up chasing me and told my father-in-law "She'll be mine and the children too, or God's".²⁰¹²

545. Mirsada Kahrman hid for about an hour and then spent the night in the Vučine residential area.²⁰¹³ On the following morning, 15 June 1992, she returned to her house and saw that it had been burned and left in ruins.²⁰¹⁴ She also saw her father-in-law's body.²⁰¹⁵ Milan Lukić was outside the house and called to her by name but she turned and ran away into the woods. Milan Lukić again fired at her but missed.²⁰¹⁶

546. Mirsada Kahrman's mother-in-law had arranged for Mirsada Kahrman to leave Višegrad on a bus convoy organised by the Red Cross.²⁰¹⁷ During the preparations to leave, and once the passengers boarded the bus, Milan Lukić attempted to intervene. The witness recounted:

Before we got on the bus, someone from the Red Cross read out a list of those of us who intended to move out. When he heard my name, Milan Lukić said he needed that woman. Veslin Vucelje, a member of the Serbian TO/Territorial Defence/, changed my name on the list and told a man from the Red Cross to read out the new name. When we got on the bus, Lukić got in among us and asked: "Is there anyone here who'd like to marry me?" No one answered him. Then he said: "If I wasn't sorry for these children, I'd send you all to Žepa." When he saw me in the bus, he said: "You, Kahrman, you must come with me." Veslin Vucelje opposed this and told Lukić: "She

²⁰⁰⁷ Mirsada Kahrman, 29 Aug 2008, T. 847-848.

²⁰⁰⁸ Mirsada Kahrman, 29 Aug 2008, T. 810.

²⁰⁰⁹ Mirsada Kahrman, 29 Aug 2008, T. 810.

²⁰¹⁰ P34, p. 6.

²⁰¹¹ P34, p. 6; 1D23, p. 8.

²⁰¹² 1D23, p. 10.

²⁰¹³ Mirsada Kahrman, 29 Aug 2008, T. 850-851.

²⁰¹⁴ 1D23, p. 10.

²⁰¹⁵ P34, p. 6; 1D23, p. 10.

²⁰¹⁶ P34, p. 6.

²⁰¹⁷ P34, p. 7; 1D23, p. 11.

can't go with you, she's the mother of two children." After that Lukić and Vucelje got out. The buses and two trucks set off at 1200 hrs. from the town.²⁰¹⁸

547. In her supplemental statement of August 2008, Mirsada Kahrman clarified that the preparations for the departure of the convoy occurred on 14 June 1992, and not 15 June 1992.²⁰¹⁹ At this time, 14 June 1992, she saw Milan Lukić who, when her name was read out loud, told her to step aside.²⁰²⁰ It was the next day, 15 June 1992, that Mirsada Kahrman boarded the bus and left Višegrad.²⁰²¹

548. Mirsada Kahrman last sighted Sredoje Lukić on 14 June 1992.²⁰²² She saw Milan Lukić for the last time prior to her departure on the bus convoy on 15 June 1992.²⁰²³

549. The bus convoy was escorted by Dragan Tomić.²⁰²⁴ When the convoy neared Kaljina, the Serbs separated 62 men between the ages of 18 and 65 from the group.²⁰²⁵ Mirsada Kahrman stated that the men were taken away and that she never knew what became of them.²⁰²⁶

550. Mirsada Kahrman knew Ferid Spahić. She also knew a man named "Zuco". She testified that neither man was on the bus which departed Višegrad on 15 June 1992.²⁰²⁷

5. Factual findings in relation to the Pionirska street incident

(a) Defence challenge of the occurrence of the Pionirska street incident

551. The Milan Lukić Defence challenged the occurrence of the fire on 14 June 1992 through experts Martin McCoy, Benjamin Dimas, Stephen O'Donnell, and Clifford Jenkins. Their conclusions were based on a site visit that took place in January 2009 and a review of witness statements.²⁰²⁸

552. Martin McCoy, Benjamin Dimas, and Stephen O'Donnell all concluded that a high-intensity fire could not have taken place in the lower room of Adem Omeragić's house. However, they also acknowledged that after 16 years there was significant degradation of the site, in particular due to the very high moisture content in the room, possible use over time of the site by people, and the weather. Moreover, while the experts had focused on what they considered was the lack of

²⁰¹⁸ 1D23, p. 11.

²⁰¹⁹ P35, p. 3.

²⁰²⁰ P35, p. 3.

²⁰²¹ Mirsada Kahrman, 29 Aug 2008, T. 850; P35, p. 3.

²⁰²² Mirsada Kahrman, 29 Aug 2008, T. 812.

²⁰²³ Mirsada Kahrman, 29 Aug 2008, T. 812; P34, p. 7; P35, p. 3; 1D23, p. 10.

²⁰²⁴ 1D23, p. 11.

²⁰²⁵ 1D23, p. 11.

²⁰²⁶ 1D23, p. 12.

²⁰²⁷ Mirsada Kahrman, 29 Aug 2008, T. 851.

²⁰²⁸ See *supra* section II.G.2(b).

significant fire damage, during cross-examination, they allowed for the possibility that there indeed was fire damage in certain areas of the room. Stephen O'Donnell also stated the possibility that an explosive device had exploded in the room, and that the pattern of impact marks on the wall indicates that the room may have been crowded at the time of the explosion. The Trial Chamber does not take into consideration the conclusions of Clifford Jenkins about the occurrence of the fire based on his observation of the physical structure since, as his own evidence showed, he is not a fire and arson investigation expert.

553. Martin McCoy stated that the longer an investigation of a crime scene is delayed, the less reliable are the conclusions that can be drawn. The Trial Chamber accepts this view. The Trial Chamber also notes that under cross-examination these experts allowed for such a range of possibilities and qualifications to their initial conclusions as to render their overall findings about the lack of a fire of the kind alleged by the Prosecution practically without foundation. Importantly, the experts agreed with the Prosecution that the fire could have taken place. The Trial Chamber is therefore satisfied that their evidence does not cast any doubt on the Prosecution's evidence that there was a fire at Adem Omeragić's house.

(b) Prosecution's evidence concerning the events

554. VG013, VG018, VG038, VG078, VG084, VG101 and VG115 testified about the events that took place on 14 June 1992.²⁰²⁹ Huso Kurspahić testified as to what his father, Hasib Kurspahić had told him about those events.²⁰³⁰ Hasib Kurspahić recalled what happened in a television interview.

555. The Trial Chamber is satisfied, based on the evidence of VG013, VG018, VG038, VG078, VG084, VG101 and Huso Kurspahić, that subsequent to the Koritnik group's arrival at Jusuf Memić's house on Pionirska street from the centre of Višegrad, a group of men arrived and robbed the group of its valuables. The Trial Chamber is also satisfied based on the evidence of VG013, VG018 and VG101 that the women and children were segregated from the Koritnik group and strip searched. It is also satisfied, based on the evidence of VG013, VG018, VG078 and VG-101, that a number of women, including Jasmina Vila, Ifeta Kurspahić and Mujesira Kurspahić, were removed from the house and that they were returned later. They were crying and some of them stated that they had been raped.

556. The Trial Chamber is also satisfied that the men then left the house and that they returned later that night. The Trial Chamber finds, based on the evidence of VG013, VG018, VG038, VG078, VG084, VG101 and Huso Kurspahić, that the armed men ordered the Koritnik group to

²⁰²⁹ See *supra* section II.G.1.

²⁰³⁰ *Ibid.*

move from Jusuf Memić's house to Adem Omeragić's house. It also finds that the group was told that the transfer was necessary for their safety.

557. The Trial Chamber is satisfied, on the basis of the evidence VG018, VG084, VG013 and VG038, that the Koritnik group was herded from Jusuf Memić's house into the room on the ground floor of Adem Omeragić's house and that the door was closed.

558. Approximately half an hour after the door was closed, the door was opened and an explosive device was placed in the room, and the carpets immediately caught fire. Only VG013 saw the explosive device being placed in. According to what Hasib Kurspahić told Huso Kurspahić, there was an explosion, which enabled him to escape. The Trial Chamber also notes that while in one of his statements, VG084 stated that he saw the door to the room being opened and a hand grenade thrown in, he referred in his later statement to hearing an explosion and seeing flames, and he testified to seeing the flame spreading into the room. The Trial Chamber considers these discrepancies in VG084's evidence to be minor and finds that there had been an explosion, following which VG-084 saw the flames.

559. All the witnesses who were inside the room remembered it being quickly engulfed in flames and everything burning. The Trial Chamber recalls, for example, that VG018 described a huge flame appearing, as if it was "coming from a gas bottle".²⁰³¹ The Trial Chamber also notes VG013's testimony that the carpets in the room were covered with a sticky substance, which was strong and pungent-smelling and caused people to choke, and that, in describing the fire that later took hold, VG038 recalled that the smoke smelled like paint or turpentine. VG013 recalled the screams of the people in the room as the fire spread. After they escaped, VG018, VG084, VG013, VG038 continued to hear the screams of those who remained inside the room. VG013 testified that following her escape and from her hiding place in the creek, she watched the house burn.

560. The Trial Chamber is satisfied by the evidence of VG013 and VG038 that the floor of the room was covered in a substance that functioned as a fire accelerant. The Trial Chamber is also satisfied on the basis of the evidence of all the witnesses that this accelerant caught fire when the explosive device was placed into the lower room of Adem Omeragić house, and that a fire enveloped the room and the people inside it.

561. VG013, VG018, VG038 and VG084 testified to a grenade or explosive device exploding in the room before they escaped. VG018, VG084 and VG013 were injured as a result. Although there appears to be a certain degree of unclarity as to precisely which of the room's two windows these

²⁰³¹ See *supra* para. 371.

witnesses escaped through, the Trial Chamber regards that inconsistency as minor and finds that it does not affect the credibility of the accounts provided by these witnesses concerning the fire and their escape from Adem Omeragić's house. The Trial Chamber further notes the evidence of VG018, VG084, VG013 and VG038 that the men outside were firing at the windows of the house and at those who tried to escape. VG101 heard shooting from her hiding place. Hasib Kurspahić recalled men firing at persons trying to escape, and in a television interview he stated that he was shot as he escaped. Also, VG013 suffered gunshot wounds as she escaped.

562. The Trial Chamber is satisfied on the basis of the evidence of VG018, VG084, VG013 and VG038 that at least one more explosive device was thrown into the room after the start of the fire and that there were men outside who were shooting at persons trying to escape from the house.

563. The Trial Chamber further notes the 2000 witness statement of VG115 wherein she stated that as she was walking towards her house on Pionirska street, she saw the Koritnik group being forced into Adem Omeragić's house and saw men around the house throwing incendiary devices, which included hand grenades and gasoline, into the house. The Trial Chamber notes the witness' assertion that at this point she rushed to her house from which she continued to hear the sound of gunfire and screaming for more than an hour.²⁰³²

564. This evidence is materially inconsistent with VG115's other evidence. In her testimony before the Trial Chamber, VG115 stated that she walked along Pionirska street during the period when the Koritnik group, moving from the centre of Višegrad, first arrived on Pionirska street. She stated that she saw Milan Lukić, Sredoje Lukić and Mitar Vasiljević with a cast on his leg, astride a white horse, herding the group along the street. When questioned as to whether she saw anything else from this vantage point of the street, VG115 responded only that the "[p]eople were taken up Pionirska street". In her testimony during the *Vasiljević* trial, and before this Trial Chamber, VG115 stated that she was already inside her house for no less than half an hour to an hour and a half before the activities at Adem Omeragić's house, began, as signalled by the noise of explosions, gunfire and screaming.²⁰³³

565. The evidence of VG115 appears to be exaggerated. The Trial Chamber finds that VG115 did not in fact witness the Koritnik group being herded into Adem Omeragić's house. It also finds that she did not actually witness men throwing gasoline and hand grenades into Adem Omeragić's house. However, the Trial Chamber is satisfied that VG115 was able to hear the sounds of gunfire, explosions and screaming from inside her house on Pionirska street, and that she was able to see the

²⁰³² See *supra* para. 374.

²⁰³³ See *supra* para. 374.

light emitted by the flames from the vantage point of her house. The Trial Chamber will only consider her evidence regarding the Pionirska street incident to this extent.

566. When determining the deaths resulting from the fire at Adem Omeragić's house on 14 June 1992, the Trial Chamber takes into account the following: the uncontroverted evidence that there was a fire at Adem Omeragić's house, the uncontroverted evidence that a number of persons were herded into Adem Omeragić's house on 14 June 1992 that was then set on fire, and the statements and testimony of survivors, as corroborated by other witnesses.

567. The Trial Chamber recalls that it denied the Prosecution oral application to amend the indictment and that it would consider on the basis of the evidence whether the death of each person listed in Annex A of the indictment has been proven.²⁰³⁴ The Trial Chamber conducts this exercise in the following paragraphs. The Trial Chamber finds that the Koritnik group was comprised exclusively of Muslim civilians, the majority of whom came from the small village of Koritnik. It is satisfied beyond a reasonable doubt that the following 59 persons listed in Annex A to the indictment died in the fire at Adem Omeragić's house on 14 June 1992: Mula Ajanović, Adis Delija, Ajnija Delija, Jasmina Delija, Hasena LNU, Tima Jasarević/Velić, Hajra Jasarević/Halilović, Meho Jasarević/Halilović, Mujo Jasarević/Halilović, Aiša Kurspahić, Aida Kurspahić, Ajka Kurspahić, Alija Kurspahić, Almir Kurspahić, Becar Kurspahić, Bisera Kurspahić, Bula Kurspahić, Dzheva Kurspahić, Enesa Kurspahić, FNU Kurspahić, Hasa Kurspahić, Hajrija Kurspahić, Halida Kurspahić, Hana/Hasiba Kurspahić, Hasan Kurspahić, Hata Kurspahić, Ifeta Kurspahić, Igabala Kurspahić, Ismet Kurspahić, Ismeta Kurspahić, Izeta Kurspahić, Kada Kurspahić/Sehić, Maida Kurspahić, Medina Kurspahić, Medo Kurspahić, Mejra Kurspahić, Mina Kurspahić, Mirela Kurspahić, Mujesira Kurspahić, Munevera Kurspahić, Munira Kurspahić (55 years), Osman Kurspahić, Pašija Kurspahić, Ramiza Kurspahić, Sabiha Kurspahić, Sadeta Kurspahić, Safa Kurspahić, Sajma Kurspahić, Seila Kurspahić, Seniha Kurspahić, Sumbula Kurspahić, Vahid Kurspahić, Fazila Memisević, Redžo Memisević, Rabija Sadiković, Faruk Sehić, Haraga Sehić, Nurka Velić, and Jasmina Vila.

568. The Trial Chamber is not satisfied beyond a reasonable doubt that the following persons listed in Annex A to the indictment died in the fire at Adem Omeragić's house on 14 June 1992: Aner Kurspahić, Hasnija Kurspahić, Munira Kurspahić (12 years), Saha Kurspahić, and Enver Sehić. Furthermore, the Trial Chamber is satisfied that Latifa Kurspahić, Lejla Kurspahić and Meva Kurspahić are alive.

²⁰³⁴ See *supra* para. 391.

569. The Trial Chamber finds that on or about 14 June 1992, a group of armed men herded at least 66 Muslim civilians into Adem Omeragić's house on Pionirska street. It is satisfied beyond reasonable doubt that the armed men subsequently set the house on fire and threw hand grenades into the house, and that at least 59 Muslim civilians died as a result.

(c) Defence challenge of Mitar Vasiljević's presence at Pionirska street on 14 June 1992

570. The Trial Chamber recalls that the Milan Lukić Defence presented a case history from the Užice hospital, a logbook entry from the Užice hospital and a log book entry from the Višegrad health centre.²⁰³⁵ The logbook entry from the Višegrad health centre, although not translated into a working language of the Tribunal, was admitted into evidence. This was done inadvertently. In view of the lack of a translation, the Trial Chamber is unable to attach any weight to this particular document. The Trial Chamber notes at this point that the burden lies on the parties to ensure that translations are provided in either of the two working languages of the Tribunal for any documents upon which they intend to rely.

571. The Trial Chamber notes that these records were submitted in order to challenge the credibility of Prosecution witnesses who identified Milan Lukić and Sredoje Lukić as having been present during the Pionirska street incident. The Milan Lukić Defence argues that in view of the fact that the Trial Chamber in the *Vasiljević* case found in favour of Mitar Vasiljević's alibi, "witnesses who have identified Milan Lukić alongside Mitar Vasiljević at the Pionirska site on 14 June 1992, AFTER the time Vasiljević's leg broke, are either mistaken or lying" with the result that "their identification of Milan Lukić being present is also called into doubt".²⁰³⁶

572. The Trial Chamber also recalls the evidence of Dr. Nigel Raby that the fractured limb reflected in a 1992 x-ray submitted by Mitar Vasiljević during his trial did not match a 2001 x-ray taken of Mitar Vasiljević's leg. The Trial Chamber accepts the evidence of Nigel Raby and finds that the 1992 x-ray was not in fact an x-ray of Mitar Vasiljević's leg. With regard to the remainder of the medical records presented by the Milan Lukić Defence and the Sredoje Lukić Defence in this case, the Trial Chamber finds that the Prosecution has not presented any evidence that these medical records were either forged or tampered with. However, the Trial Chamber by majority, Judge Robinson dissenting, considers that the fact that the 1992 x-ray, which Mitar Vasiljević asserted was an x-ray of his own leg, was not in fact so, provides a solid basis from which the reasonable inference may be drawn that he sourced and tendered into evidence a false x-ray in order to substantiate a false alibi. The Trial Chamber therefore by majority, Judge Robinson dissenting,

²⁰³⁵ 1D38.1; 1D38.6; 1D39.

²⁰³⁶ Milan Lukić final trial brief, paras 139-140 (emphasis in the original).

finds that this calls into question the credibility of the other medical records sourced by Mitar Vasiljević in support of his alibi during his trial, and presented by the Milan Lukić Defence and the Sredoje Lukić Defence in the current proceedings.

573. Several Prosecution witnesses place Mitar Vasiljević at the scene of the robbery, the transfer and the fire.²⁰³⁷ The Trial Chamber notes VG078's and VG101's prior knowledge of Mitar Vasiljević. Given the vantage points from which VG078 and VG101 were able to observe Mitar Vasiljević, and the adequate lighting conditions in which these observations were made, the Trial Chamber by majority, Judge Robinson dissenting, finds VG078's and VG101's evidence regarding Mitar Vasiljević's presence at Pionirska street during the period of the transfer, to be credible.

574. VG038 knew Mitar Vasiljević as a waiter at the *Panos* restaurant and the Vilina Vlas hotel. One of VG038's relatives worked with Mitar Vasiljević. Based on his firm prior knowledge of Mitar Vasiljević, the Trial Chamber is satisfied that VG038's evidence that Mitar Vasiljević was present at Jusuf Memić's house during the robbery, and that he stood outside the windows of the house during this period, is credible. VG038 testified that during the transfer he was able to recognise Mitar Vasiljević by the hat and uniform that he had worn earlier in the day. The Trial Chamber by majority, Judge Robinson dissenting, finds that he was able to recognise Mitar Vasiljević and finds that Mitar Vasiljević was present at the transfer.

575. VG013 also had prior knowledge of Mitar Vasiljević. In her 2008 witness statement, VG013 stated that the Koritnik group, shortly after its arrival in Višegrad, was instructed to go to Pionirska street by "a soldier". In her *Vasiljević* trial testimony, she stated that persons named Brana Tešović and Borjo Perzević issued this instruction. However, in her testimony in this case, VG013 placed the appearance of Mitar Vasiljević earlier in the narrative of events, as the person who instructed the group in front of the new hotel to go to Pionirska street. The Trial Chamber, Judge Robinson dissenting, does not consider this inconsistency to be so material as to damage VG013's credibility with regard to her placement of Mitar Vasiljević at the scene of the robbery and at Adem Omeragić's house during the period of the fire. Indeed, the majority of the Trial Chamber notes, Judge Robinson dissenting, the enduring consistency in VG013's evidence regarding Mitar Vasiljević's presence at Adem Omeragić's house during the fire. The Trial Chamber by majority, Judge Robinson dissenting, therefore finds that VG013's evidence places Mitar Vasiljević at Pionirska street on 14 June 1992 during the fire at Adem Omeragić's house.

576. VG115 testified that as she walked home along Pionirska street, she saw Mitar Vasiljević seated on a white horse with a cast on his leg and in the company of Milan Lukić and Sredoje

²⁰³⁷ See *supra* section II.G.2(a).

Lukić. The men were herding the Koritnik group along Pionirska street. The Trial Chamber notes that no other witness testified to seeing Mitar Vasiljević astride a white horse. It considers that a man mounted on a white horse would have been a conspicuous sight, particularly as being atop a horse would have physically placed him at a higher level than a group of people who were all on foot. The Trial Chamber also notes that no other witness's evidence mentions that Mitar Vasiljević had a cast on his leg. The Trial Chamber notes that in all of the physical descriptions provided by surviving witnesses of Mitar Vasiljević, none of them mentions him having a cast on his leg. The Trial Chamber considers that such a feature would certainly have attracted the attention of persons who saw Mitar Vasiljević there. The Trial Chamber also recalls that VG084 stated that there was no white horse along Pionirska street that day. It also notes that VG115, during the *Vasiljević* trial, testified that the first time that she saw Mitar Vasiljević with a cast on his leg was in the autumn of 1992, possibly in September or October. In view of these factors, the Trial Chamber finds that VG115's account is not credible in this regard.

577. In the result, the Trial Chamber by majority, Judge Robinson dissenting, having considered the evidence of VG013, VG038, VG078 and VG101, is persuaded that Mitar Vasiljević was in fact present on Pionirska street on 14 June 1992 during the robbery, transfer and burning of Adem Omeragić's house. The Trial Chamber unanimously finds that the Milan Lukić Defence and the Sredoje Lukić Defence have not succeeded in challenging the credibility of witnesses who identified Milan Lukić and Sredoje Lukić during the events surrounding the Pionirska street incident.

(d) Prosecution evidence on Milan Lukić's and Sredoje Lukić's presence, acts and conduct

578. Eight witnesses presented by the Prosecution gave evidence regarding the succession of events on 14 June 1992 that led up to and included the fire and killings at Adem Omeragić's house. Six of these witnesses were members of the Koritnik group, and one is the son of Hasib Kurspahić, a survivor of the fire. In addition, VG115 gave evidence that she witnessed certain events surrounding the incident as she walked home along Pionirska street, and thereafter from inside her house.

(i) Arrival of the Koritnik group on Pionirska street

579. The Trial Chamber recalls VG115's evidence that as she was walking home along Pionirska street she saw Milan Lukić and Sredoje Lukić herding the Koritnik group along the street from the centre of Višegrad, and that Mitar Vasiljević, mounted on a white horse with a cast on his leg, was also present. None of the accounts provided by VG013, VG018, VG038, VG078, VG084, VG101 and Huso Kurspahić mentioned the presence of Milan Lukić or Sredoje Lukić as the group made its

way along Pionirska street from the centre of Višegrad, or when it first arrived in front of Jusuf Memić's house. Consistently throughout these witnesses' accounts, neither Milan Lukić nor Sredoje Lukić appear in the narrative of events for 14 June 1992 before the start of the robbery at Jusuf Memić's house. The Trial Chamber recalls its previous finding that VG115's account of having seen Mitar Vasiljević astride a white horse with a cast on his leg as the Koritnik group was being herded along Pionirska street is not credible. In the Trial Chamber's view, her lack of credibility in this regard, together with the fact that no other witness placed Milan Lukić or Sredoje Lukić on Pionirska street prior to the timeframe of the robbery, casts significant doubt on the credibility of her assertion that she saw Milan Lukić or Sredoje Lukić as recounted. The Trial Chamber therefore places no weight on VG115's evidence that she saw Milan Lukić and Sredoje Lukić herding persons along Pionirska street from the centre of Višegrad.

(ii) Events in Jusuf Memić's house

i. The robbery

580. VG101, who had gone to school with Milan Lukić for many years, testified that she recognised him the instant that he entered Jusuf Memić's house.²⁰³⁸ VG078, who had also attended school with Milan Lukić, firmly recognised him as soon as VG101 reminded her of his identity.²⁰³⁹ The Trial Chamber concludes that VG101 and VG078 gave reliable evidence that Milan Lukić was inside Jusuf Memić's house and that he robbed the Koritnik group.

581. VG013 had last seen Milan Lukić when he was approximately 20 years old, which in 1992 would have been about five years prior to the incident.²⁰⁴⁰ She testified that Milan Lukić ordered the Koritnik group to place their valuables onto a rag which he had placed on a table in a room inside Jusuf Memić's house, and that he threatened to put a bullet in the head of anyone who withheld anything.²⁰⁴¹ VG013 had prior knowledge of Sredoje Lukić.²⁰⁴² Her evidence was that during the robbery, Sredoje Lukić was outside "somewhere around the house", and that "[h]e was seen".²⁰⁴³ In a witness statement given to the Bosnian authorities in 1995, VG013 mentioned Sredoje Lukić as being among the men who arrived at Jusuf Memić's house at the beginning of the robbery. The Trial Chamber notes that VG013's evidence does not indicate that she personally saw Sredoje Lukić during the robbery.

²⁰³⁸ See *supra* section II.G.1(h)(vi).

²⁰³⁹ See *supra* section II.G.1(h)(v).

²⁰⁴⁰ See *supra* section II.G.1(h)(iii).

²⁰⁴¹ See *supra* para. 345.

²⁰⁴² See *supra* section II.G.1(h)(iii).

²⁰⁴³ See *supra* paras 346, 410.

582. VG038 testified during examination-in-chief that before 14 June 1992, he saw Sredoje Lukić on the streets of Višegrad and knew that he was a policeman.²⁰⁴⁴ Under cross-examination, when the Sredoje Lukić Defence put to VG038 that his knowledge of Sredoje Lukić did not pre-date the incident, VG038 at first appeared confused by the question, but then agreed with the Defence's proposition. The Trial Chamber also notes VG038's 1998 witness statement wherein he stated that although he knew Mitar Vasiljević and Milan Šušnjar by sight, he did not know Milan Lukić or Sredoje Lukić, and that other persons told him about them. The Trial Chamber also notes VG038's August 1995 witness statement in which he described Sredoje Lukić as having worked at the UNIS wire factory. Based on his response during cross-examination, and his August 1995 and 1998 witness statements, the Trial Chamber is of the view that VG038 had no knowledge of either Milan Lukić or Sredoje Lukić prior to 14 June 1992.

583. VG038 asserted that it was Sredoje Lukić and Milan Šušnjar who entered Jusuf Memić's house, that it was Sredoje Lukić who ordered the group to hand over its valuables and that it was Milan Šušnjar who threatened to put a bullet in the head of anyone who failed to surrender their valuables.²⁰⁴⁵ Furthermore, under cross-examination, VG038 insisted that while Sredoje Lukić and Milan Šušnjar were inside the house, Milan Lukić and Mitar Vasiljević stood guard outside the windows of the house. VG038 testified that Milan Lukić and Sredoje Lukić were both armed and dressed in green camouflage uniforms.

584. The Trial Chamber notes VG038's insistence that Milan Lukić was outside Jusuf Memić's house during the robbery. This contradicts the evidence of VG078 and VG101, who had solid prior knowledge of Milan Lukić, who clearly recognised him when he entered Jusuf Memić's house, and who placed him inside the house during the robbery. The Trial Chamber considers that VG038 would have been standing with his mother, VG013. His evidence contradicts that of VG013, who had seen Milan Lukić prior to the incident, and who placed him inside the house during the robbery. In this respect, the Trial Chamber recalls that VG013, who had solid prior knowledge of Sredoje Lukić, did not place him inside the house.

585. In view of these inconsistencies, the Trial Chamber finds that VG038 was unable to distinguish between Milan Lukić and Sredoje Lukić, and it does not place any weight on his evidence insofar as it relates to the specific acts of either Milan Lukić or Sredoje Lukić during the robbery. Nevertheless, the Trial Chamber recalls VG038's evidence that individuals inside Jusuf Memić's house, including persons who had gone to school with Milan Lukić, spoke of Milan Lukić to VG038. Other persons also told VG038 who Sredoje Lukić was. Thus, despite the fact that

²⁰⁴⁴ See *supra* section II.G.1(h)(iv).

²⁰⁴⁵ See *supra* para. 349.

VG038 appeared to confuse the identities of both men, the Trial Chamber finds that his evidence is reliable insofar as it places both Milan Lukić and Sredoje Lukić at the scene of the robbery.

586. VG018 had no prior knowledge of either Milan Lukić or Sredoje Lukić.²⁰⁴⁶ Her evidence was that Milan Lukić and Sredoje Lukić entered Jusuf Memić's house and introduced themselves by name. The Trial Chamber recalls that although she was not in a position to see either Milan Lukić or Sredoje Lukić as they introduced themselves, owing to the fact that she was standing in another room, VG018 was able to hear their respective introductions. Furthermore, although VG018 subsequently moved into another room in which she was then able to see both men, she was unable to tell who was who.

587. The Trial Chamber recalls that in her *Vasiljević* trial testimony, VG018 identified Sredoje Lukić as having entered Jusuf Memić's house and pulled a knife from his boot, and that he then threatened to slit the throats of the Koritnik group with the blunt side of the knife should they withhold any of their valuables. However, in her testimony before the Trial Chamber, VG018 stated that it was Milan Lukić who did this. The Trial Chamber also recalls VG018's 1998 witness statement wherein she stated that Sredoje Lukić accosted a child on whom he had found money hidden. However, in her *Vasiljević* trial testimony, VG018 imputed this act to Milan Lukić.²⁰⁴⁷

588. In view of the many inconsistencies in VG018's evidence, the Trial Chamber finds that she was unable to visually distinguish between Milan Lukić and Sredoje Lukić, and that she confused the two men. Accordingly, the Trial Chamber places no weight on VG018's evidence as it relates to the specific acts of either Milan Lukić or Sredoje Lukić in or around Jusuf Memić's house. Nevertheless, the Trial Chamber is satisfied that VG018 heard Milan Lukić and Sredoje Lukić introduce themselves by name. The Trial Chamber therefore only relies on VG018's evidence insofar as it places Milan Lukić and Sredoje Lukić at the scene of the robbery.

589. Like his mother, VG018, VG084 had no prior knowledge of either Milan Lukić or Sredoje Lukić.²⁰⁴⁸ VG084's evidence was that Sredoje Lukić entered the house and introduced himself.²⁰⁴⁹ VG084 stated that he was two metres away from Sredoje Lukić when he introduced himself. However, when pressed under cross-examination, VG084 could not remember whether he was able to clearly see the face of the person who introduced himself as Sredoje Lukić. VG084 stood right beside VG018 at this time. The Trial Chamber recalls VG018's evidence that she was unable to see

²⁰⁴⁶ See *supra* section II.G.1(h)(i).

²⁰⁴⁷ See *supra* para. 347.

²⁰⁴⁸ See *supra* section II.G.1(h)(ii).

²⁰⁴⁹ See *supra* para. 404.

Milan Lukić and Sredoje Lukić when they introduced themselves because she was standing in a separate room.

590. The Trial Chamber concludes that while VG084 was near Sredoje Lukić when Sredoje Lukić introduced himself, VG084 did not actually see him as he did so. Consequently, the Trial Chamber is not satisfied that VG084 was able to visually distinguish between Milan Lukić and Sredoje Lukić. The Trial Chamber does not therefore place any weight on his evidence regarding the specific acts of either Milan Lukić or Sredoje Lukić during the robbery. However, the Trial Chamber is satisfied that, while VG084 was not in a position to see Sredoje Lukić as he introduced himself, VG084 did hear Sredoje Lukić's introduction. In addition, other persons in the house spoke of Sredoje Lukić by name to VG084, and they described him as a policeman. Furthermore, there were two girls inside the house who had gone to school with Milan Lukić, and who spoke of him by name to VG084. In view of this evidence, the Trial Chamber finds VG084's evidence reliable insofar as it places both Milan Lukić and Sredoje Lukić at the scene of the robbery.

591. The Trial Chamber recalls that Hasib Kurspahić gave an interview to a journalist, in which he recounted the events surrounding the Pionirska street incident. In this interview, Hasib Kurspahić did not name the persons who robbed the Koritnik group, conducted the transfer or who set Adem Omeragić's house on fire. However, this does not affect the reliability and credibility of his account. Huso Kurspahić gave evidence that Hasib Kurspahić, his father, had told him that Milan Lukić, Sredoje Lukić and Mitar Vasiljević entered Jusuf Memić's house, issued an order that no one should leave the house and demanded that the group hand over their valuables.²⁰⁵⁰ Hasib Kurspahić was not personally acquainted with Milan Lukić.²⁰⁵¹ Huso Kurspahić testified that his father had told him that he was able to identify Milan Lukić during the events of 14 June 1992 because Sredoje Lukić and Mitar Vasiljević referred to him as "Milan", and because a woman who had attended school with Milan Lukić in Prelovo told him that the person in question was Milan Lukić. Hasib Kurspahić was personally acquainted with Sredoje Lukić prior to 14 June 1992. The Trial Chamber is therefore satisfied that Hasib Kurspahić would have been able to recognise Sredoje Lukić on 14 June 1992. The Trial Chamber is mindful that it was not the late Hasib Kurspahić, but his son, Huso Kurspahić, who testified before the Trial Chamber about his father's observations during the Pionirska street incident. Nevertheless, the Trial Chamber is satisfied that Huso Kurspahić's evidence is sufficient to place both Milan Lukić and Sredoje Lukić at the scene of the robbery and as participants in the robbery.

²⁰⁵⁰ See *supra* para. 350.

²⁰⁵¹ See *supra* section II.G.1(h)(viii).

592. Based on the evidence of VG013, VG018, VG038, VG078, VG084, VG101 and Huso Kurspahić the Trial Chamber finds that Milan Lukić was inside Jusuf Memić's house on 14 June 1992. Furthermore, based on the evidence of VG013, VG078, VG101 and Huso Kurspahić the Trial Chamber finds that it was Milan Lukić who robbed the Koritnik group of their valuables.

593. Based on the evidence of VG018, VG038, VG084 and Huso Kurspahić, the Trial Chamber finds that Sredoje Lukić was armed and present at Jusuf Memić's house on 14 June 1992 while the robbery was taking place inside the house.

ii. The strip search

594. VG013, VG018, VG084 and VG101 gave evidence that the women in the Koritnik group were split into groups of three or four and instructed to enter a room in Jusuf Memić's house where they were subjected to strip searches.²⁰⁵² The evidence contains only minor inconsistencies as to the identity of the man or men who ordered and carried out the strip searches, and it shows that Milan Lukić and Sredoje Lukić were not involved.

iii. The removal of women among the Koritnik group

595. Following the strip search, a number of women, including Jasmina Vila, Ifeta Kurspahić and Mujesira Kurspahić were removed from the house for approximately an hour.²⁰⁵³ Upon returning to the house, the women stated that they had been raped.²⁰⁵⁴ VG078 gave evidence that Milan Lukić removed the women from the house. VG101 gave evidence that Milan Lukić, accompanied by another man, removed women from the house. VG013 testified that Milan Lukić removed Jasmina Vila, Ifeta Kurspahić and Mujesira Kurspahić from the house. However, VG018's evidence in this case and the *Vasiljević* case varied as to whether it was Milan Lukić or Sredoje Lukić who removed Jasmina Vila. In her 1993 and 1998 witness statements, and in her *Vasiljević* trial testimony, VG018 stated that it was Sredoje Lukić who ordered Jasmina Vila to accompany him. But according to her testimony in this case, it was Milan Lukić who ordered Jasmina Vila to go with him.²⁰⁵⁵

596. On the basis of the evidence of VG013, VG078 and VG101, the Trial Chamber finds that Milan Lukić removed women from the house, including Jasmina Vila, Ifeta Kurspahić and Mujesira

²⁰⁵² See *supra* section II.G.1(c)(ii).

²⁰⁵³ See *supra* section II.G.1(c)(iii).

²⁰⁵⁴ See *supra* para. 357.

²⁰⁵⁵ See *supra* para. 356.

Kurspahić. The evidence is that the women stated upon return that they had been raped. However, the Trial Chamber finds that the evidence does not establish who raped them.

(iii) The transfer

597. Much evidence was led concerning the lighting conditions between and around Jusuf Memić's house and Adem Omeragić's house.²⁰⁵⁶ While some witnesses testified that the late hour and rain made observations more difficult, witnesses consistently testified that light from sources including neighbouring houses and flashlights carried by the men, or their close proximity to the men, allowed them to identify the men who carried out the transfer. The Trial Chamber is therefore satisfied that the lighting conditions at the scene of the transfer were sufficient to allow witnesses to see the men who transferred the Koritnik group from Jusuf Memić's house to Adem Omeragić's house.

598. The Trial Chamber considers credible the evidence of VG078 and VG101 that they saw Milan Lukić walking between Jusuf Memić's house and Adem Omeragić's house, and standing in the vicinity of Adem Omeragić's house, during the transfer.²⁰⁵⁷ As his former schoolmates, both VG078 and VG101 had solid prior knowledge of Milan Lukić. The Trial Chamber takes particular note of VG101's instant recognition of Milan Lukić when he first entered Jusuf Memić's house during the robbery, and VG078's solid recollection of Milan Lukić once reminded by VG101 of who he was.²⁰⁵⁸

599. VG013 testified that Kada Šehić, a member of the Koritnik group, spoke to Milan Lukić at the time of the transfer and in VG013's presence, addressing him by name.²⁰⁵⁹ Milan Lukić responded to Kada Šehić and she subsequently told VG013 that Milan Lukić had previously taken away Kada Šehić's husband and son. The Trial Chamber recalls that VG013 was a neighbour of Milan Lukić and that she had last seen him approximately five years prior to the incident. As VG013 moved through the doorway of Jusuf Memić's house, she passed Milan Lukić at a distance of no more than about 30 centimetres. As Milan Lukić stood in the doorway of Jusuf Memić's house, he yelled at the Koritnik group to move faster. In light of the foregoing, the Trial Chamber finds VG013's evidence placing Milan Lukić at the scene during the transfer to be reliable. It also considers that these circumstances provided a solid basis from which VG013 was able to identify Milan Lukić during the subsequent events surrounding the fire at Adem Omeragić's house.

²⁰⁵⁶ See *supra* para. 363.

²⁰⁵⁷ See *supra* para. 362.

²⁰⁵⁸ See *supra* sections II.G.1(h)(v) and (vi).

²⁰⁵⁹ See *supra* para. 411.

600. While VG013's evidence places Sredoje Lukić at the scene, both in the afternoon and at the transfer during the night, the Trial Chamber is mindful that VG013 did not see him, but only heard that he was there, including from Edhem Kurspahić, who had recognised Sredoje Lukić during the transfer.²⁰⁶⁰ During cross-examination, VG013 testified that she presumed that Edhem Kurspahić knew Sredoje Lukić. Although VG013 stated in re-examination that Edhem Kurspahić, a resident of Koritnik, previously knew Sredoje Lukić and used to see him when he was patrolling the village, VG018 stated that Edhem Kurspahić only had prior knowledge of the man called "Lalco" and that he did not know Sredoje Lukić until Sredoje Lukić introduced himself in Jusuf Memić's house. The Trial Chamber is therefore not satisfied that VG013 reliably places Sredoje Lukić during the transfer.

601. VG038 gave evidence that Sredoje Lukić returned to Jusuf Memić's house that night, along with Milan Lukić and the other men who had robbed the group.²⁰⁶¹ VG038's evidence is that the men took up positions between Jusuf Memić's house and Adem Omeragić's house. VG038 was unable to see specifically where the men were standing during the transfer, and was unable to look at the men closely. However, the Trial Chamber is mindful that the men would have moved about the path during the period. The Trial Chamber notes that VG038's evidence as to the presence of Sredoje Lukić is not very specific; VG038 often referred to Milan Lukić, Sredoje Lukić, Mitar Vasiljević and Milan Šušnjar as a group and did not distinguish between their individual actions. The Trial Chamber also recalls its finding that VG038 was unable to distinguish between Milan Lukić and Sredoje Lukić. Nevertheless, the Trial Chamber considers that VG038's evidence reliably establishes that both Milan Lukić and Sredoje Lukić were present during the transfer.

602. VG013, VG078 and VG101 testified that Milan Lukić, Mitar Vasiljević, and a third man who accompanied them told various members of the Koritnik group as they left Jusuf Memić's house that they did not need to put their shoes on and they did not need to bring their shoes with them during the transfer because they would not need them.²⁰⁶² The Trial Chamber regards this as further evidence that Milan Lukić participated in the transfer.

603. VG018 stated that Milan Lukić and Sredoje Lukić returned to Jusuf Memić's house later that night.²⁰⁶³ However, VG018's placement of both Milan Lukić and Sredoje Lukić at Jusuf Memić's house at the time of the transfer to Adem Omeragić's house is based on her assertion that she was able to recognise their voices from among the voices of the men who returned to the house, in addition to having heard other persons shouting, "[t]he Lukić's are coming again". VG018 stated

²⁰⁶⁰ See *supra* para. 412.

²⁰⁶¹ See *supra* paras 359, 418 *et seq.*

²⁰⁶² See *supra* para. 359.

that she did not dare look at any of the men who participated in the transfer. As she entered that house, VG018 stated that a man pushed her into the room using the butt of his rifle, and said, "Get in *balija*. What are you waiting for? Where is Alija now to help you?"²⁰⁶⁴ VG018 was unable to specifically identify the man who said this. VG018's voice recognition, though by itself insufficient to link Milan Lukić and Sredoje Lukić to the transfer, will be used in conjunction with other evidence for that purpose.

604. VG084 gave evidence that Sredoje Lukić ordered the transfer and that he was accompanied by Milan Lukić.²⁰⁶⁵ In the *Vasiljević* trial, VG084 stated that both were wearing camouflage uniforms, but that Sredoje Lukić had a sniper rifle, whereas Milan Lukić had an automatic weapon. In the instant case, VG084 testified that Sredoje Lukić had an automatic weapon and that Milan Lukić was armed with a sniper rifle. VG084 also gave evidence that as he entered Adem Omeragić's house, Sredoje Lukić patted him on the shoulder and smiled at him. However, the Trial Chamber notes that when pressed under cross-examination, VG084 expressed some doubt as to whether the person who patted him on the shoulder was Milan Lukić or Sredoje Lukić. The Trial Chamber recalls its earlier finding that VG084 was unable to distinguish between Milan Lukić and Sredoje Lukić. Nevertheless, the Trial Chamber is satisfied that VG084's evidence demonstrates that both Milan Lukić and Sredoje Lukić were armed and present during the transfer to Adem Omeragić's house.

605. As noted earlier, Hasib Kurspahić had prior knowledge of Sredoje Lukić and thus would have been able to recognise Sredoje Lukić on 14 June 1992.²⁰⁶⁶ The Trial Chamber notes Huso Kurspahić's evidence that Sredoje Lukić, Milan Lukić, Mitar Vasiljević were among the persons who escorted the group to Adem Omeragić's house.²⁰⁶⁷ Despite the hearsay character of Huso Kurspahić's evidence, and in view of Hasib Kurspahić's prior knowledge of Sredoje Lukić, the Trial Chamber finds reliable Huso Kurspahić's evidence placing Milan Lukić and Sredoje Lukić at the scene of the transfer.

606. Based on the evidence of VG013, VG038, VG078, VG084, VG101 and Huso Kurspahić as a whole, the Trial Chamber finds that Milan Lukić was present during and participated in the transfer of the Koritnik group between Jusuf Memić's house and Adem Omeragić's house.

607. Based on the evidence of VG038, VG084 and Huso Kurspahić, the Trial Chamber finds by majority, Judge Robinson dissenting as to Sredoje Lukić's participation in the transfer, that Sredoje

²⁰⁶³ See *supra* para. 401.

²⁰⁶⁴ See *supra* paras 364, 402.

²⁰⁶⁵ See *supra* para. 360.

²⁰⁶⁶ See *supra* section II.G.2(h)(viii).

Lukić was present during and participated in the transfer of the Koritnik group between Jusuf Memić's house and Adem Omeragić's house.

(iv) The events at Adem Omeragić's house

608. VG013 testified that she saw Milan Lukić close the door to Adem Omeragić's house once the Koritnik group was inside.²⁰⁶⁸ VG013 testified that she saw Milan Lukić subsequently open the door and place a device with a lighted fuse, which started the fire.²⁰⁶⁹ While she testified under cross-examination that she had been focusing on the window, not the door, in order to escape, she maintained that she had seen Milan Lukić place the explosive device at the door. VG013 provided a logical explanation as to how she was able to see Milan Lukić in the doorway with the device. The Trial Chamber's considers VG013's evidence to be reliable in this respect, noting in particular that her evidence indicates that she retained her composure throughout the incident. The Trial Chamber is therefore satisfied that VG013 saw Milan Lukić place the explosive device into the room of Adem Omeragić's house. VG013 testified that during her escape from the burning house she landed a short distance from Milan Lukić, that she saw him shooting at the windows of the room and that Milan Lukić shot her.

609. In her 1998 witness statement, VG013 stated that that she saw Sredoje Lukić standing behind Milan Lukić when he placed an explosive device in the Adem Omeragić's house and that Sredoje Lukić also fired at the people trying to escape through the windows.²⁰⁷⁰ The Trial Chamber notes that VG013 did not repeat this statement in court or in any other witness statement. It considers reliable VG013's testimony that she could only say that Sredoje Lukić escorted the group to Adem Omeragić's house but that she could not give further evidence as to other acts and conduct of Sredoje Lukić during the night. The Trial Chamber therefore places no weight on VG013's statement of 1998 that she saw Sredoje Lukić standing behind Milan Lukić when he placed a bomb and that Sredoje Lukić shot at the windows of Adem Omeragić's house.

610. VG038 stated that he saw Sredoje Lukić open the door to the room and throw a pail of turpentine that was already on fire into the room.²⁰⁷¹ This particular assertion against Sredoje Lukić only arises in VG038's 1995 witness statement and was not repeated in court. Also, in his 1998 witness statement, VG038 stated that he did not see who threw the burning material into the house. Consequently, the Trial Chamber does not attach any weight to VG038's 1995 witness statement in

²⁰⁶⁷ See *supra* para. 362.

²⁰⁶⁸ See *supra* para. 365.

²⁰⁶⁹ See *supra* para. 367.

²⁰⁷⁰ See *supra* para. 383.

²⁰⁷¹ See *supra* para. 373.

this regard. The Trial Chamber is therefore not satisfied that VG038 saw Sredoje Lukić at Adem Omeragić's house during the period of the fire.

611. The Trial Chamber recalls its previous finding that due to material inconsistencies regarding the vantage points from which she claimed to witness certain events, it does not accept VG115's evidence that she was walking along Pionirska street during the time when Adem Omeragić's house was set on fire.²⁰⁷² Consequently, the Trial Chamber rejects her assertion that she was able to see the men who threw incendiary devices into Adem Omeragić's house. The Trial Chamber further points to the fact that when questioned during the *Vasiljević* trial as to whether she was able to see the area where the sounds of gunfire and explosions were coming from, the witness failed to actually answer the question, stating instead that "[t]he house that I was in is on the right-hand side, and the sounds were coming from the left-hand side, very near by". When specifically questioned as to whether she could see Milan Lukić during this period, she responded that she could not recognise him or any of the men as it was already dark. The Trial Chamber further recalls its finding that while she was able to see light radiating from the fire and see smoke emanating from the general vicinity of Adem Omeragić's house, and that while she was able to hear the noises of explosions and gunshots, her evidence does not satisfy the Trial Chamber that she was able to see any of the persons involved in setting the fire from the vantage point of her house. The Trial Chamber finds that VG115's evidence does not identify either Milan Lukić or Sredoje Lukić as participants in the transfer or in burning of Adem Omeragić's house.

612. The Trial Chamber therefore finds, based on the credible and reliable evidence of VG013, who had solid prior knowledge of Milan Lukić and retained her composure during the house burning, that Milan Lukić locked the Koritnik group inside that house, that he subsequently placed a lighted device into the house which set the house ablaze and that he shot at the windows of the house through which persons attempted to escape, wounding VG013.

613. The Trial Chamber finds that there is no reliable evidence that Sredoje Lukić participated in setting Adem Omeragić's house on fire or in shooting at the windows of Adem Omeragić's house as persons attempted to escape.

²⁰⁷² See *supra* paras 563-565.

(e) Defence evidence concerning Milan Lukić's alibi

(i) Milan Lukić's membership in the reserve police

614. Several witnesses testified that they knew that Milan Lukić was a reserve police officer and that they saw him in the company of police commander Dragan Tomić.²⁰⁷³ The Trial Chamber considers that the credibility of MLD21 and MLD22 has been affected during cross-examination, in particular in relation to the evidence given about the first time they encountered Milan Lukić. However, the Trial Chamber considers the evidence of other Defence witnesses, including MLD7, MLD19, MLD23, MLD24, and Stoja Vujičić, as to Milan Lukić's membership in the reserve police to be reliable. The Trial Chamber also bases its finding on the evidence of a number of Prosecution witnesses and CW1 who testified that they saw Milan Lukić wearing the blue police uniform in the summer of 1992.

615. The Trial Chamber observes that Milan Lukić's name does not appear in the financial records of the Višegrad police relating to the summer of 1992, but does not consider the absence of his name as proof that Milan Lukić was not a member of the reserve police.

616. As regards exhibit 1D25, the list of 15 reserve police officers which includes the name of Milan Lukić, the Trial Chamber recalls that the analysis of the signature on 1D25 by handwriting expert Wilhelmus Fagel demonstrated several differences when compared with reference signatures which were provided by the Prosecution. However, since it was not established that the reference signatures were original signatures of Risto Perišić and since Wilhelmus Fagel could not exclude the use of a stamp for the signature on 1D25, the Trial Chamber is not satisfied that 1D25 is a proven forgery. On the other hand, the Trial Chamber does not attach much weight to 1D25, as the document by itself does not prove or disprove the presence of Milan Lukić in Kopito on 14 June 1992.

617. It has not been established that Milan Lukić was mobilised into the reserve police force on 6 May 1992 and in the manner described by Željko Marković as the reliability of his evidence and his credibility were undermined during cross-examination. Željko Marković conceded under cross-examination that he was not sure whether Milan Lukić was mobilised into the police or in the army when he entered the police building in Višegrad. Further, the Trial Chamber received evidence that pursuant to the regular mobilisation procedure, an official call-up was sent out by the recruitment office in which the men were categorised according to their military specialty. As far as the alleged date of mobilisation, 6 May 1992, is concerned, the Trial Chamber considers that the evidence

²⁰⁷³ See *supra* section II.G.2(c)(ii).

given by Željko Marković conflicts with an entry in the military booklet of Milan Lukić indicating that he participated in the war as early as 26 April 1992.

618. The exact date and circumstances of Milan Lukić's mobilisation are not of material importance for this case. The Trial Chamber is satisfied that in June 1992 Milan Lukić was a member of the reserve police force of Višegrad.

(ii) Milan Lukić's presence in Kopito on 13-15 June 1992

619. MLD4, who had prior knowledge of Milan Lukić since childhood, testified that on the morning of 13 June 1992 he saw Milan Lukić at the Bikavac hotel together with other soldiers and policemen.²⁰⁷⁴ MLD4 also testified that Vlatko Trifković, whom he described as commander, was not present when the soldiers gathered at the hotel but that he only met Vlatko Trifković in Kopito.²⁰⁷⁵ MLD4's evidence is contradicted by that of MLD7, who was stationed at the Bikavac command but who was not deployed to Kopito. MLD7 testified under cross-examination that Vlatko Trifković, with whom MLD7 had a familial relationship, was outside the hotel on the morning of 13 June 1992 and that he departed with the other men to Kopito.²⁰⁷⁶

620. The Trial Chamber considers MLD4 to be a crucial witness for the alibi presented. He is the only witness who claims to have been with Milan Lukić throughout the period of the alibi, 13-15 June 1992. His evidence is, therefore, fundamental to the integrity of the alibi as a whole and must be carefully considered in light of the evidence of the other alibi witnesses, who only gave evidence regarding parts of the 13-15 June 1992 timeframe. The discrepancy between MLD4 and MLD7 on the question of which point in time Vlatko Trifković departed for Kopito is consequently important. MLD4 testified in cross-examination that he was "one hundred per cent sure" that he only met Vlatko Trifković in Kopito, where the latter introduced himself to MLD4 as "commander for the area". On the contrary, MLD7, who knew Vlatko Trifković and had a familial relationship with him, was certain that he saw Vlatko Trifković outside the Bikavac hotel command post prior the troops' departure for Kopito. According to the evidence of MLD4 and MLD7, there were between 20 and 50 soldiers and policemen gathered outside the Bikavac hotel. On the basis of either estimation, the group was not large and it is reasonable to infer that MLD4 would have seen Vlatko Trifković. Having considered all the evidence, the Trial Chamber takes the view that MLD7's evidence is more reliable than that of MLD4 on the question of when Vlatko Trifković left for Kopito.

²⁰⁷⁴ See *supra* paras 481-482.

²⁰⁷⁵ See *supra* paras 481-482.

²⁰⁷⁶ See *supra* paras 481, 495.

621. Goran Đerić was cross-examined in respect of three combat reports of his own brigade, the Rogatica Brigade, whose area of responsibility bordered that of the Višegrad Brigade.²⁰⁷⁷ Goran Đerić authenticated each of these reports, confirming both the signatures and the stamps upon them. Goran Đerić's evidence in-chief, and also according to the statement he gave to the Milan Lukić Defence, was that he was tasked by the Rogatica Brigade commander to travel to Kopito on 14 June 1992 in order to inform the forces there that their commander had been killed and that a road-clearing operation should be commenced on the blocked road. This was necessary as the communications equipment of these forces had been in Vlatko Trifković's car and they therefore did not know what had happened.

622. In his statement, Goran Đerić had said that he returned to the Rogatica Brigade command on 15 June 1992, informing the command that he had fulfilled his mission. The Prosecution questioned Goran Đerić as to the fact that the road-clearing operation was not mentioned at all in these reports, even though there was mention in the report of 14 June 1992 that three soldiers from Višegrad had been killed in an attack by Muslim forces.²⁰⁷⁸ Goran Đerić was unable to explain this discrepancy in these reports. He stated that the road-clearing operation would have been included in the reports of the Višegrad Brigade. He further testified that the lack of information in the report was a result of the Rogatica Brigade's area of responsibility ending at Sjemeć and did not cover the area where Vlatko Trifković had been killed.

623. The Trial Chamber considers Goran Đerić's evidence concerning his mission to Kopito to be lacking in credibility. He testified to the importance of the road in question for the Serb forces and that the road was the only road from Rogatica to Serbia. It appears odd, to say the least, that the Rogatica Brigade, dependent as it was on this road, would not have mentioned in contemporaneous, authentic combat reports that the road had become blocked as a result of an enemy attack, that a messenger was sent from that brigade in order to set in motion a road-clearing operation of this vital link, and that the messenger's mission had ultimately been successful. The Trial Chamber therefore rejects Goran Đerić's evidence that the reason that this was not mentioned in the Rogatica Brigade reports was that the alleged incident happened outside that brigade's area of responsibility. It is reasonable to expect that had this road, which connected the Rogatica Brigade and the Višegrad Brigade, been blocked it would have been reported in the Rogatica Brigade's reports. Goran Đerić's unsatisfactory evidence under cross-examination on these matters, and his evidence that he did not travel on the part of the road that was allegedly blocked, calls into question the whole of his evidence as to his alleged mission to Kopito, whether the road was actually blocked by the attack on Vlatko Trifković's vehicle, and whether a road-clearing operation was carried out. In this context,

²⁰⁷⁷ See *supra* paras 486-487.

the Trial Chamber notes that MLD7 testified under cross-examination that the “blockade was not on the road”; rather, there was “a soldier standing by the road”. The Trial Chamber therefore also holds that Goran Đerić’s evidence that he saw Milan Lukić in Kopito on 14-15 June 1992 is unreliable.

624. MLD24 testified that on his way home to Greben from his military post he met Milan Lukić’s parents at their tent in Rujište at 4 p.m. on 13 June 1992.²⁰⁷⁹ They were crying because they thought Milan Lukić had been killed in an operation in Kopito. MLD24 did not know how they had found out about the operation or why they thought Milan Lukić was deployed to Kopito and they did not tell him. MLD24 suggested to them to contact Milan Lukić’s commander Slavko Vojnović to find out what had happened. In fact, under cross-examination MLD24 testified that he himself did not know about any such operation. Noteworthy in this respect is his evidence under cross-examination that there were functioning communications in Rujište.

625. MLD24 further testified that when he came home to Greben, his wife not only knew that there had been an operation in Kopito but also the names of the three men who had been killed.²⁰⁸⁰ MLD24 did not ask his wife how she had come into possession of this information. However, he did testify under cross-examination that there were no communication devices in Greben.

626. MLD24’s evidence in this respect is difficult to believe, specifically that Milan Lukić’s parents and MLD24’s wife would have been in a better position than he, as a mobilised soldier, to keep abreast of developments within the Serb armed forces. The Trial Chamber notes that MLD24 did not have any direct knowledge of the operation in Kopito, the attack on Vlatko Trifković’s vehicle, or, importantly, the presence of Milan Lukić in Kopito.

(f) Prosecution alibi rebuttal evidence

627. The Trial Chamber notes that the evidence of VG136, that Ferid Spahić identified Milan Lukić to her as soon as Milan Lukić boarded the bus on 14 June 1992, contradicts the evidence of Ferid Spahić that he had no prior knowledge of Milan Lukić but only learnt of his identity from Esad Kustura during the bus journey.²⁰⁸¹ However, the Trial Chamber notes that the evidence of VG136 is that she was told the identity of Milan Lukić not only by Ferid Spahić but also by several other persons, including Esad Kustura. The Trial Chamber considers that this inconsistency in the evidence of VG136 and Ferid Spahić is not such as to render unreliable their consistent evidence concerning Milan Lukić’s presence on the bus in question, and in Višegrad, in the morning of 14 June 1992.

²⁰⁷⁸ See *supra* paras 486-487.

²⁰⁷⁹ See *supra* para. 488.

628. VG089 had prior knowledge of Milan Lukić because he had seen him on several occasions prior to the day that Milan Lukić abducted VG089 and because other persons had identified Milan Lukić to him.²⁰⁸² VG089 testified that at about 5 p.m. on 14 June 1992, after Milan Lukić had killed Samir Dervišević and another boy named Ajvaz at the new bridge in Višegrad, Milan Lukić brought VG089 to the Višegrad SJB, where he was detained for three days.²⁰⁸³ VG089 observed Milan Lukić on several occasions during the first, second and last day of his detention. The Trial Chamber considers that VG089's evidence is not consistent as to the date of these events. In particular, whereas his evidence in-chief is that the killings and his abduction took place on 14 June 1992, under cross-examination he testified, albeit not with full certainty, that these events occurred on a Saturday. The evidence presented is therefore not such as to enable the Trial Chamber to make a finding as to the precise date that VG089 was abducted by Milan Lukić. However, the Trial Chamber finds that VG089's evidence reliably shows that Milan Lukić was in Višegrad during three consecutive days beginning either on 13 or 14 June 1992.

629. Mirsada Kahrman had prior knowledge of both Milan Lukić and Sredoje Lukić.²⁰⁸⁴ Milan Lukić attempted to kill Mirsada Kahrman on 14 June 1992 at her house. Mirsada Kahrman also testified that she saw Milan Lukić on 15 June 1992 when she discovered her father-in-law's body near her house, which had been burnt down.²⁰⁸⁵ On this occasion Milan Lukić also attempted to kill her. The Trial Chamber notes that she clarified a previous statement to the effect that it was on 14 June 1992 that Milan Lukić had requested to take her away when someone from the Red Cross read out her name from a list of persons who wanted to leave Višegrad.²⁰⁸⁶ The convoy on which she eventually left departed on 15 June 1992. The Trial Chamber considers that Mirsada Kahrman gave credible and reliable evidence concerning Milan Lukić's presence in Višegrad during 14 and 15 June 1992.

(g) Findings on Milan Lukić's presence, acts and conduct on 14 June 1992

630. The Trial Chamber finds that the evidence presented in support of Milan Lukić's alibi shows that Milan Lukić was a member of the reserve police in Višegrad. However, the evidence of witnesses who are fundamental to the alibi as a whole, notably MLD4, MLD7 and Goran Đeric, display discrepancies on matters that are central to the alibi. In light of these discrepancies and the

²⁰⁸⁰ *Ibid.*

²⁰⁸¹ See *supra* paras 531-532.

²⁰⁸² See *supra* para. 539.

²⁰⁸³ See *supra* section II.G.4(b).

²⁰⁸⁴ See *supra* para. 541.

²⁰⁸⁵ See *supra* para. 545.

²⁰⁸⁶ See *supra* para. 547.

unreliable testimony of MLD4 and Goran Đerić, the Trial Chamber finds that the alibi does not tend to show that Milan Lukić was not present on 13-15 June 1992 during the Pionirska street incident.

631. The evidence presented by the Prosecution as to Milan Lukić's presence, acts and conduct on 14 June 1992 was presented by credible and reliable witnesses, whereas the witnesses who are fundamental to Milan Lukić's alibi as a whole, notably MLD4, MLD7 and Goran Đerić, display manifest discrepancies and elements of implausibility on matters that are central to the alibi. The Trial Chamber does find that the evidence presented in support of the alibi shows that Milan Lukić was a member of the reserve police in Višegrad. On the basis of the evidence as a whole, that is, the evidence led by the Prosecution and the evidence led by the Defence, the Trial Chamber finds the alibi is not reasonably possibly true. The Trial Chamber therefore concludes that the Prosecution has proved beyond reasonable doubt that on 14 June 1992 Milan Lukić was present at Jusuf Memić's house, during the transfer of the Koritnik group to Adem Omeragić's house and during the fire at that house. The Trial Chamber also finds that Milan Lukić participated in the robbery of the Koritnik group inside Jusuf Memić's house, that he removed a number of women from among the group including Jasmina Vila, Ifeta Kurspahić and Mujesira Kurspahić, who later returned crying and asserting that they had been raped. In particular, the Trial Chamber also finds that not only did Milan Lukić participated in the transfer of the group from Jusuf Memić's house into Adem Omeragić's house, but that he closed the door to the house, that he thereafter opened the door and placed an explosive device into the room of Adem Omeragić's house which ignited the fire inside the room, and that he shot at persons attempting to escape from the house.

(h) Defence evidence concerning Sredoje Lukić's alibi

632. In support of his alibi that he was in Obrenovac, Serbia, on 14 June 1992, Sredoje Lukić called Veroljub Živković and Branimir Bugarski who testified that they met Sredoje Lukić in Obrenovac on 14 June 1992 in the evening.²⁰⁸⁷ Both witnesses claimed that they recalled the date because it was the feast of Holy Trinity and because Sredoje Lukić had a small altercation with a shop-keeper over a deposit for beer on that evening.

633. The Trial Chamber finds certain aspects of the alibi evidence difficult to believe. According to Veroljub Živković, Sredoje Lukić was visiting Milojko Popadić, his brother-in-law, on 14 June 1992, the feast of Holy Trinity, and went to the shop to buy a crate of beer and take it to Milojko Popadić's house. Sredoje Lukić allegedly spent two hours in the shop, despite the fact that he was a guest at his relative's house on that day. In fact, Milojko Popadić allegedly came to the shop to verify the whereabouts of Sredoje Lukić and then drove him home in Sredoje Lukić's car.

²⁰⁸⁷ See *supra* section II.G.3(a).

634. The Trial Chamber finds implausible the witnesses' recollection and the alleged subsequent repeated discussion, up to two or three years after the incident, of what they claimed was a minor altercation over a crate of beer. Regarding Branimir Bugarski, the Trial Chamber notes in particular that the conversation with Milojko Popadić lasted for not more than ten minutes. It finds unsatisfactory the explanation of Branimir Bugarski that his recollection was facilitated by the fact that when Milojko Popadić and Sredoje Lukić arrived at his house, they did not enter his house to join in the festivities. Further, when the Prosecution asked Branimir Bugarski whether he was mistaken about the year and whether he was not remembering the feast of Holy Trinity in 1999, the year when a bomb fell not far from his village, Branimir Bugarski did not give a clear answer.

635. The Trial Chamber further considers that the reliability of Veroljub Živković's evidence and his credibility were affected during cross-examination, when the Prosecution tested Veroljub Živković's power of recollection in relation to the times of Sredoje Lukić's employment in Belgrade and when Veroljub Živković could not give a precise answer.

(i) Findings on Sredoje Lukić's presence, acts and conduct on 14 June 1992

636. The Trial Chamber therefore considers that the evidence presented in support of Sredoje Lukić's alibi is not credible and does not tend to show that Sredoje Lukić was not present 14 June 1992 during the Pionirska street incident.

637. The evidence presented by the Prosecution as to Sredoje Lukić's presence, acts and conduct on 14 June 1992 was presented by credible and reliable witnesses, whereas the evidence led in support of Sredoje Lukić's alibi was characterised by inconsistencies and elements of implausibility. On the basis of the evidence as a whole, that is, the evidence led by the Prosecution and the evidence led by the Defence, the Trial Chamber finds the alibi is not reasonably possibly true. The Trial Chamber therefore concludes that the Prosecution has proved beyond reasonable doubt that on 14 June 1992 Sredoje Lukić was among the armed men who came to Jusuf Memić's house in the afternoon. It is also satisfied that Sredoje Lukić entered Jusuf Memić's house and introduced himself by name, and that he was present at Jusuf Memić's house during the robbery, strip search and the removal of the women, and that Sredoje Lukić returned in the evening. The Trial Chamber finds that Sredoje Lukić was also involved in the transfer of the Koritnik group to Adem Omeragić's house. However, the Trial Chamber finds that the Prosecution has not proven beyond reasonable doubt that Sredoje Lukić participated in setting the house on fire.

H. The Bikavac incident

1. Prosecution case

(a) Events

638. Bikavac is a neighbourhood of Višegrad, located a ten-minute walk from the Višegrad town centre.²⁰⁸⁸ Following the departure of the Užice Corps, which had its command post in the Bikavac hotel, the Serb TO was stationed at that hotel.²⁰⁸⁹

639. On the evening of 27 June 1992 at 8 p.m., Milan Lukić, Mitar Vasiljević and a group of armed men arrived in several cars at the house in Bikavac where VG094 and VG119 were staying.²⁰⁹⁰ VG119 testified that Sredoje Lukić was also among the armed men who came to the house.²⁰⁹¹ Loud and “very vulgar” music could be heard from the cars.²⁰⁹² One of the cars was a Passat.²⁰⁹³ Milan Lukić and the armed men entered the house.²⁰⁹⁴ They instructed those in the house to stay there, threatening to kill them if they would not, and then left.²⁰⁹⁵

640. On that same evening, Zehra Turjačanin was staying in the Turjačanin house in Bikavac together with her family, including her mother, Dulka, her sisters, Džehva and Aida, Džehva’s children, Elma and Ensar, her sister-in-law, Sada, and her son, Selmir, and another woman from Rujište, whose name she did not remember, with her child.²⁰⁹⁶ Zehra Turjačanin’s brother, Dževad, and her cousin, Hasib, were hiding on the ground floor and were “walled in”, in a manner that did not allow them to leave their hiding place without outside assistance.²⁰⁹⁷

641. At about 8.30 p.m., Zehra Turjačanin, while smoking a cigarette on her balcony, heard loud “Serb nationalistic” music being played from several cars, in which there were several armed men.²⁰⁹⁸ The armed men knocked on the door of the Turjačanin house, as well as the doors of several other houses in the neighbourhood.²⁰⁹⁹ One of the armed men was Milan Lukić’s “cousin or

²⁰⁸⁸ Nurko Dervišević, 19 Sep 2008, T. 1966, 1967.

²⁰⁸⁹ P5, p. 3; MLD 22, 25 Feb 2009, T. 4813, 4814.

²⁰⁹⁰ VG119 said the events took place on “the 27th June because I remember that – that day. It was St. Vitus Day”, VG119, 1 Oct 2008, T. 2403-2405. VG094 said that the event took place on 28 June 1992, P335, pp 7-8; VG094, 8 Apr 2009, T. 6998-7001.

²⁰⁹¹ VG119, 1 Oct 2008, T. 2417, 2 Oct 2008, T. 2475-2476, 2487-2488.

²⁰⁹² VG119, 1 Oct 2008, T. 2403-2404.

²⁰⁹³ 1D227, p. 6; 1D57, p. 5.

²⁰⁹⁴ VG119, 1 Oct 2008, T. 2403-2404; VG094, 8 Apr 2009, T. 6998-7001.

²⁰⁹⁵ P335, pp 7-8; VG094, 8 Apr 2009, T. 7002-7003.

²⁰⁹⁶ Zehra Turjačanin, 25 Sep 2008, T. 2302-2307, 2313-2314. According to Zehra Turjačanin, this was Saturday, 27 June 1992, and St. Vitus Day, Zehra Turjačanin, 25 Sep 2008, T. 2301, 2302. In a statement to a journalist, Zehra Turjačanin said that the incident happened on the 27 June 1992, but that “their St. Vitus Day” was on 28 June 1992, 2D37, p. 2.

²⁰⁹⁷ Zehra Turjačanin, 25 Sep 2008, T. 2294, 2308, 4 Nov 2008, T. 3325, 3337; P66, p. 3.

²⁰⁹⁸ Zehra Turjačanin, 25 Sep 2008, T. 2307-2311.

²⁰⁹⁹ Zehra Turjačanin, 25 Sep 2008, T. 2307-2311; VG058, 11 Sep 2008, T. 1597, 1600, 1601.

his uncle”, whose family name was also Lukić, and who was about “50 years of age”.²¹⁰⁰ The armed men then instructed everybody in the Turjačanin household to leave the house, telling them that a convoy had been organised to transport them to Bajina Bašta, a town located north-east of Višegrad.²¹⁰¹ Zehra Turjačanin and the other women and children complied, while her brother and cousin remained walled in inside the house.²¹⁰² Upon leaving the house, Zehra Turjačanin noticed that there were no vehicles to transport them from Bikavac.²¹⁰³ Instead, the armed men led them, as well as many of their neighbours, to Meho Aljić’s house, which was approximately 100 metres away.²¹⁰⁴ Zehra Turjačanin saw Milan Lukić with the armed soldiers on the path between the Turjačanin house and Meho Aljić’s house.²¹⁰⁵ Zehra Turjačanin and the other women and children were instructed by the armed men to enter Meho Aljić’s house through a large glass patio or balcony door.²¹⁰⁶ Zehra Turjačanin was the last to enter the house.²¹⁰⁷

642. VG058 and VG115 were hiding in separate locations in close proximity to Meho Aljić’s house.

643. VG115 was standing in an orchard nearby Meho Aljić’s house.²¹⁰⁸ In her 2000 statement, VG115 stated that she was on the “main road”,²¹⁰⁹ and explained that the main road and the orchard were only 20 metres apart.²¹¹⁰ VG115 saw Milan Lukić, Mitar Vasiljević, Milan Lukić’s father, Mile, and his brother, Gojko, and a man wearing a sock over his head, as well as other men herding people into Meho Aljić’s house.²¹¹¹ VG115 testified that the man wearing a sock over his head was Sredoje Lukić.²¹¹² She testified Sredoje Lukić “wore a balaclava not to be recognised”.²¹¹³ In cross-examination, she testified that she could still recognise Sredoje Lukić by his voice and his eyes, but that, while he was wearing “the sock pulled over his head”, she could not see his hair.²¹¹⁴ According to VG115, Milan Lukić was shouting at people and forcing them to enter the house faster.²¹¹⁵ It appeared to VG115 that Milan Lukić was in charge of the group: “he stood out and it was his voice

²¹⁰⁰ Zehra Turjačanin, 25 Sep 2008, T. 2309-2310.

²¹⁰¹ Zehra Turjačanin, 25 Sep 2008, T. 2307-2309.

²¹⁰² Zehra Turjačanin, 25 Sep 2008, T. 2294, 2308, 2336.

²¹⁰³ Zehra Turjačanin, 25 Sep 2008, T. 2309.

²¹⁰⁴ Zehra Turjačanin, 25 Sep 2008, T. 2311, 2312; P134; P66, p. 2.

²¹⁰⁵ Zehra Turjačanin, 25 Sep 2008, T. 2309, 2310.

²¹⁰⁶ Zehra Turjačanin, 25 Sep 2008, T. 2313, 5 Nov 2008, T. 3369; P66, p. 2.

²¹⁰⁷ Zehra Turjačanin, 25 Sep 2008, T. 2312; P66, p. 2.

²¹⁰⁸ VG115, 28 Aug 2008, 699, 701, 702, 705; Although VG115 stayed in a house on Pionirska street, she owned a house close to Meho Aljić’s house, *id.*, T. 664, 699-700.

²¹⁰⁹ 1D18, p. 12.

²¹¹⁰ VG115, 28 Aug 2008, T. 738.

²¹¹¹ VG115, 28 Aug 2008, 701, 702, 29 Aug 2008, T. 780, 781.

²¹¹² VG115, 28 Aug 2008, 701, 702, 29 Aug 2008, T. 780, 781.

²¹¹³ VG115, 29 Aug 2008, 780-781; 1D18, p. 15.

²¹¹⁴ VG115, 29 Aug 2008, T. 780, 781.

²¹¹⁵ VG115, 28 Aug 2008, T. 716.

that could be heard most”.²¹¹⁶ VG115 then saw Milan Lukić and Sredoje Lukić place a metal garage door against a door “under the window of the living-room which was facing the road”, to prevent people from leaving.²¹¹⁷

644. VG058 testified that she was hiding “some five metres” from Meho Aljić’s house.²¹¹⁸ When VG058 was asked to look at an aerial photograph of Bikavac, she was unable to identify Meho Aljić’s house correctly.²¹¹⁹ VG058 testified that she saw Milan Lukić, Sredoje Lukić, Jovica Planojević, a man wearing a stocking over his head, and others, forcing Muslims into Meho Aljić’s house.²¹²⁰ VG058 said that the man wearing the stocking was Mitar Vasiljević.²¹²¹ She also saw Milan Lukić using the butt of his rifle to push people into the house and saying, “Come on, let’s get as many people in as possible”.²¹²² After the people were forced into the house, VG058 heard a banging noise “like a hammer”.²¹²³

645. When Zehra Turjačanin entered Meho Aljić’s house, Milan Lukić pulled her gold chain off from around her neck.²¹²⁴ Approximately 70 Muslim civilians were in the house, including Zehra Turjačanin and her other relatives mentioned above, young mothers with their children and elderly people.²¹²⁵ The youngest child in the house was one year old.²¹²⁶ All the people herded into the house were civilians, none of whom were armed or wore any kind of uniform.²¹²⁷ Some of the people in the house were locals from Bikavac, but most were refugees from surrounding villages who had sought refuge in Bikavac until they could join a convoy.²¹²⁸ Meho Aljić’s house was a “ground floor house” with “balcony windows and doors and also normal windows in a recess/niche/ and the living room too”.²¹²⁹ There was an atmosphere of fear in the house.²¹³⁰ All the exits had been blocked by heavy furniture²¹³¹ and the people were sitting on the floor against the walls.²¹³²

²¹¹⁶ VG115, 28 Aug 2008, T. 716, 717.

²¹¹⁷ VG115, 28 Aug 2008, T. 702, 705, 712, 717, 718. VG115 also described the door that Milan Lukić and Sredoje Lukić blocked as the “main door of the house”, *id.*, T. 717, 718.

²¹¹⁸ VG058, 11 Sep 2008, T. 1597, 1600, 1610.

²¹¹⁹ VG115, 11 Sep 2008, T. 1603-1606; P99; P133.

²¹²⁰ VG058, 11 Sep 2008, T. 1597.

²¹²¹ VG058, 11 Sep 2008, T. 1597, 1611.

²¹²² VG058, 11 Sep 2008, T. 1597, 1598; 1D43, para. 43.

²¹²³ VG058, 11 Sep 2008, T. 1597; 1D41, p. 8.

²¹²⁴ Zehra Turjačanin, 25 Sep 2008, T. 2312.

²¹²⁵ Zehra Turjačanin, 25 Sep 2008, T. 2312-2314; P66, p. 2; P139, pp 13, 16; VG058, 11 Sep 2008, T. 1600; VG119, 1 Oct 2008, T. 2408; 2D36, p. 1.

²¹²⁶ Zehra Turjačanin, 25 Sep 2008, T. 2314, 2303, 2304; P66, p. 4; P139, pp 15-16; 2D36, p. 1; VG115, 28 Aug 2008, T. 705, 712, 713, 29 Aug 2008, T. 782-785; VG058, 11 Sep 2008, T. 1597, 1601-1602.

²¹²⁷ VG115, 28 Aug 2008, T. 718.

²¹²⁸ 2D37, p. 5; VG058, 11 Sep 2008, T. 1597.

²¹²⁹ P66, p. 2.

²¹³⁰ Zehra Turjačanin, 25 Sep 2008, T. 2315.

²¹³¹ P66, p. 2; P139, p. 14; 2D37, p. 3; 2D36, p. 1.

²¹³² Zehra Turjačanin, 25 Sep 2008, T. 2312; P139, p. 14.

646. Milan Lukić and the other armed men threw rocks at the house in order to break the windows.²¹³³ They then shot bullets inside the house.²¹³⁴ Zehra Turjačanin gave evidence that, as everyone in the house was sitting down, the bullets merely ended up in the wall and did not hit anyone.²¹³⁵ Subsequently, the armed men threw in grenades.²¹³⁶ The grenades killed several people inside the house.²¹³⁷ The armed men then threw some form of powder into the house which induced mass suffocation.²¹³⁸ VG115 and VG058 observed the armed men, which included Milan Lukić and Sredoje Lukić, using petrol to set the house alight.²¹³⁹

647. The Trial Chamber notes that in her 2000 statement, VG115 stated that after observing the herding of the people into the house, she became scared and that, while walking back to the centre of Višegrad town, she heard bursts of gunfire and could see fire and smoke coming from Meho Aljić's house.²¹⁴⁰ However, during both examination-in-chief and in cross-examination, VG115 maintained that she remained in the plum orchard, from where she witnessed the shooting, the throwing of grenades and the fire, and that she then left and took the "main road" towards Višegrad town.²¹⁴¹ She testified in cross-examination that her 2000 statement had been "digested", and that, at the time her statement was made, this evidence was not relevant to the case for which it was used, the *Vasiljević* case.²¹⁴²

648. A fire broke out and spread very quickly.²¹⁴³ Zehra Turjačanin was reported to have said, "I heard the voice of my brother's school friend, Milan Lukić, saying that it was time to set fire to us. He came up to the house and set it on fire".²¹⁴⁴ VG035, standing at the bathroom window of her house some distance away,²¹⁴⁵ saw the fire and testified that she had never seen such a high flame.²¹⁴⁶ CW2, who was at her house approximately 200 to 500 metres away, described the fire as

²¹³³ Zehra Turjačanin, 25 Sep 2008, T. 2315; P139, p. 14; P66, p. 2; 2D37, p. 3; 2D36, p. 1.

²¹³⁴ Zehra Turjačanin, 25 Sep 2008, T. 2314-2315; P66, pp 2, 3; P139, p. 14; VG115, 28 Aug 2008, T. 712; VG058, 11 Sep 2008, T. 1597; VG035, 15 Sep 2008, T. 1681-1682. VG035 heard the shooting from her house some distance away, while VG115 and VG058 observed the shooting from their respective vantage point, in close proximity to the house. Zehra Turjačanin observed the shooting from inside the house. In cross-examination, VG119 testified she had not heard the sound of shooting or grenades, but explained that due to the very loud and vulgar music coming from the cars, she could not hear anything else, VG119, 1 Oct 2008, T. 2450-2452, 2442. In one of her statements, Zehra Turjačanin stated that the armed men were equipped with sniper rifles, P66, p. 2.

²¹³⁵ P139, p. 4.

²¹³⁶ Zehra Turjačanin, 25 Sep 2008, T. 2314-2315; P139, p. 4; P66, pp 2, 3; VG115, 28 Aug 2008, T. 712.

²¹³⁷ P139, p. 4.

²¹³⁸ Zehra Turjačanin, 25 Sep 2008, T. 2315; P139, p. 14; P66, p. 3; 2D37, pp 3, 4.

²¹³⁹ VG115, 28 Aug 2008, T. 712, 717; 1D43, para. 43; VG058, 11 Sep 2008, T. 1597, 1598, 1602. During proofing, VG115 said that one week after the house-burning, Slobodan Rončević told her, when passing Meho Aljić's house, that "we took some people together with Milan Lukić from her [*sic*] shelter and exterminated a lot of them", 1D20, p. 1.

²¹⁴⁰ 1D18, p. 12.

²¹⁴¹ VG115, 28 Aug 2008, T. 705, 738.

²¹⁴² VG115, 28 Aug 2008, T. 737, 738, 29 Aug 2008, T. 784.

²¹⁴³ Zehra Turjačanin, 25 Sep 2008, T. 2315; P139, p. 14.

²¹⁴⁴ 2D39, p. 4. Exhibit 2D39 is a newspaper article of 2005, quoting another newspaper article from 1992, citing Zehra Turjačanin's words.

²¹⁴⁵ P102.

²¹⁴⁶ VG035, 15 Sep 2008, T. 1681-1683, 1707.

“sky-high”.²¹⁴⁷ VG058 and VG035 vividly remembered the terrible screams of the people in the house,²¹⁴⁸ “like the screams of cats”.²¹⁴⁹

649. Grenade fragments had entered Zehra Turjačanin’s left leg.²¹⁵⁰ Her clothes caught fire and her skin began to burn. She saw the clothes of other people in the house catch fire and that they were burning alive. There was wailing and screaming.²¹⁵¹ Zehra Turjačanin, shutting her eyes tightly so that they would not burn, managed to escape through a small opening of about 65 centimetres under, or through the window of, the metal garage door, which was blocking the patio door.²¹⁵² Touching the door caused severe burns to her arms and hands, leaving them permanently damaged.²¹⁵³ All the other people in the house burned to death.²¹⁵⁴

650. When Zehra Turjačanin got out of Meho Aljić’s house, she saw Milan Lukić and the armed men lying in a grassy area nearby, seemingly intoxicated.²¹⁵⁵ The men shouted “stop”, but she ran on, shaking off her burning clothes.²¹⁵⁶ VG058 saw Zehra Turjačanin leave the house after it had been set on fire.²¹⁵⁷ She also witnessed Milan Lukić putting two girls into a van, and saw Milan Lukić, Sredoje Lukić, Mitar Vasiljević and Jovica Planojević drive away.²¹⁵⁸ It is not clear from her evidence whether VG058 believed Zehra Turjačanin escaped from Meho Aljić’s house before or after Milan Lukić drove away from the house.

651. At approximately 10 p.m., Milan Lukić and the armed men returned to the house where VG094 and VG119 were staying.²¹⁵⁹ VG094 noticed they arrived in a red Passat.²¹⁶⁰ VG119 testified that Sredoje Lukić was also among the armed men that came to the house.²¹⁶¹ The men were “dripping with sweat” and dirty.²¹⁶² Milan Lukić had traces of ashes on his face and clothes, and other soldiers looked as if they had been close to a fire. They all had a strange smell of either

²¹⁴⁷ P336, pp 38-39.

²¹⁴⁸ VG035, 15 Sep 2008, T. 1681; VG058, 11 Sep 2008, T. 1598, 1602. VG058 testified she could still hear the screams after the burning, which “lasted perhaps half an hour”, VG058, 11 Sep 2008, T. 1602. It is not clear whether VG058 counted half an hour from the moment that people were being herded into the house, or from the moment that the house was set ablaze.

²¹⁴⁹ VG058, 11 Sep 2008, T. 1598, 1602; 1D41, p. 8.

²¹⁵⁰ Zehra Turjačanin, 25 Sep 2008, T. 2315; P139, p. 14; P66, p. 3; 2D37, p. 3.

²¹⁵¹ Zehra Turjačanin, 25 Sep 2008, T. 2315, 2316; P139, p. 15; P66, p. 3.

²¹⁵² Zehra Turjačanin, 25 Sep 2008, T. 2316, 2317, 2320, 2321, 4 Nov 2008, T. 3346, 5 Nov 2008, T. 3369-3371; P54; P133; P139, p. 15; P66, p. 3; 2D36, p. 1; 2D39, p. 4. Only one of Zehra Turjačanin’s prior statements mentions that she “got through a narrow space under the garage door”, 2D36, p. 1.

²¹⁵³ Zehra Turjačanin, 25 Sep 2008, T. 2316, 2317, 2334, 2335, 2342; P66, p. 3; 2D37, pp 2-4.

²¹⁵⁴ Zehra Turjačanin, 5 Nov 2008, T. 3368; P139, p. 13, 17; P335, para. 47; VG035, 15 Sep 2008, T. 1707.

²¹⁵⁵ Zehra Turjačanin, 25 Sep 2008, T. 2317, 2321; P139, p. 15; P66, p. 3; 2D38, p. 3.

²¹⁵⁶ Zehra Turjačanin, 25 Sep 2008, T. 2317; P66, pp 3-4.

²¹⁵⁷ VG058, 11 Sep 2008, T. 1603, 1604, 1607.

²¹⁵⁸ VG058, 11 Sep 2008, T. 1604-1607.

²¹⁵⁹ VG094, 8 Apr 2009, T. 7003, 7004; P335, pp 7-8; VG119, 1 Oct 2008, T. 2405.

²¹⁶⁰ 1D227, p. 6.

²¹⁶¹ VG119, 1 Oct 2008, T. 2417, 2 Oct 2008, T. 2475-2476, 2487-2488.

²¹⁶² VG119, 1 Oct 2008, T. 2406.

smoke or sweat.²¹⁶³ One of the armed men, who “looked as if he was a drug addict”, wore many gold necklaces around his neck.²¹⁶⁴

652. After her escape, Zehra Turjačanin ran to the Serb settlement of Mejdan, where she stayed in a ditch of nettles for several hours.²¹⁶⁵ She then returned to Bikavac and went to the houses of other Muslims, urging them to leave.²¹⁶⁶ The first house she reached in Bikavac was that of Ismeta Kasapović.²¹⁶⁷ Zehra Turjačanin asked her to release her brother and cousin who were still “walled in” in the Turjačanin house.²¹⁶⁸ She asked her not to tell her brother and cousin what had happened to her, but to just say she had gone to Bajina Bašta.²¹⁶⁹

653. After midnight, Zehra Turjačanin also went to the house where VG035 and CW2 were staying and told them that Milan Lukić had set people on fire in Meho Aljić’s house and that they should flee.²¹⁷⁰ Zehra Turjačanin told VG035 to warn others in Bikavac of what had happened that evening, and then she left.²¹⁷¹ CW2 also stated that Zehra Turjačanin told them to flee because a group of people had been burned alive and that she was the only one that survived.²¹⁷²

654. At about 2 a.m. on 28 June 1992, Emina Kasapović, accompanied by Zehra Turjačanin, came to the house where VG094 and VG119 were staying.²¹⁷³ Zehra Turjačanin was in “horrendous condition”. VG119 testified that “most of her upper body was burned to the cinder” and her hair and her arms up to the elbows were burned.²¹⁷⁴ Zehra Turjačanin said that Milan Lukić had set over 70 persons on fire in a nearby house.²¹⁷⁵

655. After having visited three houses, Zehra Turjačanin ran to the Serb TO command post in the Bikavac hotel.²¹⁷⁶ There she encountered two soldiers, whom she told that she had had an accident with a gas cylinder at home and that she had burned herself.²¹⁷⁷ During cross-examination, she explained that she did not tell the soldiers the truth about what happened to her for fear that they might torture her.²¹⁷⁸ She asked the soldiers to shoot her as she could not go anywhere in her burned

²¹⁶³ VG094, 8 Apr 2009, T. 7003, 7049, 7050; P335, pp 7-8; 1D57, p. 5; 1D227, p. 6.

²¹⁶⁴ 1D227, p. 6.

²¹⁶⁵ P66, p. 4; 1D83, p. 3 (“/?Megdan/”); 2D37, p. 2.

²¹⁶⁶ P66, p. 4; P139, pp 16, 17.

²¹⁶⁷ P66, p. 4; P139, p. 16; 2D37, p. 2; 2D38, p. 1; 1D83, p. 3.

²¹⁶⁸ Zehra Turjačanin, 25 Sep 2008, T. 2336; P66, pp 3, 4.

²¹⁶⁹ P66, pp 4-5.

²¹⁷⁰ VG035, 15 Sep 2009, T. 1683-1684, 1705-1706; P336, pp 39-40.

²¹⁷¹ VG035, 15 Sep 2009, T. 1683-1684; P336, p. 40.

²¹⁷² P336, pp 39-40.

²¹⁷³ VG119, 1 Oct 2008, T. 2408, 2 Oct 2008, T. 2474; VG094, 8 Apr 2009, T. 7004; 1D57, p. 6.

²¹⁷⁴ VG119, 1 Oct 2008, T. 2408-2409.

²¹⁷⁵ VG119, 1 Oct 2008, T. 2408, 2409; VG094, 8 Apr 2009, T. 7004.

²¹⁷⁶ Zehra Turjačanin, 25 Sep 2008, T. 2332-2335; P139, p. 22; 2D237, p. 2; 1D83, p. 3.

²¹⁷⁷ Zehra Turjačanin, 5 Nov 2009, T. 3364-3367; 1D83, p. 4; P66, p. 5; P139, p. 22; 2D39, p. 5; 2D37, p. 2.

²¹⁷⁸ Zehra Turjačanin, 5 Nov 2009, T. 3365-3366.

state.²¹⁷⁹ At the command post, a young Serb soldier took pity on her and hid her in a house across the street where four elderly women lived.²¹⁸⁰

656. VG035 and VG119 testified that on the morning of 28 June 1992 there was a horrendous stench of burnt human flesh in the air near the burnt-down house in Bikavac.²¹⁸¹ In one of her statements, VG119 recalls seeing “smouldering skulls and bodies”.²¹⁸² VG094 did not recall passing by the burnt-down house with VG119, and said in one of her statements that “when we were leaving the house some people from our group said they felt [*sic*] the smell of the burning flesh”.²¹⁸³ In cross-examination, VG119 was unable to circle Meho Aljić’s house on an aerial photograph.²¹⁸⁴

657. That same morning, the young soldier sent for a doctor to treat Zehra Turjačanin’s wounds at the house where she was hiding. Dr. Radomir Vasiljević and a nurse arrived at the house, gave her an injection and left her some ointment and pills.²¹⁸⁵ The doctor told her that he could not return or take her to the hospital because she was a Muslim.²¹⁸⁶ Zehra Turjačanin stayed in this house for 11 days while the elderly women tended her wounds with home remedies, such as sour milk.²¹⁸⁷

658. On the eleventh day, following a warning from the young soldier that Milan Lukić was looking for her and that she was no longer safe, Zehra Turjačanin left the house of the elderly women.²¹⁸⁸ After it became known that Zehra Turjačanin survived the fire, Milan Lukić offered a bounty to anyone who could tell him of Zehra Turjačanin’s whereabouts.²¹⁸⁹

659. Zehra Turjačanin stayed in another house for four days.²¹⁹⁰ She then set out to Okrugla, which was a ten-hour journey on foot.²¹⁹¹ In Okrugla, she met VG094 who described her condition as “horrific”.²¹⁹² A physician also came to see her, but said that he had no medication to give her because he needed it for the soldiers.²¹⁹³ She stayed in Okrugla for four days after which she joined

²¹⁷⁹ Zehra Turjačanin, 25 Sep 2008, T. 2335, 4 Nov 2008, T. 3365; P139, pp 17, 22; P66, p. 5; 2D36, p. 1; VG032, 4 Sep 2008, T. 1201.

²¹⁸⁰ Zehra Turjačanin, 25 Sep 2008, T. 2334-2335; P66, p. 5; P139, pp 17, 22; 2D36, p. 1.

²¹⁸¹ VG119, 1 Oct 2008, T. 2410; 1D57, p. 6; VG035, 15 Sep 2008, T. 1684.

²¹⁸² 1D57, p. 6.

²¹⁸³ VG094, 8 Apr 2009, T. 7031, 7032; P335, para. 47.

²¹⁸⁴ VG119 1 Oct 2008, T. 2447-2448.

²¹⁸⁵ Zehra Turjačanin, 25 Sep 2008, T. 2336-2337, 5 Nov 2008, T. 3362; P139, p. 23.

²¹⁸⁶ 1D83, p. 4; P66, p. 6; Anka Vasiljević, 19 Jan 2009, T. 4226-4229; 2D36, pp 1, 2.

²¹⁸⁷ Zehra Turjačanin, 25 Sep 2008, T. 2336; P66, pp 5-6; P139, p. 23.

²¹⁸⁸ Zehra Turjačanin, 25 Sep 2008, T. 2336; P66, p. 6; P139, p. 23.

²¹⁸⁹ VG063, 18 Sep 2008, T. 1864; 2D12, p. 8; 2D36, p. 2; 1D51, p. 10.

²¹⁹⁰ P66, p. 6; P139, p. 23.

²¹⁹¹ Zehra Turjačanin, 25 Sep 2008, T. 2351; P139, p. 24.

²¹⁹² VG094, 8 Apr 2009, T. 7005.

²¹⁹³ Zehra Turjačanin, 25 Sep 2008, T. 2338, testifying that the physician said “[i]t’s not worth it. She’s really on death’s door, and so I might as well keep the medication for the soldiers”, P66, p. 6.

a convoy to Mededa.²¹⁹⁴ The convoy consisted of 753 people and included Muslim TO members from Okrugla armed with hunting rifles who had come to Višegrad to rescue the remaining Muslim population there.²¹⁹⁵ The journey to Mededa was a five-day journey on foot through woods, over hills and roads.²¹⁹⁶ VG119, who was travelling in the same convoy, stated that Zehra Turjačanin was in severe pain and asked others to scratch her head as she could not do it herself with her burnt hands.²¹⁹⁷

660. In Mededa, Zehra Turjačanin received treatment for her wounds from VG032, who knew Zehra Turjačanin before the incident.²¹⁹⁸ VG032 did not recognise her because of the burns and infections, and only recognised her when she spoke. He testified that:

Her entire face was black, burnt. It was a wound. Both her arms were bandaged, but they were not medical bandages. Those were just makeshift bandages, five or six of them. The wounds were so infected that when I tried to change the bandages and dress her wounds on her, whilst one arm as I took a couple of layers of the bandages I saw maggots coming out. I fainted at the sight of it.²¹⁹⁹

A video of Zehra Turjačanin, made while she was treated sometime in July 1992, also shows the extreme gravity of her burns.²²⁰⁰ After having been treated in Mededa by VG032, Zehra Turjačanin travelled to Zenica on foot, where she was admitted to a hospital.²²⁰¹ Huso Kurspahić testified that he saw Zehra Turjačanin when she was being treated in Mededa.²²⁰² He testified that he heard Zehra Turjačanin say that Milan Lukić, Sredoje Lukić and Mitar Vasiljević had set Meho Aljić's house on fire.²²⁰³

661. Zehra Turjačanin suffered third-degree burns as a result of the fire and has undergone skin grafts to repair some of the damage to her skin. She is missing part of her ears, and her hands are paralysed. The Trial Chamber notes that Zehra Turjačanin was a seamstress before the house-burning in Bikavac.²²⁰⁴ Now she is unable to perform many everyday functions as a result of the condition of her hands, which will never return to normal.²²⁰⁵ Zehra Turjačanin was forced to see her family members and others burn alive in Meho Aljić's house.²²⁰⁶ Following her experience in

²¹⁹⁴ Zehra Turjačanin, 25 Sep 2008, T. 2337; P66, pp 6, 7; P139, p. 24; 1D83, p. 4.

²¹⁹⁵ Zehra Turjačanin, 25 Sep 2008, T. 2350, 2351, also testifying that she knows the number of people (753) because the men leading the convoy had counted the people when stopping to rest in the forest, P139, p. 24.

²¹⁹⁶ Zehra Turjačanin, 25 Sep 2008, T. 2337; P66, pp 6-7; P139, p. 24; 1D83, p. 4.

²¹⁹⁷ VG119, 1 Oct 2008, T. 2416, 2457, 2458.

²¹⁹⁸ VG032, 4 Sep 2008, T. 1186-1188; P66, p. 7; Zehra Turjačanin, 25 Sep 2008, T. 2338, 2339.

²¹⁹⁹ VG032, 4 Sep 2008, T. 1186-1187; P66, p. 7.

²²⁰⁰ P66; Zehra Turjačanin, 25 Sep 2008, T. 2340, 2341.

²²⁰¹ Zehra Turjačanin, 25 Sep 2008, T. 2339.

²²⁰² Huso Kurspahić, 1 Sep 2008, T. 880-881.

²²⁰³ Huso Kurspahić, 1 Sep 2008, T. 881.

²²⁰⁴ Zehra Turjačanin, 25 Sep 2008, T. 2297.

²²⁰⁵ Zehra Turjačanin, 25 Sep 2008, T. 2442, 2443.

²²⁰⁶ Zehra Turjačanin, 25 Sep 2008, T. 2442, 2443.

Bikavac, she has cut all ties with her homeland, Bosnia and Herzegovina, and she gave a substantial portion of her testimony in French, the language of her new home country.²²⁰⁷

(b) Victims

662. The indictment alleges that approximately 70 individuals were killed in Meho Aljić's house during the Bikavac fire. Of those 70 people, 16 individuals are listed in Annex B to the indictment, many, but not all, by name.

663. Prosecution witnesses gave evidence that persons listed as victims in Annex B to the indictment died in the fire at Meho Aljić's house on or about 27 June 1992.²²⁰⁸ The Prosecution did not tender death certificates for these persons, but tendered a table prepared by Prosecution demographics expert, Ewa Tabeau, which contains data from various sources indicating that these persons are missing.²²⁰⁹ The Trial Chamber also heard evidence from Zehra Turjačanin, the sole survivor of the fire at Meho Aljić's house, as well as from VG058 and VG115, who both witnessed the fire.

664. The Trial Chamber received evidence that all the victims of the fire at Meho Aljić's house were Muslim civilians.²²¹⁰ The victims were mainly women and children ranging in age from approximately two or three days old to 75 years old.²²¹¹

665. The Trial Chamber received evidence relating to the following persons who are listed in Annex B of the indictment: Dehva Tufekčić (approximately 28 years old),²²¹² Elma Tufekčić (approximately five years old),²²¹³ Ensar Tufekčić (approximately one year old),²²¹⁴ Dulka Turjačanin (approximately 51 years),²²¹⁵ Selmir Turjačanin (seven or nine years old)²²¹⁶ Šuhra Aljić (approximately 25 years old),²²¹⁷ Suhra Aljić's father (FNU) (between 60 and 70 years old), mother

²²⁰⁷ Zehra Turjačanin, 25 Sep 2008, T. 2344.

²²⁰⁸ Zehra Turjačanin, VG058, VG035, Hamdija Vilić and VG115.

²²⁰⁹ P119. See also P300 (clarification).

²²¹⁰ 2D36, p. 1.

²²¹¹ Zehra Turjačanin, 25 Sep 2008, T. 2314, 2303, 2304; VG058, 11 Sep 2008, T. 1597, 1601-1602; P139, pp 15-16; VG115, 28 Aug 2008, T. 705, 29 Aug 2008, T. 782; P66, p. 4; 2D36, p. 1.

²²¹² The name is also spelled Džehva, Zehra Turjačanin, 25 Sep 2009, T. 2299, 2303, 2313, 2314; VG115, 28 Aug 2008, T. 705; P139, p. 20; 1D83, p. 3; 2D38, p. 3.

²²¹³ Zehra Turjačanin, 25 Sep 2009, T. 2303-2304. P139, p. 20; 1D83, p. 3; 2D38, p. 3.

²²¹⁴ 2D38, p. 3. The name has also been spelled Emsar (P139, p. 20) and Esad (Zehra Turjačanin, 25 Sep 2009, T. 2303; 1D83, p. 3).

²²¹⁵ The name is also spelled "Đulka". Zehra Turjačanin, 25 Sep 2009, T. 2303; 1D83, p. 3; 2D38, p. 3.

²²¹⁶ Zehra Turjačanin, 25 Sep 2009, T. 2305 (7 years); 2D38, p. 3 (9 years); P139, pp 20-21 (7 years).

²²¹⁷ Zehra Turjačanin, 25 Sep 2009, T. 2314; 2D37, pp 1, 4; 2D38, p. 3; VG058, 11 Sep 2008, T. 1601.

(FNU) (between 60 and 70 years old)²²¹⁸ and son (FNU) (approximately one year old),²²¹⁹ “[a] boy whose name is unknown, approximately 11 years old”.²²²⁰

666. The Trial Chamber heard evidence that “Sada Turjačanin”, listed in Annex B to the indictment, was also known as Sadeta Turjačanin.²²²¹ Hamdija Vilić testified that his daughter, listed as Mirzeta Vilić in Annex B to the indictment,²²²² was in fact named Zihneta Vilić.²²²³

667. Annex B is not an exhaustive list of the victims of the Bikavac fire, and there is evidence that the following persons, who are not listed in Annex B, died in Meho Aljić’s house: Aida Turjačanin,²²²⁴ Musa and Sebrija Ferić,²²²⁵ Tiha Spoljan, as well as her daughter-in-law and her two children,²²²⁶ Tija Cerić’s daughter, her granddaughter and a baby,²²²⁷ the “Sabanović family”,²²²⁸ and the “Murtić family”.²²²⁹ Furthermore, as noted above, Zehra Turjačanin testified that all the people, except her, who were forced into Meho Aljić’s house died as a result of the fire. VG035 confirmed in cross-examination that Zehra Turjačanin had told her that everybody in the house had been burned to death.²²³⁰

(c) Prosecution identification evidence

(i) Zehra Turjačanin

668. Zehra Turjačanin testified that she went to the same secondary school as Milan Lukić and that Milan Lukić was in the same class as her brother.²²³¹ Approximately once a week during breaks between classes, Zehra Turjačanin would see Milan Lukić smoking while she was also smoking behind the school.²²³² The Milan Lukić Defence put to Zehra Turjačanin that she said that she, her brother Dževad Turjačanin, and Milan Lukić would smoke together outside school.²²³³ The Milan Lukić Defence also put her brother’s statement to her, in which he stated, “I know that Zehra did not know Milan Lukić before the war. There was never a time when Zehra and I were together and saw Milan Lukić”.²²³⁴ Zehra Turjačanin confirmed that there was never a time when she and her

²²¹⁸ Zehra Turjačanin, 25 Sep 2009, T. 2314; 2D37, pp 1, 4; 2D38, p. 3; VG058, 11 Sep 2008, T. 1601.

²²¹⁹ Zehra Turjačanin, 25 Sep 2009, T. 2314; 2D37, pp 1, 4; 2D38, p. 3; VG058, 11 Sep 2008, T. 1601.

²²²⁰ 2D38.

²²²¹ Ewa Tabeau, 24 Mar 2009, T. 6198-6201.

²²²² Annex B to the indictment, no. 16.

²²²³ Hamdija Vilić, 11 Nov 2008, T. 3456.

²²²⁴ Zehra Turjačanin, 25 Sep 2009, T. 2303-2306; P139, pp 19-20; 1D83, p. 3.

²²²⁵ VG058, 11 Sep 2008, 1634, 1602, 1607, 1608.

²²²⁶ VG058, 11 Sep 2008, 1601.

²²²⁷ VG058, 11 Sep 2008, 1601.

²²²⁸ 1D43, p. 5.

²²²⁹ VG115, 28 Aug 2008, T. 702, 713.

²²³⁰ VG035, 15 Sep 2008, T. 1707.

²²³¹ Zehra Turjačanin, 25 Sep 2008, T. 2291-2292.

²²³² Zehra Turjačanin, 25 Sep 2008, T. 2292, 2293.

²²³³ Zehra Turjačanin, 4 Nov 2008, T. 3332, 3333.

²²³⁴ 1D84, p. 2.

brother were together and saw Milan Lukić.²²³⁵ The Milan Lukić Defence further cross-examined Zehra Turjačanin on the dates when she could have attended the same school as Milan Lukić, showing her a certificate reflecting her attendance at the Ivo Andrić school.²²³⁶ Zehra Turjačanin could not remember whether the dates reflected on the certificate were accurate.²²³⁷ The Milan Lukić Defence tendered a school attendance record of Milan Lukić showing he first registered at the Ivo Andrić school in 1982, the same year that Zehra Turjačanin would have completed her studies in the same school.²²³⁸ In its final trial brief, the Milan Lukić Defence submits that, given that Zehra Turjačanin was born in 1962, she would not have attended the same school as Milan Lukić, who was about five years younger.²²³⁹

669. Prior to the Bikavac fire, Zehra Turjačanin saw Milan Lukić on two occasions in June 1992. On one occasion, Zehra Turjačanin saw Milan Lukić at the factory “Alhos”, where she worked as a seamstress, while he was looking for a woman who worked there.²²⁴⁰ On the other occasion, Zehra Turjačanin was drinking coffee at her neighbour’s house, when Milan Lukić came to that house.²²⁴¹ Zehra Turjačanin stated that, in 1992, Milan Lukić was tall and clean-shaven with dark brown hair of “standard length for men”.²²⁴²

670. Zehra Turjačanin further testified that Milan Lukić’s “cousin or uncle”, who came to her house together with Milan Lukić on 27 June 1992, was “about 50 years of age” and used to be a police officer in Višegrad.²²⁴³ This man was also involved in the Bikavac incident.²²⁴⁴ The Prosecution provided documentary evidence indicating that there was only one police officer with the family name “Lukić” in Višegrad, and that this man was Sredoje Lukić.²²⁴⁵ Zehra Turjačanin did not specifically mention Sredoje Lukić in her evidence.

671. When asked by the Prosecution whether she recognised anyone in the courtroom, Zehra Turjačanin testified that she did not.²²⁴⁶

²²³⁵ Zehra Turjačanin, 4 Nov 2008, T. 3335, 3350-3351.

²²³⁶ Zehra Turjačanin, 4 Nov 2008, T. 3323-3324; 1D82.

²²³⁷ Zehra Turjačanin, 4 Nov 2008, T. 3322-3324.

²²³⁸ 1D105; 1D82.

²²³⁹ Milan Lukić final trial brief, paras 366, 384, 392.

²²⁴⁰ Zehra Turjačanin, 25 Sep 2008, T. 2297-2298.

²²⁴¹ Zehra Turjačanin, 25 Sep 2008, T. 2294-2297.

²²⁴² Zehra Turjačanin, 25 Sep 2008, T. 2366-2368.

²²⁴³ Zehra Turjačanin, 25 Sep 2008, T. 2309, 2310.

²²⁴⁴ Zehra Turjačanin, 25 Sep 2008, T. 2307-2310.

²²⁴⁵ P209; P210; P211; P212; P213; P214.

²²⁴⁶ Zehra Turjačanin, 25 Sep 2008, T. 2342. When she was asked whether she could recognise anyone in the courtroom other than the Prosecutor, Sredoje Lukić, without the court’s instruction, immediately stood up while Milan Lukić remained seated. The Presiding Judge then said: “The accused was not asked to stand. The accused who is standing will sit”. Subsequently, Zehra Turjačanin said she could not recognise anyone in the courtroom.

(ii) VG058

672. VG058 stated that, in 1992, Milan Lukić was her neighbour in Šeganje and that she met him almost every day.²²⁴⁷ VG058 testified Sredoje Lukić was also her neighbour in Šeganje, and he greeted her every time she saw him, which was often.²²⁴⁸

673. VG058 gave statements in 1992, 2000, 2002 and 2008.²²⁴⁹ In her statement of 1992, no mention is made of the Bikavac incident.²²⁵⁰ In cross-examination, VG058 maintained that she always mentioned the Bikavac incident.²²⁵¹ When questioned why the name Milan Lukić did not appear in her 1992 statement, VG058 was evasive in her answers.²²⁵² In her 2008 statement, VG058 described Milan Lukić as wearing a stocking over his head, and stated she recognised Milan Lukić by his eyes and his voice.²²⁵³ During her subsequent testimony, VG058 stated that she saw a man wearing a stocking over his head force Muslims into Meho Aljić's house,²²⁵⁴ and she recognised that man to be Mitar Vasiljević.²²⁵⁵ However, when VG058 was shown several photographs in May 2000, including that of Mitar Vasiljević, she was unable to identify Mitar Vasiljević.²²⁵⁶ In her 2008 statement, VG058 stated that all the men were wearing black uniforms, but that she recognised Sredoje Lukić by his voice alone. She also recalled Milan Lukić saying, "Come on Sredoje, get in the car".²²⁵⁷ VG058 was not cross-examined on her 2008 statement.

674. When asked by the Prosecution whether she recognised anyone in the courtroom, VG058 recognised Milan Lukić and Sredoje Lukić.²²⁵⁸ VG058 was asked to identify each of the Accused by the colour of their clothes, and failed to do so. Judge Van den Wyngaert commented this was unhelpful, and that she herself would also find it hard to make the colour distinction from a distance.²²⁵⁹

²²⁴⁷ VG058, 11 Sep 2008, T. 1579-1580, 1618-1620.

²²⁴⁸ VG058, 11 Sep 2008, T. 1581.

²²⁴⁹ 1D40 (1992); 1D41 (2000); 1D42 (2002); 1D43 (2008).

²²⁵⁰ 1D40; VG058, 11 Sep 2008, T. 1613.

²²⁵¹ VG058, 11 Sep 2008, T. 1613, 1624.

²²⁵² VG058, 11 Sep 2008, T. 1622, 1623. When requested to look at her statement given in 1992, VG058 testified that "I'm not looking. I've come here to tell you, to say quite honestly I'm not ashamed. I can raise my head high, and I've come here to talk in the interests of justice. I'm just testifying in the interests of justice". When the Presiding Judge asked the witness to answer counsel's question, VG058 said, "Let me answer you this way. I don't know how [Milan Lukić] can have the right to defend himself against such crimes, against such evil that was committed".

²²⁵³ 1D43, para. 40.

²²⁵⁴ VG058, 11 Sep 2008, T. 1597.

²²⁵⁵ VG058, 11 Sep 2008, T. 1611.

²²⁵⁶ 1D41, pp 11, 14, 15.

²²⁵⁷ 1D43, para. 41.

²²⁵⁸ VG058, 11 Sep 2008, T. 1581-1586.

²²⁵⁹ VG058, 11 Sep 2008, T. 1581-1586, 1598-1600, 1637

(iii) VG115

675. VG115 had prior knowledge of Milan Lukić and Sredoje Lukić, as described earlier in this judgement.²²⁶⁰ The Trial Chamber recalls VG115's testimony that Sredoje Lukić, "wore a balaclava not to be recognised" at Meho Aljić's house,²²⁶¹ and that she could still recognise Sredoje Lukić by his voice and his eyes.²²⁶²

676. When asked by the Prosecution whether she recognised anyone in the courtroom, VG115 recognised Milan Lukić and Sredoje Lukić.²²⁶³

(iv) VG094 and VG119

677. VG094 and VG119 had prior knowledge of Milan Lukić. On 29 May 1992, VG094 and VG119 saw Milan Lukić when they were travelling with VG119's husband and other family members from Priboj to Višegrad. Their way into Višegrad was blocked by three red vehicles, including a red Passat from which Milan Lukić appeared.²²⁶⁴ VG119 did not know Milan Lukić personally, but her husband did and told her his name.²²⁶⁵ VG094 testified that she did not personally know Milan Lukić, but "recognised" him from the description and stories she had heard from others.²²⁶⁶ In a prior statement, VG094 stated that at that time she did not know Milan Lukić, but she learned his name later.²²⁶⁷

678. Milan Lukić said to VG119's husband "why are you driving these *balija* around? Why aren't you driving your own people around?"²²⁶⁸ Milan Lukić robbed them at gunpoint.²²⁶⁹ He subsequently drove VG119, VG094 and the rest of the family to their home, but took VG119's husband and her father-in-law "for questioning at the SUP".²²⁷⁰ This was the last time that VG119 and VG094 saw these men.²²⁷¹ During the evening of 29 May 1992, Milan Lukić returned to the house of VG119 and VG094 and took them with him to the Vilina Vlas hotel.²²⁷² At the hotel, VG094 was raped by Milan Lukić,²²⁷³ while VG119 was left unharmed.²²⁷⁴

²²⁶⁰ See *supra* paras 428-432.

²²⁶¹ VG115, 28 Aug 2008, T. 717, 718, 29 Aug 2008, 780-781; 1D18, p. 15.

²²⁶² VG115, 29 Aug 2008, T. 780, 781.

²²⁶³ VG115, 29 Aug 2008, T. 794-795.

²²⁶⁴ VG119, 1 Oct 2008, T. 2390-2393; 2D69, p. 2; VG094, 8 Apr 2009, T. 6986, 6987.

²²⁶⁵ VG119, 1 Oct 2008, T. 2392.

²²⁶⁶ VG094, 8 Apr 2009, T. 6986-6987.

²²⁶⁷ P335, p. 4.

²²⁶⁸ VG119, 1 Oct 2008, T. 2393. VG094, 8 Apr 2009, T. 6987.

²²⁶⁹ VG119, 1 Oct 2008, T. 2393-2394; 2D69, p. 2.

²²⁷⁰ VG119, 1 Oct 2008, T. 2394-2395. VG094, 8 Apr 2009, T. 6987; 1D227, p. 2.

²²⁷¹ VG119, 1 Oct 2008, T. 2394-2395; 1D227, p. 2; P335, p. 4; 2D69, p. 2; VG094, 8 Apr 2009, T. 6988-6989.

²²⁷² VG119, 1 Oct 2008, T. 2397-2399; 1D227, pp 2-3; P335, pp 4-5; VG094, 8 Apr 2009, T. 6993-6994.

²²⁷³ VG094, 8 Apr 2009, T. 6994-6996.

²²⁷⁴ VG119, 1 Oct 2008, T. 2397-2399.

679. VG094 also saw Milan Lukić on another occasion, prior to 27 June 1992, when he came to the house in Bikavac where she was staying, and he made her shake hands with him.²²⁷⁵ Due to these previous encounters with Milan Lukić, both VG094 and VG119 recognised Milan Lukić on 27 June 1992 when he and the other armed men came to the house where they were staying.

680. In prior statements, VG094 mentioned that Milan Lukić had a birthmark on his face.²²⁷⁶ During cross-examination, VG094 was unsure whether it was a birthmark; however, she said that “there was something on his face”.²²⁷⁷ In cross-examination, when VG119 was asked whether Milan Lukić had facial hair or “distinguishing marks” on his face, she responded: “No. I don’t know if there was a birthmark, perhaps, or some other distinguishing feature. But no moustache, no beard, clean-shaven. Like that, yes.”²²⁷⁸

681. On 29 May 1992, after Milan Lukić had raped VG094 at the Vilina Vlas hotel and left the room, another man came in and raped her. VG094 testified that this man was Sredoje Lukić.²²⁷⁹ VG094 did not personally know Sredoje Lukić prior to 27 June 1992.²²⁸⁰ She testified that it was while detained at the Vuk Karadžić school, shortly after the Bikavac incident, that she learned from other detained women that it was Sredoje Lukić who had also raped her at the Vilina Vlas hotel,²²⁸¹ and who she described as “about 40 years old”.²²⁸² However, in cross-examination, VG094 also stated: “I was not the one who did the describing. Others described him. I provided a description of the man I saw, and others in turn gave their description, and I thought it could be Sredoje Lukić; but later on when I saw him, I realised that it was not, in fact, Sredoje Lukić, the ones that other were describing”.²²⁸³

682. VG119 was asked why she never mentioned Sredoje Lukić in her prior statements. She replied that while in Mededa, she heard Zehra Turjačanin being interviewed by a journalist.²²⁸⁴ Zehra Turjačanin allegedly stated that it was Milan Lukić, Sredoje Lukić and Mitar Vasiljević who were responsible for the Bikavac fire. According to VG119, when Zehra Turjačanin described the physical appearance of Sredoje Lukić, VG119 “had a flashback” and suddenly realised that one of the men who had accompanied Milan Lukić that night was Sredoje Lukić.²²⁸⁵ She also stated that,

²²⁷⁵ 1D227, p. 5; P335, para. 41; VG094, 8 Apr 2009, T. 6998-7000.

²²⁷⁶ P335, para. 18; 1D227, p. 2.

²²⁷⁷ VG094, 8 Apr 2008, T. 7040.

²²⁷⁸ VG119, 1 Oct 2008, T. 2430.

²²⁷⁹ VG094, 8 Apr 2009, T. 6996, 6997.

²²⁸⁰ VG094, 8 Apr 2009, T. 6996, 6997.

²²⁸¹ VG094, 8 Apr 2009, T. 6988, 6989, 6996, 7045-7046; P335, p. 6.

²²⁸² P335, para. 32; VG094, 8 Apr 2009, T. 7004, 7054, 7055. In her 1998 statement, she described him as “around 45 years” old, 2D69, p. 3.

²²⁸³ VG094, 8 Apr 2009, T. 7056.

²²⁸⁴ VG119, 2 Oct 2008, T. 2476, 2487-2490; 1D58; 1D59.

²²⁸⁵ VG119, 1 Oct 2008, T. 2417.

initially, she was “obsessed by Milan Lukić” since he had taken away her husband, and she did not think about Sredoje Lukić for a long time. However as time went by, she realised that Sredoje Lukić was also “among those who had committed crimes”.²²⁸⁶

683. VG094 became distraught when the Prosecution asked her if she could recognise anyone in the courtroom, and her testimony had to be interrupted.²²⁸⁷ When the testimony resumed, she was again asked whether she recognised anyone in the courtroom and VG094 recognised Milan Lukić.²²⁸⁸

684. When asked by the Prosecution if she recognised anyone in the courtroom, VG119, who testified via video-conference link, recognised Milan Lukić and Sredoje Lukić.²²⁸⁹

2. Milan Lukić Defence case

(a) Evidence challenging the Prosecution case

685. The Milan Lukić Defence sought to throw doubt on the Prosecution version of the events that took place in Bikavac. Defence experts Clifford Jenkins, Stephen O'Donnell and Martin McCoy testified as to the complete lack of forensic evidence of the Bikavac fire.²²⁹⁰ Martin McCoy testified that, because there was no structure of the house, “only remnants of the footing, a portion of the foundation”, he could not conclude whether or not a fire had occurred.²²⁹¹ The Prosecution showed Zehra Turjačanin a photograph of a garage door, which she indicated looked very similar to the garage at Meho Aljić's house.²²⁹² During his visit to the Bikavac site, Clifford Jenkins examined the garage door that was in the photograph shown to Zehra Turjačanin by the Prosecution.²²⁹³ He testified that the height of the window on this door was 22.9 centimetres and questioned whether Zehra Turjačanin could have gone through this narrow space without incurring more injuries to the lower part of her body.²²⁹⁴ However, during cross-examination, Clifford Jenkins conceded that if the metal door blocking the door through which Zehra Turjačanin escaped had stood on its side, or if Zehra Turjačanin had indeed climbed through an opening of approximately 65 centimetres, as she testified, this would have an impact on his opinion.²²⁹⁵

²²⁸⁶ VG119, 2 Oct 2008, T. 2477-2478, 2487-2490.

²²⁸⁷ VG094, 8 Apr 2009, T. 7006-7007, 7025.

²²⁸⁸ VG094, 8 Apr 2009, T. 7026-7027.

²²⁸⁹ VG119, 2 Oct 2008, T. 2517-2521.

²²⁹⁰ Clifford Jenkins, T. 27 Mar 2009, T. 6474. Martin McCoy, 19 Mar 2009, T. 5710, 5745. Stephen O'Donnell, 12 Mar 2009, T. 5467.

²²⁹¹ Martin McCoy, 19 Mar 2009, T. 5709, 5710.

²²⁹² Zehra Turjačanin, 25 Sep 2008, T. 2320-2321, 4 Nov 2008, T. 3345, 3346; P138.

²²⁹³ Clifford Jenkins, 27 Mar 2009, T. 6482-6484.

²²⁹⁴ Clifford Jenkins, 27 Mar 2009, T. 6482-6484. See also Martin McCoy, 19 Mar 2009, T. 5712, 5713; P138.

²²⁹⁵ Clifford Jenkins, 27 Mar 2009, T. 6531, 6532; Zehra Turjačanin, 25 Sep 2009, T. 2317.

686. The Defence argues that Zehra Turjačanin's wounds were not inflicted as a result of the Bikavac fire, referring to Zehra Turjačanin's own evidence that she told the soldiers at the Serb command post at the Bikavac hotel that she got burned in an accident at home involving a gas bottle.²²⁹⁶ Zehra Turjačanin's evidence provided various accounts of what she told the soldiers at the Bikavac hotel about how she sustained her injuries that evening, one of which was that she tripped over butane bottle and burned herself.²²⁹⁷ Another version of the story involved Zehra Turjačanin having told the guards that she had an epileptic attack, after which she had an accident involving a gas bottle and burned herself.²²⁹⁸ Zehra Turjačanin did not remember the exact details of what she had told the guards when she asked them to shoot her, and denied ever having said that an epileptic fit had caused her to have an accident involving a gas bottle.²²⁹⁹ Clifford Jenkins, the Milan Lukić Defence investigative expert, believed that the burns to her arms and forehead were more consistent with the account given to the soldiers at the Bikavac hotel.²³⁰⁰

687. Anka Vasiljević testified that her late husband, Dr. Radomir Vasiljević, who treated Zehra Turjačanin the day after the fire, had told her that Zehra Turjačanin's burns were caused when she was trying to light a cigarette over a gas stove.²³⁰¹ In cross-examination, Anka Vasiljević conceded that her husband had not referred to this when he testified in the *Vasiljević* trial.²³⁰² According to her, this was because no one ever asked him about the cause of Zehra Turjačanin's burns.²³⁰³ Anka Vasiljević testified that her husband, who was in a *kum* relationship with Milan Lukić, was "shocked" when he learned of "the change in [Zehra Turjačanin's] story" in 1995.²³⁰⁴ In cross-examination, Anka Vasiljević was unable to explain why, if he was "shocked" and in a *kum* relationship to Milan Lukić, her husband did not publicly contradict Zehra Turjačanin's story when he testified in 2001.²³⁰⁵

688. George Hough, the Milan Lukić Defence psychological expert, testified that it was "highly probable" that Zehra Turjačanin suffered from "multiple traumas",²³⁰⁶ and that he could not conclude whether the burns sustained by Zehra Turjačanin were caused by a gas stove or a burning

²²⁹⁶ Zehra Turjačanin, 5 Nov 2008, T. 3364-3366.

²²⁹⁷ 2D37, p. 2. In the various statements, the following variations of this story exist: 1D83, p. 4 (she had an epileptic fit which caused her to fall on a gas bottle and burn herself); P66, p. 5 (she had an epileptic fit while trying to light a cigarette on gas cylinder, fell on the gas cylinder and burned herself); 2D39, p. 5 (a gas cylinder had exploded and she was burned).

²²⁹⁸ 1D83, p. 4; P66, p. 5.

²²⁹⁹ Zehra Turjačanin, 4 Nov 2008, T. 3342, 5 Nov 2008, 3365.

²³⁰⁰ Clifford Jenkins, 27 Mar 2009, T. 6481-6486, 6502, 6503.

²³⁰¹ Anka Vasiljević, 19 Jan 2009, T. 4199-4200, 4219-4220, 4222-4226.

²³⁰² Anka Vasiljević, 19 Jan 2009, T. 4227, 4228.

²³⁰³ Anka Vasiljević, 19 Jan 2009, T. 4228.

²³⁰⁴ Anka Vasiljević, 19 Jan 2009, T. 4200-4202, 4220, 4186.

²³⁰⁵ Anka Vasiljević, 19 Jan 2009, 4232, 4233.

²³⁰⁶ George Hough, 25 Mar 2009, T. 6244, 6257, 6258; 1D205.

house.²³⁰⁷ George Hough had never spoken to Zehra Turjačanin or clinically examined her, but arrived at these conclusions on the basis of her prior statements and her testimony.

689. The Milan Lukić Defence cross-examined Zehra Turjačanin on statements that her brother, Dževad Turjačanin, gave to the Prosecution. In his 2001 statement, her brother stated that “we left Višegrad on the 26th of June 1992”.²³⁰⁸ The Defence argued this would contradict Zehra Turjačanin’s testimony that she brought food to her brother when he was walled in on the morning of 27 June 1992.²³⁰⁹ In his 2008 statement, which begins with “I have been asked to clarify certain matters in the statement that I made to the ICTY investigator on 25 January 2001”, Dževad Turjačanin states that on “the night of the fire”, after he was released from his hiding place by Ismeta Kasapović, he escaped Višegrad.²³¹⁰

(b) Milan Lukić’s alibi

690. The Milan Lukić Defence listed MLD2 as an alibi witness to prove that Milan Lukić was with his father in Rujište between 26 June 1992 and 29 June 1992. However, the Defence did not call MLD2.²³¹¹ When MLD10 was about to testify regarding the events in June 1992 that MLD2 would have testified about, the Prosecution objected as the Milan Lukić Defence had not listed MLD10 as an alibi witness regarding the Bikavac incident. However, the Trial Chamber allowed the Defence to question MLD10 regarding the alibi presented for the Bikavac incident and allowed the Prosecution to call evidence to rebut it at a later stage.²³¹²

691. MLD10 testified that she heard from her father and brother that, at the end of June 1992, her father and brother spent three or four days at Milan Lukić’s parents’ house in Rujište.²³¹³ Milan Lukić was also there and he roasted some lamb for them to celebrate St. Vitus Day.²³¹⁴

3. Sredoje Lukić alibi

692. On 22 June 1992, Zorka Lukić, Sredoje Lukić’s sister-in-law, gave birth to her second child in Savski Venac, a municipality of Belgrade.²³¹⁵ She was discharged from the hospital on 26 June 1992.²³¹⁶ She testified that on 27 June 1992 around noon, Sredoje Lukić, along with his wife and

²³⁰⁷ George Hough, 25 Mar 2009, T. 6243, 6244.

²³⁰⁸ 1D86, p. 3.

²³⁰⁹ Zehra Turjačanin, 25 Sep 2008, T. 2293, 2294, 2308; 4 Nov 2008, T. 3331, 3337-3340; P66, p. 4.

²³¹⁰ 1D84, para. 8.

²³¹¹ Milan Lukić’s further submissions in regard to defence of alibi, 18 July 2008, para. 14.

²³¹² Hearing, 18 Dec 2008, T. 3961, 3962, 3966-3968.

²³¹³ MLD10, 18 Dec 2008, T. 3965-3966; P215, p. 1.

²³¹⁴ MLD10, 18 Dec 2008, T. 3965-3966.

²³¹⁵ 2D44, pp 2-3, 7-12; Zorka Lukić, 1 Dec 2008, T. 3370, 3675; 2D45.

²³¹⁶ Zorka Lukić, 1 Dec 2008, T. 3672-3674; 2D46.

children, came to visit her at her house in Belgrade.²³¹⁷ Sredoje Lukić and his family stayed with Zorka Lukić for four hours and gave her money as a gift.²³¹⁸ She testified that Sredoje Lukić and his family had driven from Obrenovac to Belgrade and that after their visit they returned to Obrenovac.²³¹⁹ During cross-examination, Zorka Lukić agreed that no pictures were taken during the visit.²³²⁰ She also testified that the reason that Sredoje Lukić's visit stood out in her memory was that it was the first visit that she had received after the birth of her second child.²³²¹

693. Branimir Bugarski testified that on 23 or 24 June 1992, Sredoje Lukić called him at work and asked him to prepare a suckling pig for him, which Sredoje Lukić would take to Višegrad.²³²² He stated that he "used to slaughter pigs for [Sredoje Lukić]".²³²³ On 27 June 1992, the day before St. Vitus Day, at around 6 p.m., Sredoje Lukić went to Branimir Bugarski's house together with Niko Vujičić, who also had relatives living in Obrenovac.²³²⁴ Niko Vujičić was not present during Sredoje Lukić's visit to Zorka Lukić.²³²⁵ Sredoje Lukić said to Branimir Bugarski that he could not take the pig with him back to Višegrad because he had passengers in his car.²³²⁶ After this short visit, Sredoje Lukić and the passengers in his car left.²³²⁷ In his statement, Branimir Bugarski stated that Sredoje Lukić left for Višegrad the next morning, 28 June 1992. During cross-examination, Branimir Bugarski testified he did not know whether they left for Višegrad immediately or the next morning.²³²⁸

694. Branimir Bugarski remembers this event because it angered him; he had prepared some 80 kilograms of meat²³²⁹ which he subsequently had to put back in his freezer.²³³⁰ During cross-examination, Branimir Bugarski conceded that the suckling pig would fit in the boot of a passenger car, but that Sredoje Lukić simply said that he could not take the meat because he could not transport it.²³³¹

²³¹⁷ 2D44, pp 7-12.

²³¹⁸ Zorka Lukić, 1 Dec 2008, T. 3691; 2D44, p. 9.

²³¹⁹ 2D44, p. 13.

²³²⁰ Zorka Lukić, 1 Dec 2008, T. 3678, 3690.

²³²¹ Zorka Lukić, 1 Dec 2008, T. 3691, 3692.

²³²² Branimir Bugarski, 2 Dec 2008, T. 3749, 3750.

²³²³ Branimir Bugarski, 2 Dec 2008, T. 3748.

²³²⁴ Branimir Bugarski, 2 Dec 2008, T. 3750, 3751, 3757, 3729.

²³²⁵ 2D44, p. 17.

²³²⁶ Branimir Bugarski, 2 Dec 2008, T. 3753-3755, 2D47, para. 9.

²³²⁷ Branimir Bugarski, 2 Dec 2008, T. 3717, 3754, 3755; 2D47, para. 9.

²³²⁸ Branimir Bugarski, 2 Dec 2008, T. 3755; 2D47, para. 9.

²³²⁹ Branimir Bugarski testified that a suckling pig weighed 120 kilograms reduced to 70 to 80 kilograms when it was cut up, Branimir Bugarski, 2 Dec 2008, T. 3754.

²³³⁰ Branimir Bugarski, 2 Dec 2008, T. 3754, 3756.

²³³¹ Branimir Bugarski, 2 Dec 2008, T. 3754.

4. Prosecution alibi rebuttal evidence

695. VG035 testified that on 26 June 1992, Milan Lukić came to her house, introduced himself by name and told her that he was born in 1967.²³³² In the early morning of 27 June 1992, Milan Lukić and Sredoje Lukić returned to the house where VG035 and CW2 were staying. They pretended to be asleep. Milan Lukić said: “Look at them sleeping. Good pussy here. They need fucking.”²³³³ The men left, but Milan Lukić returned some three hours later. Milan Lukić instructed VG035 at gunpoint to come with him.²³³⁴ He took VG035 to an abandoned house in Megdan. When Milan Lukić tried to undress VG035, she begged him to take her back to her children. He started yelling at her, removed her clothes and struck VG035 so many times she could not feel her body anymore. He then raped her there three times.²³³⁵ Between the second and the third time he raped her, he said: “Why didn’t you have a bath first? You stink so badly. Those are not your children,” to which VG035 responded “Milan, those are my children. You can see it on my belly, that I had given birth.” Milan Lukić only laughed.²³³⁶ The third time he raped her, Milan Lukić said: “Now you’re going to carry a Serb child. Serb children shall be born”.²³³⁷ VG035 returned to her house at around noon, dishevelled and bruised.²³³⁸

696. VG035 testified that Milan Lukić and Sredoje Lukić returned to the house between 4 p.m. and 5 p.m., robbed VG035 and CW2 of their money and jewellery, and left the house.²³³⁹ They had come in Behija Zukić’s car, and VG035 heard loud “kalesija or burska music” playing from the car.²³⁴⁰ A few days later, VG035 confided to CW2 that she had been raped by Milan Lukić.²³⁴¹

697. In a 1998 statement, VG035 described Milan Lukić as more than 180 centimetres tall, clean-shaven, of normal build, with blue eyes, short brown hair and birth marks on his body.²³⁴² When this description was put to her in cross-examination, she did not recall having ever said that Milan Lukić had blue eyes,²³⁴³ and confirmed that she was never given the opportunity to review her 1998 statement in her own language.²³⁴⁴ In cross-examination, VG035 was shown a photograph of Milan

²³³² VG035, 15 Sep 2008, T. 1653-1655.

²³³³ VG035, 15 Sep 2008, T. 1660-1664.

²³³⁴ VG035, 15 Sep 2008, T. 1660-1664; 1D44, p. 3; P336, pp 33-35.

²³³⁵ VG035, 15 Sep 2008, T. 1667-1670, 1660.

²³³⁶ VG035, 15 Sep 2008, T. 1670-1671.

²³³⁷ VG035, 15 Sep 2008, T. 1671.

²³³⁸ P336, pp 33-35.

²³³⁹ VG035, 15 Sep 2008, T. 1675, 1676. In her statement, CW2 does not mention Milan Lukić and Sredoje Lukić coming to the house, but that another man, who was between 40 and 45 years old, came to the house around 4 and 5 p.m., P336, p. 38.

²³⁴⁰ VG035, 15 Sep 2008, T. 1676, 1677.

²³⁴¹ P336, pp 33-35.

²³⁴² 1D44, p. 2.

²³⁴³ VG035, 15 Sep 2008, T. 1714, 1715, 1718, 1719.

²³⁴⁴ VG035, 15 Sep 2008, T. 1716-1718.

Lukić dressed only in his swimming trunks.²³⁴⁵ VG035 maintained, in reference to this picture, that Milan Lukić “had spots on his body”.²³⁴⁶ Further in cross-examination, VG035 conceded that the reason that she failed to identify Milan Lukić in 2001, as recorded in a statement, was “for reasons of personal safety”.²³⁴⁷ She further added that she had been “waiting for this moment” and “to see Milan and Sredoje here and to see them arrested.”²³⁴⁸ She also testified that at the time she gave the statement: “I was under a lot of stress. I was traumatised. I was fighting for my life. I had to be treated by doctors a lot. I was literally struggling for my life.”²³⁴⁹

698. VG035 testified that she knew Sredoje Lukić before 27 June 1992 through her husband, who was a waiter in a hotel frequented by Sredoje Lukić, and that Sredoje Lukić used to be a policeman.²³⁵⁰ In her 1998 statement, VG035 did not make mention of Sredoje Lukić coming to her house on the afternoon of 27 June 1992.²³⁵¹ When asked by the Prosecution whether she recognised anyone in the courtroom, VG035 recognised Milan Lukić and Sredoje Lukić.²³⁵²

699. CW2 had prior knowledge of Milan Lukić. Either in mid- or late June 1992, Milan Lukić together with other armed men came to the house on Pionirska street where CW2 was staying and told her and her family to go to Olovo, a town outside Serb-controlled territory.²³⁵³ CW2 further stated that on 25 June 1992, Milan Lukić came to the house where she and VG035 were staying and that he later returned and took VG035 away.²³⁵⁴ CW2 said she thought Sredoje Lukić was Milan Lukić’s brother, and that Sredoje Lukić had lived in her husband’s house before she married her husband.²³⁵⁵ CW2 was not asked whether she could recognise anyone in the courtroom.²³⁵⁶

700. VG063 testified that on 28 June 1992, St. Vitus Day, while she was detained in the gym of the Hasan Veletovac school in Višegrad town,²³⁵⁷ Milan Lukić and another man entered the gym where VG063 and others were held and ordered a Muslim detainee, Ibro Sabanović, to accompany them outside.²³⁵⁸ Later that night, Milan Lukić returned, accompanied by another man, who was holding Ibro Sabanović’s head in his hand.²³⁵⁹ Milan Lukić shouted to those detainees: “this is your

²³⁴⁵ VG035, 15 Sep 2008, T. 1721; 1D46.

²³⁴⁶ VG035, 15 Sep 2008, T. 1720, 1721.

²³⁴⁷ VG035, 15 Sep 2008, T. 1696.

²³⁴⁸ VG035, 15 Sep 2008, T. 1696.

²³⁴⁹ VG035, 15 Sep 2008, T. 1712.

²³⁵⁰ VG035, 15 Sep 2008, T. 1661, 1662.

²³⁵¹ 1D44.

²³⁵² VG035, 15 Sep 2008, T. 1689.

²³⁵³ P336, p. 29-32; VG141, 6 Apr 2008, T. 6752.

²³⁵⁴ P336, p. 33-37; VG035, 15 Sep 2008, T. 1653-1655, 1664-1672.

²³⁵⁵ CW2, 9 Apr 2009, T. 7079, 7080; P336, p. 29.

²³⁵⁶ VG035, 15 Sep 2008.

²³⁵⁷ VG063, 18 Sep 2008, T. 1842-1844, 1850; 1D51, p. 8.

²³⁵⁸ VG063, 18 Sep 2008, T. 1850. 19 Sep 2008, T. 1940; 1D49, p. 8; 1D51, p. 8.

²³⁵⁹ VG063, 18 Sep 2008, T. 1850; 19 Sep 2008, T. 1940; 1D49, p. 8; 1D51, p. 8.

Kurban”, referring to the Muslim feast of Kurban Bajram during which a sheep is sacrificed for dead souls.²³⁶⁰

701. During her 12-day detention period in the Hasan Veletovac school between approximately 20 and 30 June 1992,²³⁶¹ VG063 was raped on a number of occasions by Milan Lukić.²³⁶² On one evening, Milan Lukić asked VG063 to come with him to brew him some coffee.²³⁶³ Milan Lukić made fun of VG063 in front of the other soldiers, and then took her to a classroom.²³⁶⁴ In the classroom, he ordered VG063 to take off her clothes, and when VG063 backed away in a corner, he ripped her skirt and leggings with a knife.²³⁶⁵ Milan put the barrel of a rifle in her mouth and threatened to blow her head off.²³⁶⁶ He bit her lips, neck and breasts, placed her on a desk and raped VG063, penetrating her mouth, vagina and anus, causing her great pain.²³⁶⁷ While raping her, Milan Lukić made constant threats to VG063.²³⁶⁸ Milan Lukić said to VG063 that he “could make a little Milan to each and everyone of us.”²³⁶⁹ The whole incident lasted two to three hours.²³⁷⁰ After the incident, Milan Lukić raped VG063 again on four or five separate occasions.²³⁷¹ The rapes occurred both before and after VG063 attempted to flee the school.²³⁷² VG063 confirmed that a number of women were raped at the Hasan Veletovac school.²³⁷³ On each occasion, it was Milan Lukić who selected the women to be taken out of the gym.²³⁷⁴

702. VG063 testified that she knew Milan Lukić before the Bikavac incident, as described earlier in this judgement.²³⁷⁵

5. Factual findings in relation to the Bikavac incident

(a) Prosecution evidence regarding the events and the Milan Lukić Defence challenges thereto

703. The Trial Chamber notes that several witnesses have referred to the celebration of St. Vitus Day in connection with the house-burning in Bikavac. Some witnesses testified that St. Vitus Day was celebrated on 27 June 1992, whereas others testified that it was celebrated on 28 June 1992.

²³⁶⁰ VG063, 18 Sep 2008, T. 1850-1851.

²³⁶¹ VG063, 18 Sep 2008, T. 1860. As VG063’s detention lasted for approximately 12 days, and it continued a few days after St. Vitus Day, the Trial Chamber has approximated that her detention lasted from 20 to 30 June 1992.

²³⁶² VG063, 18 Sep 2008, T. 1855-1859.

²³⁶³ VG063, 18 Sep 2008, T. 1856.

²³⁶⁴ VG063, 18 Sep 2008, T. 1856, 1857.

²³⁶⁵ VG063, 18 Sep 2008, T. 1857.

²³⁶⁶ VG063, 18 Sep 2008, T. 1857.

²³⁶⁷ VG063, 18 Sep 2008, T. 1858.

²³⁶⁸ VG063, 18 Sep 2008, T. 1858.

²³⁶⁹ VG063, 18 Sep 2008, T. 1858.

²³⁷⁰ VG063, 18 Sep 2008, T. 1858.

²³⁷¹ VG063, 18 Sep 2008, T. 1859.

²³⁷² VG063, 18 Sep 2008, T. 1859.

²³⁷³ VG063, 18 Sep 2008, T. 1859.

²³⁷⁴ VG063, 18 Sep 2008, T. 1860.

The Trial Chamber concludes that the events regarding the Bikavac fire occurred “on or about 27 June 1992”, as charged in the indictment.

704. Zehra Turjačanin testified on 25 September 2008, 4 November 2008 and 5 November 2008. Her testimony in cross-examination on 25 September 2008 and on 4 November 2008 was interrupted due to health problems she experienced in giving testimony.²³⁷⁶ The Milan Lukić Defence believes Zehra Turjačanin failed to explain why she had requested to interrupt her testimony, and that these interruptions impacted on the reliability of it.²³⁷⁷ However, in light of the extremely traumatic experience she had, the difficulties in giving her testimony without interruptions are, in the Trial Chamber’s view, understandable.

705. The Milan Lukić Defence placed considerable emphasis upon Zehra Turjačanin’s account to the Serb soldiers that her burns were caused by an accident involving a gas stove or a gas bottle. The Trial Chamber finds that this account does not cast reasonable doubt on Zehra Turjačanin’s evidence. Zehra Turjačanin testified that she did not tell the truth to the Serb soldiers as to how she received her injuries because she was afraid that she would be tortured even more. The Trial Chamber, having had the opportunity to observe her demeanour in court, considers this explanation to be satisfactory as to why she did not tell the Serb soldiers the truth. Furthermore, the Trial Chamber does not accept Anka Vasiljević’s evidence with regard to how Zehra Turjačanin received her injuries.

706. In considering the 2001 statement of her brother, Dževad Turjačanin, in which he stated that he “left Višegrad on the 26th of June 1992”, the Trial Chamber notes Dževad Turjačanin’s 2008 statement, which begins with “I have been asked to clarify certain matters in the statement that I made to the ICTY investigator on 25 January 2001”, and in which he states that he escaped Višegrad on “the night of the fire”, after he was released by Ismeta Kasapović.²³⁷⁸ This closely matches Zehra Turjačanin’s testimony as well as her 1992 video-taped statement.²³⁷⁹ The Trial Chamber further notes that the Milan Lukić Defence misstated the evidence of Zehra Turjačanin when it put to her that she said that her brother, Milan Lukić and herself would have smoked together outside school.²³⁸⁰ During examination-in-chief, Zehra Turjačanin testified that her brother and Milan Lukić were in the same class at school, and then continued to say that she saw Milan Lukić smoke outside the school while she herself was smoking.²³⁸¹ Although it has attached no

²³⁷⁵ See *supra* paras 187-190.

²³⁷⁶ Zehra Turjačanin, 25 Sep 2008, T. 2381, 4 Nov 2008, T. 3355.

²³⁷⁷ Milan Lukić final trial brief, paras 389-391. Zehra Turjačanin, 4 Nov 2008, T. 3310-3322.

²³⁷⁸ 1D84, paras 1, 8.

²³⁷⁹ P66, p. 4.

²³⁸⁰ Zehra Turjačanin 4 Nov 2008, T. 3332, 3333.

²³⁸¹ Zehra Turjačanin, 25 Sep 2008, T. 2992, 2993.

weight to the statements of Dževad Turjačanin, the Trial Chamber notes that they tend to reinforce the evidence given by Zehra Turjačanin. The Trial Chamber also holds that the school records tendered by the Milan Lukić Defence do not cast doubt on her evidence that she attended the same school as Milan Lukić. Overall, the Trial Chamber is satisfied that Zehra Turjačanin's evidence as to her prior knowledge of Milan Lukić was not shaken in cross-examination.

707. The Milan Lukić Defence has challenged the occurrence of the Bikavac fire through its Defence experts Clifford Jenkins, Stephen O'Donnell and Martin McCoy, who testified that they are unable to tell whether or not the fire at Meho Aljić's house occurred, or how Zehra Turjačanin was able to escape from the fire through the garage door. Given her evidence that she had her eyes closed when she got past the garage door, and that it was only when she looked back that she saw what had been blocking her way, the Trial Chamber is satisfied that her evidence is reliable regarding her escape from Meho Aljić's house. The Trial Chamber considers that the evidence of Clifford Jenkins, Stephen O'Donnell and Martin McCoy did not put into question the evidence given by Zehra Turjačanin, and does not cast a reasonable doubt as to the occurrence of the fire at Meho Aljić's house. Lastly, the Trial Chamber was not helped by the evidence of George Hough, the psychological expert for the Milan Lukić Defence, who, without having had any prior contact with her, was requested to examine and comment on Zehra Turjačanin's evidence. Accordingly, the Trial Chamber has attached no weight to it.

708. The Trial Chamber has considered the evidence of Zehra Turjačanin in its entirety. The Trial Chamber finds it to be coherent and reliable, and is convinced that she is a witness of truth.

709. The Trial Chamber heard compelling evidence of Zehra Turjačanin, CW2, VG035, VG058, VG094, VG115 and VG119 regarding the occurrence of the fire at Meho Aljić's house. The Trial Chamber is satisfied beyond reasonable doubt that on or about 27 June 1992, a group of armed men herded approximately 60 Muslim civilians into Meho Aljić's house in Bikavac. The Trial Chamber is also satisfied beyond reasonable doubt that the same group of armed men subsequently shot at the house, that they threw grenades into the house, and that they then set the house on fire.

710. The Trial Chamber notes Ewa Tabeau's compilation of sources concerning missing persons in Višegrad as set out in exhibit P119 and Amor Masović's table of missing persons, exhibit P184. As set out previously,²³⁸² in making its findings regarding the victims, the Trial Chamber has taken account of the discrepancies that exist in exhibit P184 and exhibit P119, as well as Ewa Tabeau's testimony as to the reasons for inaccuracies in the dates of disappearances. Exhibit P119 provides the year of birth of seven of the alleged victims of the Bikavac incident. The Trial Chamber notes

²³⁸² See *supra* para. 318.

with concern that, of these seven persons, the year of birth of four, Elma Tufekčić, Ensar Tufekčić, Selmir Turjačanin and Mina Vilić does not correspond to the year of birth mentioned in P184. Therefore, from the perspective of determining the identity of the victims of the Bikavac incident, the Trial Chamber does not consider that the data contained in these tables is sufficiently reliable, and has instead relied on witness testimony.

711. The Milan Lukić Defence challenged the death of Sada Turjačanin in the Bikavac fire, claiming that she was born in 1962 and is still alive.²³⁸³ However, Ewa Tabeau explained that “Sada Turjačanin” was also known as “Sadeta Turjačanin” and clarified that the person listed in Annex B as “Sada Turjačanin” was “Sadeta Turjačanin” born 1963.²³⁸⁴ The Trial Chamber accepts Ewa Tabeau’s evidence in this respect and is satisfied that Sadeta Turjačanin (approximately 29 years old) died as a result of the Bikavac fire.²³⁸⁵

712. The Trial Chamber notes that the following persons are listed in Annex B to the indictment: “A boy whose name is unknown, approximately 11 years old”, and “Jelačić, first name unknown, age unknown”. The Trial Chamber finds the indictment to be insufficiently specific regarding the identity of these alleged victims, and observes that no evidence was presented which would establish the identity of these two individuals.²³⁸⁶ On the basis of the evidence, the Trial Chamber as a matter of law is unable to find that these persons perished in the fire at Meho Aljić’s house.

713. Annex B does not exhaustively list the victims of the Bikavac incident and the Trial Chamber heard evidence that other named persons not listed in Annex B also died in the Bikavac incident. The Trial Chamber is satisfied on the basis of the evidence relating to these additional persons that Aida Turjačanin also died in the Bikavac fire. It considers that the evidence does not reliably indicate that Tija Sabanović, Musa and Sebrija Ferić, Tiha Spoljan and her daughter-in-law with two children, Tija Cerić’s daughter, her granddaughter and a baby, and the “Murtić family” died in the fire.

714. The Trial Chamber received evidence from Hamdija Vilić that his daughter, listed as Mirzeta Vilić in Annex B, was named Zihneta Vilić. There is also evidence that Hamdija Vilić’s wife, Mina Vilić, together with their three children, Zihneta, Nihada and Nihad, were staying in close proximity to Meho Aljić’s house on the day it was set on fire.²³⁸⁷ However, neither VG058 nor VG115 specifically testified that they saw these individuals being herded into Meho Aljić’s house, and Zehra Turjačanin did not testify that they were present in the house. None of the parties

²³⁸³ 1D221, p. 2.

²³⁸⁴ Ewa Tabeau, 24 Mar 2009, T. 6198-6201. See also 2D38, confirming Sada/Sadeta Turjačanin was born in 1963.

²³⁸⁵ Zehra Turjačanin, 25 Sep 2009, T. 2303-2305. P139, pp 20-21; 1D83, p. 3; 2D38, p. 3.

²³⁸⁶ The sole piece of evidence mentioning the eleven-year-old boy is 2D38.

²³⁸⁷ Annex B to the Indictment, nr. 16. Hamdija Vilić, 11 Nov 2008, T. 3456; VG063, 18 Sep 2008, T. 1840, 1841, 19 Sep 2008, 1919-1921. VG035, 15 Sep 2008, T. 1679.

asked Hamdija Vilić, who was not an eye-witness to the Bikavac incident, to clarify how he knew that his relatives died in this incident. Although the Trial Chamber considers that Hamdija Vilić was truthful when he testified that he believed his family had died in the Bikavac incident, on the basis of the evidence, the Trial Chamber is unable to make a legal finding that they perished in the fire at Meho Aljić's house.

715. The Trial Chamber is satisfied that at least 60 Muslims died as a result of the fire at Meho Aljić's house, including the following persons who have been sufficiently identified as having died there: Dehva Tufekčić, Elma Tufekčić, Ensar Tufekčić, Dulka Turjačanin, Selmir Turjačanin, Sadeta Turjačanin, Aida Turjačanin, Šuhra Aljić, (FNU) Aljić (father of Suhra Aljić), (FNU) Aljić (mother of Suhra Aljić), and (FNU) Aljić (son of Suhra Aljić).

(b) Prosecution evidence on Milan Lukić's presence, acts and conduct

716. Zehra Turjačanin, VG058 and VG115 gave evidence placing Milan Lukić at Meho Aljić's house on the night of the Bikavac incident. In addition, VG035 placed Milan Lukić near Meho Aljić's house a few hours before the house-burning, between 4 and 5 p.m. VG119 and VG094 placed him near Meho Aljić's house shortly before and immediately after the house-burning. Huso Kurspahić testified that he was told by Zehra Turjačanin when she was in Mededa, after the house-burning, that Milan Lukić was amongst those who had set Meho Aljić's house on fire.

717. The Trial Chamber has heard evidence that Milan Lukić played a very active role in the Bikavac incident. Milan Lukić used the butt of his rifle to push people into the house and was heard saying, "Come on, let's get as many people in as possible".²³⁸⁸ Milan Lukić placed a garage door against the exit to Meho Aljić's house, while all the exits inside the house had already been blocked by heavy furniture. VG115 and VG058 both observed Milan Lukić firing at the house, which is consistent with Zehra Turjačanin's account of what transpired inside the house. VG115 witnessed the throwing of grenades inside the house by Milan Lukić and the armed men, which is corroborated by Zehra Turjačanin's testimony that grenades were thrown into the house and that she sustained grenade injuries to her left leg.²³⁸⁹ The Trial Chamber also received evidence in the form of a 2005 newspaper article in which Zehra Turjačanin recounted that she heard Milan Lukić saying that "it was time to set fire to us", following which Milan Lukić did set fire to the house.²³⁹⁰ It notes however that this newspaper article quotes a 1992 newspaper article, citing Zehra Turjačanin's words. The Trial Chamber has therefore placed very little weight on this piece of

²³⁸⁸ VG058, 11 Sep 2008, T. 1597, 1598.

²³⁸⁹ Zehra Turjačanin, 25 Sep 2008, T. 2315; P139, p. 14; P66, p. 3; 2D37, p. 3.

²³⁹⁰ 2D39, p. 4.

evidence. It attaches more weight to the evidence of VG058 and VG115, who witnessed Milan Lukić throwing petrol at Meho Aljić's house in order to set it alight.

718. The Trial Chamber is satisfied that VG058 and VG115, both of whom had seen Milan Lukić before the incident on a regular basis and over a long period of time, had sufficient prior knowledge of Milan Lukić in order to recognise him at Meho Aljić's house. However, the Trial Chamber considers that VG058 and VG115 did not stand up well under cross-examination by the Milan Lukić Defence, and that VG058 was very evasive and defensive in her answers when cross-examined.

719. In their final trial briefs, the Milan Lukić Defence and the Sredoje Lukić Defence adverted to the inability of VG058 to identify Meho Aljić's house on an aerial photograph.²³⁹¹ In fact, she placed it exactly one block further away from its actual location. The Trial Chamber does not, however, attach any importance to this witness' inability to identify a house on an aerial photograph, taking the view that there was nothing unusual or exceptional in her failure to do so, or that it casts any doubt upon her testimony.

720. In her 2000 statement, VG115 did not mention that she personally witnessed Milan Lukić shooting at the house, throwing grenades at the house, and setting it on fire, whereas in her testimony, she was adamant that she did see Milan Lukić performing these acts. In her 1992 statement, VG058 makes no mention of the Bikavac incident. In her 2008 statement, VG058 described Milan Lukić as wearing a stocking over his head, and stated she recognised Milan Lukić by his eyes and his voice, whereas during her testimony she maintained she had an unobstructed view of Milan Lukić's face. There are also certain discrepancies in this aspect of the testimony of both VG115 and VG058 when considered in light of the testimony of Zehra Turjačanin. For example, VG115 saw the garage door being placed against the main door of the house, whereas Zehra Turjačanin testified that a garage door was placed against the patio or balcony door. Owing to these discrepancies in the evidence of VG058 and VG115, the Trial Chamber approaches their evidence with caution.

721. VG119 and VG094 saw Milan Lukić just before and immediately after the fire. VG094 and VG119 had both encountered Milan Lukić on 29 May 1992, when Milan Lukić took away VG119's husband "for questioning", after which he disappeared. On that same day, Milan Lukić raped VG094, which she later recounted to VG119. Then, shortly before 27 June 1992, Milan Lukić came to the house of VG094 and VG119 again. The Trial Chamber is satisfied that VG119 and VG094

²³⁹¹ Milan Lukić final trial brief, para. 418. Sredoje Lukić Defence final brief, filed on 12 May 2009 ("Sredoje Lukić final trial brief"), para. 265.

had sufficient prior knowledge of Milan Lukić to know that it was he who came to their door on the night of the Bikavac incident. When Milan Lukić returned to the house of VG119 and VG094 immediately after the fire at Meho Aljić's house, it was apparent that Milan Lukić had recently been close to a fire. VG094 stated that one of the men who accompanied Milan Lukić looked drugged; this is consistent with Zehra Turjačanin's account of the demeanour of the men she saw lying in the grass by Meho Aljić's house. The loud music VG119 and VG094 described as coming from the cars in which Milan Lukić arrived is also consistent with the evidence of VG035 and Zehra Turjačanin.

722. In cross-examination, VG119 was unable to circle Meho Aljić's house in an aerial photograph.²³⁹² The Trial Chamber observes however, as noted in the Prosecution final trial brief, that there was no structure visible in the photograph which VG119 could have circled.²³⁹³

723. The Trial Chamber is satisfied that VG094 and VG119 stood up well under cross-examination, and that their credibility, when confronted with their prior evidence regarding their description of Milan Lukić's physical appearance, was not shaken. It does not believe, as has been argued by the Milan Lukić Defence, that since VG119 was able to spend time with Zehra Turjačanin in Okrugla and Mededa, she has "tailored" her evidence to match that of Zehra Turjačanin.²³⁹⁴ The Trial Chamber finds that the evidence of VG094 and VG119 is credible and largely consistent, and that it strongly reinforces the account given by Zehra Turjačanin. It therefore attaches great weight to their testimony.

724. The Trial Chamber has placed little weight on the fact that, when asked whether she could recognise anyone in court, Zehra Turjačanin indicated she could not. The Trial Chamber is satisfied that Zehra Turjačanin had sufficient prior knowledge of Milan Lukić to identify him correctly, both when she met him between her house and Meho Aljić's house, as well as inside Meho Aljić's house, when he pulled the gold chain from around her neck.

(c) Defence evidence concerning Milan Lukić's alibi

725. MLD10 testified that Milan Lukić was in Rujište on St. Vitus Day and some days afterwards. MLD10 testified that her father and brother told her that Milan Lukić brought "a package" to them, that "he helped them" in the house and that he "roasted some lamb for them" to celebrate St. Vitus Day.²³⁹⁵

²³⁹² VG119 T. 1 Oct 2008, 2447-2448.

²³⁹³ Prosecution final trial brief, para. 303.

²³⁹⁴ Milan Lukić final trial brief, para. 413.

²³⁹⁵ MLD10, 18 Dec 2008, T. 3965, 3966.

726. As set out above, the Trial Chamber has considered that the testimony of Hamdija Vilić regarding allegations of bribery and MLD10's evidence in this respect raise serious questions as to her credibility in general, including her alibi evidence regarding the Bikavac incident. It is the Trial Chamber's view that when, in addition to the allegations of bribery, due account is taken of her lack of direct knowledge of Milan Lukić's presence in Rujište, and her lack of specificity with regard to the time-frame within which Milan Lukić is said to have been present at his parents' house, MLD10 is wholly unreliable. The Trial Chamber therefore rejects her evidence.

(d) Prosecution alibi rebuttal evidence

727. The Prosecution called VG035, CW2 and VG063 to rebut the alibi of Milan Lukić. VG035 and CW2 gave evidence that Milan Lukić came to their house twice in the morning of 27 June 1992 and that, on the second occasion, VG035 was taken away by Milan Lukić and was raped by him. VG035 testified that Milan Lukić returned to their house between 4 and 5 p.m. on 27 June 1992, and robbed them of their valuables. Although CW2 corroborates the occurrence of the robbery, she does not corroborate Milan Lukić's presence during that robbery.

728. The Trial Chamber considers that the evidence given by VG035 and CW2 was consistent and reliable, and was not shaken under cross-examination. The Trial Chamber accepts VG035's explanation that she was genuinely very much afraid and distraught when giving her statement in 2001, when she was asked to identify Milan Lukić.

729. The Trial Chamber notes that VG035 testified that she saw Sredoje Lukić at her house a few hours before the fire. VG035's evidence was, however, not corroborated by CW2, who was staying with her in the same house.²³⁹⁶

730. VG063 describes Milan Lukić's presence at the Hasan Veletovac school, located in Višegrad town, on the night of St. Vitus Day. Although she did not know the date herself, she knew it was St. Vitus Day because Milan Lukić yelled this at those detained in the Hasan Veletovac school. She described Milan Lukić's extremely brutal demeanour both before and after the beheading of Ibro Sabanović. The Trial Chamber recalls its earlier finding that VG063 had prior knowledge of Milan Lukić, and finds that she was able to recognise him that evening.²³⁹⁷

(e) Findings on Milan Lukić's presence, acts and conduct during the Bikavac incident

731. The evidence presented by the Prosecution as to Milan Lukić's presence, acts and conduct on or about 27 June 1992 was presented by credible and reliable witnesses. On the other hand, the

²³⁹⁶ P336, p. 38.

Trial Chamber has found that the evidence led in support of Milan Lukić's alibi to be wholly unreliable. On the basis of the evidence as a whole, that is, the evidence led by the Prosecution and the evidence led by the Defence, the Trial Chamber finds the alibi is not reasonably possibly true. The Trial Chamber concludes that the Prosecution has proved beyond reasonable doubt that Milan Lukić was present throughout the Bikavac incident, that he shot at the house, threw grenades into the house and subsequently set the house on fire.

(f) Prosecution evidence regarding Sredoje Lukić's presence

732. VG058 and VG115 placed Sredoje Lukić at Meho Aljić's house, VG035 placed him in Bikavac a few hours before the fire, and VG119 placed him in Bikavac shortly before and after the fire. Huso Kurspahić heard Zehra Turjačanin say, when she was being treated for her wounds in Mededa, that Sredoje Lukić was also responsible for setting the house on fire.

733. The Trial Chamber will first consider the evidence of those witnesses who placed Sredoje Lukić at the fire. VG115, who generally did not stand up very well under cross-examination, said she saw a man with a balaclava or stocking over his head at the Bikavac incident, and that she recognised this man, by his eyes and voice, to be Sredoje Lukić. VG058, who also did not stand up well in cross-examination, saw a man with a stocking over his head as well, and believed this man to be Mitar Vasiljević. However, when she was shown a picture of Mitar Vasiljević in 2000, she did not recognise him. Although VG058 testified she had an unobstructed view of Sredoje Lukić's face during the Bikavac incident, the Trial Chamber notes that in most of her previous statements, she does not mention Sredoje Lukić. It was only in her 2008 statement that she stated she recognised Sredoje Lukić at Meho Aljić's house, but then only by his voice.²³⁹⁸ Although the Trial Chamber believes that there was a man wearing a sock over his head, the Trial Chamber is unable to rely on VG058 or VG115's evidence regarding Sredoje Lukić's presence at Meho Aljić's house.

734. The Trial Chamber notes that Zehra Turjačanin made no specific mention of Sredoje Lukić's presence at the fire. She testified that she saw a cousin or uncle of Milan Lukić, also named "Lukić" and who used to be a police officer, arrive at her house before she was led to Meho Aljić's house. There is evidence indicating that there was only one police officer with the family name "Lukić" in Višegrad, and that this police officer was Sredoje Lukić.²³⁹⁹ However, Zehra Turjačanin's only description of this "Lukić" was that he was a man of "about 50 years of age", whereas at the time Sredoje Lukić was just 32 years old. The Trial Chamber observes that Sredoje Lukić is only one year older than the witness. During cross-examination, Zehra Turjačanin repeated

²³⁹⁷ See *supra* paras 187-190

²³⁹⁸ 1D43, para. 41.

²³⁹⁹ P209; P210; P211; P211; P212; P213 and P214.

that a 50 year-old man was amongst the perpetrators of the Bikavac incident, which is consistent with her 1992 statement to a journalist.²⁴⁰⁰ Moreover, Zehra Turjačanin's previous statements tend to be explicit that, other than Milan Lukić, she did not know the identity of the other perpetrators.²⁴⁰¹ Therefore, the Trial Chamber by majority, Judge David dissenting, does not find her evidence to be conclusive as to whether Sredoje Lukić was present at the house-burning in Bikavac.

735. VG119 testified she saw Sredoje Lukić at her house shortly before and immediately after the fire. The Trial Chamber notes that her evidence regarding Sredoje Lukić's presence is not corroborated by VG094, who was staying in the same house as VG119. What is more, VG119 never mentioned Sredoje Lukić in her prior statements. It was only when she was in Mededa and heard Zehra Turjačanin describing Sredoje Lukić to a journalist that she had "a flashback" and suddenly realised that he was one of the men whom she had seen accompanying Milan Lukić on the night of the Bikavac incident,²⁴⁰² and that, over time, she realised that Sredoje Lukić was also "among those who had committed crimes".²⁴⁰³ In view of the Trial Chamber's finding by majority, Judge David dissenting, that the evidence of Zehra Turjačanin as to Sredoje Lukić's presence at Meho Aljić's house is not conclusive, the Trial Chamber places no weight on VG119's evidence in this respect. Similarly, the Trial Chamber by majority, Judge David dissenting, has not given any weight to Huso Kurspahić's evidence that Zehra Turjačanin told him, when she was being treated for her wounds in Mededa, that Sredoje Lukić was amongst the people who burned Meho Aljić's house.

(g) Defence evidence concerning Sredoje Lukić's alibi

736. Zorka Lukić testified that Sredoje Lukić arrived at her house around noon on 27 June 1992, and that he left her house around 4 p.m. The Trial Chamber considers that Zorka Lukić stood up well under cross-examination.

737. Sredoje Lukić went to see Branimir Bugarski in Obrenovac, where he arrived "around 6 p.m.", in the company of Niko Vujičić. After a short visit, Sredoje Lukić and Niko Vujičić left Obrenovac. In his statement, Branimir Bugarski stated that Sredoje Lukić left for Višegrad on the next morning, 28 June 1992, whereas during cross-examination, Branimir Bugarski testified that he did not know whether Sredoje Lukić left for Višegrad immediately or the next morning. If Sredoje Lukić left early in the evening of 27 June 1992, it is possible that he could still have been present at

²⁴⁰⁰ Zehra Turjačanin, 5 Nov 2008, T. 3358, 3359; 2D37, p. 3.

²⁴⁰¹ 1D83, p. 2; 2D37, p. 3.

²⁴⁰² VG119, 1 Oct 2008, T. 2417.

²⁴⁰³ VG119, 2 Oct 2008, T. 2477-2478, 2487-2490.

Meho Aljić's house by 8.30 p.m., whereas if Sredoje Lukić left for Višegrad on the next morning, he could not have been present at the Bikavac incident.

738. It is not clear when Niko Vujičić first joined Sredoje Lukić and why he was in the car with Sredoje Lukić and why Sredoje Lukić did not pick up the pig when he had enough space in his car. The Trial Chamber is further not convinced by Branimir Bugarski's explanation as to how he was able to remember that Sredoje Lukić came to his house on that particular evening. However, Branimir Bugarski maintained his position regarding the events on the evening of 27 June 1992 and stood up relatively well under cross-examination.

(h) Finding on Sredoje Lukić's presence, acts and conduct at the Bikavac incident

739. In light of the evidence of Zehra Turjačanin, VG119, VG094, VG058, VG115 and Huso Kurspahić, the Trial Chamber by majority, Judge David dissenting, is not satisfied beyond reasonable doubt that Sredoje Lukić was present at the Bikavac incident on or about 27 June 1992. Thus, it is not necessary to consider further the alibi proffered by the Sredoje Lukić Defence.

I. Trial Chamber's observations on the Pionirska street and Bikavac incidents

740. In the all too long, sad and wretched history of man's inhumanity to man, the Pionirska street and Bikavac fires must rank high. At the close of the 20th century, a century marked by war and bloodshed on a colossal scale, these horrific events remain imprinted on the memory for the viciousness of the incendiary attack, for the obvious premeditation and calculation that defined it, for the sheer callousness, monstrosity and brutality of herding, trapping and locking the victims in the two houses, thereby rendering them helpless in the ensuing inferno and for the degree of pain and suffering inflicted on the victims as they were burnt alive.

J. Killing of Hajra Korić

1. Prosecution case

(a) Events

741. The indictment charges Milan Lukić with the murder of Hajira Korić, a Muslim. However, the evidence given by VG035 and CW2 indicates that the spelling of the victim's first name should be "Hajra".

742. On a day between 28 June and 5 July 1992, VG035, CW2, Hajra Korić and some 10 to 15 women and children stayed in a house in Potok, a settlement of Višegrad.²⁴⁰⁴ The house was located near a bus station, and the people in the house were waiting for a convoy heading for Macedonia.²⁴⁰⁵ Hajra Korić had told the women that “Milan Lukić and his group” were looking for her son and husband, and that they were hiding in the Korić house.²⁴⁰⁶

743. At some point during the day, a group of about 10 armed men wearing white and grey camouflage uniforms entered the house.²⁴⁰⁷ Some of the women knew who the men were and described them as “the Savić group”, and one person said they came from Čačice.²⁴⁰⁸ At that time, Hajra Korić hid under the kitchen table.²⁴⁰⁹ The armed men forced the women and children out of the house.²⁴¹⁰

744. The group of women and children, including Hajra Korić, started walking towards Bikavac.²⁴¹¹ After a short while, they encountered Milan Lukić and his group who ordered them to stop.²⁴¹² Milan Lukić was wearing a camouflage uniform and carried an automatic rifle with a silencer.²⁴¹³ Milan Lukić instructed the women and children to return to the house from which they had come.²⁴¹⁴

745. As the women were walking back, Milan Lukić and another armed man walked alongside them, searching for Hajra Korić.²⁴¹⁵ According to VG035, the other man walked up to CW2, but Milan Lukić said that she was not Hajra.²⁴¹⁶ When Milan Lukić reached the end of the line, he saw Hajra Korić and singled her out.²⁴¹⁷ He asked her where her husband and son were.²⁴¹⁸ Hajra Korić responded that her husband was in Belgrade and that she was telling the truth; Milan Lukić “just laughed” and shot her in the chest.²⁴¹⁹ Milan Lukić laughed again, and said “What is she doing?”²⁴²⁰

²⁴⁰⁴ VG035, 15 Sep 2008, T. 1684-1686, 1700, 1702; 1D44, p. 5; P336, pp 41-42, 44.

²⁴⁰⁵ VG035, 15 Sep 2008, T. 1685; 1D44, p. 5.

²⁴⁰⁶ VG035, 15 Sep 2008, T. 1687, 1700; P336, p. 42; 1D44, p. 5.

²⁴⁰⁷ VG035, 15 Sep 2008, T. 1686, 1700, 1701; 1D44, pp 5, 6.

²⁴⁰⁸ 1D44, pp 5, 6.

²⁴⁰⁹ VG035, 15 Sep 2008, T. 1686; 1D44, p. 5; P336, p. 41.

²⁴¹⁰ VG035, 15 Sep 2008, T. 1686, 1700, 1701; 1D44, p. 5.

²⁴¹¹ VG035, 15 Sep 2008, T. 1686.

²⁴¹² VG035, 15 Sep 2008, T. 1686, 1701; 1D44, p. 6; P336, pp 42-43.

²⁴¹³ 1D44, p. 6.

²⁴¹⁴ P336, pp 42-43; 1D44, p. 6.

²⁴¹⁵ VG035, 15 Sep 2008, T. 1687, 1703.

²⁴¹⁶ VG035, 15 Sep 2008, T. 1687, 1703. The Trial Chamber notes that in CW2's statement, it was Milan Lukić who asked the other man if CW2 was Hajra, and the man told him that she was not, P336, p. 43.

²⁴¹⁷ VG035, 15 Sep 2008, T. 1687, 1703, 1704; P336, p. 43; 1D44, p. 6 (also stating that Milan Lukić told her, “You Hajra, I told you that I would find you and kill you”).

²⁴¹⁸ VG035, 15 Sep 2008, T. 1687; 1D44, p. 6.

²⁴¹⁹ VG035, 15 Sep 2008, T. 1687; P336, pp 43-44; 1D44, p. 6 (also stating that when Hajra Korić approached him, she wanted to hug Milan Lukić, but as she attempted this “he kicked her from behind”, and while Hajra Korić was on the ground, he shot her in the chest).

He then turned her over with his foot, and shot her again in the back.²⁴²¹ Hajra Korić did not show any signs of life after having been shot.²⁴²²

746. Milan Lukić subsequently instructed the rest of the group to return to their homes and said that he would return that same night at 11 p.m. and that if anyone fled he would have everybody else killed.²⁴²³ VG035 and CW2 were afraid that they might also be killed and decided to spend the night elsewhere.²⁴²⁴ The next morning, VG035's mother-in-law told her that she had seen the body of Hajra Korić, and feared that VG035 had met a similar fate.²⁴²⁵ CW2 stated she did not know whether anyone ever buried Hajra Korić.²⁴²⁶

(b) Prosecution identification evidence

747. VG035 testified that she knew Milan Lukić before the Hajra Korić incident. Her knowledge of Milan Lukić is described earlier in this Judgement.²⁴²⁷ In addition, in the early morning of 27 June 1992, Milan Lukić came to the house of VG035 and CW2 and at gunpoint instructed VG035 to come with him.²⁴²⁸ He took VG035 to an abandoned house in Megdan, where he raped her three times.²⁴²⁹ VG035 testified that before singling out Hajra Korić from the line of women, Milan Lukić recognised VG035 and told her, "Don't be afraid".²⁴³⁰ When asked by the Prosecution whether she recognised anyone in the courtroom, VG035 recognised Milan Lukić.²⁴³¹

748. CW2 also testified that she knew Milan Lukić before the Hajra Korić incident. Her knowledge of Milan Lukić is described above.²⁴³² CW2 was not asked whether she could recognise anyone in the courtroom.

2. Milan Lukić Defence case

749. The Defence claims that another man, not Milan Lukić, shot Hajra Korić, and that "Milan Lukić was not anywhere near Hajra Korić".²⁴³³ In support of its claim, the Milan Lukić Defence

²⁴²⁰ VG035, 15 Sep 2008, T. 1687. The Trial Chamber notes that in her statement, VG035 states that after shooting her for the *second* time, Milan Lukić checked whether she was dead and said, "What was the matter with her", after which he started laughing, 1D44, p. 6.

²⁴²¹ VG035, 15 Sep 2008, T. 1687; 1D44, p. 6.

²⁴²² VG035, 15 Sep 2008, T. 1687.

²⁴²³ VG035, 15 Sep 2008, T. 1704; P336, p. 45.

²⁴²⁴ VG035, 15 Sep 2008, T. 1704; 1D44, p. 6; P336, p. 46.

²⁴²⁵ 1D44, p. 6.

²⁴²⁶ 1D44, p. 6; P336, p. 45.

²⁴²⁷ See *supra* paras 695-698.

²⁴²⁸ VG035, 15 Sep 2008, T. 1660; 1D44, p. 3; P336, pp 33-35.

²⁴²⁹ VG035, 15 Sep 2008, T. 1667-1670.

²⁴³⁰ VG035, 15 Sep 2008, T. 1703.

²⁴³¹ VG035, 15 Sep 2008, T. 1689.

²⁴³² See *supra* para. 699.

²⁴³³ CW2, 9 Apr 2009, T. 7078.

relied on a statement given by CW2 on 25 July 2008 to the Women Victims of War Association, which states the following:

When my turn came he [Milan Lukić] stopped to ask that other chetnik “is it this one?” and Hajra was behind me. He looked at me and this other chetnik told Milan Lukić “it’s not that one”. At that moment as he saw Hajra behind me that chetnik singled her out and only half a meter from us killed Hajra in front of all of us, shooting at Hajra.²⁴³⁴

750. The Prosecution tendered a statement of CW2, dated 6 August 2008 and given to an investigator of the Prosecutor’s Office of BiH, wherein CW2 stated:

EXPERT ASSOCIATE: And what happened when they got to Hajra?

WITNESS: As Hajra came up behind me, he moved her some half a metre from us and suddenly shot her.

EXPERT ASSOCIATE: Who shot her?

WITNESS: Milan Lukić. The other asked, “What was up with her?” He replied, “I’ve got no idea,” and walked up to her and shot her again.

EXPERT ASSOCIATE: So, Milan Lukić shot her twice?

WITNESS: Yes.²⁴³⁵

751. While testifying, CW2 stated that she always maintained that it was Milan Lukić who shot Hajra Korić.²⁴³⁶

752. Lastly, the Defence claimed that Bakira Hasečić, the President of the Women Victims of War Association, “prompted” CW2 to testify against Milan Lukić.²⁴³⁷ In cross-examination, CW2 denied having been influenced by Bakira Hasečić in giving her statement to the association.²⁴³⁸

753. Although no notice of alibi was presented by the Milan Lukić Defence for the Hajra Korić incident, MLD10 testified that she heard from her father and brother that, in early July 1992, Milan Lukić escorted her father and brother, who were living in Serb-controlled territory, through the woods to arrive safely at the west bank of the Drina river. There, a boat came to pick up her father and brother and transported them to the east bank of the Drina river, after which they travelled to Žepa, which was held by the ABiH.²⁴³⁹

²⁴³⁴ 1D228, p. 5.

²⁴³⁵ P336, p. 43.

²⁴³⁶ CW2, 9 Apr 2009, T. 7070, 7076-7077, 7084.

²⁴³⁷ CW2, 9 Apr 2009, T. 7078, 7083-7084.

²⁴³⁸ CW2, 9 Apr 2009, T. 7083-7084.

²⁴³⁹ MLD10, 18 Dec 2008, T. 4007-4010.

3. Factual findings in relation to the Hajra Korić incident

(a) Prosecution evidence regarding the event

754. Although the Prosecution has not presented any forensic evidence regarding the death of Hajra Korić, the Trial Chamber is satisfied beyond reasonable doubt that on a day between 28 June 1992 and 5 July 1992, Hajra Korić was shot at twice and that she died as a result.

(b) Prosecution evidence regarding Milan Lukić's presence, acts and conduct

755. Prior to the incident, Milan Lukić had introduced himself to VG035 and had raped her three times, while CW2 had had various encounters with Milan Lukić in June 1992. The Trial Chamber considers that VG035 and CW2 had sufficient prior knowledge of Milan Lukić to recognise him when he shot Hajra Korić. Their credibility, when confronted by their prior evidence regarding their description of Milan Lukić's physical appearance, was not undermined in cross-examination. The Trial Chamber recalls its earlier finding that it accepts VG035's explanation that she was genuinely very much afraid and distraught when she was asked to identify Milan Lukić while giving her statement in 2001.

756. CW2 conceded that, while she has remained in contact with VG035 for the last decade, they have not discussed the killing of Hajra Korić.²⁴⁴⁰ The Trial Chamber also considers that CW2 maintained in her testimony in court that it was Milan Lukić who shot Hajra Korić, and considers that she is a witness of truth. The Trial Chamber considers that the evidence given by VG035 and CW2 is consistent and reliable.

(c) Defence evidence

757. As set out above, the Trial Chamber considers that the allegations of bribery and MLD10's evidence in this respect raise serious questions as to her credibility in general, including her alibi evidence regarding the Hajra Korić incident.²⁴⁴¹ It considers that MLD10 is wholly unreliable and it rejects her evidence.

(d) Findings regarding Milan Lukić's presence, acts and conduct

758. The evidence presented by the Prosecution as to Milan Lukić's presence, acts and conduct on a day between 28 June and 5 July 1992 was presented by credible and reliable witnesses. On the other hand, the Trial Chamber has found the evidence led in support of Milan Lukić's alibi to be

²⁴⁴⁰ CW2, 9 Apr 2009, T. 7082.

²⁴⁴¹ See *supra* section II.E.4(d).

wholly unreliable. On the basis of the evidence as a whole, that is, the evidence led by the Prosecution and the evidence led by the Defence, the Trial Chamber finds the alibi is not reasonably possibly true. The Trial Chamber concludes that the Prosecution has proved beyond reasonable doubt that Milan Lukić shot Hajra Korić and that she died as a result.

K. Incidents at the Uzamnica detention camp

1. Prosecution case

759. The Uzamnica detention camp was in the former JNA barracks at Uzamnica, located on the right bank of the Drina near the hydroelectric dam.²⁴⁴²

760. Between June 1992 and October 1994, a total of around 45 men and around 11 women and two children were detained in the Uzamnica camp.²⁴⁴³ The number of persons detained varied as some detainees would be taken away and new persons would be brought in.²⁴⁴⁴ The detainees were Muslims, the oldest being about 80 years old,²⁴⁴⁵ and civilians with few exceptions.²⁴⁴⁶ The detainees were locked in a warehouse with the male and female detainees being held in separate rooms.²⁴⁴⁷

761. The living conditions in the camp were deplorable.²⁴⁴⁸ There was not enough food for all detainees.²⁴⁴⁹ There were no sanitary facilities,²⁴⁵⁰ and the detainees did not receive medical care.²⁴⁵¹ There was no heating or electricity in the warehouse.²⁴⁵²

762. The male detainees were regularly beaten by the guards with fists, truncheons, electric cables and wooden bats, mostly during the nights and, in particular, at the end of 1992 and the beginning of 1993.²⁴⁵³ The detainees were also beaten by other persons entering the barracks.²⁴⁵⁴ After the ICRC visited the camp in May 1993, having been repeatedly denied access to the camp,

²⁴⁴² Nurko Dervišević, 19 Sep 2008, T. 1956; Islam Kustura, 23 Sep 2008, T. 2177; P111, p. 2; P113; P142, p. 6; 1D61, p. 4.

²⁴⁴³ Nurko Dervišević, 19 Sep 2008, T. 1957-1958; P111, pp 3-4; 2D15, pp 5-8; P142, p. 7; Islam Kustura, 23 Sep 2008, T. 2177, 2179; 2D19, p. 2; P168, p. 6.

²⁴⁴⁴ Nurko Dervišević, 19 Sep 2008, T. 1957-1958, 1979.

²⁴⁴⁵ Nurko Dervišević, 19 Sep 2008, T. 1958, P111, p. 3. See also 2D15, p. 6.

²⁴⁴⁶ Islam Kustura, 23 Sep 2008, T. 2178-2179, 24 Sep 2008, T. 2268, 2269; Nurko Dervišević, 19 Sep 2008, T. 1958; P111, p. 3; P142, p. 7; P168, p. 6.

²⁴⁴⁷ P114; Nurko Dervišević, 19 Sep 2008, 1996; P111, pp 3, 6; P168, p. 6; Islam Kustura, 23 Sep 2008, T. 2177-2178.

²⁴⁴⁸ Nurko Dervišević, 19 Sep 2008, T. 1959; P111, p. 5; Islam Kustura, 23 Sep 2008, T. 2179; P142, p. 7.

²⁴⁴⁹ Islam Kustura, 23 Sep 2008, T. 2179-2180; P142, p. 7; P168, p. 7; Nurko Dervišević, 19 Sep 2008, T. 1959-1960; P111, p. 5; Nurko Dervišević weighed 62 kilograms before the detention and only 42 kilograms after he was released.

²⁴⁵⁰ P142, p. 7; Islam Kustura, 23 Sep 2008, T. 2180, 2196; P168, p. 6.

²⁴⁵¹ Islam Kustura, 23 Sep 2008, T. 2196.

²⁴⁵² Islam Kustura, 23 Sep 2008, T. 2180; Adem Berberović, 2 Oct 2008, T. 2509.

²⁴⁵³ 1D61, pp 6, 7; 2D19, p. 2; P142, p. 7; P111, pp 5, 6; P168, pp 6, 7.

²⁴⁵⁴ P111, p. 6.

the living conditions improved.²⁴⁵⁵ However, the detainees were too scared to tell the ICRC about the beatings.²⁴⁵⁶ After some of the guards left the camp at the end of 1993, the beatings stopped.²⁴⁵⁷

763. From the beginning of June 1992 until the end of 1992 or beginning of 1993, Đure Đurišić was the commander of the Uzamnica camp.²⁴⁵⁸ He wore a camouflage uniform with the insignia of the Serb army.²⁴⁵⁹ Several other commanders succeeded him.²⁴⁶⁰ There were seven or more armed Serb guards in the camp, among them Rade Milosavljević and Mićo Spasojević.²⁴⁶¹ There was also a Muslim, Šaban Muratagić, who was described as “a kind of watchman in the camp”.²⁴⁶² He spent the night in the warehouse and went to work outside the camp during the day.²⁴⁶³ Šaban Muratagić would tell the detainees to go out of the warehouse if that was ordered by a guard and he would also beat the detainees or watch when they were beaten.²⁴⁶⁴ He also told the detainees the names of the guards and “the opportunistic visitors”.²⁴⁶⁵

764. Some detainees died in the barracks. Meho Bečirević, Čamir Bečirević, and Bekto Salić died from the injuries sustained from the beatings.²⁴⁶⁶ Mustafa Čuprija developed diabetes and died after a month.²⁴⁶⁷ The 96-year-old mother of Islam Kustura broke her leg, but did not receive medical attention and died 20 days later.²⁴⁶⁸

765. The detainees were forced to work in and around Višegrad during their detention.²⁴⁶⁹ For example, detainees unloaded coal at a place called Gornja Mahala and at Cadzava, took out slag from the boiler house and worked at a farm near the Župa river.²⁴⁷⁰

766. At one point in August or September 1992, all detainees were taken by truck to Dobro Polje, where they were chained in pairs and sent out on foot towards the front line.²⁴⁷¹ Although the ABiH

²⁴⁵⁵ Nurko Dervišević, 19 Sep 2008, T. 1967; P111, pp 6, 7; P168, p. 7; Islam Kustura, 23 Sep 2008, T. 2196.

²⁴⁵⁶ Nurko Dervišević, 19 Sep 2008, T. 1967.

²⁴⁵⁷ Adem Berberović, 2 Oct 2008, T. 2537; 1D61, p. 6.

²⁴⁵⁸ P111, p. 4; 2D15, p. 4; 2D16, p. 6; P168, p. 7; P142, pp 6, 8; 1D61, p. 6; 2D19, p. 2.

²⁴⁵⁹ P168, pp 6, 7.

²⁴⁶⁰ P142, pp 7, 8; 1D61, p. 7; P111, p. 4; 2D19, pp 2, 3.

²⁴⁶¹ Nurko Dervišević, 19 Sep 2008, T. 1958, 1959, 1961, P111, p. 4; 2D15, pp 4-5; 2D17, p. 8; Islam Kustura, 23 Sep 2008, T. 2180-2181; P142, pp 7, 8; 1D61, p. 7; P168, pp 6, 7.

²⁴⁶² 2D15, p. 6.

²⁴⁶³ P142, p. 6, 2D16, p. 7.

²⁴⁶⁴ P111, p. 6; 2D15, p. 6; 2D16, p. 7; P142, pp 6, 9, 11; 1D61, pp 4, 5; 2D19, p. 2.

²⁴⁶⁵ Adem Berberović, 2 Oct 2008, T. 2508, 2535; Nurko Dervišević, 19 Sep 2008, T. 1961, P111, p. 4, P112, p. 2; P168, pp 6, 7; P171, p. 2.

²⁴⁶⁶ P142, p. 10; 2D19, p. 2; P111, p. 6; 2D15, pp 6, 7; 2D16, p. 8.

²⁴⁶⁷ P142, p. 10; P111, p. 6; 2D17, p. 8.

²⁴⁶⁸ P142, p. 10; Nurko Dervišević, 19 Sep 2008, T. 1995-1996; P111, pp 4, 6; 2D15, p. 7; 2D16, p. 8.

²⁴⁶⁹ P142, p. 10; 1D61, p. 6; 2D20, p. 3; 2D19, p. 2.

²⁴⁷⁰ Adem Berberović, 2 Oct 2008, T. 2513, 2540; P111, p. 6; 2D15, p. 9; 2D16, pp 10-11.

²⁴⁷¹ P142, p. 11.

started shooting, they returned unharmed.²⁴⁷² In October 1992, groups of soldiers came to the camp and took the male detainees to dig trenches outside the camp by the dam.²⁴⁷³

767. In early October 1994, the detainees remaining at the Uzamnica camp were driven to Sarajevo where they were exchanged.²⁴⁷⁴

(a) Beatings

768. From June 1992 onwards until 1993, Milan Lukić would regularly come to the camp with several other persons, including Sredoje Lukić,²⁴⁷⁵ Miloš Lukić,²⁴⁷⁶ Boban Indić²⁴⁷⁷ and Dragan Šekarić from Goražde,²⁴⁷⁸ to beat the detainees.²⁴⁷⁹ The camp guards would let them in and when the guards were not there, Milan Lukić would just unlock the door to the warehouse and enter.²⁴⁸⁰ From 1993 onwards, Milan Lukić was seen less and less, and he was not seen at all for a period of between two and eight months in 1994 because he was in custody in Belgrade.²⁴⁸¹ Milan Lukić reappeared in the Uzamnica camp sometime in 1994, but he did not beat the detainees at that time.²⁴⁸²

769. In 1992 and 1993, Milan Lukić and the men accompanying him, including Sredoje Lukić, would beat the detainees inside the warehouse in clear view of the others.²⁴⁸³ They would beat the detainees with rifle butts, wooden sticks and their hands and would also kick them with their boots.²⁴⁸⁴ When they finished, there would be blood all over the floor.²⁴⁸⁵ Milan Lukić also made the detainees sing “Chetnik” songs and “make the sign of the cross”.²⁴⁸⁶ When Milan Lukić saw detainees working outside the camp, he would approach them and beat them.²⁴⁸⁷

(i) Beating of Adem Berberović

²⁴⁷² P142, p. 11.

²⁴⁷³ P142, p. 11; 2D15, p. 9.

²⁴⁷⁴ Adem Berberović, 2 Oct 2008, T. 2540-2541; P142, p. 11. See also Islam Kustura, 23 Sep 2008, T. 2196-2197; 2D19, p. 3; Nurko Dervišević, 19 Sep 2008, T. 1957, 1978; P111, p. 7; 2D15, p. 4; 2D17, p. 7. See also 2D16, p. 6.

²⁴⁷⁵ Islam Kustura, 23 Sep 2008, T. 2182, 2189; Adem Berberović, 2 Oct 2008, T. 2536; 1D61, p. 4; P142, p. 9; P111, p. 5; P112, p. 2.

²⁴⁷⁶ P142, p. 9; 1D61, p. 4; 2D19, p. 2; P111, p. 5.

²⁴⁷⁷ P111, p. 5; P168, p. 7. See also P112, pp 2-3; Boban Simšić.

²⁴⁷⁸ P142, p. 9; 1D61, p. 4; P168, p. 7; P111, p. 5; P112, pp 2-3.

²⁴⁷⁹ Adem Berberović, 2 Oct 2008, T. 2509, 2511, 2547; P142, p. 9; 1D61, pp 4-5; Islam Kustura, 23 Sep 2008, T. 2186-2187, 2188-2189; 2D19, p. 2; P168, p. 7; P171, p. 2; Nurko Dervišević, 19 Sep 2008, T. 1960; 2D17, p. 8.

²⁴⁸⁰ P142, p. 9. See also Islam Kustura, 23 Sep 2008, T. 2188; P168, p. 7.

²⁴⁸¹ Adem Berberović, 2 Oct 2008, T. 2536, 2539-2540; Islam Kustura, 23 Sep 2008, T. 2185, 2197-2199; Nurko Dervišević, 19 Sep 2008, T. 1984, 2004-2005, P111, p. 7.

²⁴⁸² Nurko Dervišević, 19 Sep 2008, T. 1984-1985, 2004-2005; P111, p. 7; Islam Kustura, 23 Sep 2008, T. 2197-2198.

²⁴⁸³ Adem Berberović, 2 Oct 2008, T. 2544, 2545, 2547; Nurko Dervišević, 19 Sep 2008, T. 1997; P111, p. 5; P168, p. 7; Islam Kustura, 24 Sep 2008, T. 2271.

²⁴⁸⁴ Adem Berberović, 2 Oct 2008, T. 2511; P142, p. 9; P168, p. 7; Islam Kustura 23 Sep 2008, T. 2182, 2187-2188.

²⁴⁸⁵ P111, p. 5. See also 2D17, p. 8; P168, p. 7.

²⁴⁸⁶ 2D17, p. 8.

²⁴⁸⁷ P142, p. 10.

770. On or about 14 August 1992, Adem Berberović (referred to as VG003 in the indictment), a Muslim from the village of Hamzići in Višegrad municipality, born in 1965, was arrested by 12 Serb men in camouflage uniform while he was escorting women and children towards Mededa and Goražde.²⁴⁸⁸ They took him to the village Gornja Lijeska, where he was interrogated.²⁴⁸⁹ The following day he was brought to the Uzamnica camp by police officers.²⁴⁹⁰ Adem Berberović arrived in the Uzamnica camp already severely wounded,²⁴⁹¹ after having been beaten and injured during his arrest and interrogation.²⁴⁹²

771. The Milan Lukić Defence and the Sredoje Lukić Defence put to Adem Berberović in cross-examination that he was a soldier and was captured during combat.²⁴⁹³ Adem Berberović replied that he joined the TO at the beginning of the war, but denied that he was captured during combat.²⁴⁹⁴ He stated that he was escorting civilians and not carrying any weapons at the time of his arrest.²⁴⁹⁵

772. Adem Berberović was detained in the Uzamnica barracks for 26 months.²⁴⁹⁶ On or about 5 October 1994, Adem Berberović and the other detainees were driven out of the camp to Kula in Sarajevo where they were later exchanged.²⁴⁹⁷

773. A few days after Adem Berberović's arrival, Milan Lukić and Sredoje Lukić entered the warehouse at about noon and started beating him and other detainees, including Nurko Dervišević.²⁴⁹⁸ Milan Lukić said to Adem Berberović, "Fuck your Ustasha mother. You have green eyes like a true Ustasha".²⁴⁹⁹ The door of the warehouse was left open, which allowed Adem Berberović to see the men clearly.²⁵⁰⁰

774. Adem Berberović testified that this was the first time he saw Milan Lukić in the camp and was beaten by him.²⁵⁰¹ The Trial Chamber notes that while Adem Berberović testified that Islam Kustura and VG025 were among the other detainees who were beaten on that day,²⁵⁰² there is other evidence to show that neither Islam Kustura nor VG025 had yet arrived in the camp at the end of

²⁴⁸⁸ Adem Berberović, 2 Oct 2008, T. 2532; P142, pp 1, 4.

²⁴⁸⁹ Adem Berberović, 2 Oct 2008, T. 2532-2534; P142, p. 5.

²⁴⁹⁰ Adem Berberović, 2 Oct 2008, T. 2535; P142, pp 5-6; 1D61, p. 4.

²⁴⁹¹ Adem Berberović, 2 Oct 2008, T. 2532-2533, 2535; Nurko Dervišević, 19 Sep 2008, T. 1994-1995.

²⁴⁹² Adem Berberović, 2 Oct 2008, T. 2532-2534; P142, pp 3-5; 1D61, pp 3-4.

²⁴⁹³ Adem Berberović, 2 Oct 2008, T. 2532, 2554, 2557.

²⁴⁹⁴ Adem Berberović, 2 Oct 2008, T. 2527-2528, P142, p. 2 (corrected 2 Oct 2008, T. 2503).

²⁴⁹⁵ Adem Berberović, 2 Oct 2008, T. 2532, 2554, 2557, 2559.

²⁴⁹⁶ P142, p. 7.

²⁴⁹⁷ Adem Berberović, 2 Oct 2008, T. 2540-2541; P142, p. 11.

²⁴⁹⁸ Adem Berberović, 2 Oct 2008, T. 2507; 1D61, p. 4.

²⁴⁹⁹ Adem Berberović, 2 Oct 2008, T. 2507.

²⁵⁰⁰ Adem Berberović, 2 Oct 2008, T. 2509-2510.

²⁵⁰¹ Adem Berberović, 2 Oct 2008, T. 2507.

²⁵⁰² Adem Berberović, 2 Oct 2008, T. 2507.

August 1992.²⁵⁰³ The Trial Chamber considers that Adem Berberović was mistaken when he referred to Islam Kustura and VG025, but does not attach material weight to that discrepancy.

775. The Milan Lukić Defence put to Adem Berberović his previous statement of 1994, in which he stated that he had seen Milan Lukić at the camp for the first time on the second day after his arrival and that Milan Lukić only kicked him once in the chest and did not beat him on that occasion.²⁵⁰⁴ Adem Berberović confirmed that Milan Lukić only kicked him on the second day after his arrival, but stated that he beat other detainees on that day.²⁵⁰⁵ Adem Berberović also confirmed his previous statement that on the day after the first beating, Milan Lukić and Sredoje Lukić came back.²⁵⁰⁶ In the statement, he described that they came to the camp with Dragan Šekarić and beat him and Nurko Dervišević with a 1.2 metre pole on the head and body for 15 minutes²⁵⁰⁷ and that Milan Lukić cut Adem Berberović's head.²⁵⁰⁸

776. Adem Berberović was beaten by Milan Lukić many times after the first beatings.²⁵⁰⁹ Milan Lukić beat Adem Berberović so many times that he was unable to remember each and every incident.²⁵¹⁰ Sometimes Milan Lukić administered electric shocks to Adem Berberović by holding an electric baton under his chin.²⁵¹¹ Sredoje Lukić also returned to the camp two or three more times to beat the detainees.²⁵¹² Adem Berberović stated that the end of 1992 and the beginning of 1993 was the worst part of his detention.²⁵¹³

777. One afternoon, Milan Lukić began beating Adem Berberović on the back with an electric baton.²⁵¹⁴ While Milan Lukić was beating Adem Berberović, the inner segment of the baton fell out and Milan Lukić accused Adem Berberović of having cost him "500 marks" for this baton and started cursing his *balija* mother.²⁵¹⁵

778. In February 1993, Adem Berberović and other detainees were forced to work near Okolišta.²⁵¹⁶ Milan Lukić beat Adem Berberović with a wooden bat in a kitchen where the detainees were taken for lunch after work.²⁵¹⁷ He told Adem Berberović to move two or three

²⁵⁰³ Islam Kustura, 23 Sep 2008, T. 2176-2177. See also 2D19, p. 2; P168, p. 6; Adem Berberović, 2 Oct 2008, T. 2543.

²⁵⁰⁴ 1D61, p. 4.

²⁵⁰⁵ Adem Berberović, 2 Oct 2008, T. 2535-2536.

²⁵⁰⁶ Adem Berberović, 2 Oct 2008, T. 2536.

²⁵⁰⁷ 1D61, p. 4.

²⁵⁰⁸ 1D61, p. 4.

²⁵⁰⁹ Adem Berberović, 2 Oct 2008, T. 2511, 2536.

²⁵¹⁰ Adem Berberović, 2 Oct 2008, T. 2511, 2513; P142, pp 7, 9.

²⁵¹¹ P142, p. 9. See also 1D61, p. 5.

²⁵¹² Adem Berberović, 2 Oct 2008, T. 2515-2516, 2536, 2545, 2552.

²⁵¹³ Adem Berberović, 2 Oct 2008, T. 2537; 1D61, p. 6.

²⁵¹⁴ Adem Berberović, 2 Oct 2008, T. 2511-2512.

²⁵¹⁵ Adem Berberović, 2 Oct 2008, T. 2511-2512.

²⁵¹⁶ Adem Berberović, 2 Oct 2008, T. 2513, 2514, 2536; 1D61, p. 6.

²⁵¹⁷ Adem Berberović, 2 Oct 2008, T. 2514-2515.

metres away from the other men and to bend down, and then started beating him with the bat.²⁵¹⁸ When that bat broke into pieces, because he beat Adem Berberović so fiercely, Milan Lukić went away and brought another bat and continued beating Adem Berberović.²⁵¹⁹ Adem Berberović was covered in blood and lost consciousness.²⁵²⁰

779. Adem Berberović was also beaten by the guards who would call him out of the warehouse during the night.²⁵²¹ Rade Milosavljević beat him every night. On one occasion he cut his chin, on another occasion he knocked out two of his teeth.²⁵²² Šaban Muratagić also beat Adem Berberović on several occasions.²⁵²³

780. Adem Berberović did not receive medical care for his injuries. He could not move for 65 days and had to lie down because of his injuries.²⁵²⁴ Adem Berberović still suffers from the injuries received during detention. He lost sight in one eye and has sleeping problems.²⁵²⁵ He has headaches and pain in his arms, back, spine, and in his left leg.²⁵²⁶ Scars remain on his chin and on his leg and he has pain in his right kidney.²⁵²⁷

(ii) Beating of Islam Kustura

781. On or about 3 October 1992, Islam Kustura (referred to as VG008 in the indictment), a Muslim from Višegrad born in 1930, was arrested in his house by Serb men, together with his mother, wife and other persons, and was brought to the Hasan Veletovac school in Višegrad.²⁵²⁸ Police officers then brought them to the Uzamnica camp.²⁵²⁹ Islam Kustura was detained in the Uzamnica camp for two years and ten days.²⁵³⁰

782. Islam Kustura saw Milan Lukić and Sredoje Lukić for the first time two or three days after his arrival in the Uzamnica camp, on which day they beat him and other detainees.²⁵³¹ Milan Lukić would call the detainees *balija* and would run at them.²⁵³² When they fell over, he would beat them with a rifle or with his fists, and he would also kick them.²⁵³³ Sredoje Lukić also beat Islam Kustura

²⁵¹⁸ Adem Berberović, 2 Oct 2008, T. 2514-2515.

²⁵¹⁹ Adem Berberović, 2 Oct 2008, T. 2514-2515.

²⁵²⁰ Adem Berberović, 2 Oct 2008, T. 2514.

²⁵²¹ Adem Berberović, 2 Oct 2008, T. 2537; P142, pp 8, 9.

²⁵²² Adem Berberović, 2 Oct 2008, T. 2537.

²⁵²³ 1D61, pp 5, 6.

²⁵²⁴ P142, p. 7.

²⁵²⁵ Adem Berberović, 2 Oct 2008, T. 2517. See also P142, p. 11.

²⁵²⁶ Adem Berberović, 2 Oct 2008, T. 2517.

²⁵²⁷ P142, p. 11.

²⁵²⁸ Islam Kustura, 23 Sep 2008, T. 2171, 2172-2173, 2176-2177, 2201; 2D19, pp 1, 2.

²⁵²⁹ Islam Kustura, 23 Sep 2008, T. 2177. See also Adem Berberović, 2 Oct 2008, T. 2543.

²⁵³⁰ Islam Kustura, 23 Sep 2008, T. 2188, 24 Sep 2008, T. 2269.

²⁵³¹ Islam Kustura, 23 Sep 2008, T. 2181-2182, 2200.

²⁵³² Islam Kustura, 23 Sep 2008, T. 2182.

²⁵³³ Islam Kustura, 23 Sep 2008, T. 2182. See also at T. 2194.

and the other detainees on that occasion.²⁵³⁴ First he kicked Islam Kustura and then he beat him with a rifle and with wooden stakes.²⁵³⁵ After the first beating, Islam Kustura was not able to move.²⁵³⁶ Milan Lukić and Sredoje Lukić beat Islam Kustura for a second time on another occasion, after which Islam Kustura was unable to stand for about three weeks.²⁵³⁷

783. Islam Kustura testified that Milan Lukić and Sredoje Lukić mistreated him “if it wasn’t every day it was every other day”.²⁵³⁸ He said that he saw Milan Lukić “hundreds of times” coming to beat the detainees and that Sredoje Lukić was “always” with Milan Lukić.²⁵³⁹ He stated that Milan Lukić would most often beat him with wooden sticks and beams.²⁵⁴⁰

784. Islam Kustura was also mistreated by the camp guards.²⁵⁴¹ He recalled that Mićo Spasojević beat him and other detainees on two occasions with a self-made “kind of whip” to which a piece of iron was tied.²⁵⁴²

785. As a result of the beatings, Islam Kustura’s left arm was broken in three places and his right arm in one place.²⁵⁴³ The Milan Lukić Defence put to Islam Kustura that his arms were not broken, but that he just thought so because of the pain.²⁵⁴⁴ Islam Kustura replied that he did not know exactly how he managed to recover without medical assistance, but that he was absolutely certain that his arms were broken.²⁵⁴⁵ He also recalled that the fracture occurred sometime during the winter of 1992 or 1993 and that he was not able to use his arms for six months.²⁵⁴⁶ Islam Kustura testified that after he was released, an x-ray was made showing “bulges” on his ribs and his back.²⁵⁴⁷

(iii) Beating of Nurko Dervišević

786. In the middle of June 1992, Nurko Dervišević (referred to as VG016 in the indictment), a Muslim born in 1940,²⁵⁴⁸ was arrested in Kupalište by Nebojša Todorović and Goran a/k/a/ Dragan Popović and brought to the police station in Višegrad, where he had to hand over his identity

²⁵³⁴ Islam Kustura, 23 Sep 2008, T. 2181-2182, 2183.

²⁵³⁵ Islam Kustura, 23 Sep 2008, T. 2183.

²⁵³⁶ Islam Kustura, 23 Sep 2008, T. 2184.

²⁵³⁷ Islam Kustura, 23 Sep 2008, T. 2184; 2D19, p. 2.

²⁵³⁸ Islam Kustura, 23 Sep 2008, T. 2186-2187.

²⁵³⁹ Islam Kustura, 23 Sep 2008, T. 2182, 2189, 24 Sep 2008, T. 2283.

²⁵⁴⁰ Islam Kustura, 23 Sep 2008, T. 2187-2188; 2D19, p. 2.

²⁵⁴¹ Islam Kustura, 23 Sep 2008, T. 2181. See also 2D19, p. 2.

²⁵⁴² Islam Kustura, 23 Sep 2008, T. 2181.

²⁵⁴³ 2D19, p. 2; Islam Kustura, 23 Sep 2008, T. 2182.

²⁵⁴⁴ Islam Kustura, 23 Sep 2008, T. 2202-2203.

²⁵⁴⁵ Islam Kustura, 23 Sep 2008, T. 2202.

²⁵⁴⁶ Islam Kustura, 23 Sep 2008, T. 2203.

²⁵⁴⁷ Islam Kustura, 23 Sep 2008, T. 2182; 2D19, p. 2.

²⁵⁴⁸ P111, p. 1; P112, p. 1.

card.²⁵⁴⁹ Milan Lukić appeared and asked Nurko Dervišević where his sons were and slapped him over his head.²⁵⁵⁰ Nurko Dervišević was then taken to the Uzamnica camp and detained there for 28 months.²⁵⁵¹

787. Nurko Dervišević was regularly beaten by Milan Lukić.²⁵⁵² On several occasions, Milan Lukić kicked Nurko Dervišević with his trainers and held him to the floor with his foot.²⁵⁵³ On another occasion, Milan Lukić held Nurko Dervišević against the pillar in the hangar and kicked him.²⁵⁵⁴ Another time he chased him across the hangar.²⁵⁵⁵ When Nurko Dervišević fell and tried to crawl forward, Milan Lukić put his foot on his back.²⁵⁵⁶ Nurko Dervišević testified that Milan Lukić beat the other detainees and “tortured them much worse”.²⁵⁵⁷

788. Nurko Dervišević testified that Sredoje Lukić came to the camp only once, in July or August, “the later months”, and that Sredoje Lukić hit him several times on that occasion.²⁵⁵⁸ In a previous statement he had indicated that this beating occurred at the end of 1993.²⁵⁵⁹ Nurko Dervišević was alone in the camp and Semšo Poljo was brought in by Milan Lukić and Sredoje Lukić.²⁵⁶⁰ Sredoje Lukić beat Nurko Dervišević on his back with a baton while Milan Lukić was beating Semšo Poljo.²⁵⁶¹ When asked during cross-examination whether Sredoje Lukić ever beat or mistreated him during his detention, Nurko Dervišević first stated that Sredoje Lukić did *not* beat or mistreat him,²⁵⁶² but later confirmed that Sredoje Lukić beat him several times on the described occasion.²⁵⁶³

789. In a statement given in 1998, Nurko Dervišević stated that Sredoje Lukić regularly came to the Uzamnica camp with Milan Lukić and Miloš Lukić and severely beat him.²⁵⁶⁴ He stated that a couple of times he was beaten so badly by the three men that his body “looked like [he] was wearing a camouflage uniform”.²⁵⁶⁵ Other witness’ accounts also suggest that Sredoje Lukić beat

²⁵⁴⁹ Nurko Dervišević, 19 Sep 2008, T. 1954, 1955; P111, p. 2. See also 2D15, p. 4; 2D16, pp 5-6; 2D17, p. 6.

²⁵⁵⁰ Nurko Dervišević, 19 Sep 2008, T. 1954, 1955, 1956; P111, p. 2. See also 2D16, p. 6.

²⁵⁵¹ Nurko Dervišević, 19 Sep 2008, T. 1955, 1957, 1978, 1997. See also P111, pp 2, 7; 2D15, p. 4; 2D16, p. 6; 2D17, p. 7.

²⁵⁵² Islam Kustura, 23 Sep 2008, T. 2182, 2189, 24 Sep 2008, T. 2283; Nurko Dervišević, 19 Sep 2008, T. 1960-1961, 1992, P111, p. 5; P112, p. 2; 2D17, p. 8.

²⁵⁵³ Nurko Dervišević, 19 Sep 2008, T. 1992.

²⁵⁵⁴ Nurko Dervišević, 19 Sep 2008, T. 1960.

²⁵⁵⁵ Nurko Dervišević, 19 Sep 2008, T. 1960.

²⁵⁵⁶ Nurko Dervišević, 19 Sep 2008, T. 1960.

²⁵⁵⁷ Nurko Dervišević, 19 Sep 2008, T. 1992.

²⁵⁵⁸ Nurko Dervišević, 19 Sep 2008, T. 1961-1962.

²⁵⁵⁹ P112, p. 2.

²⁵⁶⁰ Nurko Dervišević, 19 Sep 2008, T. 1961-1962, 1999; P112, p. 2.

²⁵⁶¹ P111, p. 5; P112, p. 2.

²⁵⁶² Nurko Dervišević, 19 Sep 2008, T. 1999.

²⁵⁶³ Nurko Dervišević, 19 Sep 2008, T. 2003, 2006.

²⁵⁶⁴ P111, p. 5.

²⁵⁶⁵ P111, p. 5.

Nurko Dervišević on more than one occasion. Adem Berberović stated that the second day after his arrival in the Uzamnica camp, he saw Milan Lukić and Sredoje Lukić order Nurko Dervišević to put his hands around a post and then watched them repeatedly kick Nurko Dervišević on the head, back and ribs.²⁵⁶⁶ The next day they returned with Dragan Šekarić and beat Adem Berberović and Nurko Dervišević with a 1.2 metre pole for 15 minutes.²⁵⁶⁷ In court, Adem Berberović stated under cross-examination that he and Nurko Dervišević were beaten by Sredoje Lukić on more than one occasion,²⁵⁶⁸ and that Nurko Dervišević, who had been longer in the camp than Adem Berberović, had told him that Milan Lukić and Sredoje Lukić had come before Adem Berberović's arrival and had beaten and maltreated him.²⁵⁶⁹ Islam Kustura recalled a particular incident when Nurko Dervišević was pulled out of a puddle after having been seriously beaten by Milan Lukić and Sredoje Lukić.²⁵⁷⁰

790. Nurko Dervišević was also beaten by the guards, including by Mićo Spasojević.²⁵⁷¹ On one occasion, Šaban Muratagić beat Nurko Dervišević, jumped on him and kicked him. He told Nurko Dervišević that he was made to do so by Mićo Spasojević.²⁵⁷²

791. Nurko Dervišević suffers long term consequences from his detention and the beatings.²⁵⁷³ He has severe pain in his legs and some muscles in his arm are damaged.²⁵⁷⁴ He has problems with his kidneys and urinary ducts.²⁵⁷⁵ Nurko Dervišević was declared 70 per cent invalid and had to retire after having been released from the camp.²⁵⁷⁶

(iv) Beating of VG025

792. VG025, a Muslim born in 1959, was taken to the Uzamnica camp on 26 November 1992.²⁵⁷⁷ He was a member of the ABiH.²⁵⁷⁸ He spent eight months in the Uzamnica camp and was released on 8 July 1993.²⁵⁷⁹

793. VG025 was regularly and severely beaten by the guards in the Uzamnica camp,²⁵⁸⁰ and also by Milan Lukić.²⁵⁸¹ One day, Milan Lukić, Dragan Šekarić and Boban Indić made him and other

²⁵⁶⁶ 1D61, p. 4.

²⁵⁶⁷ 1D61, p. 4.

²⁵⁶⁸ Adem Berberović, 2 Oct 2008, T. 2545.

²⁵⁶⁹ Adem Berberović, 2 Oct 2008, T. 2509.

²⁵⁷⁰ Islam Kustura, 23 Sep 2008, T. 2189.

²⁵⁷¹ P111, p. 5. See also 2D17, p. 8.

²⁵⁷² 2D17, p. 7.

²⁵⁷³ P111, p. 7.

²⁵⁷⁴ P111, p. 7.

²⁵⁷⁵ Nurko Dervišević, 19 Sep 2008, T. 2008-2009.

²⁵⁷⁶ Nurko Dervišević 19 Sep 2008, T. 1969-1970.

²⁵⁷⁷ P168, p. 6. Cf. Nurko Dervišević, 19 Sep 2008, T. 1995.

²⁵⁷⁸ P168, p. 7; Islam Kustura, 23 Sep 2008, T. 2178-2179, 24 Sep 2008, T. 2268, 2269; P111, p. 3.

²⁵⁷⁹ P168, p. 8.

detainees lie down one by one on a wooden table in the warehouse. They had brought a wooden board, approximately 1.5 metres long, ten centimetres thick and ten centimetres wide, and started to beat the detainees on their naked backs with this board until they fainted.²⁵⁸² One month later, Milan Lukić, Dragan Šekarić and Boban Indić arrived again and beat VG025 and other detainees “the same way with rifle butts” and kicked the detainees.²⁵⁸³

794. Islam Kustura testified that VG025 was also beaten by Sredoje Lukić.²⁵⁸⁴ While VG025 stated that he was beaten by the camp guards,²⁵⁸⁵ he also stated that he never saw Sredoje Lukić at Uzamnica camp.²⁵⁸⁶

795. Once, when VG025 was on the verge of death, the camp commander Đure Đurisić drove VG025 to the outpatient clinic in Višegrad where he was given injections, after which he was brought back to the camp.²⁵⁸⁷

796. VG025 received severe injuries from the beatings. Seven ribs on his left side were broken and his right arm was broken.²⁵⁸⁸ His skull was fractured on the top right side when Milan Lukić beat him with his rifle butt.²⁵⁸⁹ Two vertebrae and VG025’s spinal column were damaged when Milan Lukić beat him with wooden planks.²⁵⁹⁰ After he was released, VG025 was unable to sit for a month because of his injured back and the beatings. He also suffers from “shocks due to fear and nervousness” and had a heart attack in 1999 which, he believes, was brought on by the stress and injuries he was subjected to in the Uzamnica camp.²⁵⁹¹ VG025 was declared 90 per cent invalid following his release from the camp.²⁵⁹² He has been under extensive medical treatment as a result of the beatings and mistreatment in the Uzamnica camp.²⁵⁹³

(b) Non-indicted crimes in Uzamnica camp

(i) Killings and disappearances

²⁵⁸⁰ P168, p. 6.

²⁵⁸¹ P171, p. 2; P168, p. 7; Islam Kustura, 23 Sep 2008, T. 2179; 2D17, p. 8.

²⁵⁸² P168, p. 7.

²⁵⁸³ P168, p. 7.

²⁵⁸⁴ Islam Kustura, 23 Sep 2008, T. 2188-2189, 24 Sep 2008, T. 2283.

²⁵⁸⁵ P168, pp 6, 7.

²⁵⁸⁶ P171, p. 3.

²⁵⁸⁷ P171, p. 2.

²⁵⁸⁸ P171, p. 2.

²⁵⁸⁹ P171, p. 2.

²⁵⁹⁰ P171, p. 2.

²⁵⁹¹ P171, p. 2.

²⁵⁹² P168, p. 8.

²⁵⁹³ P171, p. 2.

797. In July 1992, Milan Lukić removed from the warehouse Pero Gačić, a Serb from Goražde and member of the ABiH, who it was said was later “liquidated”.²⁵⁹⁴ Also in July 1992, Milan Lukić removed Enes Džaferagić/Djaferović, his brother Cipko, Muharem Imamagić and Mirsad Mameledija/Mamalegić, telling them they were going out for “a holiday in Bajina Bašta”, but they never returned.²⁵⁹⁵ During one night at the end of July 1992, Milan Lukić came to the Uzamnica camp in a green TAM truck and took away more than 20 of the younger detainees.²⁵⁹⁶ Milan Lukić said he was taking them to Pale but none of the persons have been seen since.²⁵⁹⁷ Milan Lukić also took away Juso and Rasim Avdić, who remain missing.²⁵⁹⁸

798. In September 1992, Milan Lukić took away Muharem Bajaktarević and Ahmet Sejdić’s sister from the warehouse and they never returned.²⁵⁹⁹ In November 1992, after having beaten the detainees, Milan Lukić took Bajro Šišić out.²⁶⁰⁰ Milan Lukić said that he was going to take him for a walk into town and that the man had nothing to be scared of, but Bajro Šišić never returned.²⁶⁰¹ Ten or 15 days later, again after having beaten the detainees in the warehouse, Milan Lukić took out another two detainees, Ramiz Karić and Nermin LNU.²⁶⁰² As the two were putting on their shoes, Milan Lukić said that they would not need shoes where they were going.²⁶⁰³

799. Milan Lukić killed 17-year-old Mirza Bajić from Gostilje who had come to the camp in March 1993.²⁶⁰⁴ Adem Berberović heard from the guards that he was killed in retaliation for the killing of an old man in Župa by Muslim soldiers.²⁶⁰⁵

(ii) Rape and maltreatment of women

800. Milan Lukić and his group entered the female part of the hangar on several occasions. Adem Berberović heard him shouting at the women.²⁶⁰⁶ Adem Berberović also heard that he had maltreated the women.²⁶⁰⁷

²⁵⁹⁴ 2D15, p. 5; 2D16, p. 7.

²⁵⁹⁵ 2D15, p. 8; P111, p. 6.

²⁵⁹⁶ 2D15, p. 8; P111, p. 7. The detainees were: Salko Ahmetagić, Beširević’s father and son, Ismet Bulatović, Ibrahim Dizdarević, Meho Dizdarević, Huso Hajdarević, Alija Hodžić, Rušid Hrustić, Hasan Hukić, Ismet Karčić/Karić, Jakub Kahrman, Hamed Kustura, Himzo Omerović, Rasim Omerović, Semšo Poljo, Čamil Šabanović, Osman Smrdić, Alija Tabaković, Hasib Tabaković, Dževad Ustamujić, two men from Dobrun.

²⁵⁹⁷ 2D15, p. 8, 2D16, p. 9.

²⁵⁹⁸ P111, p. 7.

²⁵⁹⁹ 2D15, p. 7.

²⁶⁰⁰ P142, pp 9-10. See also Adem Berberović, 2 Oct 2008, T. 2504.

²⁶⁰¹ P142, p. 10.

²⁶⁰² Adem Berberović, 2 Oct 2008, T. 2505; P142, p. 10; 1D61, pp 5-6. See also Islam Kustura, 23 Sep 2008, T. 2194-2195.

²⁶⁰³ P142, pp 9, 10.

²⁶⁰⁴ Adem Berberović, 2 Oct 2008, T. 2505; 1D61, pp 6, 7; P168, p. 7.

²⁶⁰⁵ 1D61, p. 7.

²⁶⁰⁶ P142, p. 10.

²⁶⁰⁷ P142, p. 10.

801. At the beginning of February 1993, Mićo Spasojević ordered Adem Berberović and Duda Dizdarević to go behind the warehouse.²⁶⁰⁸ After forcing the woman to undress, he ordered Adem Berberović to have sexual intercourse with her.²⁶⁰⁹ Five days later, Mićo Spasojević tried to force Anes Čuprija to have sexual intercourse with Duda Dizdarević, but he was unable to do so.²⁶¹⁰ On another occasion, Mićo Spasojević tried to force Adem Berberović to have sexual intercourse with Sena Muharemović, but he was unable to do so.²⁶¹¹ When she struggled, Mićo Spasojević hit her with a rifle butt.²⁶¹² He then took a nail and repeatedly struck her on the head with it.²⁶¹³ The guards also allowed Šaban Muratagić to have sexual intercourse with the detained women.²⁶¹⁴

(c) Identification

(i) Adem Berberović

802. Adem Berberović did not know Milan Lukić or Sredoje Lukić before his detention in the Uzamnica camp.²⁶¹⁵ He was told by Nurko Dervišević, who had been in the camp two months longer than him, that the men who had beaten them were Milan Lukić and Sredoje Lukić.²⁶¹⁶ Later, Šaban Muratagić also told Adem Berberović who Milan Lukić was; he knew Milan Lukić because they had gone to school together.²⁶¹⁷ Adem Berberović then learned to recognise the voices of Milan Lukić and Sredoje Lukić.²⁶¹⁸

803. In a previous statement, Adem Berberović described Milan Lukić as “quite tall”, “middle weight”, with black hair.²⁶¹⁹ In another statement, he stated that Milan Lukić was born in 1966 and that he had previously lived and worked in Serbia.²⁶²⁰ Adem Berberović described Sredoje Lukić as “quite chubby of middle height” with light brown hair.²⁶²¹ He added that Sredoje Lukić was a cousin of Milan Lukić.²⁶²² In court, he described Milan Lukić as about 15 to 20 centimetres taller than Sredoje Lukić.²⁶²³

²⁶⁰⁸ 1D61, p. 6; 2D19, p. 2.

²⁶⁰⁹ 1D61, p. 6.

²⁶¹⁰ 1D61, p. 6.

²⁶¹¹ 1D61, p. 6.

²⁶¹² 1D61, p. 6.

²⁶¹³ 1D61, p. 6.

²⁶¹⁴ 1D61, p. 5.

²⁶¹⁵ Adem Berberović, 2 Oct 2008, T. 2507.

²⁶¹⁶ Adem Berberović, 2 Oct 2008, T. 2507-2509, 2535. See also P142, p. 9.

²⁶¹⁷ Adem Berberović, 2 Oct 2008, T. 2508.

²⁶¹⁸ Adem Berberović, 2 Oct 2008, T. 2510.

²⁶¹⁹ P142, p. 9.

²⁶²⁰ 1D61, p. 4.

²⁶²¹ P142, p. 9.

²⁶²² P142, p. 9.

²⁶²³ Adem Berberović, 2 Oct 2008, T. 2551-2552.

804. The Sredoje Lukić Defence put to Adem Berberović the testimony of Nurko Dervišević that Sredoje Lukić only came to the Uzamnica camp on one occasion. Adem Berberović averred that he saw Sredoje Lukić four or five times, that Sredoje Lukić beat Nurko Dervišević on more than one occasion and that he does not know how Nurko Dervišević could possibly not have seen Sredoje Lukić because they were together in the warehouse.²⁶²⁴ Adem Berberović also testified that Nurko Dervišević had problems with his eyesight and that he complained about not being able to see properly.²⁶²⁵

805. There is evidence that in November 2000, Adem Berberović indicated to an investigator that he recognised Sredoje Lukić in a photospread. The photospread used with Adem Berberović is missing and could, therefore, not be tendered in this case.²⁶²⁶ Ib Jul Hansen stated that the photospread could not have contained a photograph of Sredoje Lukić because he and his colleagues never used photographs of Sredoje Lukić in any photograph arrays.²⁶²⁷

806. When asked by the Prosecution whether he recognised anyone in the courtroom, Adem Berberović recognised Milan Lukić and Sredoje Lukić.²⁶²⁸

(ii) Islam Kustura

807. Islam Kustura did not know Milan Lukić before the war.²⁶²⁹ Other detainees identified Milan Lukić to him.²⁶³⁰ Islam Kustura then saw Milan Lukić coming to Uzamnica camp “all the time”,²⁶³¹ with the exception of a period of five or six months in 1994.²⁶³² He described Milan Lukić as being about 180 or 190 centimetres tall, clean-shaven, with short black hair.²⁶³³

808. Islam Kustura knew Sredoje Lukić as a police officer before the war.²⁶³⁴ In court, he described Sredoje Lukić as “blondish” and being about 20 centimetres shorter than Milan Lukić.²⁶³⁵ The Sredoje Lukić Defence put to Islam Kustura that in his statement of 1994, which he gave five weeks after his release, he was able to provide 16 names of Serbian guards and “outside soldiers”, who mistreated him and other detainees in the Uzamnica camp but that he did not mention the name

²⁶²⁴ Adem Berberović, 2 Oct 2008, T. 2552-2553.

²⁶²⁵ Adem Berberović, 2 Oct 2008, T. 2564-2565.

²⁶²⁶ Ib Jul Hansen, 30 Oct 2008, T. 3089, 3137-3138.

²⁶²⁷ Ib Jul Hansen, 30 Oct 2008, T. 3084-3085, 3094, 3118-3119, 3121.

²⁶²⁸ Adem Berberović, 2 Oct 2008, T. 2520-2523.

²⁶²⁹ Islam Kustura, 23 Sep 2008, T. 2181.

²⁶³⁰ Islam Kustura, 23 Sep 2008, T. 2181: “they told me, the others”.

²⁶³¹ Islam Kustura, 23 Sep 2008, T. 2184-2185.

²⁶³² Islam Kustura, 23 Sep 2008, T. 2185, 2197-2198.

²⁶³³ Islam Kustura, 23 Sep 2008, T. 2199, 2220.

²⁶³⁴ Islam Kustura, 23 Sep 2008, T. 2181.

²⁶³⁵ Islam Kustura, 24 Sep 2008, T. 2271-2272.

of Sredoje Lukić.²⁶³⁶ Islam Kustura replied that he did not mention Sredoje Lukić because Sredoje Lukić was always together with Milan Lukić and that whenever he mentioned one he “thought the other was implied”.²⁶³⁷ When the Sredoje Lukić Defence put to Islam Kustura that Nurko Dervišević had testified that he had seen Sredoje Lukić only once in the Uzamnica camp, Islam Kustura replied that he had no explanation for that kind of testimony and averred that Sredoje Lukić was always with Milan Lukić.²⁶³⁸

809. Islam Kustura was not asked by the Prosecution whether he recognised anyone in the courtroom.

(iii) Nurko Dervišević

810. Nurko Dervišević did not know Milan Lukić before the war.²⁶³⁹ During cross-examination he testified that there was no Milan Lukić in Višegrad itself²⁶⁴⁰ and that the name Lukić – unlike Lučić – was not common in Višegrad municipality.²⁶⁴¹

811. Nurko Dervišević saw Milan Lukić for the first time in the police station in mid-June 1992, following his arrest.²⁶⁴² Once he arrived at the camp he, like Adem Berberović, was told by Šaban Muratagić who Milan Lukić was.²⁶⁴³ Šaban Muratagić said that he knew Milan Lukić because he came from a village close to Rujište.²⁶⁴⁴ Nurko Dervišević also stated that many other detainees knew Milan Lukić and told him who he was.²⁶⁴⁵ Nurko Dervišević described Milan Lukić as being “not yet thirty at that time [...] with brown to black hair, [...] about 180 centimetres, medium built”.²⁶⁴⁶

812. Nurko Dervišević had known Sredoje Lukić for approximately 15 years before the war and for approximately ten years as a police officer.²⁶⁴⁷ Nurko Dervišević believes he saw Sredoje Lukić for the first time in the Uzamnica camp in July or August, “the later months”, or towards the end of

²⁶³⁶ Islam Kustura, 24 Sep 2008, T. 2275.

²⁶³⁷ Islam Kustura, 24 Sep 2008, T. 2275.

²⁶³⁸ Islam Kustura, 24 Sep 2008, T. 2283-2284.

²⁶³⁹ Nurko Dervišević, 19 Sep 2008, T. 1953, 1960, 1964-1965.

²⁶⁴⁰ Nurko Dervišević, 19 Sep 2008, T. 1976.

²⁶⁴¹ Nurko Dervišević, 19 Sep 2008, T. 1976-1977.

²⁶⁴² Nurko Dervišević, 19 Sep 2008, T. 1960.

²⁶⁴³ P111, p. 2; P112, p. 2.

²⁶⁴⁴ Nurko Dervišević, 19 Sep 2008, T. 1961.

²⁶⁴⁵ P112, p. 2.

²⁶⁴⁶ P111, p. 2.

²⁶⁴⁷ P112, p. 2. See also Nurko Dervišević, 19 Sep 2008, T. 1961.

1993.²⁶⁴⁸ He described Sredoje Lukić as being “tall, blond, about thirty years old” and stated that he was a cousin of Milan Lukić.²⁶⁴⁹ In court, he stated that Sredoje Lukić had brown hair.²⁶⁵⁰

813. The Sredoje Lukić Defence put to Nurko Dervišević that he did not mention Sredoje Lukić at all in three previous statements.²⁶⁵¹ Nurko Dervišević replied that he may have left Sredoje Lukić’s name out in one statement because he was there only once, but that he was certain that Sredoje Lukić did come to the camp on one occasion.²⁶⁵²

814. When asked by the Prosecution whether he recognised anyone in the courtroom, Nurko Dervišević recognised Milan Lukić and Sredoje Lukić.²⁶⁵³

(iv) VG025

815. VG025’s evidence was received pursuant to Rule 92 *quater* as his health did not allow him to travel to give *viva voce* testimony before the court.²⁶⁵⁴

816. According to his February 1998 statement, VG025 knew Milan Lukić “from before the war, actually since [...] childhood”.²⁶⁵⁵ In his 2008 statement, VG025 corrected that statement clarifying that he knew Milan Lukić “for perhaps three of (*sic*) four years before the war”.²⁶⁵⁶ He described Milan Lukić as approximately “180 cm tall, well-built, with light brown, short-cut straight hair”.²⁶⁵⁷

817. When shown a photospread in December 1998, VG025 stated that the persons in the photographs “resembled” Milan Lukić.²⁶⁵⁸ Ib Jul Hansen testified that it was never established whether the man in the photographs was Milan Lukić.²⁶⁵⁹

818. VG025 knew Sredoje Lukić as a police officer for a couple of years before the war.²⁶⁶⁰

2. Milan Lukić Defence case and Sredoje Lukić Defence case

819. Milan Lukić claims in his notice of alibi in relation to the Uzamnica camp that he was “not in charge for [*sic*] the prisoners (as a member of the reserve police) which was until the [*sic*] August

²⁶⁴⁸ Nurko Dervišević, 19 Sep 2008, T. 1961-1962; P112, p. 2.

²⁶⁴⁹ P111, p. 5.

²⁶⁵⁰ Nurko Dervišević, 19 Sep 2008, T. 1999.

²⁶⁵¹ Nurko Dervišević, 19 Sep 2008, T. 2003, referring to 2D17. The Trial Chamber notes that in 1D16, Nurko Dervišević refers to Sredoje Lukić as a member of a “Chetnik formation”, see 2D16, p. 5.

²⁶⁵² Nurko Dervišević, 19 Sep 2008, T. 2003, referring to 2D15; 2D16; 2D17.

²⁶⁵³ Nurko Dervišević, 19 Sep 2008, T. 1968-1969.

²⁶⁵⁴ Decision on Prosecution motion to admit statements pursuant to Rule 92 *quater* (VG025), 22 October 2008.

²⁶⁵⁵ P168, p. 3.

²⁶⁵⁶ P171, p. 2.

²⁶⁵⁷ P168, p. 3.

²⁶⁵⁸ P169; 1D75, p. 2; Ib Jul Hansen, 30 Oct 2008, T. 3092-3093.

²⁶⁵⁹ Ib Jul Hansen, 30 Oct 2008, T. 3092.

1992”.²⁶⁶¹ He also submits that he was detained for some of the time-period charged, but without giving further details.²⁶⁶² Sredoje Lukić has not presented an alibi in relation to the Uzamnica charges.

820. There is documentary evidence that Milan Lukić was in detention from 10 to 13 March 1993 and from 27 March 1993 to 14 April 1993.²⁶⁶³ Further, there is Defence witness evidence that Milan Lukić was imprisoned in Serbia, but it is unspecific as to the exact dates of imprisonment.²⁶⁶⁴ A number of Prosecution witnesses testified that Milan Lukić was in custody in Belgrade for some months in 1994.²⁶⁶⁵

3. Factual findings in relation to the incidents at the Uzamnica camp

(a) Prosecution evidence regarding the beatings

821. The Trial Chamber is satisfied that the detainees at the Uzamnica camp, including Adem Berberović, Islam Kustura, Nurko Dervišević, and VG025, who were either civilians or *hors de combat*, were severely and repeatedly beaten with fists, truncheons, sticks and rifle butts, and kicked with boots. The beatings caused serious injuries and serious mental and physical suffering. The evidence shows that the detainees were mistreated both by the guards of the camp and by “opportunistic visitors” entering the camp.

(b) Prosecution evidence concerning Milan Lukić’s presence at the Uzamnica camp

822. All four witnesses who gave evidence in relation to the beatings charged testified that Milan Lukić regularly came to the Uzamnica camp and beat the detainees in the second half of 1992 and in 1993. There is evidence that Milan Lukić beat and kicked Adem Berberović, Islam Kustura, Nurko Dervišević and VG025 on several occasions and inflicted serious injuries and suffering. In 1994, Milan Lukić was not seen in the camp for a longer period.

823. The Trial Chamber notes that the three detainees who appeared as witnesses before the court had no prior knowledge of Milan Lukić. Only one witness, VG025, had known Milan Lukić three or four years before the war.

824. The Trial Chamber is satisfied that, on the basis of his prior knowledge, VG025 was able to recognise Milan Lukić in the Uzamnica camp. The Trial Chamber is mindful of the fact that

²⁶⁶⁰ P171, p. 3.

²⁶⁶¹ Milan Lukić’s Defence notice pursuant to Rule 67(A)(1)(a), filed confidentially on 10 January 2008, para. 21(C).

²⁶⁶² Milan Lukić further submissions, filed confidentially on 18 July 2008, para. 15.

²⁶⁶³ 1D238.

²⁶⁶⁴ MLD18, 23 Jan 2009, T. 4421; 25 Oct 2001, T. 1962.

VG025's evidence was not tested in cross-examination as his statements were admitted pursuant to Rule 92 *quater* due to VG025's poor health condition. It is also mindful that there is no evidence that VG025 identified Milan Lukić in photographs.²⁶⁶⁶ It appears from the evidence that a photospread was shown to VG025, but that it could not be established whether the photographs depicted Milan Lukić. However, the Trial Chamber notes that VG025 gave a description fitting Milan Lukić and that his evidence as to Milan Lukić's presence at the Uzamnica camp is consistent and very specific. In his statements of 1998 and 2008, VG025 refers to Milan Lukić as the person who beat him and other detainees in the Uzamnica camp regularly and he describes two of the beating incidents in detail. In his 2008 statement, VG025 further specified the injuries which were inflicted by Milan Lukić, namely the damage to his spinal column and the fracture of his skull.

825. Adem Berberović and Islam Kustura were not able to recognise Milan Lukić when they saw him there for the first time in the Uzamnica camp as they had no prior knowledge of Milan Lukić. Nurko Dervišević testified that he had seen Milan Lukić before at the police station after his arrest, but that he only learned his name in the Uzamnica camp. Both Adem Berberović and Nurko Dervišević were told by Šaban Muratagić that the man who had beaten them was Milan Lukić. Šaban Muratagić identified Milan Lukić to each of them on separate occasions. Islam Kustura does not refer to Šaban Muratagić as a source of his knowledge of Milan Lukić, but testified that he was told "by others" who Milan Lukić was.²⁶⁶⁷ The Trial Chamber received evidence that Šaban Muratagić, while not a guard, had a special role in the camp and acted as a kind of "watchman" and that he told the detainees the names of the guards and other men who came to the camp. Both Nurko Dervišević and Adem Berberović testified that Šaban Muratagić knew Milan Lukić before the war as the two were from neighbouring villages and went to school together.

826. The Trial Chamber further considers that VG025, Adem Berberović and Nurko Dervišević were detained in the Uzamnica camp for a long period of time. In fact, they spent about eight months together in the same room of the warehouse. There is no evidence indicating that VG025 or any other person in the camp contradicted Šaban Muratagić's identification of Milan Lukić. The Trial Chamber also takes notes of the fitting description of Milan Lukić given by Adem Berberović, Nurko Dervišević and VG025 in their previous statements. It is, therefore, reasonable to infer, on the basis of the evidence regarding the conditions of detention and the length of time over which they were detained together that VG025 confirmed the other detainees' knowledge that it was Milan Lukić who beat them. Nurko Dervišević further stated that many other detainees knew Milan Lukić and confirmed who he was. The Trial Chamber, therefore, considers Nurko Dervišević's and Adem

²⁶⁶⁵ Islam Kustura, 23 Sep 2008, T. 2185, 2197-2199; Nurko Dervišević, 19 Sep 2008, T. 1984, 2004-2005; P111, p. 7.

²⁶⁶⁶ See Milan Lukić final trial brief, paras 469, 475.

²⁶⁶⁷ Islam Kustura, 23 Sep 2008, T. 2181.

Berberović's evidence that Šaban Muratagić had prior knowledge of Milan Lukić and that he identified Milan Lukić to them in the Uzamnica camp to be reliable.

827. The Trial Chamber also notes the testimony of Adem Berberović and Nurko Dervišević that, after Šaban Muratagić had identified Milan Lukić to them, they saw Milan Lukić on numerous occasions within the following two years of their detention and that during that time they even learned to recognise him by his voice. The Trial Chamber considers that during their detention Adem Berberović and Nurko Dervišević acquired sufficient knowledge of Milan Lukić enabling them to recognise Milan Lukić. For the reasons described earlier in the judgement,²⁶⁶⁸ the Trial Chamber is satisfied that Adem Berberović and Nurko Dervišević are properly characterised as recognition witnesses.

828. The Trial Chamber accepts the recognition of Milan Lukić by Adem Berberović and Nurko Dervišević in the courtroom as reliable evidence.

(c) Defence evidence regarding Milan Lukić's imprisonment

829. The Milan Lukić Defence did not call any witnesses to challenge the Prosecution evidence. Milan Lukić's alibi in relation to the charges of beatings in the Uzamnica camp is that he was imprisoned for some time.²⁶⁶⁹ The evidence adduced to support the alibi, which in itself remained vague, is scarce. Documentary evidence only shows that Milan Lukić was detained in Belgrade for a few days in March 1993 and in the first half of April 1993.²⁶⁷⁰ Defence witnesses did not give the exact dates when Milan Lukić was imprisoned, while Prosecution witnesses testified that they heard that Milan Lukić was detained for a few months in 1994.

830. The evidence does not tend to show that Milan Lukić was not present in the Uzamnica camp at the time of the beatings, as it relates to different time periods. The Trial Chamber considers that the witnesses particularly recalled having been beaten by Milan Lukić at the beginning of their detention, namely in the second half of 1992 and in the beginning of 1993. The Trial Chamber considers that the reliability of their evidence is not diminished by the fact that the witnesses were not able to pinpoint the date and time of the beatings.

²⁶⁶⁸ See *supra* section I.D.3.

²⁶⁶⁹ Milan Lukić further submissions, filed confidentially on 18 July 2008, para. 15.

²⁶⁷⁰ 1D238. See also Milan Lukić final trial brief, paras 476, 478, 479.

(d) Finding on Milan Lukić's presence, acts and conduct at the Uzamnica camp

831. The Trial Chamber has found that the evidence led in support of Milan Lukić's imprisonment for some time in spring 1993 and possibly 1994, does not tend to show that he was not present in Uzamnica camp at the time of the beatings because it relates to different time periods.

832. The Trial Chamber is satisfied that, while there were time periods in 1993 and 1994 during which Milan Lukić did not come to the camp, he did occasionally come to the camp in 1993 and 1994. While the evidence shows that Milan Lukić also beat the detainees in the latter half of 1992 and in 1993, in particular in the later months of 1993, it has not been established that Milan Lukić beat the detainees in 1994. The Trial Chamber is further satisfied that the beatings caused serious injuries and serious mental and physical suffering, but considers that the detainees were also regularly beaten by the camp guards and that not all injuries were inflicted by Milan Lukić.

833. The evidence presented by the Prosecution as to Milan Lukić's presence, acts and conduct at the Uzamnica camp was presented by credible and reliable witnesses. On the basis of the evidence as a whole, that is, the evidence led by the Prosecution and the evidence led by the Defence, the Trial Chamber concludes that the Prosecution has proved beyond reasonable doubt that Milan Lukić regularly came to the Uzamnica camp between June 1992 and the beginning of 1993 and that he beat the detainees, including Adem Berberović, Islam Kustura, Nurko Dervišević and VG025, on many occasions.

(e) Prosecution evidence concerning Sredoje Lukić's presence in the Uzamnica camp

834. As far as Sredoje Lukić's presence in the Uzamnica camp is concerned, witness accounts differ widely. The Trial Chamber is satisfied that the evidence of the Prosecution witnesses shows that Sredoje Lukić came to the Uzamnica camp during the indictment period. VG025's evidence that he never saw Sredoje Lukić at the camp does not conflict with that finding and may be reconciled with other witness statements when the different periods of detention of the witnesses are taken into account. Adem Berberović referred to having seen Sredoje Lukić at the camp four or five times after his arrest in August 1992,²⁶⁷¹ and Nurko Dervišević testified that he was beaten by Sredoje Lukić on one occasion in July or August, "the later months", or at the end of 1993.²⁶⁷² As VG025 was detained in the Uzamnica camp from November 1992 until July 1993, his evidence that he never saw Sredoje Lukić at the camp is not, as the Sredoje Lukić Defence submitted, inconsistent with the testimony of Adem Berberović and Nurko Dervišević.²⁶⁷³ With regard to

²⁶⁷¹ Adem Berberović, 2 Oct 2008, T. 2536, 2552; 1D61, p. 4.

²⁶⁷² Nurko Dervišević, 19 Sep 2008, T. 1961-1962.

²⁶⁷³ See Sredoje Lukić final trial brief, para. 364.

Islam Kustura's testimony that Sredoje Lukić was "always" with Milan Lukić is concerned,²⁶⁷⁴ the Trial Chamber considers that his evidence corroborates other witness evidence that Sredoje Lukić never came to the camp alone, but always in the company of Milan Lukić. However, the Trial Chamber considers as an overstatement Islam Kustura's testimony that Sredoje Lukić was "always" with Milan Lukić since other evidence does not establish that Sredoje Lukić came to the camp as often as Milan Lukić. Further, the Trial Chamber finds unsatisfactory Islam Kustura's explanation that he had not mentioned Sredoje Lukić in a previous statement because "whenever he mentioned Milan Lukić" he "thought the other was implied".²⁶⁷⁵ In sum, the evidence shows that Sredoje Lukić was seen at the camp a few times.

835. There is evidence that in October 1992, Sredoje Lukić, together with Milan Lukić, beat Islam Kustura with a rifle and with wooden stakes and that after these first beatings, Islam Kustura had to lie down for some time to recover.

836. Nurko Dervišević testified that he was beaten by Sredoje Lukić only once and that he may not have mentioned Sredoje Lukić in statements given to Bosnian authorities because he was there only once.²⁶⁷⁶ However, there is evidence given by Adem Berberović and Islam Kustura that Sredoje Lukić beat Nurko Dervišević on more than one occasion. Adem Berberović testified that Nurko Dervišević was beaten by Sredoje Lukić on several occasions and Islam Kustura testified that Nurko Dervišević suffered the same mistreatment by Sredoje Lukić as the other detainees. The Trial Chamber also takes into account that in his 1998 statement Nurko Dervišević himself stated that he was "regularly" beaten by both Milan Lukić and Sredoje Lukić and that he provided further details in relation to Sredoje Lukić in his 2008 statement.²⁶⁷⁷

837. Nurko Dervišević and Islam Kustura knew Sredoje Lukić as a police officer before the war. The Trial Chamber is convinced that, based on their prior knowledge of Sredoje Lukić, Nurko Dervišević and Islam Kustura were able to recognise Sredoje Lukić in the camp. It does not agree with the argument of the Sredoje Lukić Defence that the discrepancy in Nurko Dervišević's description of Sredoje Lukić's hair colour between his 1998 statement and his testimony casts significant doubt on Nurko Dervišević's ability to recognise Sredoje Lukić.²⁶⁷⁸ In addition, Nurko Dervišević recognised Sredoje Lukić in the courtroom. Further, in the Trial Chamber's view, the assessment by Islam Kustura of the difference in height of the Accused does not, as the Sredoje

²⁶⁷⁴ Islam Kustura, 23 Sep 2008, T. 2182, 2189.

²⁶⁷⁵ Islam Kustura, 24 Sep 2008, T. 2275.

²⁶⁷⁶ See also Sredoje Lukić final trial brief, paras 344, 345, 354, 355.

²⁶⁷⁷ P111, p. 5.

²⁶⁷⁸ See Sredoje Lukić final trial brief, para. 353.

Lukić Defence suggests,²⁶⁷⁹ detract from the credible evidence that Islam Kustura had prior knowledge of Sredoje Lukić, which enabled him to recognise Sredoje Lukić in the Uzamnica camp. Therefore, the Trial Chamber cannot agree with the submission by the Sredoje Lukić Defence that Islam Kustura's evidence is unreliable and not credible because he did not mention Sredoje Lukić in a previous statement.²⁶⁸⁰

838. Adem Berberović had no prior knowledge of Sredoje Lukić. Šaban Muratagić told Adem Berberović who Sredoje Lukić was. Further, the description of Sredoje Lukić given by Adem Berberović does not exclude Sredoje Lukić. The Trial Chamber recalls that Adem Berberović indicated to an investigator that he recognised Sredoje Lukić in a photospread and that most probably the photospread did not contain any photos of Sredoje Lukić. The Trial Chamber notes with concern that the photospread used with Adem Berberović, an important piece of evidence, is missing.²⁶⁸¹ In the absence of the photospread the Trial Chamber is not in a position to assess whether Adem Berberović recognised Sredoje Lukić in the photospread or not.

839. Adem Berberović identified Sredoje Lukić in court. However, taking into account that Adem Berberović had no prior knowledge of Sredoje Lukić and that the evidence shows that Sredoje Lukić did not come to the Uzamnica camp as often as Milan Lukić, the Trial Chamber does not consider that Adem Berberović had sufficient knowledge of Sredoje Lukić and it will not attach any weight to the in-court identification of Sredoje Lukić by Adem Berberović.

(f) Defence evidence concerning Sredoje Lukić's presence at the Uzamnica camp

840. Sredoje Lukić did not provide an alibi or call any witnesses in relation to the charges of beatings in the Uzamnica camp.

(g) Finding on Sredoje Lukić's presence, acts and conduct at the Uzamnica camp

841. The evidence presented by the Prosecution as to Sredoje Lukić's presence, acts and conduct at the Uzamnica camp was presented by credible and reliable witnesses. On the basis of the evidence as a whole, that is, the evidence led by the Prosecution and the evidence led by the Defence, the Trial Chamber concludes that the Prosecution has proved beyond reasonable doubt that Sredoje Lukić came to the Uzamnica camp on several occasions in the second half of 1992 and in the later months of 1993, and that he also beat the detainees, including Islam Kustura, Nurko Dervišević and Adem Berberović.

²⁶⁷⁹ See Sredoje Lukić final trial brief, paras 379, 380. See also 2D64, 2D52.

²⁶⁸⁰ See Sredoje Lukić final trial brief, para. 381.

²⁶⁸¹ See *supra* para. 805. See also Milan Lukić final trial brief, para. 474; Sredoje Lukić final trial brief, para. 391.

L. Further evidence of crimes

842. The Trial Chamber heard additional evidence relating to crimes that took place in Višegrad during the indictment period. Specific instances of crimes allegedly committed by Milan Lukić and Sredoje Lukić and which are not charged in the indictment are also set out below. This evidence will not be used in the making of any finding of guilt by the Trial Chamber on these non-indicted crimes.²⁶⁸²

843. In the beginning of June 1992, VG115 saw Milan Lukić, Mitar Vasiljević and another man arrive at Pionirska Street in a red Passat during curfew.²⁶⁸³ Milan Lukić was driving the Passat, and he stopped the car in front of the neighbouring house of an elderly couple from Koritnik named Kurspahić,²⁶⁸⁴ who were between 60 and 80 years old.²⁶⁸⁵ VG115 was able to observe the events that occurred inside the Kurspahić house from her own house, only seven to eight metres away.²⁶⁸⁶

844. The inside of the Kurspahić house was dark, and Milan Lukić, Mitar Vasiljević and the other man searched the inside of the house with flashlights.²⁶⁸⁷ The Kurspahićs were hiding on the first floor.²⁶⁸⁸ When the men turned on the lights of the first floor, VG115 could see from her window²⁶⁸⁹ that the elderly woman was standing and that her husband was sitting.²⁶⁹⁰ VG115 heard the men ask the couple where their sons were, and then heard the elderly woman entreat the men, “please, don’t kill us.”²⁶⁹¹ There was a burst of gunfire.²⁶⁹² There were screams from the elderly woman followed by another burst of gunfire.²⁶⁹³ The screaming stopped.²⁶⁹⁴

845. According to VG115, the door to the Kurspahić’s house was left open, and the bodies could be seen inside.²⁶⁹⁵ VG101 heard that the elderly woman’s body was lying in front of the fire while

²⁶⁸² See *supra* para. 37.

²⁶⁸³ VG115, 27 Aug 2008, T. 666, 680-681; 1D19, T. 1012. Curfew was between 9 p.m. and 5 or 6 a.m., 1D19, T. 1015. See also VG115, 27 Aug 2008, T. 665. For evidence of VG115’s identification of Milan Lukić, see *supra* section II.G.1(h)(vii).

²⁶⁸⁴ VG115, 27 Aug 2008, T. 673-674; 1D18, p. 9; 1D19, T. 1016, also referring to the elderly couple as “an elderly man from Koritnik and his old grandmother from Koritnik”. In her August 2008 testimony and her September 2000 witness statement she refers to them as husband and wife, VG115, 27 Aug 2008, T. 674. See also VG101, who refers to the Kurspahić couple as “Seco and Rasema”, a couple from Koritnik that “went to stay with their sons in Pionirska Street.” 1D37, T. 23.

²⁶⁸⁵ VG115, 27 Aug 2008, T. 674; 1D37, T. 23; 1D19, T. 1017.

²⁶⁸⁶ VG115, 27 Aug 2008, T. 674-675.

²⁶⁸⁷ VG115, 27 Aug 2008, T. 674-675; 1D19, T. 1016-1018.

²⁶⁸⁸ VG115, 27 Aug 2008, T. 675; 1D19, T. 1016-1017.

²⁶⁸⁹ 1D18, p. 9; 1D19, T. 1018.

²⁶⁹⁰ VG115, 27 Aug 2008, T. 675.

²⁶⁹¹ 1D19, T. 1018-1019. See also VG115, 27 Aug 2008, T. 676.

²⁶⁹² VG115, 27 Aug 2008, T. 676; 1D18, p. 9; 1D19, T. 1019.

²⁶⁹³ VG115, 27 Aug 2008, T. 676; 1D18, p. 9; 1D19, T. 1019.

²⁶⁹⁴ VG115, 27 Aug 2008, T. 676.

²⁶⁹⁵ VG115, 27 Aug 2008, T. 677; 1D18, p. 9; 1D19, T. 1019.

her husband's body was found on the sofa.²⁶⁹⁶ The bodies of the Kurspahić couple remained in their house for five or six days until they were removed.²⁶⁹⁷

846. In early June 1992, from the window of the house in Šeganje, VG063 saw Milan Lukić²⁶⁹⁸ and others take away a man named Uzeir Suceksa.²⁶⁹⁹ When Uzeir Suceksa's sons asked where he was going, Milan Lukić told them that their father would be back soon.²⁷⁰⁰ VG063 never saw Uzeir Suceksa again, and his wife later heard that he had been buried somewhere near Žepa.²⁷⁰¹

847. The Trial Chamber recalls that VG131 testified that on 9 June 1992 she was raped by Milan Lukić at the Vilina Vlas hotel.²⁷⁰² However, her evidence regarding Sredoje Lukić's presence during this incident was not addressed, and will be set out in this section. According to VG131, Sredoje Lukić arrived with Milan Lukić at her mother-in-law's apartment at midnight on 9 June 1992.²⁷⁰³ VG131 testified that it was her belief, based on her own impressions together with descriptions provided by other people, that the soldier was Sredoje Lukić.²⁷⁰⁴ In cross-examination, VG131 agreed that, after discussing his appearance with others, she determined that the soldier was Sredoje Lukić.²⁷⁰⁵ The Sredoje Lukić Defence also put to VG131 a description of the soldier from her 1992 statement, in which he is described as 40 to 45 years old, with acne and other scars, and longish, curly brown hair. VG131 said that this description fit the soldier "up to a point".²⁷⁰⁶ In re-examination, she confirmed that she concluded that the soldier was Sredoje Lukić based on her own impressions and other people's descriptions, which she had heard after leaving Višegrad.²⁷⁰⁷

848. Sredoje Lukić, like Milan Lukić, was armed, and he also told VG131, her sister and her friend to go the SUP building because they would need to identify some people.²⁷⁰⁸ Instead, the girls were taken to the Vilina Vlas hotel, where Milan Lukić called VG131's friend over, and told Sredoje Lukić to interrogate her.²⁷⁰⁹ VG131 never saw her friend again.²⁷¹⁰

849. On the morning of 14 June 1992,²⁷¹¹ Ferid Spahić, along with 150 men, women, and children, boarded two buses leaving the village of Bosanska Jagodina, thinking they were heading

²⁶⁹⁶ 1D37, T. 23.

²⁶⁹⁷ 1D18, p. 9; 1D19, T. 1019. See also 1D37, T. 23.

²⁶⁹⁸ For evidence of VG063's identification of Milan Lukić, see *supra* section II.E.3(b).

²⁶⁹⁹ VG063, 18 Sep 2008, T. 1839.

²⁷⁰⁰ VG063, 18 Sep 2008, T. 1839.

²⁷⁰¹ VG063, 18 Sep 2008, T. 1839.

²⁷⁰² See *supra* section II.F.3(a).

²⁷⁰³ VG131, 5 Nov 2008, T. 3381-3382.

²⁷⁰⁴ VG131, 5 Nov 2008, T. 3381-3382, 3414.

²⁷⁰⁵ VG131, 5 Nov 2008, T. 3435.

²⁷⁰⁶ VG131, 5 Nov 2008, T. 3436.

²⁷⁰⁷ VG131, 5 Nov 2008, T. 3440.

²⁷⁰⁸ VG131, 5 Nov 2008, T. 3382-3383.

²⁷⁰⁹ VG131, 5 Nov 2008, T. 3384, 3385, 3387.

²⁷¹⁰ VG131, 5 Nov 2008, T. 3393.

for safety.²⁷¹² The buses stopped temporarily at Išarića Brdo and approximately 50 Muslim men were told to remain on the buses while the women, children and elderly were taken off.²⁷¹³ The bus turned back in the direction it had come, and the men spent that night on the bus.²⁷¹⁴ On 15 June 1992, at about 11 a.m., the bus stopped in front of the Sladara factory in Rogatica and the 50 men were ordered to get on a different bus.²⁷¹⁵ Once the men boarded the second bus, a man named Slaviša Vukojičić ordered them off the bus again so that their hands could be tied with wire.²⁷¹⁶ Men were beaten as their hands were tied,²⁷¹⁷ and they were then forced back on the bus which drove back in the direction of Sokolac.²⁷¹⁸

850. Approximately 100 metres after the bus passed a place on a hill above Kalimanići where there was a small house and a small clearing,²⁷¹⁹ the bus stopped again.²⁷²⁰ At this time, Ferid Spahić believed that they were going to be exchanged.²⁷²¹ The men were ordered off the bus and lined up in a two-by-two column, while Ferid Spahić and three others were taken to the end of the column.²⁷²² The column was then forced to walk to the clearing, and men were beaten as they walked.²⁷²³ At the clearing, Slaviša Vukojičić and another man took the first ten people from the column and made the men step down two at a time into a pit.²⁷²⁴ Predrag Milisavljević then shot the first two men in the column and Ferid Spahić saw the men fall.²⁷²⁵ Ferid Spahić describes, "At that moment, I realised that there was no exchange, and that this was just a classical form of execution".²⁷²⁶ When the next ten men were taken from the column,²⁷²⁷ Ferid Spahić escaped.²⁷²⁸

851. On 18 June 1992, between 11 a.m. and 2 p.m., VG097 saw Milan Lukić, Sredoje Lukić, and Mitar Vasilejvić in a red Passat, which stopped on a dirt road in Kosovo Polje where a group of people were hiding.²⁷²⁹ After they got out of the car, Milan Lukić walked toward a cherry tree and climbed it.²⁷³⁰ A woman named Murka Kos, who was between 80 and 85 years old, approached and

²⁷¹¹ 1D6, p. 1; 1D7, pp 2-3; P15, T. 18; P20, p. 4.

²⁷¹² VG136, 6 Apr 2009, T. 6799, 6800-6801; P15, T. 18-19; P20, p. 4; P21, p. 2. See also P331, p. 61.

²⁷¹³ Ferid Spahić, 26 Aug 2008, T. 532; 1D7, pp 3-4; P20, p. 5. See also P33, p. 61.

²⁷¹⁴ Ferid Spahić, 26 Aug 2008, T. 532; P20, p. 5.

²⁷¹⁵ P15, T. 36; P20, pp 5-6. Note that the witness named a number of men and boys who he knew were on the bus with him, 1D7, p. 4; P15, T. 39-40; P20, p. 7.

²⁷¹⁶ P15, T. 37-38.

²⁷¹⁷ P15, T. 37-38.

²⁷¹⁸ Ferid Spahić, 26 Aug 2008, T. 532; P15, T. 40; P20, p. 6.

²⁷¹⁹ 1D7, p. 6; P15, T. 40; P20, p. 7.

²⁷²⁰ P15, T. 41; P20, p. 8.

²⁷²¹ P15, T. 41; P20, p. 8.

²⁷²² P15, T. 43-44; P20, p. 8.

²⁷²³ P15, T. 44-45; P20, p. 8.

²⁷²⁴ 1D7, p. 7; P15, T. 46, 49-50; P20, p. 8.

²⁷²⁵ P15, T. 46, 50; P20, pp 8-9.

²⁷²⁶ P15, T. 46.

²⁷²⁷ P15, T. 47; P20, p. 9.

²⁷²⁸ P15, T. 50, 52-53; P20, p. 9.

²⁷²⁹ P28, pp 4-5. See also VG097, 27 Aug 2008, T. 624-625.

²⁷³⁰ P28, p. 4. See also. VG097, 27 Aug 2008, T. 624-625.

told Milan Lukić to get out of the tree because she was afraid he would break the branches.²⁷³¹ After he listened to her for a moment, Milan Lukić shot her in the head.²⁷³² Milan Lukić, Sredoje Lukić, and Mitar Vasilejvić then returned to the car and left.²⁷³³

852. In the “latter part of June 1992”, Zehra Turjačanin saw Enver Subasić and Deda Musević doused in gasoline and set on fire by a group of men, including Milan Lukić.²⁷³⁴ The incidents took place approximately 250 metres away from Zehra Turjačanin’s house.²⁷³⁵

853. VG097 testified that he saw Milan Lukić, Sredoje Lukić and Mitar Vasiljević taking away men on three separate occasions during June 1992.²⁷³⁶ Around 15 June 1992, VG097 saw Milan Lukić taking away Mujo Kursapić in a red Passat.²⁷³⁷ VG097 then saw Milan Lukić driving away Dedad Ribac in Dedad Ribac’s car.²⁷³⁸ The third incident occurred a few days prior to 19 June 1992 when Milan Lukić, Sredoje Lukić and Mitar Vasiljević took Rasim Torohan away from his home.²⁷³⁹ None of the three men who were taken away were armed or wore military uniforms.²⁷⁴⁰ They were never seen again.²⁷⁴¹

854. In the beginning of July 1992, on her way home from work, VG115 saw Milan Lukić, Mitar Vasiljević and two other men attack an old man from Dušće named Kahrman in a small meadow close to her apartment building.²⁷⁴² It was daytime and there were many people around coming home from work.²⁷⁴³ Kahrman was hand-cuffed, and as he screamed, the men made cuts on his arms and cut his ears.²⁷⁴⁴ According to VG115, he was targeted because he was the father or uncle of an “alleged well-known extremist”.²⁷⁴⁵ Kahrman was killed and “the body could be seen for a long time” before it eventually ended up in the Drina river.²⁷⁴⁶ VG115 stated that she “couldn’t forget those screams”.²⁷⁴⁷

²⁷³¹ P28, p. 4.

²⁷³² VG097, 27 Aug 2008, T. 624; P28, p. 4.

²⁷³³ P28, p. 5.

²⁷³⁴ Zehra Turjačanin, 25 Sep 2008, T. 2300-2301. For evidence of Zehra Turjačanin’s identification of Milan Lukić, see *supra* section II.H.1(c)(i).

²⁷³⁵ Zehra Turjačanin, 25 Sep 2008, T. 2301.

²⁷³⁶ VG097, 27 Aug 2008, T. 654-655; P28, p. 4.

²⁷³⁷ P28, p. 4; VG097, 27 Aug 2008, T. 655.

²⁷³⁸ P28, p. 4; VG097, 27 Aug 2008, T. 655.

²⁷³⁹ P28, p. 4; VG097, 27 Aug 2008, T. 655.

²⁷⁴⁰ VG097, 27 Aug 2008, T. 655.

²⁷⁴¹ P28, p. 4.

²⁷⁴² 1D19, T. 1032.

²⁷⁴³ 1D18, p. 13; 1D19, T. 1032.

²⁷⁴⁴ 1D19, T. 1032.

²⁷⁴⁵ 1D18, p. 13; 1D19, T. 1032.

²⁷⁴⁶ 1D19, T. 1033. See also 1D18, p. 13.

²⁷⁴⁷ 1D18, p. 13; 1D19, T. 1033.

855. After 19 June 1992 and until 17 or 18 July 1992, VG097 repeatedly saw Mitar Vasiljević and Milan Lukić throw bodies into the Drina river.²⁷⁴⁸ He watched this through binoculars from Hamzići.²⁷⁴⁹

856. At the end of July 1992, VG115 saw Milan Lukić and Mitar Vasiljević shoot Medo Mulahasić, who was about 60 years old, in the back of the head on the old bridge in Višegrad.²⁷⁵⁰ They then threw his body into the Drina river.²⁷⁵¹

857. On another day in late July 1992, while returning home from work in the afternoon,²⁷⁵² VG115 saw Milan Lukić, Mitar Vasiljević and “another of the Lukić’s” hitting and stabbing a man known as “Kupus” on the Rzav bridge in the center of Višegrad.²⁷⁵³ Milan Lukić “stabbed him with a knife lots of times, lots of times, all over his body”.²⁷⁵⁴ Kupus was screaming.²⁷⁵⁵ It was daytime and there were people passing by.²⁷⁵⁶ Mitar Vasiljević yelled at VG115, telling her to “pass by quickly” so she would not end up like Kupus.²⁷⁵⁷ Kupus was killed and his body remained at that location for about a week.²⁷⁵⁸

858. On a day in late autumn 1992, at around 1 p.m., VG115 saw Milan Lukić take Amela Gacka, who was pregnant, out of a car, bring her to the bridge over the Drina river, and shoot her.²⁷⁵⁹ Amela Gacka was the fiancée of Gojko Lukić, Milan Lukić’s older brother.²⁷⁶⁰ On cross-examination, when VG115 was asked why in her 2000 statement she did not say she was an eye-witness to Amela Gacka’s murder, she explained that it was because no one had asked about this specific murder.²⁷⁶¹ VG115 was also asked whether it was “an amazing coincidence” that she was able to witness so many atrocities committed by Milan Lukić, Sredoje Lukić, and Mitar Vasiljević and she agreed that it was “incredible but it happened by chance” because the men had committed such acts on a daily basis.²⁷⁶²

859. The Trial Chamber heard evidence that the Hasan Veletovac school on Pionirska street was used as a detention facility in June 1992 and that there were “nearly 500” Muslim civilians detained

²⁷⁴⁸ VG097, 27 Aug 2008, T. 625; P28, p. 5.

²⁷⁴⁹ P28, p. 5.

²⁷⁵⁰ 1D19, T. 1034-1035.

²⁷⁵¹ 1D18, p. 13; 1D19, T. 1034-1035.

²⁷⁵² 1D18, p. 14; 1D19, T. 1035-1036.

²⁷⁵³ 1D18, p. 14; 1D19, T. 1035-1036.

²⁷⁵⁴ 1D19, T. 1036.

²⁷⁵⁵ 1D19, T. 1036.

²⁷⁵⁶ 1D19, T. 1036.

²⁷⁵⁷ 1D19, T. 1037.

²⁷⁵⁸ 1D18, p. 14.

²⁷⁵⁹ VG115, 28 Aug 2008, T. 719-720, 721, 728, 729, 730.

²⁷⁶⁰ VG115, 28 Aug 2008, T. 719-720.

²⁷⁶¹ VG115, 28 Aug 2008, T. 730.

²⁷⁶² VG115, 28 Aug 2008, T. 730.

there.²⁷⁶³ The school was surrounded by barbed wire and people could not move freely.²⁷⁶⁴ VG064 recalled seeing blood on the walls and on the floors of the corridors.²⁷⁶⁵ Women detained at the school were required to do chores, such as cleaning blood from certain areas of the school.²⁷⁶⁶

860. VG063 testified that Milan Lukić was in charge of the Hasan Veletovac school and that he issued orders to the other soldiers.²⁷⁶⁷ Boban Šimšić and Ljubiša Cvijović and other soldiers often accompanied Milan Lukić.²⁷⁶⁸ During the period of time that she was detained at the school, VG063 saw Milan Lukić every day.²⁷⁶⁹ He always wore camouflage, as did the guards at the school.²⁷⁷⁰ She saw Sredoje Lukić “many times” but he was not always with Milan Lukić.²⁷⁷¹

861. One day during a roll-call, three Muslim men, Ismet Bulatović, Semso Poljo, and a young man by the name of Eniz or Enes were taken away by Milan Lukić, Ljubisa Cvijović, Boban Simsić and other soldiers.²⁷⁷² They were never seen again.²⁷⁷³

862. On another occasion, several elderly men were ordered by Milan Lukić to go outside the school.²⁷⁷⁴ They were ordered to beat one another on the head with sticks and sing “Chetnik” songs.²⁷⁷⁵ If they did not beat one another hard enough, they were beaten by Milan Lukić, Sredoje Lukić, Boban Šimšić and others.²⁷⁷⁶ When one of the elderly men returned, he was bleeding and covered in bruises.²⁷⁷⁷

863. One evening, Milan Lukić, Sredoje Lukić and Boban Šimšić made a number of men stand in a circle in the middle of the gym, and they beat them.²⁷⁷⁸ They beat one man so hard that his entire body was covered in blood and he soiled himself.²⁷⁷⁹ This man’s wife pleaded with Milan Lukić to stop and Milan Lukić hit her several times.²⁷⁸⁰ During the same incident, Milan Lukić urinated in

²⁷⁶³ VG063, 18 Sep 2008, T. 1843, 1844; VG064, 28 Oct 2008, T. 2893; P109. VG063 testified that there were 80 to 100 individuals when she arrived, VG063, 18 Sep 2008, T. 1843. In her 2000 statement, VG063 states that there were approximately 300 people in the gym, 1D49, p. 7. In her 1994 and 2004 statements, VG063 estimates that there were 200 people in the school when she arrived with 120 people, 1D51, p. 7; 2D12, p. 3; 2D13, p. 6.

²⁷⁶⁴ VG063, 18 Sep 2008, T. 1843-1845.

²⁷⁶⁵ VG064, 28 Oct 2008, T. 2893.

²⁷⁶⁶ VG063, 18 Sep 2008, T. 1849-1850.

²⁷⁶⁷ VG063, 18 Sep 2008, T. 1844, 1860.

²⁷⁶⁸ VG063, 18 Sep 2008, T. 1844-1845, 1863.

²⁷⁶⁹ VG063, 18 Sep 2008, T. 1862.

²⁷⁷⁰ VG063, 18 Sep 2008, T. 1858, 1888.

²⁷⁷¹ VG063, 18 Sep 2008, T. 1844-1845, 1862-1863. See also *id.* T. 1907, 1908-1911, 1929-1930, 1936.

²⁷⁷² VG063, 18 Sep 2008, T. 1846.

²⁷⁷³ VG063, 18 Sep 2008, T. 1846.

²⁷⁷⁴ VG063, 18 Sep 2008, T. 1847.

²⁷⁷⁵ VG063, 18 Sep 2008, T. 1847; 1D49, p. 8.

²⁷⁷⁶ VG063, 18 Sep 2008, T. 1847.

²⁷⁷⁷ VG063, 18 Sep 2008, T. 1847.

²⁷⁷⁸ VG063, 18 Sep 2008, T. 1849.

²⁷⁷⁹ VG063, 18 Sep 2008, T. 1849.

²⁷⁸⁰ VG063, 18 Sep 2008, T. 1849.

the cap of an old man and then put the cap, full of urine, back on the man's head.²⁷⁸¹ Milan Lukić repeated this act with the other old men, and he forced the men to show him their penises because he wanted to know how big Muslim penises were.²⁷⁸²

864. On another evening, Milan Lukić came to the school with Ljubiša Cvijović and Boban Šimšić and took all the small children outside.²⁷⁸³ They told the people detained in the school that the children would be returned only after all the gold and money they possessed had been collected.²⁷⁸⁴ If they failed to collect it all, the children would be thrown off the bridge into the Drina river.²⁷⁸⁵ This incident was one of several in which children were taken away until valuables were collected.²⁷⁸⁶

865. On one occasion, Milan Lukić came to the school and called for a woman named Haša Hadžić, who was approximately 40 to 50 years old.²⁷⁸⁷ After she stood up, Milan Lukić and Sredoje Lukić stripped her and then beat her unconscious.²⁷⁸⁸

²⁷⁸¹ VG063, 18 Sep 2008, T. 1849; 1D51, p. 9.

²⁷⁸² VG063, 18 Sep 2008, T. 1849; 1D49, pp 9-10.

²⁷⁸³ VG063, 18 Sep 2008, T. 1847-1848.

²⁷⁸⁴ VG063, 18 Sep 2008, T. 1848.

²⁷⁸⁵ VG063, 18 Sep 2008, T. 1848.

²⁷⁸⁶ VG063, 18 Sep 2008, T. 1848. See also 1D51, p. 5; 2D12, p. 6.

²⁷⁸⁷ 1D51, p. 8; 2D12, pp 6-7; VG063, 18 Sep 2008, T. 1855.

²⁷⁸⁸ VG063, 18 Sep 2008, T. 1855; 1D51, p. 8.

III. LAW AND FINDINGS ON THE RESPONSIBILITY OF THE ACCUSED

A. Introduction

866. Milan Lukić is charged with nine counts of violations of the laws or customs of war punishable under Article 3 of the Statute and Common Article 3 of the Geneva Conventions of 12 August 1949: murder (counts 3, 7, 10, 15 and 19) and cruel treatment (counts 5, 12, 17 and 21). Milan Lukić is also charged with 12 counts of crimes against humanity punishable under Article 5 of the Statute: persecution (count 1), extermination, (counts 8 and 13), murder (counts 2, 6, 9, 14 and 18) and inhumane acts (counts 4, 11, 16 and 20).

867. Sredoje Lukić is charged with five counts of violations of the laws or customs of war pursuant to Article 3 of the Statute: murder (counts 10 and 15) and cruel treatment (counts 12, 17 and 21). Sredoje Lukić is also charged with eight counts of crimes against humanity pursuant to Article 5 of the Statute: persecution (count 1), extermination (counts 8 and 13), murder (counts 9 and 14) and inhumane acts (counts 11, 16 and 20).

B. General requirements of Article 3 of the Statute

868. The application of Article 3 of the Statute requires a determination that a state of armed conflict existed at the time the crime was committed and that the alleged crime was connected with the armed conflict.²⁷⁸⁹ An armed conflict exists, in the words of the Appeals Chamber in *Tadić*:

whenever there is a resort to armed force between States or protracted armed violence between governmental authorities and organised groups or between such groups within a State. International humanitarian law applies from the initiation of such armed conflicts and extends beyond the cessation of hostilities until a general conclusion of peace is reached; or, in the case of internal conflicts, a peaceful settlement is reached. Until that moment, international humanitarian law continues to apply in the whole territory of the warring States or, in the case of internal conflicts, the whole territory under the control of a party, whether or not actual combat takes place there.²⁷⁹⁰

Where crimes were allegedly committed at a time and a place where fighting was not taking place, “it would be sufficient [...] that the alleged crimes were closely related to hostilities occurring in other parts of the territories controlled by the parties to the conflict.”²⁷⁹¹ While the proximity between the alleged crime and the armed conflict must not be understood as the existence of a causal link, it is required that “the existence of an armed conflict must, at a minimum, have played a substantial part in the perpetrator’s ability to commit it, his decision to commit it, the manner in which it was committed or the purpose for which it was committed.”²⁷⁹² Importantly, a

²⁷⁸⁹ *Tadić* Jurisdiction Decision, paras 67-70.

²⁷⁹⁰ *Tadić* Jurisdiction Decision, para. 70; *Kunarac et al.* Appeal Judgement, para. 56.

²⁷⁹¹ *Kunarac et al.* Appeal Judgement, para. 57.

²⁷⁹² *Kunarac et al.* Appeal Judgement, para. 58.

geographical and temporal link must be established between the crimes with which the accused is charged and the armed conflict.²⁷⁹³

869. Four further jurisdictional requirements must be fulfilled for Article 3 of the Statute to be applicable:

- (1) the violation must constitute an infringement of a rule of international humanitarian law,
- (2) the rule must be customary in nature or, if it belongs to treaty law, the required conditions must be met,
- (3) the violation must be serious, that is to say that it must constitute a breach of a rule protecting important values and the breach must involve grave consequences for the victim, and
- (4) the violation of the rule must entail, under customary or conventional law, the individual criminal responsibility of the person breaching the rule.²⁷⁹⁴

Common Article 3, which prohibits murder and cruel treatment in paragraph (1)(a), “is indeed regarded as being part of customary international law, and serious violations thereof would at once satisfy the four requirements”.²⁷⁹⁵

870. For each crime charged under Article 3 of the Statute and Common Article 3, the Prosecution is required to prove that the victims were “persons taking no active part in hostilities”, including by virtue of being civilians and persons who have laid down their arms or who have been placed *hors de combat* by virtue of sickness, wounds, detention or any other cause.²⁷⁹⁶ The Prosecution must prove that the alleged perpetrator of the crime must have known or should have been aware that the victim was taking no active part in the hostilities.²⁷⁹⁷ Relevant to the Trial Chamber’s determination of the victim’s protection under Common Article 3 is the specific situation of the victim at the moment the crime was committed.²⁷⁹⁸ The Trial Chamber considers that relevant factors in this respect include the victim’s activity, clothing, age and gender, as well as whether or not the victim was carrying a weapon.²⁷⁹⁹

C. General requirements of Article 5 of the Statute

1. Nexus to an armed conflict

871. In order for Article 5 of the Statute to be applicable, the crime charged must have been committed in the context of an armed conflict. The Trial Chamber has set out above the definition

²⁷⁹³ *Stakić* Appeal Judgement, para. 342.

²⁷⁹⁴ *Tadić* Jurisdiction Decision, para. 94. See also *Kunarac et al.* Appeal Judgement, para. 66; *Aleksovski* Appeal Judgement, para. 20.

²⁷⁹⁵ *Kunarac et al.* Appeal Judgement, para. 68, referring to *Tadić* Jurisdiction Decision, paras 98, 134 and *Delalić et al.* Appeal Judgement, para. 125.

²⁷⁹⁶ Common Article 3; *Delalić et al.* Appeal Judgement, para. 420.

²⁷⁹⁷ *Halilović* Trial Judgement, para. 36; *Krajišnik* Trial Judgement, para. 847.

²⁷⁹⁸ *Tadić* Trial Judgement, paras 615-616; *Halilović* Trial Judgement, paras 33-34.

²⁷⁹⁹ *Galić* Trial Judgement, para. 50; *Halilović* Trial Judgement, para. 34.

of armed conflict, which also applies within the context of Article 5. It should be added that for the purposes of Article 5, the nature of the armed conflict, that is, whether it is international or internal in character, is irrelevant.²⁸⁰⁰ Moreover, the armed conflict requirement is jurisdictional, which means that it is satisfied by proof that there was an armed conflict and that the acts of the accused are objectively linked geographically as well as temporally with the armed conflict.²⁸⁰¹

2. Widespread or systematic attack against a civilian population

872. The crime charged under Article 5 must have been committed in the context of a widespread or systematic attack against a civilian population.²⁸⁰² The requirements below have to be satisfied.

873. There must be an attack.²⁸⁰³ “Attack” has been defined as a course of conduct involving the commission of acts of violence.²⁸⁰⁴ The attack could precede, outlast, or continue during the armed conflict, but it need not be a part of it.²⁸⁰⁵ The term “attack” also encompasses mistreatment of the civilian population.²⁸⁰⁶

874. The attack must be directed against any civilian population.²⁸⁰⁷ It is not required that the entire population be subjected to the attack; however, the civilian population, rather than a limited and randomly selected number of individuals, must be the primary object of the attack.²⁸⁰⁸ Relevant factors for determining this include the means and method used in the course of the attack, the status of the victims, the number of victims and the discriminatory nature of the attack and the nature of the crimes committed in its course.²⁸⁰⁹

875. The attack must be widespread or systematic.²⁸¹⁰ This is a disjunctive, rather than cumulative, requirement.²⁸¹¹ “Widespread” refers to the large-scale nature of the attack which is primarily reflected in the number of victims. “Systematic” refers to the organised nature of the acts of violence and the “non-accidental repetition of similar criminal conduct on a regular basis”.²⁸¹² Relevant to a Trial Chamber’s consideration of this requirement are the consequences of the attack

²⁸⁰⁰ *Tadić* Jurisdiction Decision, para. 142.

²⁸⁰¹ *Kunarac et al.* Appeal Judgement, para. 83.

²⁸⁰² *Kunarac et al.* Appeal Judgement, para. 85.

²⁸⁰³ *Kunarac et al.* Appeal Judgement, para. 85.

²⁸⁰⁴ *Kunarac et al.* Trial Judgement, para. 415, affirmed by *Kunarac et al.* Appeal Judgement, para. 89.

²⁸⁰⁵ *Kunarac et al.* Appeal Judgement, para. 86, referring to *Tadić* Appeal Judgement, para. 251.

²⁸⁰⁶ *Kunarac et al.* Appeal Judgement, para. 86.

²⁸⁰⁷ *Kunarac et al.* Appeal Judgement, para. 85.

²⁸⁰⁸ *Kunarac et al.* Appeal Judgement, para. 90. The Trial Chamber recalls that a population can be qualified as civilian even if non-civilians are among it, as long as it is predominantly civilian, *Jelisić* Trial Judgement, para. 54; *Kupreškić et al.* Trial Judgement, paras 547-549; *Limaj et al.* Trial Judgement, para. 186.

²⁸⁰⁹ *Kunarac et al.* Appeal Judgement, para. 91.

²⁸¹⁰ *Kunarac et al.* Appeal Judgement, para. 85.

²⁸¹¹ *Kunarac et al.* Appeal Judgement, para. 97; *Blaškić* Appeal Judgement, para. 101.

²⁸¹² *Kunarac et al.* Appeal Judgement para. 94; *Blaškić* Appeal Judgement, para. 101.

upon the targeted population, the number of victims, the nature of the acts committed, and any identifiable pattern of crimes.²⁸¹³

876. The acts of the accused, by their nature or consequences, must objectively form part of the attack.²⁸¹⁴ Although the acts must not be isolated, it is not required that the acts were committed in the midst of the attack provided that they are sufficiently connected therewith.²⁸¹⁵

877. The perpetrator must know that his acts constitute part of a pattern of widespread or systematic crimes directed against a civilian population and must know that his acts fit into such a pattern.²⁸¹⁶ This requires that the accused knew that there was an attack on a civilian population and that his acts formed part of that attack, or at least that he took the risk that his acts were part of the attack.²⁸¹⁷ But it is not required that the accused knew the details of the attack or approved of the context in which his acts occurred. It is sufficient that he merely understood the overall context in which his acts took place.²⁸¹⁸ The accused's motives for participating in the attack are irrelevant as well as whether the accused intended his acts to be directed against the targeted population or merely against his victim.²⁸¹⁹ Thus, it is the attack, not the acts of the accused, which must be directed against the civilian population.²⁸²⁰

3. Applicability of Article 5 to non-civilian victims

878. The Appeals Chamber has held that Article 5 of the Statute is applicable not only to civilians, but also to persons placed *hors de combat* "provided all other necessary conditions are met, in particular that the act in question is part of a widespread or systematic attack against any civilian population."²⁸²¹

²⁸¹³ *Kunarac et al.* Appeal Judgement, para. 95.

²⁸¹⁴ *Tadić* Appeal Judgement, para. 248; *Kunarac et al.* Appeal Judgement, paras 85, 99-101.

²⁸¹⁵ *Kunarac et al.* Appeal Judgement, para. 100; *Tadić* Appeal Judgement, para. 248.

²⁸¹⁶ *Kunarac et al.* Appeal Judgement, para. 85.

²⁸¹⁷ *Kunarac et al.* Appeal Judgement, paras 102, 105.

²⁸¹⁸ *Kunarac et al.* Appeal Judgement, para. 102.

²⁸¹⁹ *Tadić* Appeal Judgement, paras 248-272; *Kunarac et al.* Appeal Judgement, para. 103.

²⁸²⁰ *Kunarac et al.* Appeal Judgement paras 103, 105.

²⁸²¹ *Martić* Appeal Judgement, para. 313, confirmed in *Mrkšić et al.* Appeal Judgement, para. 29. The Appeals Chamber also clarified that "whereas the civilian status of the victims, the number of civilians, and the proportion of civilians within a civilian population are factors relevant to the determination of whether the *chapeau* requirement of Article 5 of the Statute that an attack be directed against a "civilian population" is fulfilled, there is no requirement nor is it an element of crimes against humanity that the victims of the underlying crimes be "civilians", *id.*, para. 32.

D. Findings on the general requirements of Article 3 and Article 5

1. Existence of an armed conflict

879. In its final trial brief, the Milan Lukić Defence submits that the Prosecution did not meet its burden of proof regarding the existence of an armed conflict.²⁸²² The Milan Lukić Defence submits that the Prosecution has not established that there was an armed conflict of the requisite intensity or that the armed conflict was protracted, and further submitted that the evidence shows that the Užice Corps had left Višegrad before the indictment period began.²⁸²³ It also submits that the Prosecution presented no evidence of the organised nature of the parties to the conflict.²⁸²⁴

880. The Trial Chamber must determine whether (i) there was protracted armed violence, and (ii) the parties to the conflict were organised. The evidence shows that an armed conflict started in BiH in early April 1992 and continued until late 1995, when the Dayton Accords were signed. The armed conflict encompassed the municipality of Višegrad. While the Užice Corps established Serb control over the town of Višegrad, the evidence shows that during the indictment period there was an armed conflict in and around the Višegrad municipality between the opposing Serb and Muslim forces. From the beginning of the indictment period until at least October 1992, both sides undertook offensive and defensive actions, a feature which, the Trial Chamber considers, demonstrates that they were engaged in military planning and tactics in order to achieve military objectives, including to establish control over portions of the territory in and around the Višegrad municipality. The Trial Chamber notes in this regard the establishment of front lines by both forces, to which armed men were deployed. A particular example of this is the area of Crni Vrh, in respect of which the armed forces engaged in regular attacks.

881. While there is evidence that the Muslim forces were not well-equipped or well-armed, the Rogatica Brigade Command operations reports indicate that both sides laid landmines. There is also evidence of the use of heavy weapons, and large quantities of ammunition, by the Serb forces, which, the Trial Chamber considers is indicative of the intense fighting that was taking place on, at the very least, the dates to which the reports pertained.

882. Soldiers were killed as a result of the fighting. Large numbers of civilians fled the Višegrad area or went missing, and the ethnic makeup of Višegrad altered completely from being predominantly Muslim to being almost exclusively Serb.

²⁸²² Milan Lukić final trial brief, paras 60-66.

²⁸²³ Milan Lukić final trial brief, paras 62, 64.

²⁸²⁴ Milan Lukić final trial brief, para. 63.

883. With regard to the level of organisation of the Serb and Muslim forces, evidence presented to the Trial Chamber described establishment of a local armed force by the Užice Corps in April 1992. Men were recruited into the force, including through the mobilisation of the Višegrad reserve police and the creation of units that were considered part of the Serb forces. Training, weapons, and other equipment were initially provided by the Užice Corps. By June 1992, as demonstrated by the Rogatica Brigade Command operations reports, requests for equipment and weapons were being made to the Command of the Sarajevo Romanija Corps. Similarly, there appears to be a concern to ensure that the Serb forces in Višegrad were operating under the same rules as other units; the Rogatica Brigade Command report dated 14 June 1992 states: “In order for the command and subordinate units to be successful you need to provide us with rules [and] instructions (rules on companies, platoons, battalions, mines, regulations for preparing meals, and other rules).”²⁸²⁵ Both of these requests, as well as the established reporting procedures that are illustrated by the Rogatica Brigade Command reports and the division of the members of the Rogatica Brigade by rank, indicate both that the Rogatica Brigade had a chain of command itself and that it was part of a clearly-established and understood chain of command that stretched beyond Višegrad, as were the other units, such as the unit of which Milan Lukić was a member.

884. The evidence shows that Muslims began to organise themselves locally into armed units before the Užice Corps arrived in Višegrad and continued to do so after the Corps departed. VG082 drew no meaningful distinction between the organisation that he referred to both as the TO and the “BiH army”, which he testified he joined after 11 June 1992. The Trial Chamber is satisfied on the basis of the evidence of VG082 that the TO structure, which had existed before the war, formed the basis of the structure of the new Muslim forces. There was a chain of command. The Muslim forces established frontlines and, as illustrated in particular by the Rogatica Brigade Command reports, the Muslim forces regularly undertook offensive and defensive military actions. The evidence indicates that these forces controlled territory in and around the Višegrad municipality. Goran Đerić testified that Muslim forces controlled all of the roads, except the Višegrad-Rogatica road. As noted above in relation to the Serb forces, there were continuous battles between the two sides for control of Crni Vrh, and the evidence of VG013 indicates that the Muslim forces were in control of Crni Vrh when she was there in late June 1992. The Trial Chamber considers that the ability of the Muslim forces to carry out effective military operations, including the necessary troop movements and logistics, clearly indicates that the forces had a significant level of organisation. Furthermore, the forces were staffed with doctors and had a sufficient level of organisation and means to transport VG013 out of the conflict zone to Goražde. Therefore, the Trial Chamber is satisfied that the Muslim forces constituted an organised party to the armed conflict.

²⁸²⁵ P221, p. 2.

885. On the basis of the evidence described above, the Trial Chamber finds that there was a protracted armed conflict in the Višegrad municipality, and that the Serb and Muslim forces constituted organised parties to that conflict. Therefore, this general requirement of Article 3 of the Statute is met.

886. In assessing whether the crimes allegedly committed by Milan Lukić and Sredoje Lukić were connected with the armed conflict, the Trial Chamber has considered evidence demonstrating that as a result of the armed conflict in and around Višegrad, existing systems of governance broke down and the society was divided along ethnic lines. After the JNA departed Višegrad, leaving Serb-only authorities in charge, an environment prevailed in which Muslims were the targets by Serbs of killings, rapes, beatings and other forms of mistreatment, the destruction of property and theft.

887. Evidence also shows that Milan Lukić was a member of a unit that formed part of the Serb forces and engaged in combat with Muslim forces, and that both Milan Lukić and Sredoje Lukić were members of the Serb reserve police. Milan Lukić and Sredoje Lukić were regularly seen around Višegrad, armed and wearing camouflage uniforms. In addition, Milan Lukić had an extensive range and type of weaponry available to him. The Trial Chamber is satisfied that the armed conflict created a facilitative environment in which the crimes charged could be committed, and that Milan Lukić and Sredoje Lukić were fully aware of the armed conflict taking place around Višegrad.

888. The armed conflict was taking place in and around the Višegrad municipality throughout the indictment period. The temporal scope of the armed conflict covered and extended beyond the period of the indictment to the end of 1995. Therefore, the Trial Chamber finds that the crimes allegedly committed by Milan Lukić and Sredoje Lukić were closely related to the conflict.

2. Widespread or systematic attack

889. In assessing whether the crimes charged under Article 5 of the Statute were committed in the context of a widespread or systematic attack against a civilian population, the Trial Chamber must consider whether there was an attack directed against a civilian population, which was widespread or systematic. Furthermore, the accused must know that their acts constitute part of a pattern of widespread or systematic crimes directed against a civilian population and must know that their acts fit into such a pattern.

890. Evidence before the Trial Chamber shows that numerous acts of violence were perpetrated against the Muslim civilian population in Višegrad by the Serb police, members of paramilitary groups and local Serbs from before the indictment period began, and that the number of these acts

increased with the departure of the Užice Corps. These acts of violence included unlawful arrests and beatings, abductions, rapes, theft and destruction of property, and arbitrary killings. Two mosques in Višegrad were burned down. The Trial Chamber recalls its finding that evidence on specific non-indicted crimes will be taken into account when determining whether the Prosecution has satisfied the general requirements of Article 5 of the Statute. This evidence also shows that Muslim men, women and children were the target of abductions, rapes, arbitrary killings, acts of humiliation, beatings, and theft, most particularly during June and July 1992.

891. The Trial Chamber finds that these acts indisputably fit within the definition of “attack” as defined in the case-law of the Tribunal. The Trial Chamber is further satisfied that the attacks were directed in a discriminatory manner against the civilian population; the victims were civilians from Višegrad, many were elderly and women and children, and all were Muslims.

892. The attacks were not isolated events. On the contrary, attacks of all types were repeated time and time again against the Muslim population. Some Muslims were the targets of attacks on more than one occasion. There are accounts of women being raped multiple times.

893. As a result of these attacks, Muslims abandoned their jobs, went into hiding, or left Višegrad. Muslims made up the largest group of the internally displaced population from the Višegrad municipality. The 2005 ICRC list of missing persons provides that 705 persons were reported to have disappeared from Višegrad, a sizeable majority of whom were Muslim. Considerable numbers of Muslim civilians were killed. From mid-May to September or October 1992, Mevsud Poljo and others pulled 170 to 180 bodies out from the Drina river, most dressed in civilian clothes, and whom they then buried. According to Mevsud Poljo, these accounted for only 20 per cent of those seen in the river at that time. The bodies of hundreds of Muslim civilians were later exhumed from mass graves around the Višegrad municipality.

894. Consequently, the ethnic composition of Višegrad changed dramatically. When the conflict started, Višegrad was inhabited by almost twice as many Muslims as Serbs. By 1997, Serbs made up 95.9 per cent of the population and the Muslim population had dropped to below 1 per cent.²⁸²⁶

895. The crimes allegedly committed by Milan Lukić and Sredoje Lukić indisputably formed part of the attack. The alleged crimes were linked temporally and geographically to the attack, and in terms of purpose and objective, and, in fact, were mostly committed during the height of the attack against the Muslim population, namely in June 1992. Moreover, Milan Lukić and Sredoje Lukić could not have avoided knowing that there was an attack; the scale of the attack was considerable

²⁸²⁶ Ewa Tabeau, 22 Sep 2008, T. 2085-2086, 24 Sep 2008, T. 2216-2217, 2220, 2228.

and the effects of the attack on the Muslim population were drastic and severe, and it was perpetrated by local Serbs and the Serb authorities, which was the community to which both Milan Lukić and Sredoje Lukić belonged. The Trial Chamber is satisfied that the crimes allegedly committed by Milan Lukić and Sredoje Lukić formed part of this widespread or systematic attack, and that, in the Trial Chamber's view, they must have been aware that their acts fit into the attack. Whenever a widespread or systematic attack is a requirement for a crime charged in the indictment, this requirement has been met.

E. Article 7(1) of the Statute

896. The indictment charges both of the Accused with committing and aiding and abetting crimes pursuant to Article 7(1) of the Statute, which provides:

A person who planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of a crime referred to in Articles 2 to 5 of the present Statute, shall be individually responsible for the crime.

897. "Committing" a crime covers physically or directly perpetrating a crime or engendering a culpable omission in violation of criminal law.²⁸²⁷ The *actus reus* required for committing a crime is that the accused participated, physically or otherwise directly, alone or jointly with others, in the material elements of a crime provided for in the Statute.²⁸²⁸

898. The ICTR Appeals Chamber in the *Gacumbitsi* and *Seromba* cases held that 'committing' genocide is "not limited to direct and physical perpetration" and that other acts can constitute direct participation in the *actus reus* of the crime".²⁸²⁹ In the Appeals Chamber's view, the legal standard for committing genocide is whether the actions were "as much an integral part of the genocide as were the killings which [they] enabled"²⁸³⁰ and whether the accused "approved and embraced as his own" the decision to commit the crime.²⁸³¹ While the Appeals Chamber in the *Gacumbitsi* case confined its interpretation of 'committing' to the crime of genocide, the Appeals Chamber in the *Seromba* case held, by majority, that the outlined legal standard for committing equally applies to

²⁸²⁷ *Krstić* Trial Judgement, para. 601. See also *Tadić* Appeal Judgement, para. 188; *Limaj et al.* Trial Judgement, para. 509.

²⁸²⁸ *Limaj et al.* Trial Judgement, para. 509; *Kordić and Čerkez* Trial Judgement, para. 375.

²⁸²⁹ *Seromba* Appeal Judgement, para. 161, referring to *Gacumbitsi* Appeal Judgement, para. 60 and *Ndindabahizi* Appeal Judgement, para. 123.

²⁸³⁰ *Seromba* Appeal Judgement, para. 161; *Gacumbitsi* Appeal Judgement, para. 60.

²⁸³¹ *Seromba* Appeal Judgement, paras 161, 171. After having applied the correct legal standard to the factual findings, the Appeals Chamber came to the conclusion that "Seromba crossed the line separating aiding and abetting from committing genocide and became a principal perpetrator in the crime itself", para. 182.

the crime of extermination.²⁸³² It stressed that for the *actus reus* of extermination, it is sufficient that the accused participated in measures *indirectly* causing death.²⁸³³

899. While the legal standard for ‘committing’ as set out by the Appeals Chamber has not been applied to the crime of murder, this Trial Chamber is unable to identify any basis prohibiting such application. In this respect, the Trial Chamber also notes the statement of the Appeals Chamber in the *Seromba* case that the question whether a person “acts with his own hands, *e.g.* when killing people, is not the only relevant criterion” when assessing whether that person committed the crime.²⁸³⁴ Further, for the *actus reus* of murder, it is sufficient that the “perpetrator’s conduct contributed substantially to the death of the person”.²⁸³⁵ This Trial Chamber considers that a person who plays a central role in the commission of the crime of murder and embraces and approves as his own the decision to commit murder is not adequately described as an aider and abettor but qualifies as a direct perpetrator who committed the crime.²⁸³⁶

900. The requisite *mens rea* for ‘committing’ is that the accused acted with the intent to commit the crime, or with an awareness of the probability, in the sense of the substantial likelihood, that the crime would occur as a consequence of his conduct.²⁸³⁷ The *mens rea* may be inferred from the circumstances.²⁸³⁸

901. The *actus reus* of aiding and abetting has been defined as rendering practical assistance, encouragement or moral support, which has a substantial effect on the perpetration of a crime provided for in the Statute.²⁸³⁹ There is no requirement of a causal relationship between the conduct of the aider or abettor and the commission of the crime.²⁸⁴⁰ The assistance may occur before, during or after the principal crime has been committed.²⁸⁴¹ Tacit approval of an accused who is physically

²⁸³² *Seromba* Appeal Judgement, para. 190. Judge Liu dissenting.

²⁸³³ *Seromba* Appeal Judgement, paras 189, 190 referring to *Ndindabahizi* Appeal Judgement, para. 123 fn. 268.

²⁸³⁴ *Seromba* Appeal Judgement, para. 161.

²⁸³⁵ *Milutinović et al.* Trial Judgement, para. 137, referring to *Martić* Trial Judgement, para. 58; *Orić* Trial Judgement, para. 347; *Kvočka et al.* Appeal Judgement, para. 261; *Galić* Appeal Judgement, para. 149; *Delalić et al.* Appeal Judgement, para. 423; *Kordić and Čerkez* Appeal Judgement, para. 37.

²⁸³⁶ *Seromba* Appeal Judgement, para. 161.

²⁸³⁷ *Limaj et al.* Trial Judgement, para. 509; *Galić* Trial Judgement, para. 172. See also *Kordić and Čerkez* Appeal Judgement, paras 29, 112.

²⁸³⁸ *Galić* Trial Judgement, para. 172.

²⁸³⁹ *Blagojević and Jokić* Appeal Judgement, para. 127; *Simić et al.* Appeal Judgement, para. 85; *Blaškić* Appeal Judgement, para. 45, citing *Vasiljević* Appeal Judgement, para. 102; *Aleksovski* Appeal Judgement, para. 162, citing *Furundžija* Trial Judgement, para. 249; *Tadić* Appeal Judgement, para. 229.

²⁸⁴⁰ *Blagojević and Jokić* Appeal Judgement, para. 127; *Simić et al.* Appeal Judgement, para. 85; *Blaškić* Appeal Judgement, para. 48; *Ntagerura et al.* Appeal Judgement, para. 372.

²⁸⁴¹ *Blagojević and Jokić* Appeal Judgement, para. 127; *Simić et al.* Appeal Judgement, para. 85; *Blaškić* Appeal Judgement, para. 48; *Ntagerura et al.* Appeal Judgement, para. 372.

present at the scene and in a position of authority may amount to encouragement and thus meet the *actus reus* of aiding and abetting.²⁸⁴²

902. The *mens rea* for aiding and abetting is knowledge that, by his or her conduct, the aider and abettor is assisting or facilitating the commission of the offence.²⁸⁴³ Knowledge may be inferred from the relevant circumstances.²⁸⁴⁴ The aider and abettor need not share the *mens rea* of the principal perpetrator but must be aware of the essential elements of the crime ultimately committed by the principal, including of his state of mind.²⁸⁴⁵

F. Murder under Articles 3 and 5 of the Statute (counts 2, 3, 6, 7, 9, 10, 14, 15, 18 and 19)

1. Law

903. The basic elements of murder are the same under both Article 3 and Article 5:²⁸⁴⁶

- (1) the death of a victim,
- (2) the death was the result of an act or omission of the accused,
- (3) the accused intended to kill the victim or wilfully cause serious bodily harm which he should reasonably have known might lead to death.²⁸⁴⁷

In addition, Article 3 requires the proof of the victim being a person who was taking no active part in the hostilities at the time of his death.²⁸⁴⁸ It is not required that the perpetrator intended to target a specific individual. Rather, it is sufficient that the perpetrator intended indiscriminately to kill whoever would be fatally injured as a result of his action.²⁸⁴⁹ The physical perpetrator's act or omission need not have been the sole cause for the victim's death; it is sufficient that the "perpetrator's conduct contributed substantially to the death of the person".²⁸⁵⁰

904. There is no requirement that the body of the victim has been recovered for the proof of death to be established.²⁸⁵¹ The death may be established by circumstantial evidence, provided that the

²⁸⁴² *Brdanin* Appeal Judgement, paras 273, 277; *Kayishema and Ruzindana* Appeal Judgement, paras 201-202; *Aleksovski* Trial Judgement, para. 87.

²⁸⁴³ *Simić et al.* Appeal Judgement, para. 86; *Blaškić* Appeal Judgement, para. 49 and 45 citing *Vasiljević* Appeal Judgement, para. 102; *Furundžija* Trial Judgement, para. 249.

²⁸⁴⁴ *Limaj et al.* Trial Judgement, para. 518; *Delalić et al.* Trial Judgement, para. 328; *Tadić* Trial Judgement, para. 676.

²⁸⁴⁵ *Blagojević and Jokić* Appeal Judgement, para. 222; *Simić et al.* Appeal Judgement, para. 86; *Aleksovski* Appeal Judgement, para. 162; *Vasiljević* Appeal Judgement, para. 102.

²⁸⁴⁶ *Kordić and Čerkez* Trial Judgement, para. 236; *Blagojević and Jokić* Trial Judgement, para. 556; *Stakić* Trial Judgement, para. 631; *Strugar* Trial Judgement, para. 236; *Brdanin* Trial Judgement, para. 380; *Krnjelać* Trial Judgement, paras 323-324.

²⁸⁴⁷ *Kvočka et al.* Appeal Judgement, para. 261 with further references.

²⁸⁴⁸ *Strugar* Trial Judgement, para. 236. See also *Delalić et al.* Appeal Judgement, para. 423; *Naletilić and Martinović* Trial Judgement, para. 248 (footnote 660).

²⁸⁴⁹ *Martić* Trial Judgement, para. 60.

²⁸⁵⁰ *Milutinović et al.* Trial Judgement, para. 137, referring to *Martić* Trial Judgement, para. 58; *Orić* Trial Judgement, para. 347; *Kvočka et al.* Appeal Judgement, para. 261; *Galić* Appeal Judgement, para. 149; *Delalić et al.* Appeal Judgement, para. 423; *Kordić and Čerkez* Appeal Judgement, para. 37.

²⁸⁵¹ *Kvočka et al.* Appeal Judgement, para. 260.

only reasonable inference available from the evidence presented to the Trial Chamber is that “the victim is dead as a result of acts or omissions of the accused or of one or more persons for whom the accused is criminally responsible”.²⁸⁵² The Trial Chamber notes that relevant factors to be considered include proof of incidents of mistreatment directed against the victim, patterns of mistreatment and disappearances of other victims, the coincident or near-coincident time of death of other victims, the fact that the victims were present in an area where an armed attack was carried out, when, where and the circumstances in which the victim was last seen, behaviour of soldiers in the vicinity, as well as towards other civilians, at the relevant time, and lack of contact by the victim with others whom the victim would have been expected to contact, such as his or her family.²⁸⁵³

2. Findings of responsibility

(a) Charges against Milan Lukić

(i) Counts 2 and 3 concerning the Drina river incident

905. Under counts 2 and 3 of the indictment, the Prosecution charges Milan Lukić with having committed and/or aided and abetted the crime of murder as both a crime against humanity and a violation of the laws or customs of war, pursuant to Articles 3 and 5(a) of the Statute.

906. The Trial Chamber has found that the following five men were killed during the Drina river incident on 7 June 1992: Meho Džafić, Ekrem Džafić, Hasan Mutapčić, Hasan Kustura and Amir Kurtalić.²⁸⁵⁴ In respect of the elements required under Article 3 of the Statute, the Trial Chamber considers that the evidence proves beyond reasonable doubt that these five men, as well as the two survivors VG014 and VG032, were Muslim civilians who did not take an active part in hostilities at the time of the incident. While the bodies of the five killed men have not been recovered, the evidence of VG014 and VG032 establishes that these men died in the shooting.²⁸⁵⁵ In this respect, the Trial Chamber notes the evidence contained in exhibits P119 and P184 regarding missing persons and also the evidence of VG079, which establishes that the bodies of the five men remained in the water near the river bank for two days after the incident.²⁸⁵⁶ The Trial Chamber is therefore convinced beyond reasonable doubt that these five men were killed on 7 June 1992.

907. The evidence establishes beyond reasonable doubt that Milan Lukić shot at the seven captured men whom he had ordered to line up along the bank of the Drina river. Both VG014 and VG032 heard the sound of Milan Lukić’s sniper rifle, which was fitted with a silencer, being fired.

²⁸⁵² *Kvočka et al.* Appeal Judgement, para. 260.

²⁸⁵³ *Martić* Trial Judgement, fn 112 with further references.

²⁸⁵⁴ *Supra* para. 200.

²⁸⁵⁵ *Supra* para. 118.

Furthermore, Mitar Vasiljević testified that Milan Lukić and the other two soldiers opened fire on the seven men. The Trial Chamber notes VG032's evidence that Meho Džafić was killed mid-scream by a muffled shot. In view of the consistency in the evidence that the other two soldiers used rifles that were not fitted with silencers, the Trial Chamber considers that it has been proven beyond reasonable doubt that Milan Lukić shot and killed Meho Džafić.

908. The Trial Chamber further concludes that Milan Lukić's role and actions in the events leading up to the killings, at Sase and, particularly, at the river's edge before and during the killings, were such that were it not for his presence and directions, including regarding the manner in which the men were to be killed, the killings would not have been committed. The Trial Chamber therefore holds that he is also responsible for having committed the killings of Ekrem Džafić, Hasan Mutapčić, Hasan Kustura and Amir Kurtalić. The Trial Chamber follows the finding of the Appeals Chamber in *Seromba* and *Gacumbitsi* that a person who did not personally physically commit a crime – in the present case, personally shooting each victim – can nonetheless be liable for committing the crime of murder if there is evidence that the perpetrator's acts were as much an integral part of the murder as the killings which the crime enabled.²⁸⁵⁷ The Trial Chamber acknowledges that the crime charged in the present case is murder, and not genocide or extermination, which were the crimes under consideration in *Seromba* and *Gacumbitsi*. However, in its view, there is nothing in these judgements that would suggest that the *ratio decidendi* could not be applicable to the crime of murder. Indeed, the Trial Chamber observes that the *Seromba* judgement also applied to the crime of extermination, which is the act of killing albeit on a large scale. The Trial Chamber therefore holds in respect of Ekrem Džafić, Hasan Mutapčić, Hasan Kustura and Amir Kurtalić, who might have been shot, not by Milan Lukić but by his colleagues, that there is abundant evidence to conclude, following the *Seromba* case, that Milan Lukić embraced these shootings as his own.

909. Milan Lukić's actions on 7 June 1992 rounding up the Muslim men do not initially indicate that this was being done with the specific intent of murdering them. The evidence that Milan Lukić was looking for some keys at the Vilina Vlas hotel may be indicative that he considered detaining the men at the hotel. However, it appears that when Milan Lukić failed to find the keys he was looking for, his mindset changed. There is convincing evidence that once Milan Lukić is in the red Passat and drives from the Vilina Vlas hotel towards Sase, he has made up his mind that the captured men are to be killed. In this respect, the Trial Chamber notes VG014's evidence that Milan Lukić said that he must hurry up with the killings because he had to kill also the six men who remained in the house in Bikavac. Once in Sase, the evidence is clear that Milan Lukić intended to

²⁸⁵⁶ *Supra* para. 123.

kill the seven men. He ordered them to march to the river and also threatened to kill them should they try to escape. It appears also that the two soldiers believed the men were to be killed because one of the soldiers requested directions from Milan Lukić as to how to shoot: single shots or bursts of fire. Milan Lukić took the decision that single shots were to be used to kill the seven men.

910. On the basis of the evidence presented, the Trial Chamber concludes that it has been proved beyond reasonable doubt that Milan Lukić acted with intent to commit the crime of murder.

911. The Trial Chamber finds Milan Lukić guilty under Article 7(1) of the Statute of committing murder, pursuant to Article 3 (count 3) and Article 5 (count 2) of the Statute, of Meho Džafić, Ekrem Džafić, Hasan Mutapčić, Hasan Kustura and Amir Kurtalić.

(ii) Counts 6 and 7 concerning the Varda factory incident

912. Under counts 6 and 7 of the indictment, the Prosecution charges Milan Lukić with having committed and/or aided and abetted the crime of murder as both a crime against humanity and a violation of the laws or customs of war, pursuant to Articles 3 and 5(a) of the Statute.

913. The Trial Chamber recalls that the following seven Muslim men were killed on the bank of the Drina river in front of the Varda factory on or about 10 June 1992: Nusret Aljošević, Nedžad Bektaš, Mušan Čančar, Ibrišim Memišević, Hamed Osmanagić, Lutvo Tvrtković and Sabahudin Velagić.²⁸⁵⁸ The Trial Chamber notes the men were civilians and were not taking an active part in hostilities when they were killed. On the contrary, the evidence shows that all of these Muslim men were collected while they were working at a sawmill factory.²⁸⁵⁹ The Trial Chamber further recalls that Milan Lukić himself selected these men from the Varda factory and forced them to the bank of the Drina river, where he shot them.²⁸⁶⁰ The Trial Chamber is convinced that Milan Lukić came armed to the Varda factory that day and that he gathered the seven men with the intent to kill them. The Trial Chamber observes the calculated, callous, and vicious character of these killings.

914. The Trial Chamber finds Milan Lukić guilty under Article 7(1) of the Statute of committing murder, pursuant to Article 3 (count 7) and Article 5 (count 6) of the Statute, of Nusret Aljošević, Nedžad Bektaš, Mušan Čančar, Ibrišim Memišević, Hamed Osmanagić, Lutvo Tvrtković and Sabahudin Velagić.

²⁸⁵⁷ See *supra* paras 897-898.

²⁸⁵⁸ See *supra* para. 319.

²⁸⁵⁹ See *supra* para. 307.

²⁸⁶⁰ See *supra* paras 307, 309, 323.

(iii) Counts 9 and 10 concerning the Pionirska street incident

915. Under counts 9 and 10 of the indictment, the Prosecution charges Milan Lukić with having committed and/or aided and abetted the crime of murder as both a crime against humanity and a violation of the laws or customs of war, pursuant to Articles 3 and 5(a) of the Statute.

916. The Trial Chamber has found that 59 Muslim civilians were killed when Adem Omeragić's house was set on fire on 14 June 1992. The evidence shows beyond a reasonable doubt that the victims were civilians who were taking no active part in hostilities.

917. The Trial Chamber further recalls its finding that in the evening on 14 June 1992, Milan Lukić returned to Jusuf Memić's house, where at least 66 persons were held, and herded these individuals to Adem Omeragić's house and into a single room of this house. The Trial Chamber has found that Milan Lukić then closed the door to the room. After a certain time, Milan Lukić opened the door and placed an incendiary device into the room which exploded, igniting the fire inside the room. The Trial Chamber has also found that Milan Lukić fired at the windows to the room where the Koritnik group was trapped, and that he shot at individuals who escaped through the windows.

918. The Trial Chamber has found that Milan Lukić told individuals among the Koritnik group as they were leaving Jusuf Memić's house that they did not need to put on or bring their shoes with them to Adem Omeragić's house. The Trial Chamber has also found that the carpet in Adem Omeragić's house had been coated with a flammable substance prior to the Koritnik group's arrival. Given these facts and in light of the actions by Milan Lukić before and during the burning, the Trial Chamber is satisfied that Milan Lukić intended to kill the people he had herded into Adem Omeragić's house. These killings were premeditated and deliberate. The Trial Chamber notes in this respect the evidence of CW1 that before she left Višegrad on 29 May 1992, she had met Milan Lukić at the SUP building, where he had said that "we got orders that not an ear should remain of the Kurspahić family".²⁸⁶¹

919. The Trial Chamber finds Milan Lukić guilty under Article 7(1) of the Statute of committing murder, pursuant to Article 3 (count 10) and Article 5 (count 9) of the Statute, of 59 persons in the Pionirska street incident.

(iv) Counts 14 and 15 concerning the Bikavac incident

²⁸⁶¹ See *supra* para. 392.

920. Under counts 14 and 15 of the indictment, the Prosecution charges Milan Lukić with having committed and/or aided and abetted the crime of murder as both a crime against humanity and a violation of the laws or customs of war, pursuant to Articles 3 and 5(a) of the Statute.

921. The Trial Chamber has found that on or about 27 June 1992 Milan Lukić herded approximately 60 Muslim civilians into Meho Aljić's house, that he shot at the house, threw grenades into the house, and subsequently set the house on fire. It has also found that at least 60 individuals died as a result.

922. The evidence shows that all the exits of the house had been blocked by heavy furniture when the people entered Meho Aljić's house, thereby preventing anyone inside the house from escaping. After he had herded everyone inside, Milan Lukić then blocked the last exit to the house. Shortly thereafter, he set the house on fire. This evidence makes it abundantly clear that Milan Lukić acted deliberately and with premeditation. The Trial Chamber is satisfied that the only reasonable inference is that Milan Lukić intended to kill the persons that he had herded into Meho Aljić's house.

923. The Trial Chamber finds Milan Lukić guilty under Article 7(1) of the Statute of committing murder, pursuant to Article 3 (count 15) and Article 5 (count 14) of the Statute, of at least 60 persons in the Bikavac incident.

(v) Counts 18 and 19 concerning the Hajra Korić incident

924. Under counts 18 and 19 of the indictment, the Prosecution charges Milan Lukić with having committed and/or aided and abetted the crime of murder as both a crime against humanity and a violation of the laws or customs of war, pursuant to Articles 3 and 5(a) of the Statute.

925. The Trial Chamber has found that on a day between 28 June and 5 July 1992 Milan Lukić singled out Hajra Korić, a Muslim civilian, from a group of women and that he shot her twice. The Trial Chamber is satisfied that the only reasonable inference is that Milan Lukić intended to kill Hajra Korić.

926. The fact that Milan Lukić was actively looking for Hajra Korić, that he singled her out, and then shot her in cold blood shows that her murder was premeditated.

927. The Trial Chamber finds Milan Lukić guilty under Article 7(1) of the Statute of committing murder, pursuant to Article 5 of the Statute (count 18) and Article 3 (count 19) of the Statute, of Hajra Korić.

(b) Charges against Sredoje Lukić

(i) Counts 9 and 10 concerning the Pionirska street incident

928. Under counts 9 and 10 of the indictment, the Prosecution charges Sredoje Lukić with having committed and/or aided and abetted the crime of murder as both a crime against humanity and a violation of the laws or customs of war, pursuant to Articles 3 and 5(a) of the Statute.

929. The Trial Chamber has found that 59 Muslim civilians were killed when Adem Omeragić's house was set on fire on 14 June 1992. The evidence shows beyond a reasonable doubt that the victims were civilians who were taking no active part in hostilities.

930. The Trial Chamber is satisfied that Sredoje Lukić was among the men who came to Jusuf Memić's house in the afternoon. Sredoje Lukić was armed and present around Jusuf Memić's house. The Trial Chamber is satisfied that Sredoje Lukić came back to Jusuf Memić's house during the night and by majority, Judge Robinson dissenting, that he participated in the transfer of the Koritnik group to Adem Omeragić's house. The Trial Chamber considers that the evidence does not establish that Sredoje Lukić participated in setting Adem Omeragić's house on fire.

931. The Trial Chamber does not find that the described acts and conduct of Sredoje Lukić on Pionirska street played an integral part in the commission of the murder of 59 persons in Adem Omeragić's house. Thus, his acts and conduct do not qualify as "committing" pursuant to Article 7(1) of the Statute.

932. However, the Trial Chamber by majority, Judge Robinson dissenting, finds that Sredoje Lukić's acts and conduct during the incident as a whole contributed to the commission of murder in Adem Omeragić's house. He rendered practical assistance, which had a substantial effect on the commission of the crime of murder, when he was at Jusuf Memić's house in the afternoon, visibly carrying arms and, in particular, when he participated in the transfer of the Koritnik group to Adem Omeragić's house.

933. The Trial Chamber by majority, Judge Robinson dissenting, further finds that the only reasonable inference to be drawn from the evidence is that Sredoje Lukić knew that the persons whom he had helped place into, and who had been locked in, Adem Omeragić's house would be killed as a result of the fire when the house was set ablaze. The Trial Chamber by majority, Judge Robinson dissenting, is satisfied that Sredoje Lukić also knew that his acts and conduct contributed to the commission of the murder.

934. The Trial Chamber by majority, Judge Robinson dissenting, finds Sredoje Lukić guilty under Article 7(1) of the Statute of aiding and abetting murder, pursuant to Article 3 (count 10) and Article 5 (count 9) of the Statute, of 59 persons in the Pionirska street incident.

(ii) Counts 14 and 15 concerning the Bikavac incident

935. Under counts 14 and 15 of the indictment, the Prosecution charges Sredoje Lukić with having committed and/or aided and abetted the crime of murder as both a crime against humanity and a violation of the laws or customs of war, pursuant to Articles 3 and 5(a) of the Statute.

936. The Trial Chamber by majority, Judge David dissenting, has found that Sredoje Lukić was not present at the Bikavac incident on or about 27 June 1992. Therefore, the Trial Chamber by majority, Judge David dissenting, acquits Sredoje Lukić pursuant to Article 7(1) of the Statute of committing and/or aiding and abetting murder, pursuant to Article 3 (count 15) and Article 5 (count 14) of the Statute, of at least 60 persons in the Bikavac incident.

G. Extermination under Article 5(b) of the Statute (counts 8 and 13)

1. Law

937. The crime of extermination is the act of killing on a large scale.²⁸⁶² In the most recent Appeals Chamber Judgement dealing with extermination, the Appeals Chamber defined the *actus reus* of extermination as consisting of any act, omission, or combination thereof which contributes directly or indirectly to the killing of a large number of individuals.²⁸⁶³

938. The crime of extermination differs from murder in that it requires an element of mass destruction. However, there is no requirement that a certain number of victims must have been killed.²⁸⁶⁴ An assessment of whether this element is met must be made on a case-by-case basis, taking account of all the relevant factors.²⁸⁶⁵ It has, for example, been held that the *actus reus* of extermination may be established on the basis of “an accumulation of separate and unrelated incidents, meaning on an aggregate basis.”²⁸⁶⁶ Another factor in the majority’s view, Judge Van den Wyngaert dissenting, is the population density of the particular area. In other words, while there may be a higher threshold for a finding of extermination in a densely-populated area, it would not

²⁸⁶² *Seromba* Appeal Judgement, para. 189; *Stakić* Appeal Judgement, para. 259; *Ntakirutimana* Appeal Judgement, para. 516; *Bagosora* Trial Judgement, para. 2191; *Martić* Trial Judgement, para. 62.

²⁸⁶³ *Seromba* Appeal Judgement, para. 189, citing *Brdanin* Trial Judgement, para. 389. See also *Bagosora* Trial Judgement, para. 2191.

²⁸⁶⁴ *Stakić* Appeal Judgement, para. 260; *Ntakirutimana* Appeal Judgement, para. 516; *Krstić* Appeal Judgement, para. 501; *Blagojević and Jokić* Trial Judgement, para. 573; *Brdanin* Appeal Judgement, paras 471-472.

²⁸⁶⁵ *Martić* Trial Judgement, para. 63.

be inappropriate to find extermination in a less densely-populated area on the basis of a lower threshold, that is, fewer victims. The majority notes, Judge Van den Wyngaert dissenting, that in *Krajišnik* the Trial Chamber found that approximately 66 persons were killed in the Pionirska street incident and that this constituted extermination.²⁸⁶⁷

939. The *mens rea* of extermination is that the accused committed the act or omission with the intent to kill persons on a large scale or in knowledge that the deaths of a large number of people were a probable consequence of the act or omission.²⁸⁶⁸

2. Findings of responsibility

(a) Charges against Milan Lukić

(i) Count 8 concerning the Pionirska street incident

940. Under count 8 of the indictment, the Prosecution charges Milan Lukić with having committed and/or aided and abetted the crime of extermination as a crime against humanity pursuant to Articles 3 and 5(b) of the Statute.

941. The Trial Chamber has found that Milan Lukić committed murder in connection with the Pionirska street incident, killing 59 persons.²⁸⁶⁹

942. The Trial Chamber has considered, in particular, the number and type of victims of the fire, the area from which they came, and the manner in which the fire was prepared in the context of the other events that took place on 14 June 1992.

943. The victims of the Pionirska street incident were mainly elderly persons, women and children from Koritnik, one of the small and less densely populated villages at the Drina river close to Višegrad town. The Trial Chamber recalls that the villagers of Koritnik had gathered in the morning of 14 June 1992 as they were told by Serbs from neighbouring villages that they would be evacuated to the Serb village of Kladanj. Although a few persons merged with the villagers from

²⁸⁶⁶ *Brdanin* Trial Judgement, para. 391. The Trial Chamber's approach was affirmed by the Appeals Chamber, *Brdanin* Appeal Judgement, paras 471-472; *Ntakirutimana* Appeal Judgement, para. 521.

²⁸⁶⁷ *Krajišnik* Trial Judgement, paras 699, 720.

²⁸⁶⁸ *Stakić* Appeal Judgement, paras 259, 260, where the Appeals Chamber stated that "[t]he *mens rea* of extermination clearly requires the intention to kill on a large scale or to systematically subject a large number of people to conditions of living that would lead to their deaths. This intent is a clear reflection of the *actus reus* of the crime"; *Ntakirutimana* Appeal Judgement, para. 522. See also *Bagosora* Trial Judgement, para. 2191, where the Trial Chamber stated that "[t]he *mens rea* of extermination requires that the accused intended to kill persons on a massive scale or to subject a large number of people to conditions of living that would lead to their deaths in a widespread or systematic manner"; *Brdanin* Trial Judgement, para. 395, where the Trial Chamber states that "[t]he Prosecution is thus required to prove beyond reasonable doubt that that accused had the intention to kill persons on a massive scale or create the conditions of life that led to the deaths of a large number of people", confirmed in *Brdanin* Appeal Judgement, para. 476.

Koritnik between Greben and Višegrad when the group passed through Sase, the victims of the Pionirska street incident were predominantly the elderly, female and children villagers of Koritnik.

944. Milan Lukić herded the Koritnik group into the lower room of Adem Omeragić's house in which the floor had been covered with an accelerant. He then closed the door. After a while, he opened the door and threw an incendiary device into the room which started the fire. Milan Lukić attempted to prevent any escape of the victims by shooting at the windows of the room.

945. On the basis of the above, the Trial Chamber finds that the killing of 59 persons is killing on a large scale and, Judge Van den Wyngaert dissenting, sufficient to meet the element of mass destruction required for extermination. In this respect, the Trial Chamber has particularly considered the characteristics of the place where the victims came from.

946. The evidence shows that Milan Lukić took actions throughout the day on 14 June 1992 in order to keep the Koritnik group together and that, given his dominant role in the events, he must have been aware of the group being placated by promises that they would be able to leave on a convoy the following day and that they would be safe. In the Trial Chamber's opinion, the only reasonable inference to be drawn from the evidence of Milan Lukić's actions from his arrival at Jusuf Memić's house until he started the fire at Adem Omeragić's house is that Milan Lukić had the intent to kill on a large scale. In reaching this conclusion, the Trial Chamber has considered particularly that the victims were placed in a confined location, which Milan Lukić personally set on fire. The Trial Chamber also recalls the evidence of CW1 that Milan Lukić told her that orders had been received "that not an ear should remain of the Kurspahić family".²⁸⁷⁰

947. The Trial Chamber by majority, Judge Van den Wyngaert dissenting, finds Milan Lukić guilty under Article 7(1) of the Statute of committing extermination, pursuant to Article 5(b) of the Statute (count 8), of 59 persons in the Pionirska street incident.

(ii) Count 13 concerning the Bikavac incident

948. Under count 13 of the indictment, the Prosecution charges Milan Lukić with having committed and/or aided and abetted the crime of extermination as a crime against humanity pursuant to Articles 3 and 5(b) of the Statute.

949. The Trial Chamber has found that Milan Lukić committed murder in connection with the Bikavac incident. In relation to the charge of extermination, the Trial Chamber has considered, in particular, the manner in which Meho Aljić's house was prepared and the Muslim victims were

²⁸⁶⁹ See supra para. 919.

herded into the house. The Trial Chamber has also considered the number and type of victims of the fire. The evidence shows that all the exits of the house had been blocked by heavy furniture when the people entered the house, thereby preventing anyone inside the house from escaping. Milan Lukić forced the Muslim persons into Meho Aljić's house. He blocked the last exit to the house, fired at it, threw in grenades and set the house on fire. The Trial Chamber recalls that at least 60 people were killed. The Trial Chamber finds that the killing of at least 60 people is killing on a large scale and, Judge Van den Wyngaert dissenting, meets the element of mass destruction required for extermination.

950. The victims were all extremely vulnerable, women, children and elderly persons who had left their homes and had taken refuge in Bikavac in the hope of leaving Višegrad on a convoy. The Trial Chamber is satisfied that Milan Lukić's acts contributed directly to the deaths of a large number of people. Furthermore, based on the evidence of his actions at Meho Aljić's house, the Trial Chamber concludes that Milan Lukić had the necessary intent to kill the persons he trapped in that house on a large scale. The Trial Chamber notes the evidence that Milan Lukić was heard saying, "Come on, let's get as many people in as possible", following which he blocked the last available exit with a garage door and set the house on fire.

951. The Trial Chamber by majority, Judge Van den Wyngaert dissenting, finds Milan Lukić guilty pursuant to Article 7(1) of the Statute of committing extermination, pursuant to Article 5 of the Statute (count 13), of at least 60 persons in the Bikavac incident.

(b) Charges against Sredoje Lukić

(i) Count 8 concerning the Pionirska street incident

952. Under count 8 of the indictment, the Prosecution charges Sredoje Lukić with having committed and/or aided and abetted the crime of extermination as a crime against humanity pursuant to Articles 3 and 5(b) of the Statute.

953. The Trial Chamber recalls that its factual findings concerning Sredoje Lukić's participation in the Pionirska street incident were reached by majority, Judge Robinson dissenting. As Judge Van den Wyngaert's dissent concerning count 8 relates to the legal qualification of the crime as extermination, there is no majority for a conviction of Sredoje Lukić for extermination. Consequently, the Trial Chamber acquits Sredoje Lukić of having committed or aided and abetted in the commission of the crime of extermination.

²⁸⁷⁰ See *supra* para. 388.

(ii) Count 13 concerning the Bikavac incident

954. Under count 13 of the indictment, the Prosecution charges Sredoje Lukić with having committed and/or aided and abetted the crime of extermination as a crime against humanity pursuant to Articles 3 and 5(b) of the Statute.

955. The Trial Chamber by majority, Judge David dissenting, has found that Sredoje Lukić was not present at the Bikavac house-burning on or about 27 June 1992. Therefore, the Trial Chamber by majority, Judge David dissenting, acquits Sredoje Lukić pursuant to Article 7(1) of the Statute of committing and/or aiding and abetting extermination, pursuant to Article 5 of the Statute (count 13), of at least 60 persons in the Bikavac incident.

H. Cruel treatment and inhumane acts under Article 3 and Article 5 of the Statute (counts 4, 5, 11, 12, 16, 17, 20 and 21)

1. Law on cruel treatment

956. Cruel treatment is codified in Common Article 3, which provides, in relevant part, as follows:

In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:

(1) persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth, health, or any other similar criteria. To this end the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

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

Although clearly worded as being confined to cases of “armed conflict not of an international character”, it is now widely accepted that the standards of conduct listed under Common Article 3 have acquired the status of customary international law²⁸⁷¹ and, as such, are applicable both in instances of internal and international armed conflict.²⁸⁷² Cruel treatment is not expressly listed as an offence under the Statute; however, the Tribunal’s case-law establishes that this may be prosecuted pursuant to Article 3 of the Statute.²⁸⁷³

²⁸⁷¹ *Tadić* Jurisdiction Decision, para. 102. See also *Kunarac et al.* Appeal Judgement, para. 68; *Blaškić* Trial Judgement, para. 166.

²⁸⁷² *Delalić et al.* Appeal Judgement, para. 420. See also *id.*, paras 140-150; *Tadić* Jurisdiction Decision, para. 102.

²⁸⁷³ *Kunarac et al.* Appeal Judgement, para. 68; *Delalić et al.* Appeal Judgement, paras 123-136; *Jelišić* Trial Judgement, para. 33; *Furundžija* Trial Judgement, paras 132-133; *Tadić* Jurisdiction Decision, para. 91.

957. The *actus reus* of cruel treatment requires proof of an act or omission which caused serious mental or physical suffering or injury, or which constituted a serious attack on human dignity.²⁸⁷⁴ The act or omission must be similar in gravity to the other offences listed under Article 3 of the Statute.²⁸⁷⁵ The suffering inflicted by the relevant act or omission upon the victim need not be long-lasting, so long as it is real and serious.²⁸⁷⁶ The seriousness of the act or omission in question is assessed on a case-by-case basis having regard to the factual circumstances of each instance. Such circumstances may include the nature of the relevant act or omission, the context in which it occurred, its duration and/or repetition, the physical, mental and moral effects on the victim and the personal particulars of the victim, such as age, gender and state of health.²⁸⁷⁷

958. The *mens rea* of cruel treatment is satisfied by proof that the act or omission was committed either:

- (1) with intent to inflict serious physical or mental suffering or commit a serious attack on the human dignity of the victim;²⁸⁷⁸ or
- (2) with the knowledge or foresight that the act or omission was likely to cause serious physical and mental suffering or constitute a serious attack upon human dignity, and the perpetrator accepted that risk or was indifferent as to whether such consequences would result from his act or omission.²⁸⁷⁹

2. Law on inhumane acts

959. Article 5(i) was drafted as a residual category, following the crimes listed in subparagraphs (a) through (h), to avoid an exhaustive enumeration of crimes against humanity, as it was felt that “[a]n exhaustive categorization would merely create opportunities for evasion of the letter of prohibition.”²⁸⁸⁰ At the same time, however, while this provision potentially covers a broad range of acts, this Tribunal has recognised that “great caution” must be exercised before holding that an act, which is not regulated specifically in Article 5, amounts to “other inhumane acts”²⁸⁸¹ to ensure that the principle of *nullem crimen sine lege* is not contravened.²⁸⁸²

960. Criminal responsibility for inhumane acts requires an assessment of whether the acts in question are “sufficiently serious as to amount to other inhumane acts”.²⁸⁸³ The act or omission must have been of a seriousness similar to that of the crimes enumerated in Article 5(a) to (h), the

²⁸⁷⁴ *Delalić et al.* Appeal Judgement, para. 424; *Haradinaj et al.* Trial Judgement, para. 126; *Simić et al.* Trial Judgement, para. 74; *Krnojelac* Trial Judgement, para. 130.

²⁸⁷⁵ *Simić et al.* Trial Judgement, para. 74; *Krnojelac* Trial Judgement, para. 130.

²⁸⁷⁶ *Krnojelac* Trial Judgement, para. 131.

²⁸⁷⁷ *Orić* Trial Judgement, para. 352; *Simić et al.* Trial Judgement, para. 75; *Krnojelac* Trial Judgement, para. 131.

²⁸⁷⁸ *Orić* Trial Judgement, para. 353; *Strugar* Trial Judgement, para. 261; *Krnojelac* Trial Judgement, para. 132.

²⁸⁷⁹ *Haradinaj et al.* Trial Judgement, para. 126; *Orić* Trial Judgement, para. 353; *Strugar* Trial Judgement, para. 261; *Krnojelac* Trial Judgement, para. 132; *Simić et al.* Trial Judgement, para. 76.

²⁸⁸⁰ *Kupreškić et al.* Trial Judgement, para. 563.

²⁸⁸¹ *Martić* Trial Judgement, para. 82.

²⁸⁸² *Blagojević and Jokić* Trial Judgement, paras 624-625.

²⁸⁸³ *Stakić* Appeal Judgement, para. 317.

act or omission must have caused serious mental or physical suffering or injury or constituted a serious attack on human dignity, and the act or omission must have been performed by the accused or a person for whose acts and omissions he bears criminal responsibility.²⁸⁸⁴

961. The *actus reus* of ‘other inhumane acts’ can be constituted by a range of acts or omissions that satisfy the above conditions.²⁸⁸⁵ In determining whether the act or omission is of “similar seriousness” to the other crimes enumerated in Article 5, it is necessary to consider “all factual circumstances, including the nature of the act or omission, the context within which it occurred, the individual circumstances of the victim as well as the physical and mental effects on the victim.”²⁸⁸⁶ While it is not necessary that the victim suffered long-term effects from the act, the fact that it has long-term effects can be relevant to an assessment of the seriousness of the act.²⁸⁸⁷

962. The *mens rea* requires proof that “at the time of the act or omission, the perpetrator had the intention to inflict serious physical or mental suffering or to commit a serious attack upon the human dignity of the victim” or the accused knew that his acts or omissions were likely to cause serious physical or mental suffering or a serious attack upon the human dignity of the victim.²⁸⁸⁸

3. Findings of responsibility

(a) Charges against Milan Lukić

(i) Counts 4 and 5 concerning the Drina river incident

963. Under count 4 of the indictment, the Prosecution charges Milan Lukić with having committed and/or aided and abetted the crime of inhumane acts, a crime against humanity pursuant to Articles 5(i) and 7(1) of the Statute, in respect of persons who survived the Drina river incident.

²⁸⁸⁴ *Kordić and Čerkez* Appeal Judgement, para. 117; *Vasiljević* Appeal Judgement, para. 165; *Dragomir Milošević* Trial Judgement, para. 934; *Martić* Trial Judgement, para. 83; *Blagojević and Jokić* Trial Judgement, para. 626; *Galić* Trial Judgement, para. 152; *Vasiljević* Trial Judgement, para. 234.

²⁸⁸⁵ Examples of acts that have been characterised as other inhumane acts have included deliberate sniping causing serious injuries and deliberate firing of shells at areas where civilians would be seriously injured, *Galić* Appeal Judgement, para. 158; the injury of prisoners of war during the course of their work, *Naletilić and Martinović* Appeal Judgement, para. 435; mutilation and other types of severe bodily harm, beating and other acts of violence, *Kvočka et al.* Appeal Judgement, para. 435; forcible transfer, *Kordić and Čerkez* Appeal Judgement, para. 151; being forced to run down a steep slope and being fired at, *Kordić and Čerkez* Appeal Judgement, paras 572-573; creation of brutal and deplorable living conditions for detainees including systematic beatings, *Krnjelac* Appeal Judgement, para. 163; killing members of the victim’s family before his eyes and causing him severe burns by burning down his home while he was still in it, *Kupreškić et al.* Appeal Judgement, para. 27; confinement in camps under inhumane conditions, *Kvočka et al.* Trial Judgement, para. 189; use of detainees for certain forms of labour and as human shields, *Naletilić and Martinović* Trial Judgement, para. 245.

²⁸⁸⁶ *Martić* Trial Judgement, para. 84; *Blagojević and Jokić* Trial Judgement, para. 627; *Galić* Trial Judgement, para. 153.

²⁸⁸⁷ *Krnjelac* Trial Judgement, para. 144; *Kunarac et al.* Trial Judgement, para. 501; *Simić et al.* Trial Judgement, para. 75; *Vasiljević* Trial Judgement, para. 235.

²⁸⁸⁸ *Dragomir Milošević* Trial Judgement, para. 935; *Martić* Trial Judgement, para. 85; *Blagojević and Jokić* Trial Judgement, para. 628; *Galić* Trial Judgement, para. 154.

Under count 5 of the indictment, the Prosecution charges Milan Lukić with having committed and/or aided and abetted the crime of cruel treatment, a violation of the laws or customs of war pursuant to Articles 3 and 7(1) of the Statute, in respect of the survivors of the Drina river incident.

964. As a preliminary point, the Trial Chamber considers that the two survivors of the Drina river incident, VG014 and VG032, were taking no active part in hostilities at the time of the incident. The evidence shows that both of them feared for their lives when Milan Lukić ordered them and the other detained men to move towards and line up along the Drina river. Milan Lukić had issued several threats that the men would be killed should they try to escape. Both witnesses testified to feeling that all hope was lost. In the Trial Chamber's opinion, a reasonable inference from the extraordinarily fearful and stressful circumstances in which they were placed is that they endured mental suffering of sufficient gravity to meet the requirements of both Article 3 and Article 5(i) of the Statute.

965. Milan Lukić's acts at the Drina river on 7 June 1992 – his ordering the captive men to cross the field to the river, his instructing the two soldiers within earshot of the captive men as to how to kill them, thereafter ordering them to line up with their backs towards himself and the soldiers, and ultimately his shooting the men – constitute acts that directly caused the mental suffering of VG014 and VG032. As has been established earlier,²⁸⁸⁹ Milan Lukić's intent was clearly to murder the seven men. Therefore, the Trial Chamber considers that Milan Lukić must have known that his actions were likely to cause serious mental suffering to any survivors and that he accepted these consequences of his actions.

966. The Trial Chamber finds Milan Lukić guilty under Article 7(1) of the Statute of committing cruel treatment, pursuant to Article 3 of the Statute (count 5), and inhumane acts, pursuant to Article 5(i) of the Statute (count 4), against VG014 and VG032.

(ii) Counts 11 and 12 concerning the Pionirska street incident

967. Under count 11 of the indictment, the Prosecution charges Milan Lukić with having committed and/or aided and abetted the crime of inhumane acts, a crime against humanity pursuant to Articles 5(i) and 7(1) of the Statute, in respect of persons who survived the Pionirska street incident. Under count 12 of the indictment, the Prosecution charges Milan Lukić with having committed and/or aided and abetted the crime of cruel treatment, a violation of the laws or customs of war pursuant to Articles 3 and 7(1) of the Statute, in respect of the survivors of the Pionirska street incident.

²⁸⁸⁹ See *supra* para. 908.

968. VG013, VG018, VG038, VG078, VG084, VG101 and Hasib Kurspahić survived the Pionirska street incident. The Trial Chamber recalls that VG078 and VG101 escaped as the group was being transferred from Jusuf Memić's house to Adem Omeragić's house. The Trial Chamber is satisfied that the survivors were civilians who took no active part in hostilities.

969. The Trial Chamber is satisfied that Milan Lukić's acts of robbing VG013, VG018, VG038, VG078, VG084, VG101 and Hasib Kurspahić of their valuables at gunpoint in Jusuf Memić's house, and of placing VG013, VG018, VG038, VG084 and Hasib Kurspahić in Adem Omeragić's house and setting the house on fire are of a gravity similar to the other offences listed under Articles 3 and 5 of the Statute. The Trial Chamber is also satisfied that Milan Lukić's acts of shooting at the windows of Adem Omeragić's house as VG013 and VG038 escaped through them, and of wounding VG013 in the process, are of a gravity similar to the other offences listed in these Articles.

970. The only reasonable inference is that Milan Lukić intended a serious attack on the human dignity of the victims and that he wilfully inflicted serious physical and mental suffering upon them.

971. The Trial Chamber finds Milan Lukić guilty under Article 7(1) of the Statute of committing cruel treatment, pursuant to Article 3 of the Statute (count 12), and inhumane acts, pursuant to Article 5(i) of the Statute (count 11), against VG013, VG018, VG038, VG078, VG084, VG101 and Hasib Kurspahić.

(iii) Counts 16 and 17 concerning the Bikavac incident

972. Under count 16 of the indictment, the Prosecution charges Milan Lukić with having committed and/or aided and abetted the crime of inhumane acts, a crime against humanity pursuant to Articles 5(i) and 7(1) of the Statute, in respect of the sole survivor of the Bikavac incident. Under count 17 of the indictment, the Prosecution charges Milan Lukić with having committed and/or aided and abetted the crime of cruel treatment, a violation of the laws or customs of war pursuant to Articles 3 and 7(1) of the Statute, in respect of the sole survivor of the Bikavac incident.

973. The Trial Chamber has found that Milan Lukić murdered at least 60 of the people who had been herded into Meho Aljić's house, by setting it on fire. The sole survivor of this house-burning is Zehra Turjačanin. The Trial Chamber is satisfied that Zehra Turjačanin was an unarmed civilian, and that she took no active part in hostilities at the time of the incident.

974. The Trial Chamber recalls that Zehra Turjačanin suffered third-degree burns as a result of the fire and has undergone skin grafts to repair some of the damage to her skin. She is missing part

of her ears, and her hands are paralysed. The Trial Chamber notes that Zehra Turjačanin was a seamstress before the house-burning in Bikavac.²⁸⁹⁰ Now she is unable to perform many everyday functions as a result of the condition of her hands, which will never return to normal.²⁸⁹¹ Zehra Turjačanin was forced to see her family members and others burn alive in Meho Aljić's house.²⁸⁹² Following her experience in Bikavac, she has cut all ties with her homeland, Bosnia and Herzegovina, and she gave a substantial portion of her testimony in French, the language of her new home country.²⁸⁹³

975. The Trial Chamber is satisfied that Milan Lukić's acts, placing Zehra Turjačanin in Meho Aljić's house, shooting at, and throwing grenades into, the house, and setting the house on fire, are of gravity similar to the other offences listed under Articles 3 and 5 of the Statute. The only reasonable inference to be drawn from the evidence is that Milan Lukić wilfully intended to inflict serious physical and mental suffering upon Zehra Turjačanin.

976. The Trial Chamber finds Milan Lukić guilty pursuant to Article 7(1) of the Statute of committing cruel treatment, pursuant to Article 3 of the Statute (count 17), and inhumane acts, pursuant to Article 5(i) of the Statute (count 16), against Zehra Turjačanin.

(iv) Counts 20 and 21 concerning the Uzamnica detention camp

977. Under counts 20 and 21 of the indictment, the Prosecution charges Milan Lukić with having committed and/or aided and abetted in the commission of cruel treatment pursuant to Article 3 of the Statute and inhumane acts pursuant to Article 5(i) of the Statute against Muslim detainees at the Uzamnica detention camp. In particular, Milan Lukić is charged with having repeatedly beaten Adem Berberović, Islam Kustura, Nurko Dervišević and VG025.²⁸⁹⁴

978. Milan Lukić beat the detainees, including Adem Berberović, Islam Kustura, Nurko Dervišević and VG025, on numerous occasions, not only with fists, but also with truncheons, sticks and rifle butts and kicked them with boots.²⁸⁹⁵ The Trial Chamber is convinced that the detainees were either civilians who took no active part in the hostilities or combatants *hors de combat*. The beatings caused serious mental or physical suffering or injury. Some detainees were elderly persons who suffered particularly from the beatings and the injuries sustained.²⁸⁹⁶ The Trial Chamber also

²⁸⁹⁰ Zehra Turjačanin, 25 Sep 2008, T. 2297.

²⁸⁹¹ Zehra Turjačanin, 25 Sep 2008, T. 2442, 2443.

²⁸⁹² Zehra Turjačanin, 25 Sep 2008, T. 2442, 2443.

²⁸⁹³ Zehra Turjačanin, 25 Sep 2008, T. 2344.

²⁸⁹⁴ Indictment, para. 15.

²⁸⁹⁵ See *supra* section II.K.1(a).

²⁸⁹⁶ See *supra* para. 760.

considers that the fact that the detainees were imprisoned in the camp made them particularly vulnerable as they could not escape or defend themselves.

979. The Trial Chamber finds that the extraordinarily brutal beatings are of similar gravity as the other offences listed under Articles 3 and 5 of the Statute.

980. The evidence shows that Milan Lukić acted with intent to inflict serious physical or mental suffering when he beat the detainees not only with fists, but also with truncheons, sticks and rifle butts and when he kicked them with his boots. The intent of Milan Lukić is also apparent from the fact that he ran at the detainees until they fell over and that he would then start beating them.²⁸⁹⁷

981. The Trial Chamber finds Milan Lukić guilty under Article 7(1) of the Statute of committing cruel treatment, pursuant to Article 3 of the Statute (count 21), and inhumane acts, pursuant to Article 5(i) of the Statute (count 20), against Muslim detainees at the Uzamnica camp, including Adem Berberović, Islam Kustura, Nurko Dervišević and VG025.

(b) Charges against Sredoje Lukić

(i) Counts 11 and 12 concerning the Pionirska street incident

982. Under count 11 of the indictment, the Prosecution charges Sredoje Lukić with having committed and/or aided and abetted the crime of inhumane acts, a crime against humanity pursuant to Articles 5(i) and 7(1) of the Statute, in respect of persons who survived the Pionirska street incident. Under count 12 of the indictment, the Prosecution charges Sredoje Lukić with having committed and/or aided and abetted the crime of cruel treatment, a violation of the laws or customs of war pursuant to Articles 3 and 7(1) of the Statute, in respect of the survivors of the Pionirska street incident.

983. VG013, VG018, VG038, VG078, VG084, VG101 and Hasib Kurspahić survived the Pionirska street incident. The Trial Chamber recalls that VG078 and VG101 escaped as the group was being transferred from Jusuf Memić's house to Adem Omeragić's house. The Trial Chamber is satisfied that the survivors were civilians who took no active part in hostilities. The Trial Chamber has found that the treatment of the survivors of the Pionirska street incident constituted cruel treatment and inhumane acts.²⁸⁹⁸

984. The Trial Chamber finds that Sredoje Lukić's acts and conduct during the incident contributed to the commission of the crimes of cruel treatment and inhumane acts against the

²⁸⁹⁷ See *e.g. supra* paras 773-778, 782-783, 787, 789, 793.

²⁸⁹⁸ See *supra* paras 967-971.

survivors of the Pionirska street incident. He rendered practical assistance to the commission of these crimes when he was at Jusuf Memić's house in the afternoon, visibly carrying arms, and, in particular, when he participated in the transfer of the Koritnik group to Adem Omeragić's house during the night. Judge Robinson dissents with regard to Sredoje Lukić's participation in the transfer.

985. The Trial Chamber by majority, Judge Robinson dissenting, also finds that the only reasonable inference to be drawn from the evidence is that Sredoje Lukić knew that the survivors were subjected to serious mental and physical suffering and that his acts and conduct facilitated the commission of these crimes.

986. The Trial Chamber finds Sredoje Lukić guilty under Article 7(1) of the Statute of aiding and abetting cruel treatment, pursuant to Article 3 of the Statute (count 12), and inhumane acts, pursuant to Article 5(i) of the Statute (count 11), against VG013, VG018, VG038, VG078, VG084, VG101 and Hasib Kurspahić.

(ii) Counts 16 and 17 concerning the Bikavac incident

987. Under count 16 of the indictment, the Prosecution charges Sredoje Lukić with having committed and/or aided and abetted the crime of inhumane acts, a crime against humanity pursuant to Articles 5(i) and 7(1) of the Statute, in respect of the sole survivor of the Bikavac incident. Under count 17 of the indictment, the Prosecution charges Sredoje Lukić with having committed and/or aided and abetted the crime of cruel treatment, a violation of the laws or customs of war pursuant to Articles 3 and 7(1) of the Statute, in respect of the sole survivor of the Bikavac incident.

988. The Trial Chamber by majority, Judge David dissenting, has found that Sredoje Lukić was not present at the Bikavac incident on or about 27 June 1992. Therefore, the Trial Chamber by majority, Judge David dissenting, acquits Sredoje Lukić pursuant to Article 7(1) of the Statute of committing and/or aiding and abetting cruel treatment, pursuant to Article 3 of the Statute (count 17), and inhumane acts, pursuant to Article 5 of the Statute (count 16), against Zehra Turjačanin.

(iii) Counts 20 and 21 concerning Uzamnica detention camp

989. Under counts 20 and 21 of the indictment, the Prosecution charges Sredoje Lukić with having committed and/or aided and abetted in the commission of cruel treatment pursuant to Article 3 of the Statute and inhumane acts pursuant to Article 5(i) of the Statute against Muslim

detainees at the Uzamnica detention camp. In particular, Sredoje Lukić is charged with having repeatedly beaten Islam Kustura and Nurko Dervišević.²⁸⁹⁹

990. As set out above, the Trial Chamber is satisfied that Sredoje Lukić repeatedly and severely beat detainees, including Islam Kustura and Nurko Dervišević, in the Uzamnica camp.²⁹⁰⁰ These beatings are of similar gravity as the other offences listed under Articles 3 and 5 of the Statute. The evidence shows that Sredoje Lukić acted with intent to inflict serious injuries or suffering.²⁹⁰¹

991. The Trial Chamber finds Sredoje Lukić guilty under Article 7(1) of the Statute of committing cruel treatment, pursuant to Article 3 of the Statute (count 21), and inhumane acts, pursuant to Article 5(i) of the Statute (count 20), against Muslim detainees in the Uzamnica camp, including Islam Kustura and Nurko Dervišević.

I. Persecutions under Article 5(h) of the Statute (count 1)

1. Law

992. Persecution on political, racial and religious grounds is criminalised under Article 5(h) of the Statute. The *actus reus* of the crime consists of an act or omission that discriminates in fact and which denies or infringes upon a fundamental right laid down in international customary or treaty law. The *mens rea* requires that the act or omission was carried out with the intention to discriminate on the basis of race, religion or politics.²⁹⁰²

(a) Persecutory acts (*actus reus*)

993. There is no comprehensive list of what may constitute the underlying acts of persecution,²⁹⁰³ but these may be crimes listed under Article 5 or under other articles of the Statute, as well as acts which are not listed in the Statute.²⁹⁰⁴ The underlying act must be of equal gravity to the crimes listed elsewhere in Article 5 of the Statute.²⁹⁰⁵ Therefore, only gross or blatant denials of fundamental rights, laid down in international customary or treaty law are considered to reach such

²⁸⁹⁹ Referred to as VG008 and VG016 in the indictment.

²⁹⁰⁰ See *supra* section II.K.1(a).

²⁹⁰¹ See e.g. *supra* paras 773-776, 782, 788-789.

²⁹⁰² *Stakić* Appeal Judgement, para. 327, referring to *Kordić and Čerkez* Appeal Judgement, para. 101; *Blaškić* Appeal Judgement, para. 131; *Vasiljević* Appeal Judgement, para. 113; *Krnojelac* Appeal Judgement, para. 185.

²⁹⁰³ *Vasiljević* Trial Judgement, para. 246; *Krnojelac* Trial Judgement, para. 433; *Kordić and Čerkez* Trial Judgement, para. 192; *Kupreškić et al.* Trial Judgement, para. 567.

²⁹⁰⁴ *Brdanin* Appeal Judgement, para. 296, referring to *Krnojelac* Appeal Judgement, para. 219; *Kvočka et al.* Appeal Judgement, para. 321-323.

²⁹⁰⁵ *Kordić and Čerkez* Appeal Judgement, para. 102, referring to *Blaškić* Appeal Judgement, para. 135; *Krnojelac* Appeal Judgement, paras 199, 221.

a level of gravity.²⁹⁰⁶ When applying the gravity requirement, however, particularly to conduct that does not constitute an offence under the Statute or a crime under international law, “the acts must not be considered in isolation, but in context, by looking at their cumulative effect.”²⁹⁰⁷ Although persecution often refers to a series of acts, a single act or omission may be sufficient, as long as it discriminates in fact and was carried out deliberately with the intention to discriminate on one of the listed grounds.²⁹⁰⁸

(b) Persecutory intent (*mens rea*)

994. The *mens rea* consists of the intent to commit the underlying act and to discriminate on political, racial or religious grounds.²⁹⁰⁹ It is not sufficient for the accused to be aware that he is in fact acting in a way that is discriminatory; he must consciously intend to discriminate against the victim or victims (*dolus specialis*).²⁹¹⁰ There is no requirement that a discriminatory policy exist.²⁹¹¹

(c) Specific acts charged

995. Both Accused are alleged to have committed persecution through a number of underlying acts, listed in paragraph 4 of the indictment. Some of these acts – extermination, murder, cruel treatment, inhumane acts – are charged under separate counts. The Trial Chamber will consider below to what extent each of these crimes, if proven, meets the elements of the crime of persecution.

996. Other acts underlying persecution have not been charged under separate counts: unlawful detention and confinement, harassment, humiliation, terrorisation and psychological abuse, theft of personal property and destruction of houses. The Trial Chamber considers these terms not to refer to specific crimes but rather to be descriptive of acts which meet the threshold of crimes against

²⁹⁰⁶ *Kordić and Čerkez* Appeal Judgement, para. 103, referring to *Blaškić* Appeal Judgement, para. 139; *Brdanin* Trial Judgement, para. 995, referring to *Kupreškić et al.* Trial Judgement, para. 621; *Krnjelac* Trial Judgement, para. 434; *Naletilić and Martinović* Trial Judgement, para. 635; *Stakić* Trial Judgement, para. 736; *Simić et al.* Trial Judgement, para. 48. The *Kvočka et al.* Appeals Chamber and the *Brdanin* Appeals Chamber held that the acts underlying persecutions under Article 5(h) of the Statute need not necessarily be considered a crime in international law, *Kvočka et al.* Appeal Judgement, para. 323; *Brdanin* Appeal Judgement, para. 296.

²⁹⁰⁷ *Kvočka et al.* Appeal Judgement, para. 321; *Milutinović et al.* Trial Judgement, para. 179; *Kupreškić et al.* Trial Judgement, para. 615(e); *Krnjelac* Trial Judgement, para. 434. See also *Naletilić and Martinović* Appeal Judgement, para. 574.

²⁹⁰⁸ *Kordić and Čerkez* Appeal Judgement, para. 102, referring to *Blaškić* Appeal Judgement, para. 135; *Vasiljević* Appeal Judgement, para. 113.

²⁹⁰⁹ *Stakić* Appeal Judgement, para. 328.

²⁹¹⁰ *Stakić* Appeal Judgement, para. 328; *Brdanin* Trial Judgement, para. 996, referring to *Kordić and Čerkez* Trial Judgement, para. 217; *Krnjelac* Trial Judgement, para. 435; *Vasiljević* Trial Judgement, para. 248; *Simić et al.* Trial Judgement, para. 51.

²⁹¹¹ *Brdanin* Trial Judgement, para. 996, referring to *Kupreškić et al.* Trial Judgement, para. 625; *Krnjelac* Trial Judgement, para. 435; *Vasiljević* Trial Judgement, para. 248; *Stakić* Trial Judgement, para. 739; *Simić et al.* Trial Judgement, para. 51.

humanity. The case law of the Tribunal shows that these acts may constitute underlying acts of persecution.²⁹¹²

2. Findings of responsibility

997. The Trial Chamber has previously held that paragraph 4 of the indictment lists the underlying persecutory acts exhaustively.²⁹¹³

(a) Charges against Milan Lukić

(i) Drina river incident

998. The Trial Chamber has found Milan Lukić guilty of the murder of Meho Džafić, Ekrem Džafić, Hasan Mutapčić, Hasan Kustura and Amir Kurtalić on 7 June 1992. The Trial Chamber has also found Milan Lukić guilty of committing cruel treatment and inhumane acts against the two survivors of the Drina river incident, VG014 and VG032.

999. The men that Milan Lukić rounded up on 7 June 1992 were Muslims. The Trial Chamber is satisfied that this was the reason Milan Lukić rounded them up and detained them. The evidence further shows that Milan Lukić made derogatory remarks about Muslims towards persons he encountered when driving the Passat towards the Vilina Vlas hotel.²⁹¹⁴ Importantly, the evidence shows that just prior to shooting at the seven men, whom Milan Lukić had lined up on the river bank, the soldiers cursed in a similarly derogatory manner at the Muslim victims.²⁹¹⁵

1000. The Trial Chamber concludes that this evidence convincingly establishes a discriminatory mindset towards Muslims on the part of Milan Lukić and that he acted with a discriminatory intent when he shot at the seven Muslim men on 7 June 1992. Accordingly, Milan Lukić committed the underlying persecutory acts of the murder of the five men and of subjecting the two survivors to harassment, humiliation, terrorisation and psychological abuse.

²⁹¹² *Krajišnik* Trial Judgement, para. 751-754; *Krnjelac* Trial Judgement, para. 111, 115; *Simić et al.* Trial Judgement, para. 63-66; *Kordić and Čerkez* Trial Judgement, para. 292, 301, 302; *Blaškić* Appeal Judgement, para. 155 (unlawful detention and confinement); *Kvočka* Appeal Judgement, para. 325; *Blaškić* Appeal Judgement, para. 155 (harassment, humiliation and psychological abuse); *Blaškić* Appeal Judgement, para. 149; *Kordić and Čerkez* Appeal Judgement, para. 108 (destruction of real or personal property); *Kordić and Čerkez*, Appeal Judgement para. 77, 79, 672; *Blaškić* Appeal Judgement, paras 147, 148 (theft).

²⁹¹³ Pre-trial conference, 9 Jul 2008, T. 202: "The Trial Chamber takes the view that paragraph 4 of the indictment lists the underlying persecutory acts exhaustively, consequently no finding of guilt will be made against the accused for crimes constituting persecutory acts not explicitly listed in [...] that paragraph. It is true that evidence regarding non-indicted crimes may be relevant to a number of issues, for example the existence of an armed conflict, the question of a widespread and systematic attack on a civilian population and possibly the issue of discriminatory intents on the parts of the accused, but it does not appear to the Trial Chamber necessary that so many witnesses are called to testify exclusively on these non-indicted crimes."

²⁹¹⁴ See *supra* para. 109.

²⁹¹⁵ See *supra* para. 116.

1001. Milan Lukić is also charged with having committed harassment, humiliation, terrorisation and psychological abuse against the five men whom he killed. The Trial Chamber considers that they, like VG014 and VG032, must be considered to have similarly suffered mental suffering as a result of the extraordinarily fearful and stressful circumstances in which Milan Lukić placed them. However, the Trial Chamber considers that these underlying acts were so closely intertwined with the act of murder that they cannot be distinguished from that act. The Trial Chamber will therefore consider these acts in sentencing Milan Lukić as evidence of the particularly ruthless and discriminatory manner in which Milan Lukić killed the five men.

(ii) Varda factory incident

1002. The indictment charges Milan Lukić with having committed and/or aided and abetted in the execution of the crime of persecution by participating in the murder, harassment, humiliation, terrorisation and psychological abuse of the seven Muslim men at the Varda factory on or about 10 June 1992.

1003. The Trial Chamber has found Milan Lukić guilty of the murder, on or about 10 June 1992, of Nusret Aljošević, Nedžad Bektaš, Mušan Čančar, Ibrišim Memišević, Hamed Osmanagić, Lutvo Tvrtković, and Sabahudin Velagić.²⁹¹⁶ The act of murdering these Muslim men is of gravity equal to the other crimes listed in Article 5 of the Statute.

1004. The evidence establishes that Milan Lukić specifically selected the Muslim men from the group of employees who were present in the factory and that he killed those men in, as observed earlier, a calculated, callous and vicious manner.²⁹¹⁷ The Trial Chamber also recalls the evidence of VG024 that Milan Lukić had instructed three Serb workers ensure that Sabahudin Velagić did not get away.²⁹¹⁸ This shows beyond a reasonable doubt that Milan Lukić acted with discriminatory intent in selecting and killing the seven men.

1005. The Trial Chamber further holds that the act of arbitrarily selecting at gunpoint the seven victims from the Varda factory and the act of marching them to their death would have caused them severe mental suffering. These acts, which Milan Lukić undertook with a discriminatory mindset against Muslims, may be described as harassment, humiliation, terrorisation and psychological abuse. However, the Trial Chamber considers that these underlying acts were so closely intertwined with the act of murder that they cannot be distinguished from that act, and that none of these seven men survived the ordeal. Rather than holding Milan Lukić responsible for these acts as separate

²⁹¹⁶ See *supra* para. 912.

²⁹¹⁷ See *supra* para. 912.

²⁹¹⁸ See *supra* para. 237.

persecutory acts, the Trial Chamber will consider them in sentencing Milan Lukić as evidence of the particularly ruthless and discriminatory manner in which Milan Lukić killed the seven men.

(iii) Pionirska street incident

1006. Count 1 charges Milan Lukić with having committed and/or aided and abetted in the commission of persecution in relation to the following acts of the Pionirska street incident: the murder, the unlawful detention and confinement of the victims under inhumane conditions, the harassment, humiliation, terrorisation and psychological abuse of the victims, and the theft of personal property and the destruction of houses.

1007. The Trial Chamber has found that the Koritnik group was exclusively comprised of Muslim civilians who took no active part in hostilities, many of whom were elderly people and small children.

1008. The Trial Chamber recalls that Milan Lukić robbed the members of the Koritnik group at gun point inside Jusuf Memić's house. In so doing, he threatened to kill or otherwise harm persons who withheld their valuables. The Trial Chamber also recalls that the Koritnik group was required to leave their valuables behind in Jusuf Memić's house as Milan Lukić and other armed men transferred them to Adem Omeragić's house. The Trial Chamber bears in mind that the members of the Koritnik group were forced to leave their homes, and to do so on extremely short notice. It considers that the personal effects carried by each member of the group as they left their home villages and journeyed to Višegrad represented their only remaining possessions as they hoped to find new homes in Kladanj. The Trial Chamber finds that Milan Lukić, by robbing the Koritnik group of their belongings, committed not only theft of personal property but also subjected them to harassment, humiliation, terrorisation and psychological abuse by robbing an already vulnerable group of civilians under threat of death and physical harm of the few belongings that they had in their possession.

1009. The Trial Chamber recalls that Milan Lukić removed a number of women from among the Koritnik group at Jusuf Memić's house. When the women returned they asserted that they had been raped. The Trial Chamber recalls that the evidence does not establish that Milan Lukić raped the women. The Trial Chamber also recalls VG078's and VG101's expression of terror at the mere possibility of being raped. In particular, it recalls VG101's statement that she preferred to face death rather than rape, and that this motivated her to escape, at the risk of being killed in the process. The Trial Chamber considers that by participating in the removal of these women from Jusuf Memić's house Milan Lukić placed VG013, VG018, VG078 and VG101 in fear that they might be raped. The Trial Chamber also notes that several members of the Koritnik group were subjected to strip

searches. The Trial Chamber has found that Milan Lukić was not involved in the strip searches, but notes that he remained, armed, in the house while the searches were carried out. On the basis of the foregoing, the Trial Chamber holds that Milan Lukić subjected the Koritnik group to harassment, humiliation, terrorisation and psychological abuse.

1010. As the group was being transferred from Jusuf Memić's house to Adem Omeragić's house, Milan Lukić told some individuals in the group that they would not need their shoes. Once the Koritnik group was herded into the room of Adem Omeragić's house, Milan Lukić locked them inside. The conditions inside the room were overcrowded. The Trial Chamber recalls VG013's evidence that the air in the room was suffocating due to the presence of a pungent, sticky substance on the carpets which caused persons to choke.²⁹¹⁹ The Trial Chamber finds that by these acts, Milan Lukić unlawfully detained the Koritnik group under inhumane conditions.

1011. Milan Lukić subsequently opened the door to the room and set an incendiary device to explode inside the room. The room ignited and 59 persons were burned alive. Among those burned alive were elderly people and children. The Trial Chamber has found that by these acts, Milan Lukić murdered 59 persons. The Trial Chamber has also found that as persons attempted to escape through the windows, Milan Lukić fired on the windows. VG013 was shot by Milan Lukić and sustained wounds to her upper left arm and to her left knee. The Trial Chamber finds that also by these acts, Milan Lukić subjected VG013, VG018, VG038, VG084 and Hasib Kurspahić to harassment, humiliation, terrorisation and psychological abuse.

1012. The Trial Chamber recalls Hasib Kurspahić's statement that he saw Jusuf Memić's house set on fire after the Koritnik group had left.²⁹²⁰ However, there is no evidence indicating that Milan Lukić set this house on fire. The Trial Chamber finds that by his acts and presence at on 14 June 1992 at Adem Omeragić's house, including by personally setting it on fire, Milan Lukić is responsible for the destruction of Adem Omeragić's house, which was owned by a Muslim, and that he is not responsible for the destruction of Jusuf Memić's house.

1013. The Trial Chamber notes the generally discriminatory atmosphere surrounding the Pionirska street incident. The Koritnik group was comprised entirely of Muslim civilians. The members of the group had been transferred by force from their homes and were kept under a ruse, that they would be transferred out of Višegrad to safety the following morning. The Trial Chamber recalls VG018's evidence that as she was being strip-searched, the man who conducted the strip used the term *balija* to insult her and the other persons who were strip searched.²⁹²¹ VG018 also gave evidence that she

²⁹¹⁹ See *supra* para. 366.

²⁹²⁰ See *supra* para. 387.

²⁹²¹ See *supra* para. 352.

was forcefully pushed inside Adem Omeragić's house by a soldier whom she could not identify, who said "Get in, *balija*. What are you waiting for? Where is Alija now to help you?"²⁹²²

1014. The Trial Chamber also recalls the evidence of CW1 that in May 1992 she saw Milan Lukić who told her that he had received "orders that not an ear should remain of the Kurspahić family".²⁹²³ It also recalls CW1's fear upon hearing this declaration, that Milan Lukić would kill her and her whole family. The Trial Chamber concludes that Milan Lukić knew the Kurspahić family and that they were Muslims. It takes particular note of the fact that most of the victims of the Pionirska street incident were members of the Kurspahić family.

1015. On the basis of the above, the Trial Chamber finds that the only reasonable inference is that Milan Lukić murdered the 59 Muslim civilians in Adem Omeragić's house, and subjected the victims to unlawful detention and confinement, harassment, humiliation, terrorisation and psychological abuse because they were Muslims. The Trial Chamber also finds that Milan Lukić by his presence and actions on 14 June 1992 participated in the destruction of Jusuf Memić's house and that he personally destroyed Adem Omeragić's house only because these houses belonged to Muslims.

(iv) Bikavac incident

1016. Under count 1 of the indictment, the Prosecution charges Milan Lukić with having committed and/or aided and abetted in the commission of persecution in relation to the following acts of the Bikavac incident: the murder, the unlawful detention and confinement of the victims under inhumane conditions, the harassment, humiliation, terrorisation and psychological abuse of the victims, and the theft of personal property and the destruction of houses.

1017. The Trial Chamber has found that Milan Lukić murdered at least 60 individuals in the fire in Meho Aljić's house in Bikavac, and that he committed the crimes of cruel treatment and inhumane acts in relation to the sole survivor, Zehra Turjačanin.

1018. The evidence shows that the people who were herded into Meho Aljić's house were Muslims, many of whom were refugees from neighbouring villages and were trying to leave Višegrad because they were no longer safe there. The only reasonable inference from the evidence is that Milan Lukić singled out Muslims, herded them into Meho Aljić's house, and killed them because they were Muslim. This act of murder is of gravity equal to the other crimes listed under

²⁹²² See *supra* para. 364.

²⁹²³ See *supra* para. 388.

Articles 3 and 5 of the Statute. Accordingly, Milan Lukić committed the underlying persecutory act of the murder of at least 60 Muslims.

1019. The Trial Chamber is satisfied that the only reasonable inference is that Milan Lukić singled out Zehra Turjačanin, and that he intended to kill her, because she was Muslim. Although Milan Lukić did not manage to kill her, in his attempt to do so he subjected her to unlawful detention, harassment, humiliation and psychological abuse. The Trial Chamber is satisfied these acts were of equal gravity to the other crimes listed under Articles 3 and 5 of the Statute. The Trial Chamber finds that Milan Lukić committed the underlying persecutory acts of unlawful detention, harassment, humiliation, terrorisation and psychological abuse against Zehra Turjačanin. The Prosecution also charges these persecutory acts in relation to the victims who died in Meho Aljić's house. The Trial Chamber considers these acts to be so closely intertwined with the act of their murder that they cannot be distinguished from that act. Rather than holding Milan Lukić responsible for these acts as separate persecutory acts, the Trial Chamber will consider them in sentencing Milan Lukić as evidence of the particularly ruthless and discriminatory manner in which Milan Lukić killed the people in Meho Aljić's house.

1020. The Trial Chamber is satisfied that Milan Lukić's selected Meho Aljić's house and burned it only because it belonged to a Muslim. The act of destroying Meho Aljić's house by fire was of gravity equal to the other crimes listed under Articles 3 and 5 of the Statute. Accordingly, it finds Milan Lukić committed the persecutory act of destruction of the house.

1021. Although there is evidence that Milan Lukić took the golden necklace from Zehra Turjačanin shortly before he set Meho Aljić's house on fire, the Trial Chamber is not satisfied that this act of theft is of sufficient gravity to constitute an underlying act of the crime of persecution. The Trial Chamber therefore finds that Milan Lukić did not commit the persecutory act of theft by stealing Zehra Turjačanin's necklace.

(v) Murder of Hajra Korić

1022. The Trial Chamber has found that on a day between 28 June and 5 July 1992 Milan Lukić singled out Hajra Korić, a Muslim, from a group of Muslim women and that he killed her, shooting her twice. The Trial Chamber is satisfied that the only reasonable inference available on the evidence is that Milan Lukić killed Hajra Korić because she was a Muslim. This act of murder is of gravity equal to the other crimes listed under Articles 3 and 5 of the Statute. Accordingly, Milan Lukić committed the underlying persecutory act of the murder of Hajra Korić.

1023. In addition, Milan Lukić is charged with harassment, humiliation, terrorisation and psychological abuse of Muslim and other non-Serb civilians in relation to the Hajra Korić incident.

The Trial Chamber finds this part of the persecution charge relating to the killing of Hajra Korić to be unclear. The charges in the indictment only relate to the murder of Hajra Korić, not to the acts that preceded that murder. Furthermore, the indictment makes no mention of the group of women that accompanied Hajra Korić. Accordingly, Milan Lukić cannot be held responsible for having committed harassment, humiliation, terrorisation and psychological abuse against them as underlying persecutory acts.

(vi) Uzamnica detention camp

1024. Under count 1 of the indictment, the Prosecution charges Milan Lukić with having committed and/or aided and abetted in the execution of the crime of persecution, when he participated in the cruel and inhumane treatment and severely beat Muslims and other non-Serb civilians in the Uzamnica camp over extended periods of time,²⁹²⁴ and when he participated in the harassment, humiliation, terrorisation and psychological abuse of Muslim and other non-Serb civilians in the Uzamnica camp.²⁹²⁵

1025. The Trial Chamber has found Milan Lukić guilty of having committed the crime of inhumane acts pursuant to Article 5(i) of the Statute and the crime of cruel treatment pursuant to Article 3 of the Statute.²⁹²⁶ The detainees in the Uzamnica camp, including Adem Berberović, Islam Kustura, Nurko Dervišević and VG025, were all Muslims.²⁹²⁷ The evidence shows that Milan Lukić often referred to detainees as “*balijas*”, a derogatory term for Muslims.²⁹²⁸ There is also evidence that he made the detainees sing “Chetnik” songs and “make the sign of the cross”,²⁹²⁹ from which the Trial Chamber infers that Milan Lukić beat the Muslim detainees with a discriminatory intent.

(vii) Finding on count 1 in relation to Milan Lukić

1026. The Trial Chamber finds Milan Lukić guilty under Article 7(1) of the Statute of committing persecutions, pursuant to Articles 5(h) of the Statute, in relation to the charges concerning the Drina river incident, the Varda factory incident, the Pionirska street incident, the Bikavac incident, the Hajra Korić incident and the Uzamnica camp beatings.

²⁹²⁴ Indictment, paras 3, 4 b), referring to paras 13-15.

²⁹²⁵ Indictment, paras 3, 4 d), referring to paras 13-15.

²⁹²⁶ See *supra* section III.H.3(a)(iv).

²⁹²⁷ See *supra* para. 760.

²⁹²⁸ See *supra* paras 777, 782.

²⁹²⁹ See *supra* para. 769.

(b) Charges against Sredoje Lukić

(i) Pionirska street incident

1027. Count 1 charges Sredoje Lukić with having committed and/or aided and abetted in the commission of persecution in relation to the following acts of the Pionirska street incident: the murder, the unlawful detention and confinement of the victims under inhumane conditions, the harassment, humiliation, terrorisation and psychological abuse of the victims, and the theft of personal property and the destruction of houses.

1028. The Trial Chamber has found that Sredoje Lukić was present and armed at Jusuf Memić's house during the robbery in the afternoon on 14 June 1992.²⁹³⁰ The Trial Chamber has also found that Sredoje Lukić aided and abetted the robbery of the Koritnik group of its valuables. Furthermore, the Trial Chamber has found that Sredoje Lukić was present during the transfer of the Koritnik group to Adem Omeragić's house, and, by majority, Judge Robinson dissenting, that he participated in the transfer. The Trial Chamber by majority, Judge Robinson dissenting, has therefore found that he thereby aided and abetted in the commission of murder. The Trial Chamber has also found that Sredoje Lukić aided and abetted in the commission of cruel treatment and inhumane acts.²⁹³¹

1029. The Trial Chamber has previously noted the generally discriminatory atmosphere surrounding the Pionirska street incident, and that the Koritnik group comprised entirely of Muslim civilians who were unarmed and took no active part in hostilities. They had been forced from their homes, and many were elderly people and small children. The Trial Chamber has also taken particular note of VG018's evidence regarding discriminatory behaviour of the armed men in Jusuf Memić's house, and as she was pushed into Adem Omeragić's house.

1030. The Trial Chamber recalls that the members of the Koritnik group were robbed at gun point inside Jusuf Memić's house, and that they were threatened with death or otherwise if they withheld their valuables. At this time, Sredoje Lukić was armed and present around Jusuf Memić's house. As considered earlier, the valuables being carried by the members of the Koritnik group represented their only remaining possessions. The Trial Chamber finds that by rendering practical assistance to the robbery of an already vulnerable group of civilians under threat of death and physical harm of the few belongings that they had in their possession, Sredoje Lukić aided and abetted the theft of personal property and the subjecting of the Koritnik group to harassment, humiliation, terrorisation and psychological abuse.

²⁹³⁰ See *supra* para. 593.

²⁹³¹ See *supra* paras 982-986.

1031. The Trial Chamber recalls that a number of women from the Koritnik group were removed from Jusuf Memić's house, and that when the women returned they asserted that they had been raped. VG078 and VG101 both expressed terror at the mere possibility of being raped. In particular, the Trial Chamber recalls VG101's statement that she preferred to face death rather than rape, and that this motivated her to escape, at the risk of being killed in the process. The Trial Chamber considers that by being around Jusuf Memić's house, armed, when the women were removed from the house, Sredoje Lukić rendered practical assistance, which had a substantial effect on the removal of these women, and thereby aided and abetted their removal. The Trial Chamber finds that by assisting in the removal of these women from Jusuf Memić's house, Sredoje Lukić contributed to causing VG013, VG018, VG078 and VG101 fear that they might be raped. The Trial Chamber also notes that several members of the Koritnik group were subjected to strip searches. The Trial Chamber has found that Sredoje Lukić was not involved in the strip searches. However, he was outside the house, armed, while the searches were carried out. On the basis of the foregoing, the Trial Chamber finds that Sredoje Lukić aided and abetted the subjection of VG013, VG018, VG078 and VG084 to harassment, humiliation, terrorisation and psychological abuse.

1032. The Trial Chamber recalls that the Koritnik group was herded from Jusuf Memić's house and locked inside Adem Omeragić's house. The room was overcrowded and, according to, VG013 the air in the room was suffocating due to the presence of a pungent, sticky substance on the carpets, which caused persons in the room to choke. The Trial Chamber has found that Sredoje Lukić was present during the transfer of the Koritnik group to Adem Omeragić's house, and by majority, Judge Robinson dissenting, that he participated in the transfer. The Trial Chamber by majority, Judge Robinson dissenting, is, therefore, satisfied that by his acts Sredoje Lukić aided and abetted in the unlawful detention of the Koritnik group under inhumane conditions.

1033. The Trial Chamber has found that the Koritnik group was forced into Adem Omeragić's house, that the house was set alight and that 59 persons were burned alive. Among those burned alive were elderly people and children. VG013, VG018, VG038, VG084 and Hasib Kurspahić survived the fire. The Trial Chamber further recalls its finding that Sredoje Lukić was present during the transfer of the Koritnik group to Adem Omeragić's house, and by majority, Judge Robinson dissenting, that he participated in the transfer. The Trial Chamber recalls its finding by majority, Judge Robinson dissenting, that Sredoje Lukić thereby aided and abetted in the commission of murder. The Trial Chamber by majority, Judge Robinson dissenting, therefore finds that Sredoje Lukić aided and abetted the commission of the persecutory act of murder. The Trial Chamber by majority, Judge Robinson dissenting, also finds that by his acts Sredoje Lukić aided and abetted in the harassment, humiliation, terrorisation and psychological abuse of the survivors, VG013, VG018, VG038, VG084, VG078, VG101 and Hasib Kurspahić.

1034. The Trial Chamber recalls Hasib Kurspahić's statement that he saw Jusuf Memić's house set on fire after the Koritnik group had left. However, there is no evidence indicating that Sredoje Lukić was involved in setting this house on fire. The Trial Chamber by majority, Judge Robinson dissenting, finds that Sredoje Lukić, by aiding and abetting the burning of Adem Omeragić's house, also aided and abetted the destruction of Adem Omeragić's house, which was owned by a Muslim.

1035. On the basis of the evidence, the Trial Chamber by majority, Judge Robinson dissenting, finds that the only reasonable inference is that Sredoje Lukić knew that the persons who were locked in Adem Omeragić's house were Muslims and that they would not only be unlawfully detained in Adem Omeragić's house, but that they would subsequently die as a result of the fire. The Trial Chamber by majority, Judge Robinson dissenting, also finds that Sredoje Lukić knew that the perpetrators, including Milan Lukić, who locked the Koritnik group in Adem Omeragić's house and set the house on fire, did so with discriminatory intent. The Trial Chamber by majority, Judge Robinson dissenting, also holds that Sredoje Lukić knew that by his acts he was rendering practical assistance to the commission of the underlying acts of murder, unlawful detention, harassment, humiliation, terrorisation and psychological abuse, and the theft of personal property and destruction of a house.

(ii) Bikavac incident

1036. Under count 1 of the indictment, the Prosecution charges Sredoje Lukić with having committed and/or aided and abetted in the commission of persecution in relation to the following acts of the Bikavac incident: the murder, the unlawful detention and confinement of the victims under inhumane conditions, the harassment, humiliation, terrorisation and psychological abuse of the victims, and the theft of personal property and the destruction of houses.

1037. The Trial Chamber by majority, Judge David dissenting, has found that Sredoje Lukić was not present at the Bikavac house-burning on or about 27 June 1992,²⁹³² and therefore by majority, Judge David dissenting, acquits Sredoje Lukić pursuant to Article 7(1) of the Statute of having committed or aided and abetted the crime of persecutions, a crime against humanity under Article 5 of the Statute (count 1), in connection with the Bikavac incident.

(iii) Uzamnica detention camp

1038. Under count 1 of the indictment, the Prosecution charges Sredoje Lukić with having committed and/or aided and abetted in the execution of the crime of persecution, when he participated in the cruel and inhumane treatment and severely beat Muslim and other non-Serb

²⁹³² See *supra* para. 739.

civilians in the Uzamnica camp over extended periods of time,²⁹³³ and when he participated in the harassment, humiliation, terrorisation and psychological abuse of Muslims and other non-Serb civilians in the Uzamnica camp.²⁹³⁴

1039. The Trial Chamber has found Sredoje Lukić guilty of having committed the crime of inhumane acts pursuant to Article 5(i) of the Statute and the crime of cruel treatment pursuant to Article 3 of the Statute.²⁹³⁵ Sredoje Lukić beat detainees in the Uzamnica camp, who were Muslims, on several occasions.²⁹³⁶ The Trial Chamber considers that the only reasonable inference is that Sredoje Lukić had a discriminatory intent when he beat the detainees.

(iv) Finding on count 1 in relation to Sredoje Lukić

1040. The Trial Chamber finds Sredoje Lukić guilty under Article 7(1) of the Statute of aiding and abetting persecutions, pursuant to Articles 5(h) of the Statute, in relation to the charges concerning the Pionirska street incident and the Uzamnica camp beatings.

J. Cumulative convictions

1041. Cumulative convictions, that is, multiple convictions entered under different statutory provisions in relation to the same conduct, are permissible only if each statutory provision involved has a materially distinct element not contained in the other. An element is materially distinct from another if it requires proof of a fact not required by the other element. Where this test is not met, the Trial Chamber will enter a conviction only under the more specific provision.²⁹³⁷

1042. Milan Lukić has been found criminally responsible for the crime of persecution (count 1) and for the crimes charged in counts 2 to 21. Sredoje Lukić has been found criminally responsible for the crime of persecution (count 1) and for the crimes charged in counts 9 to 12, and 20 and 21. The acts underlying the findings of persecution include the acts underlying the findings of the crimes under counts 2 to 21. Persecution requires a materially distinct element that is not present as an element in any of the other crimes, that is, proof that the act or omission discriminated in fact and that the act or omission was committed with the specific intent to discriminate on the basis of one of the grounds listed in Article 5 of the Statute.²⁹³⁸ The other crimes under counts 2 to 21 require proof of materially distinct elements, which are not present in the crime of persecution. As a

²⁹³³ Indictment, paras 3, 4 b), referring to paras 13-15.

²⁹³⁴ Indictment, paras 3, 4 d), referring to paras 13-15.

²⁹³⁵ See *supra* section III.H.3(b)(iii).

²⁹³⁶ See *supra* para. 760, 841.

²⁹³⁷ *Delalić et al.* Appeal Judgement, paras 412-413; *Kordić and Čerkez* Appeal Judgement, para. 1033. See also *Kunarac et al.* Appeal Judgement, para. 177; *Stakić* Appeal Judgement, paras 355-358.

²⁹³⁸ *Stakić* Appeal Judgement, paras 359-364; *Kordić and Čerkez* Appeal Judgement, para. 1041.

result, cumulative conviction is permissible for persecution and for the crimes found to have been committed by Milan Lukić under counts 2 to 21, and by Sredoje Lukić under counts 9 to 12, and 20 and 21.

1043. Milan Lukić has been found criminally responsible for the following crimes charged under Article 3 and Article 5 of the Statute, which are based on the same conduct: murder as a crime against humanity (counts 2, 6, 9, 14, 18) and murder as a violation of the laws and customs of war (counts 3, 7, 10, 15, 19), and inhumane acts as a crime against humanity (counts 4, 11, 16, 20) and cruel treatment as a violation of the laws or customs of war (counts 5, 12, 17, 21). Sredoje Lukić has been found criminally responsible for the following crimes charged under Article 3 and Article 5 of the Statute, which are based on the same conduct: murder as a crime against humanity (count 9) and murder as a violation of the laws and customs of war (count 10), and inhumane acts as a crime against humanity (counts 11 and 20) and cruel treatment as a violation of the laws or customs of war (counts 12 and 21).

1044. Crimes under Article 3 of the Statute require a materially distinct element to be proven which is not required for the crimes under Article 5 of the Statute, that is, the nexus between the acts of the accused and the armed conflict. Crimes under Article 5 of the Statute require a materially distinct element that is not required for the crimes under Article 3 of the Statute, that is, a widespread or systematic attack directed against any civilian population. Therefore, cumulative convictions are permissible under Article 3 and Article 5 for the crimes found to have been committed by Milan Lukić under counts 2, 6, 9, 14, 18 and counts 3, 7, 10, 15, 19, and under counts 4, 11, 16, 20 and counts 5, 12, 17, 21.²⁹³⁹ Cumulative convictions are permissible under Article 3 and Article 5 for the crimes found to have been committed by Sredoje Lukić under counts 9 and 10, and counts 11 and 20 and counts 12 and 21.

1045. Milan Lukić has been found criminally responsible for the crime of murder as a crime against humanity (counts 2, 6, 9, 14, 18), murder as a violation of the laws and customs of war (counts 3, 7, 10, 15, 19), and the crime of extermination as a crime against humanity (counts 8 and 13). The crime of extermination does not contain a materially distinct element from murder: each crime involves killing within the context of a widespread and systematic attack against the civilian population, and the only element that distinguishes these offences is the requirement that the killings occur on a large scale.²⁹⁴⁰ The Trial Chamber finds, therefore, that it is not permissible to enter convictions under Article 5 for both murder as a crime against humanity and extermination as a crime against humanity in respect of the crimes found to have been committed by Milan Lukić

²⁹³⁹ *Jelišić* Appeal Judgement, para. 82.

²⁹⁴⁰ *Ntakirutimana* Appeal Judgement, para. 542; *Blagojević and Jokić* Trial Judgement, para. 802.

under counts 9 and 14 and under counts 8 and 13 and that convictions shall only be entered in respect of the crimes of extermination in relation to those counts. However, as crimes under Article 3 of the Statute require a materially distinct element that is not required for the crimes under Article 5 of the Statute, that is, the nexus between the acts of the accused and the armed conflict, it is permissible to convict Milan Lukić for the crime of murder as a violation of the laws and customs of war (counts 3, 7, 10, 15, 19) and the crime of extermination as a crime against humanity (counts 8 and 13).

IV. SENTENCING

A. Law on sentencing

1. General principles

1046. Sentencing is governed by Article 24 of the Statute and Rule 101. Article 24 provides:

1. The penalty imposed by the Trial Chamber shall be limited to imprisonment. In determining the terms of imprisonment, the Trial Chambers shall have recourse to the general practice regarding prison sentences in the courts of the former Yugoslavia.
2. In imposing the sentences, the Trial Chambers should take into account such factors as the gravity of the offence and the individual circumstances of the convicted person.
3. In addition to imprisonment, the Trial Chambers may order the return of any property and proceeds acquired by criminal conduct, including by means of duress, to their rightful owners.

Rule 101 provides:

- (A) A convicted person may be sentenced to imprisonment for a term up to and including the remainder of the convicted person's life.
- (B) In determining the sentence, the Trial Chamber shall take into account the factors mentioned in Article 24, paragraph 2, of the Statute, as well as such factors as:
 - (i) any aggravating circumstances;
 - (ii) any mitigating circumstances including the substantial cooperation with the Prosecutor by the convicted person before or after conviction;
 - (iii) the general practice regarding prison sentences in the courts of the former Yugoslavia;
 - (iv) the extent to which any penalty imposed by a court of any State on the convicted person for the same act has already been served, as referred to in Article 10, paragraph 3, of the Statute.
- (C) Credit shall be given to the convicted person for the period, if any, during which the convicted person was detained in custody pending surrender to the Tribunal or pending trial or appeal.

(a) General practice regarding prison sentences in the former Yugoslavia

1047. The range of penalties evident in the practice of the courts of the former Yugoslavia is "valid only as an indication"²⁹⁴¹ and is not binding on the Trial Chamber. The relevant statutory provisions of the law of the former Yugoslavia are Articles 41(1) and 142 of the 1990 Criminal Code of the Socialist Federal Republic of Yugoslavia ("SFRY").²⁹⁴² Article 41(1) provides that:

For a given offence, the court shall set the limits prescribed by law for the offence and shall consider all the circumstances which might influence the severity of the penalty (mitigating and attenuating circumstances) and, in particular: the level of criminal responsibility, the motives for the offence, the intensity of the threat or assault on the protected object, the circumstances under which the offence was committed, the previous history of the perpetrator of the offence, his personal circumstances and conduct subsequent to the perpetration of the offence and any other circumstances relating to the character of the perpetrator.

Article 142 provides that:

²⁹⁴¹ *Jelišić* Trial Judgement, para. 114; *Tadić* Second Sentencing Judgement, para. 12; *Delalić et al.* Trial Judgement, paras 1193-1194; *Aleksovski* Trial Judgement, para. 242; *Erdemović* Sentencing Judgement, para. 39.

Any person who out of a disregard for the rule of law among peoples in times of war, armed conflict or occupation orders an attack against a civilian population [...] or commits [...] acts of homicide or torture or who has subjected the civilian population to inhumane treatment [...] shall be punished with a term of imprisonment of at least five years or by death.

In 1998, BiH abolished the death penalty and replaced it with a prison term of 20 to 40 years.²⁹⁴³

(i) The practice of the Tribunal

1048. The Trial Chamber will take into account the prior practice of the Tribunal regarding sentencing in respect of the crimes for which Milan Lukić and Sredoje Lukić are convicted.²⁹⁴⁴ The Appeals Chamber has held that comparable sentences should be imposed in respect of like individuals in like cases.²⁹⁴⁵ Cases will, however, only be comparable “if they involve the commission of the same offences in substantially similar circumstances”.²⁹⁴⁶ Reference to previously determined sentences otherwise will be of very limited assistance.²⁹⁴⁷ Where a pattern of sentencing has emerged in relation to persons where their circumstances and the circumstances of their offences are generally similar, the Trial Chamber should ensure that the sentence imposed does not produce an unjustified disparity to those preceding it.²⁹⁴⁸ A sentence may be deemed to be capricious or excessive, and hence subject to appeal, if it is not proportionate to a line of similar sentences.²⁹⁴⁹

(b) Other general principles

1049. In determining the penalty, the Trial Chamber also will have regard to the mission of the Tribunal pursuant to Security Council resolutions 808 and 827, that is, “to put a [*sic*] end to the serious violations of international humanitarian law and to contribute to restoring and keeping the peace in the former Yugoslavia”.²⁹⁵⁰ Accordingly, the Trial Chamber must pronounce a penalty that takes note of the primary objectives of sentencing, as defined by the Appeals Chamber: punishment and deterrence.²⁹⁵¹

²⁹⁴² *Tadić* Second Sentencing Judgement, para. 11; *Jelišić* Trial Judgement, para. 1110, n. 116.

²⁹⁴³ *Jelišić* Trial Judgement, para. 113; *Tadić* Second Sentencing Judgement, para. 12.

²⁹⁴⁴ *Jelišić* Trial Judgement, para. 115.

²⁹⁴⁵ *Kvočka et al.* Appeal Judgement, para. 681. See also *Strugar* Appeal Judgement, para. 348.

²⁹⁴⁶ *Strugar* Appeal Judgement, para. 348; *Furundžija* Appeal Judgement, para. 250.

²⁹⁴⁷ *Delalić et al.* Appeal Judgement, paras 758 and 821. See also *Strugar* Appeal Judgement, para. 348.

²⁹⁴⁸ *Delalić et al.* Appeal Judgement, para. 758.

²⁹⁴⁹ *Jelišić* Appeal Judgement, para. 96.

²⁹⁵⁰ *Jelišić* Trial Judgement, para. 116; *Tadić* Second Sentencing Judgement, para. 7.

²⁹⁵¹ *Jelišić* Trial Judgement, para. 116.

2. The gravity of the offence

1050. The Trial Chamber is subject to an overriding obligation to tailor a penalty to fit the individual circumstances of the accused and the gravity of the crime.²⁹⁵² This is the “litmus test” for determining the appropriate sentence.²⁹⁵³ The Trial Chamber has considerable discretion regarding the rubric under which issues that may point to the gravity of an offence or constitute an aggravating circumstance can be considered.²⁹⁵⁴ However, factors taken into account in evaluating the gravity of a crime may not be reconsidered as separate aggravating circumstances and *vice versa*,²⁹⁵⁵ as to do so would be to “detrimentally influence the [accused’s] sentence twice”.²⁹⁵⁶ Factors of relevance to the inherent gravity of a crime include the impact of the crime upon the direct victim,²⁹⁵⁷ as well as the effect on the victim’s relatives,²⁹⁵⁸ the discriminatory intent of the accused where this is not a constituent element of the crime,²⁹⁵⁹ the vulnerability of the victims,²⁹⁶⁰ the scale and brutality of the offences²⁹⁶¹ and the role of the accused.²⁹⁶² It is an established principle in the Tribunal’s jurisprudence that “there is no distinction between the seriousness of a crime against humanity and that of a war crime”.²⁹⁶³

3. Aggravating and mitigating circumstances and the character of the accused

1051. Pursuant to Rule 101(B)(i) and 101(B)(ii) respectively, the Trial Chamber shall take into account aggravating and mitigating circumstances when pronouncing the appropriate sentence. The Statute and the Rules do not exhaustively define factors that may constitute aggravating and mitigating circumstances when determining a sentence.²⁹⁶⁴ The Trial Chamber may consider the particularities of each case and has a considerable margin of discretion in determining the weight to afford to mitigating or aggravating circumstances.²⁹⁶⁵ In contrast to aggravating circumstances,²⁹⁶⁶

²⁹⁵² *Strugar* Appeal Judgement, para. 336; *Delalić et al.* Appeal Judgement, para. 717; *Momir Nikolić* Sentencing Appeal Judgement, para. 8.

²⁹⁵³ *Delalić et al.* Trial Judgement, para. 1225, endorsed by the Appeals Chamber, *Delalić et al.* Appeal Judgement, para. 731 and *Aleksovski* Appeal Judgement, para. 182; *Blaškić* Appeal Judgement, para. 683; *Momir Nikolić* Sentencing Appeal Judgement, para. 11.

²⁹⁵⁴ *Hadžihasanović and Kubura* Appeal Judgement para. 317; *Vasiljević* Appeal Judgement para. 157.

²⁹⁵⁵ *Limaj et al.* Appeal Judgement, para. 143; *Momir Nikolić* Sentencing Appeal Judgement, para. 58, recalling *Deronjić* Sentencing Appeal Judgement, para. 106 (and sources cited therein).

²⁹⁵⁶ *Momir Nikolić* Sentencing Appeal Judgement, para. 61. See also *Delalić et al.* Appeal Judgement, para. 750.

²⁹⁵⁷ *Delalić et al.* Trial Judgement, para. 1260; *Blaškić* Appeal Judgement, para. 683, citing *Krnjelac* Trial Judgement, para. 512.

²⁹⁵⁸ *Blaškić* Appeal Judgement, para. 683.

²⁹⁵⁹ *Kunarac et al.* Appeal Judgement, para. 357; *Tadić* Appeal Judgement, para. 305.

²⁹⁶⁰ *Kunarac et al.* Appeal Judgement, para. 352.

²⁹⁶¹ *Delić* Trial Judgement, para. 563; *Boškoski and Tarčulovski* Trial Judgement, para. 588.

²⁹⁶² *Boškoski and Tarčulovski* Trial Judgement, para. 588.

²⁹⁶³ *Tadić* Sentencing Appeal Judgement, para. 69; *Furundžija* Appeal Judgement, para. 247; *Rajić* Sentencing Judgement, para. 83.

²⁹⁶⁴ *Delalić et al.* Appeal Judgement, para. 780.

²⁹⁶⁵ *Delalić et al.* Appeal Judgement, para. 777.

²⁹⁶⁶ *Delić* Trial Judgement, para. 566.

mitigating circumstances need not bear a direct relation to the charged offence.²⁹⁶⁷ The conclusion as to whether a fact amounts to a mitigating circumstance is made on the balance of probabilities,²⁹⁶⁸ but the Prosecution must prove the existence of an aggravating circumstance beyond reasonable doubt.²⁹⁶⁹ The Trial Chamber is under no obligation to take into account what the accused did not do²⁹⁷⁰ and the absence of a mitigating circumstance may never constitute an aggravating circumstance.²⁹⁷¹

(a) Aggravating circumstances

1052. Circumstances which previously have been held to constitute aggravating circumstances include the accused's abuse of his or her position of leadership, level in the command structure or role in the broader context of the conflict²⁹⁷² in carrying out the crimes,²⁹⁷³ the duration of criminal conduct,²⁹⁷⁴ the large number of victims involved,²⁹⁷⁵ the special vulnerability of the victims, including their young age,²⁹⁷⁶ the systemic nature of the convicted crime,²⁹⁷⁷ the level of participation of the accused,²⁹⁷⁸ the accused's enthusiastic support for the crimes committed,²⁹⁷⁹ premeditation and motive,²⁹⁸⁰ the accused's conduct during the proceedings,²⁹⁸¹ the intimidation of witnesses,²⁹⁸² and the circumstances of the offences generally.²⁹⁸³ The Appeals Chamber has held that there is an absolute prohibition against considering the accused's refusal to give oral testimony to be an aggravating factor in determining the sentence.²⁹⁸⁴

(b) Mitigating circumstances

1053. Circumstances that previously have been relevant to mitigation in sentencing include the genuine and sincere expression of remorse by the accused,²⁹⁸⁵ the voluntary admission of guilt,²⁹⁸⁶

²⁹⁶⁷ *Boškoski and Tarčulovski* Trial Judgement, para. 597; *Stakić* Trial Judgement, para. 920.

²⁹⁶⁸ *Hadžihasanović and Kubura* Appeal Judgement, para. 302.

²⁹⁶⁹ *Blaškić* Appeal Judgement, para. 686; *Delalić et al.* Appeal Judgement, para. 763.

²⁹⁷⁰ *Momir Nikolić* Sentencing Appeal Judgement, para. 56.

²⁹⁷¹ *Blaškić* Appeal Judgement, para. 687; *Plavšić* Sentencing Judgement, para. 64.

²⁹⁷² *Blaškić* Appeal Judgement, para. 686; *Jokić* Sentencing Judgement, paras 61-62.

²⁹⁷³ *Hadžihasanović and Kubura* Appeal Judgement, para. 320; *Galić* Appeal Judgement para. 412.

²⁹⁷⁴ *Hadžihasanović and Kubura* Appeal Judgement, para. 317; *Blaškić* Appeal Judgement, para. 686.

²⁹⁷⁵ *Hadžihasanović and Kubura* Appeal Judgement, paras 310, 317.

²⁹⁷⁶ *Kunarac et al.* Trial Judgement, paras 352, 355. See also *Orić* Trial Judgement, para. 733.

²⁹⁷⁷ *Hadžihasanović and Kubura* Appeal Judgement, paras 349-353.

²⁹⁷⁸ *Momir Nikolić* Sentencing Appeal Judgement, para. 47.

²⁹⁷⁹ *Blaškić* Appeal Judgement, para. 686; *Jelišić* Appeal Judgement, para. 86; *Kayishema and Ruzindana* Appeal Judgement, para. 351; *Jelišić* Trial Judgement, paras 131 and 133.

²⁹⁸⁰ *Blaškić* Appeal Judgement, paras 686 and 694. See also *Kayishema and Ruzindana* Appeal Judgement, para. 161.

²⁹⁸¹ *Delalić et al.* Appeal Judgement, para. 788.

²⁹⁸² *Delalić et al.* Appeal Judgement, para. 789.

²⁹⁸³ *Blaškić* Appeal Judgement, para. 686. See also *Tadić* Second Sentencing Judgement, para. 19.

²⁹⁸⁴ *Delalić et al.* Appeal Judgement, para. 783.

²⁹⁸⁵ *Jokić* Sentencing Judgement, para. 89.

²⁹⁸⁶ *Dragan Nikolić* Sentencing Appeal Judgement, para. 51, though noting that this circumstance should not be given undue weight.

the accused's voluntary surrender,²⁹⁸⁷ the accused's conduct during the proceedings,²⁹⁸⁸ the accused's comportment in detention,²⁹⁸⁹ the accused's age²⁹⁹⁰ and the accused's personal and family circumstances.²⁹⁹¹

1054. Substantial cooperation with the Prosecution is expressly mandated by Rule 101(B)(ii) as a mitigating circumstance. This may include the accused making himself or herself available to the Prosecutor for interview. The Appeals Chamber has held that the Trial Chamber should take into account the Prosecution's assessment of cooperation. If the Trial Chamber ultimately disagrees with the Prosecution's assessment, it has a duty to provide sufficient reasons for its divergence.²⁹⁹²

1055. The Appeals Chamber has also held that those with a low level of command in the overall structure of the conflict should not necessarily be subject to a low sentence:

On the contrary, a sentence must always reflect the inherent level of gravity of a crime which "requires consideration of the particular circumstances of the cases, as well as the form and degree of the participation of the accused in the crime." In certain circumstances, the gravity of the crime may be so great that even following consideration of any mitigating factors, and despite the fact that the accused was not senior in the so-called overall command structure, a very severe penalty is nevertheless justified.²⁹⁹³

(c) The character of the accused

1056. Whether factors related to the character of the accused constitute aggravating or mitigating circumstances depends largely on the circumstances of each case.²⁹⁹⁴ Evidence of an accused's good character, including the absence of prior criminal convictions, may in some cases be indicative of propensity for rehabilitation and in others may serve to demonstrate the particularly heinous nature of the crimes committed.²⁹⁹⁵ Similarly, the accused's professionalism or competence as evidence of his or her character may be either aggravating or mitigating.²⁹⁹⁶

4. Reduction in sentence of accused as a result of mitigating factors

1057. The Trial Chamber must determine how to adjust the sentence in light of any mitigating factors in favour of the accused. For example, the Trial Chamber in *Bralo* sentenced Miroslav Bralo to 20 years' imprisonment, after determining that mitigating factors, including his guilty plea, his remorse, his efforts to atone for his crimes and his voluntary surrender, warranted only a five-year

²⁹⁸⁷ *Blaškić* Appeal Judgement, para. 696; *Jokić* Sentencing Judgement, para. 73.

²⁹⁸⁸ *Delalić et al.* Appeal Judgement, para. 788.

²⁹⁸⁹ *Blaškić* Appeal Judgement, para. 696; *Jokić* Sentencing Judgement, para. 100; *Dragan Nikolić* Sentencing Judgement, para. 268.

²⁹⁹⁰ *Blaškić* Appeal Judgement, para. 696; *Jokić* Sentencing Judgement, para. 100.

²⁹⁹¹ *Blaškić* Appeal Judgement, para. 696; *Kunarac et al* Appeal Judgement, paras 362, 408.

²⁹⁹² *Momir Nikolić* Sentencing Appeal Judgement, para. 96.

²⁹⁹³ *Delalić et al.* Appeal Judgement, para. 847, citing *Aleksovski* Appeal Judgement, para. 181.

²⁹⁹⁴ *Hadžihasanović and Kubura* Appeal Judgement, paras 325, 328.

²⁹⁹⁵ *Hadžihasanović and Kubura* Appeal Judgement, paras 323-329; *Tadić* First Sentencing Judgement, para. 59.

reduction in the twenty-five-year sentence that the Trial Chamber otherwise would have imposed for his crimes.²⁹⁹⁷ However, the Trial Chamber in *Nikolić* found that the mitigating factors of his guilty plea, expression of remorse, reconciliation, and disclosure of information to the Prosecution warranted a substantial reduction in sentence from a life sentence to 23 years.²⁹⁹⁸

5. Reduction in sentence of accused to credit for time already served

1058. Pursuant to Rule 101(C), an accused is entitled to credit for the time spent in detention pending and during the trial.

B. Discussion and findings

1. Discussion with regards to the offences committed by Milan Lukić

(a) The gravity of the offences committed by Milan Lukić

1059. With regard to the Drina river killings, the Varda factory killings and the Hajra Korić killing, the Trial Chamber considers that Milan Lukić committed these murders by summarily executing 13 victims in three killing incidents. In addition, the Trial Chamber notes that Milan Lukić shot the victims of the Drina river incident in the back.

1060. With regard to the beatings at the Uzamnica camp, the Trial Chamber recalls that the Trial Chamber in *Kvočka* found that not only the viciousness of the beatings, but also the fact that the perpetrator inflicts such violence without reason and repeatedly, heightens the gravity of prisoner-abuse crimes.²⁹⁹⁹ Milan Lukić was an opportunistic visitor who repeatedly visited the Uzamnica camp over a period of two years for no reason other than to beat the prisoners with utmost brutality.

1061. The serious gravity of these multiple murders and savage beatings must be recognised individually, even as the Trial Chamber considers the particular gravity of the monstrous mass killings that Milan Lukić committed in the Pionirska street fire and the Bikavac fire. The Trial Chamber reiterates that the Pionirska street fire and the Bikavac fires exemplify the worst acts of inhumanity that one person may inflict upon others. The Trial Chamber recalls its observations that these horrific events remain imprinted on the memory for the viciousness of the incendiary attack, for the sheer callousness and cruelty of herding, trapping, and locking the victims in the two houses, thereby rendering them helpless in the ensuing inferno, and for the degree of pain and suffering inflicted on the victims as they were burned alive.

²⁹⁹⁶ *Hadžihasanović and Kubura* Appeal Judgement, para. 324.

²⁹⁹⁷ *Bralo* Sentencing Judgement, para. 95.

²⁹⁹⁸ *Dragan Nikolić* Sentencing Judgement, para. 274.

²⁹⁹⁹ *Kvočka et al.* Trial Judgement, paras 747-748.

1062. By burning the victims and the houses in which they were trapped, Milan Lukić and the other perpetrators intended to obliterate the identities of their victims and, in so doing, to strip them of their humanity. The families of victims could not identify or bury their loved ones. Indeed, in neither case has it ever been established what became of the victims' remains. For several victims of the Pionirska street fire and for at least 50 victims of the Bikavac fire, all that is known is that they were Muslim. It never will be certain which names on the list of Višegrad's missing were individuals who burned alive in these fires. There is a unique cruelty in expunging all traces of the individual victims which must heighten the gravity ascribed to these crimes.

(b) The aggravating circumstances of the crimes committed by Milan Lukić

1063. The Prosecution submits that Milan Lukić's "depravity" and his efforts to kill his victims "in a way calculated to cause the maximum amount of suffering" warrants the conclusion that his "apparent depravity and enjoyment of his criminal acts [are] an aggravating factor" with regard to his sentence.³⁰⁰⁰ The Prosecution also submits that the premeditation of the crimes is an aggravating factor.³⁰⁰¹ Where these factors have been proved beyond reasonable doubt, the Trial Chamber will consider them as aggravating circumstances with regard to sentencing. The Trial Chamber notes the submissions by the Prosecution that the number and vulnerability of the victims, the suffering of the victims, the form of the accused's participation and the enthusiasm of the accused while participating in these crimes should be taken into consideration with regard to determining the gravity of the crimes.³⁰⁰² The Trial Chamber will consider these factors to be aggravating circumstances with regard to sentencing and therefore has not considered them with regard to the gravity of the crimes.

1064. In total, the Trial Chamber has found Milan Lukić responsible for the deaths of at least 132 people.³⁰⁰³ Milan Lukić committed these crimes against vulnerable victims whom he had rendered helpless. The victims of the Pionirska street fire and the Bikavac fire were children, women and elderly. Among the victims of the Pionirska street fire were a seventy-five-year-old woman, six children between the ages of two and four years old, and a two-day-old infant. Several of Milan Lukić's victims were neighbours, individuals with whom he once had attended school, and women who had known him since he was a child. The detainees in the Uzamnica camp were prisoners living in deplorable conditions, with no opportunity to escape the prison or their tormentors.

³⁰⁰⁰ Prosecution final trial brief, paras 617-619.

³⁰⁰¹ Prosecution final trial brief, para. 620.

³⁰⁰² Prosecution final trial brief, para. 603. However, the Trial Chamber notes Milan Lukić's role in the crimes is considered with regard to the gravity of the crime.

³⁰⁰³ The Trial Chamber notes, however, that large-scale killing is an element of the crime of extermination. Therefore, the number of victims cannot be considered an aggravating factor of the crime. See *Stakić* Trial Judgement, para. 904.

1065. During the Drina river and Varda factory incidents, Milan Lukić selected his victims at random from among Muslim civilians. Just prior to the Drina river killings, Milan Lukić ordered the two armed men that he had brought with him to switch their weapons to fire single shots, not bursts. He also carried out the cold-blooded murder of Hajra Korić in a flippant and cavalier manner, laughing when he shot her twice. The brutal beatings that Milan Lukić carried out against detainees at Uzamnica camp as an opportunistic visitor also reflect his enjoyment of inflicting pain on his Muslim victims.

1066. The survivors of these crimes now live with permanent physical injuries and with the mental anguish that accompanies those who have witnessed and survived the brutality and violence which Milan Lukić inflicted upon them. The Trial Chamber particularly recalls Zehra Turjačanin, who presented a sad, tragic but heroic figure as the sole survivor of the Bikavac fire. The survivors of both fires were forced to leave behind family members or neighbours in their escape. Several survivors bear the scars and physical pain of having been burned, shot by bullets and hit by shrapnel. The Uzamnica detainees bear scars, ill-health and serious physical disabilities as a result of the beatings they received in detention. Family members watched their loved ones being taken away, and after the Drina river incident and Varda factory incident, had to live with the fear and uncertainty that resulted from Milan Lukić's random selection of Muslim victims.

1067. The Trial Chamber recalls its findings that the killing of Hajra Korić, the Pionirska street fire, and the Bikavac fire were premeditated. It also notes that approximately two weeks before the Pionirska street fire, in which many members of the Kurspahić family perished, Milan Lukić told CW1 that he "got orders that not an ear should remain of the Kurspahić family".³⁰⁰⁴

1068. Milan Lukić proceeded deliberately through each stage of his crimes. Neither the fear nor the suffering of his victims dissuaded him. Nor was he deterred by the prospect of being identified in carrying out his heinous acts. The victims of the Drina river incident, the Pionirska street incident, and the Bikavac incident were detained prior to being killed. Milan Lukić opted to kill them rather than to release them. Just prior the Drina river incident, Milan Lukić ignored the pleas of the men he had decided to kill.³⁰⁰⁵ The Trial Chamber also notes VG032's evidence that it appeared that none of those present gave orders to Milan Lukić or seemed able to affect his actions or decisions.³⁰⁰⁶ In addition, the victims of the Drina river incident were killed by single shots and the victims of the Varda factory incident were killed one by one. Milan Lukić had ample opportunity to recognise the suffering of the first victims and to halt the killings before killing more

³⁰⁰⁴ CW1, 17 Mar 2009, T. 5548.

³⁰⁰⁵ VG032, 4 Sep 2008, T. 1179-1180; Mitar Vasiljević, 10 Sep 2008, T. 1523; P263, clip 113.

³⁰⁰⁶ VG032, 11 Sep 2001, T. 300-301.

people. In each instance, he continued to kill the victims. The victims of the Pionirska street fire survived at least 20 minutes inside the burning room.³⁰⁰⁷ VG084 and VG018, who escaped the inferno, heard screams from the victims still trapped inside.³⁰⁰⁸ The victims of the Bikavac fire also survived approximately 20 minutes inside the burning room.³⁰⁰⁹ VG058 testified that she heard their screams, “like the screams of cats”, as they burned.³⁰¹⁰ The victims of these fires might not have died had they been allowed to leave the burning houses at any point in those 20 minutes. Milan Lukić was present during their final minutes and could not have been unaware of their pain; the evidence establishes that he did nothing to stop the burning or to release the victims. During the Pionirska street fire, he continued to shoot at victims who tried to escape.

1069. Furthermore, in examining these crimes in their totality, the Trial Chamber notes the pattern of repetition in Milan Lukić’s behaviour. Two men survived the Drina river incident on 7 June 1992. Three days later, Milan Lukić selected another seven men from the Varda factory, took them to the bank of the Drina river, and shot them in cold blood. On this occasion, none of the men survived. Similarly, while approximately ten individuals survived the Pionirska street fire, only one individual survived the Bikavac fire and the house was destroyed completely. Prior to setting the Bikavac fire, the perpetrators barricaded the exits, which they had not done prior to setting the Pionirska street fire. After witnessing the consequences of his actions, including the bodies in the river and the sights and sounds of people burning alive, Milan Lukić sought not just to replicate these acts of extreme violence, but to carry them out with greater efficiency.

(c) The mitigating circumstances regarding Milan Lukić

1070. The Trial Chamber finds that, as submitted by the Prosecution, Milan Lukić did not co-operate with the Prosecution and therefore this cannot be considered a mitigating circumstance.³⁰¹¹

1071. The Trial Chamber notes that Milan Lukić’s detention has caused difficulties for his family, but ascribes little weight to it as a mitigating factor in sentencing.

1072. The Trial Chamber does not agree with the Milan Lukić Defence that the fact that Milan Lukić did not join the war voluntarily should be a mitigating factor in his sentencing.³⁰¹²

³⁰⁰⁷ Benjamin Dimas testified that in many fires, victims will suffocate within five to 20 minutes. Benjamin Dimas, 24 Mar 2009, T. 6100. The Trial Chamber notes that this statement is not based on his specific knowledge of how long the victims survived in the Pionirska street fire. VG084 and VG018 heard screams and gunshots for an hour to an hour and a half after their escape from the Pionirska street fire, P82, T. 1601; P83, p. 10; P74, p. 4.

³⁰⁰⁸ P82, T. 1601; P83, p. 10; P74, p. 4.

³⁰⁰⁹ Benjamin Dimas, 24 Mar 2009, T. 6100, 6101. The Trial Chamber again notes that this statement is not based on his specific knowledge of how long the victims survived in the Bikavac fire. VG058 testified that the burning “lasted perhaps half an hour”, VG058, 11 Sep 2008, T. 1602.

³⁰¹⁰ VG058, 11 Sep 2008, T. 1598, 1602; 1D41, p. 8.

³⁰¹¹ Prosecution final trial brief, para. 627.

1073. The Milan Lukić Defence also submits that Milan Lukić did not “distinguish between people based upon their ethnicity”³⁰¹³ and that he assisted Muslims during the war.³⁰¹⁴ The Trial Chamber notes that several Defence and Prosecution witnesses stated that Milan Lukić was friendly with Muslims prior to the war.³⁰¹⁵ However, the Trial Chamber recalls that it found both MLD1 and MLD10, who gave evidence that Milan Lukić assisted Muslims during the war, to be unreliable witnesses. In addition, the Trial Chamber recalls its findings as to the numerous occasions on which Milan Lukić attacked, robbed or killed Muslims on the basis of their religious affiliation. The possibility that he might have rendered assistance to a few Muslims cannot mitigate to any significant extent the sentence required for the grave and heinous crimes that he committed, particularly given that he indiscriminately attacked even those Muslims with whom he had prior good relations. The fact that Milan Lukić was friendly with Muslims prior to the war only serves to magnify the cruelty of his acts and conduct against Muslims during the war, and should not mitigate his sentence.

1074. The Milan Lukić Defence submits that the individual circumstances of Milan Lukić, as detailed by George Hough in his expert report and testimony, must mitigate Milan Lukić’s sentence. George Hough, a clinical psychologist,³⁰¹⁶ evaluated Milan Lukić on six occasions in November 2008 for a total of 24 hours.³⁰¹⁷ George Hough testified that as a child, Milan Lukić did not exhibit any of the usual indicators that would signal “the emergence of deviant development or severe psychopathology” such as fighting, delinquency, criminality, and drug and alcohol abuse.³⁰¹⁸ He also concluded that Milan Lukić was “a follower and not a leader”, and that there are no

³⁰¹² Milan Lukić final trial brief, para. 616, 617.

³⁰¹³ Milan Lukić final trial brief, para. 628.

³⁰¹⁴ Milan Lukić final trial brief, paras 629, 632.

³⁰¹⁵ See *e.g.* VG014, 10 Jul 2008, T. 350-351, 362; VG097, 26 Aug 2008, T. 599; Željko Marković, 17 Dec 2008, T. 3845; MLD10, 18 Dec 2008, T. 3951; MLD20, 26 Jan 2009, T. 4499.

³⁰¹⁶ Dr. George Hough is certified by the American Board of Professional Psychology in the United States, George Hough, 25 Mar 2009, T. 6211; 1D202, p. 10.

³⁰¹⁷ George Hough, 25 Mar 2009, T. 6286, 26 Mar 2009, T. 6351; 1D203, p. 1; Prosecution submission concerning matters related to Dr. George Hough, filed confidentially on 2 February 2009; Dr. George Hough, 26 Mar 2009, T. 6326-6330; P309. The Prosecution raised its concern with the Trial Chamber that Co-counsel Dragan Ivetić had acted as the translator during the course of the consultations. George Hough testified, both on direct examination and cross-examination, that the situation had not been ideal. The Prosecution presented George Hough with Donald Bershof’s article, “Ethical conflicts in psychology”, which notes that problems may arise where the linguistic skills of the psychologist do not match the language of the client. George Hough explained that he reviewed the guidelines from most to least optimal and stated there were “really no other choices available”, George Hough, 26 Mar 2009, T. 6327-6329. Nonetheless, on examination-in-chief, he testified that to the best of his ability to judge, he believed Dragan Ivetić had done “a professional job”, George Hough, 25 Mar 2009, T. 6288. He further stated that he believed his report to be a “reliable and valid report of Mr. Lukić’s current emotional and cognitive status,” George Hough, 25 Mar 2009, T. 6288. On cross-examination, George Hough readily admitted that he could not “rule out” the fact that items could have been omitted in the process of translation, George Hough, 26 Mar 2009, T. 6329. He also testified that he “was aware that there is the risk of a dual-role relationship, since Mr. Ivetić is also on the Defence team; but the Defence attorneys assured me that they had exhausted resources, all other alternatives to a competent translator, so I agreed to go ahead and work with Mr. Ivetić”, George Hough, 25 Mar 2009, T. 6288.

³⁰¹⁸ George Hough, 25 Mar 2009, T. 6291-6292.

indications that Milan Lukić held any positions of leadership.³⁰¹⁹ He also stated that Milan Lukić “introduced himself wherever he went because he viewed himself as a professional policeman”.³⁰²⁰

1075. No evidence has been led in this case that Milan Lukić acted on the orders of his superiors. However, the Trial Chamber has considered Dr. Hough’s analysis in its evaluation of the sentencing.

1076. The Trial Chamber does not consider that the fact that Milan Lukić had no criminal record prior to the war to be a mitigating factor in his sentencing.³⁰²¹ The circumstances of the crimes he committed and the attitude with which he carried out these crimes show that Milan Lukić was not a victim of the “chaos” of the war, as the Milan Lukić Defence submits,³⁰²² but rather an opportunist who took advantage of an environment in which he could commit crimes against Muslims with impunity.

(d) The character of Milan Lukić as a mitigating factor in his sentencing

(i) The character of Milan Lukić prior to the war

1077. MLD10, a former Muslim neighbour of Milan Lukić, described him as a “very positive character” and testified that he was “thoughtful and kind to all people, regardless of nationality or ethnicity”.³⁰²³ Željko Marković, who was acquainted with Milan Lukić between 1987 and 1989, described Milan Lukić as a quiet man who lived modestly. He stated that Milan Lukić was the “paragon of gentleman-like behaviour”.³⁰²⁴ Other Defence witnesses presented similar accounts of Milan Lukić’s character prior to the war.³⁰²⁵ Several Defence witnesses testified that Milan Lukić did not drink alcohol or smoke.³⁰²⁶ The Prosecution tendered photographs of Milan Lukić holding a cigarette and holding a bottle that appeared to be filled with alcohol.³⁰²⁷ MLD20 explained that “when [Milan Lukić] went to school, he neither smoke nor drank”, and the photographs depicted events that “were probably special occasions”.³⁰²⁸ However, Zehra Turjačanin testified that Milan Lukić smoked while he still was attending school.³⁰²⁹

(ii) The character of Milan Lukić during the war

³⁰¹⁹ George Hough, 25 Mar 2009, T. 6315.

³⁰²⁰ Milan Lukić final trial brief, para. 646, citing George Hough, 25 Mar 2009, T. 6304-6305.

³⁰²¹ *Bralo* Sentencing Judgement, para. 47, 48.

³⁰²² Milan Lukić final trial brief, para. 637.

³⁰²³ MLD10, 18 Dec 2008, T. 3951-3952.

³⁰²⁴ Željko Marković, 17 Dec 2008, T. 3844-3845.

³⁰²⁵ MLD7, 19 Jan 2009, T. 4274; MLD15, 3 Feb 2009 T. 4661.

³⁰²⁶ 1D203, p. 7; MLD15, 3 Feb 2009 T. 4675; MLD18, 23 Jan 2009, T. 4423; MLD20, 26 Jan 2009, T. 4499; MLD24, 5 Mar 2009, T. 5163; Željko Marković, 17 Dec 2008, T. 3873.

³⁰²⁷ P231; P232.

1078. MLD17, who testified to having known Milan Lukić since April 1992 when they were neighbours in Belgrade, gave evidence regarding his character both prior to and during the war.³⁰³⁰ MLD17 described that Milan Lukić was exceptional, calm, had a “good heart” and that Milan Lukić did not treat his neighbours differently based on their ethnicity.³⁰³¹ On cross-examination, MLD17 agreed that most of their neighbours were Serbs and that her assessment of his character was based on the few times she had met him in April and June of 1992 and once in early March 1993.³⁰³²

1079. Anka Vasiljević, who was in a *kum* relationship with Milan Lukić and has known him since 1992, testified that she had regular contact with him during the war and at religious and social events after the war.³⁰³³ She stated that during the war he was a good man, a good *kum*, who loved children and provided moral support.³⁰³⁴ She had never heard anybody speak ill of Milan Lukić, neither during nor after the war.³⁰³⁵ Anka Vasiljević testified that if he was able to help “he helped everybody”.³⁰³⁶ She likened him to the “patron saint” of her family and stated that she continued to adore him.³⁰³⁷

1080. The Trial Chamber has noted the Defence’s submissions and the evidence provided by Željko Marković, MLD10, MLD7, and Anka Vasiljević as to Milan Lukić’s good character. However, it considers that the sheer brutality of Milan Lukić’s actions sharply contradicts their testimony, as does the evidence given by those who survived his attacks.

(e) The purpose of sentencing with regards to Milan Lukić

1081. The Milan Lukić Defence submits that the principle of deterrence is not applicable to the case of Milan Lukić because Milan Lukić “poses no danger to the wider community and his actions during the war were a response to a chaotic and uncontrollable situation” created by political leaders.³⁰³⁸ It argues that the prosecution of Milan Lukić will not deter, and will in fact embolden, these political leaders by rendering them “immune from the grasp of justice”.³⁰³⁹ The Trial Chamber cannot agree with this assessment. The deterrence of direct perpetrators is as much a primary objective of sentencing as is the deterrence of indirect perpetrators in leadership positions.

³⁰²⁸ MLD20, 26 Jan 2009, T. 4517-4518.

³⁰²⁹ Zehra Turjačanin, 25 Sep 2008, T. 2292, 2293.

³⁰³⁰ MLD17, 4 Feb 2009, T. 4698-4700.

³⁰³¹ MLD17, 4 Feb 2009, T. 4700-4701.

³⁰³² MLD17, 4 Feb 2009, T. 4707, 4721-4722.

³⁰³³ Anka Vasiljević, 19 Jan 2009, T. 4186-4187, 4189, 4192, 4202. For an explanation of the *kum* relationship, see *supra* para. 132.

³⁰³⁴ Anka Vasiljević, 19 Jan 2009, T. 4191-4192.

³⁰³⁵ Anka Vasiljević, 19 Jan 2009, T. 4192.

³⁰³⁶ Anka Vasiljević, 19 Jan 2009, T. 4193.

³⁰³⁷ Anka Vasiljević, 19 Jan 2009, T. 4208.

³⁰³⁸ Milan Lukić final trial brief, para. 611.

³⁰³⁹ Milan Lukić final trial brief, para. 611.

1082. The Milan Lukić Defence also submits that the offences for which Milan Lukić has been found guilty are “much lower on the relative scale of culpability” than “horrendous crimes such as ethnic cleansing, large scale detentions, mass rape and mass executions” and that this should weigh on the Trial Chamber’s consideration of retribution. The Trial Chamber, recalling its findings as to the gravity of the crimes committed by Milan Lukić, disagrees strongly with the Defence and finds that these crimes are not ‘low’ on any “relative scale of culpability”. Furthermore, the Trial Chamber rejects the argument that horrific crimes committed by any other accused should mitigate Milan Lukić’s sentence. The Trial Chamber assesses Milan Lukić’s sentence based only upon the appropriate sanctions for the specific crimes he committed, in light of both aggravating and mitigating circumstances.

1083. The Milan Lukić Defence submits that “reconciliation should be a paramount consideration in determining any sentence for this Accused”.³⁰⁴⁰ The Trial Chamber does not agree that the acts committed by Milan Lukić were either “short-lived” or “explainable given the circumstances”.³⁰⁴¹ The Trial Chamber also notes that the Milan Lukić Defence did not explain how sentencing Milan Lukić to a shorter prison term than is otherwise warranted, given the gravity of the crimes, the aggravating factors and the mitigating factors, will assist in community reconciliation.

(f) Findings with regards to the offences committed by Milan Lukić

1084. Having considered all the evidence relating to sentencing, including matters of mitigation, the Trial Chamber maintains the position that on the basis alone of Milan Lukić’s guilt for personally, physically and in cold blood killing the five people at Drina river, the seven people at Varda factory, the 59 people in the Pionirska street fire, at least 60 people in the Bikavac fire and Hajra Korić, a total of at least 132 people, the maximum penalty is warranted. In respect of the findings of guilt with regard to the other crimes charged, the Trial Chamber is satisfied that a penalty in the highest range would be warranted.

2. Discussion with regards to the offences committed by Sredoje Lukić

(a) The gravity of the offences committed by Sredoje Lukić

1085. With regard to the Uzamnica camp incidents, Sredoje Lukić was also an opportunistic visitor in the camp who had no reason to be there other than to beat the detainees. He did not visit the camp nearly as often as Milan Lukić. However, while his beatings were not as numerous as those committed by Milan Lukić, his methods were equally savage.

³⁰⁴⁰ Milan Lukić final trial brief, para. 614.

³⁰⁴¹ Milan Lukić final trial brief, para. 614.

1086. Sredoje Lukić aided and abetted the crimes committed in the Pionirska street incident. Sredoje Lukić did not set the fire and was not found to have shot at victims inside the house or at those attempting to escape the inferno. However, the Trial Chamber recalls the particular gravity of this monstrous mass killing, which exemplifies the worst acts of inhumanity that one person may inflict upon others, as set out above. The Trial Chamber also recalls its finding that, by burning the victims and the house in which they were trapped, the perpetrators' intent was to obliterate the victims' identities and, in so doing, to strip them of their humanity.

(b) The aggravating circumstances of the crimes committed by Sredoje Lukić

1087. The Prosecution submits that Sredoje Lukić's "depravity" and his efforts to kill his victims "in a way calculated to cause the maximum amount of suffering" warrants the conclusion that his "apparently depravity and enjoyment of his criminal acts [are] an aggravating factor" with regard to his sentence.³⁰⁴² The Prosecution also submits that the premeditation of the crimes is an aggravating factor.³⁰⁴³ Where these factors have been proved beyond reasonable doubt, the Trial Chamber will consider them as aggravating circumstances with regard to sentencing. The Trial Chamber also recalls its finding that it will consider the number and vulnerability of the victims, the suffering of the victims, the form of the accused's participation and the enthusiasm of the accused while participating in these crimes as aggravating circumstances with regard to sentencing and therefore will not consider them in determining the gravity of the crimes.³⁰⁴⁴

1088. Sredoje Lukić bears criminal responsibility as an aider and abettor for the deaths of at least 59 people in the Pionirska incident, the victims of which were children, women and the elderly. Several victims of the Pionirska street incident either knew or recognised Sredoje Lukić as a policeman from Višegrad. There is no evidence that Sredoje Lukić did anything to stop the burning or to release the victims. He also bears criminal responsibility as a direct perpetrator for the beating of several men in the Uzamnica camp. The Trial Chamber recalls its findings as to the conditions in the Uzamnica camp.

1089. What the Trial Chamber has said above regarding the effect of these crimes upon the survivors also applies to Sredoje Lukić and the Trial Chamber has taken this into account as an aggravating circumstance.

1090. Sredoje Lukić had been a police officer in Višegrad before the war began and continued to serve in this capacity during the war, a position of authority that he abused when he aided and

³⁰⁴² Prosecution final trial brief, paras 617-619.

³⁰⁴³ Prosecution final trial brief, para. 620.

³⁰⁴⁴ Prosecution final trial brief, para. 603. However, the Trial Chamber notes that Sredoje Lukić's role in the crimes is considered with regard to the gravity of the crime.

abetted the Pionirska street fire and committed the beatings at Uzamnica camp. He knew many of the victims who recognised him as a police officer. Rather than using his authority to protect the citizens whom he had previously served, he participated in and therefore sanctioned the robbery, abuse and murder of his Muslim neighbours. His participation in these crimes was a cruel inversion of the duty he had to the citizens of Višegrad.³⁰⁴⁵

(c) The mitigating circumstances regarding Sredoje Lukić

1091. The Trial Chamber finds that, as submitted by the Prosecution, Sredoje Lukić did not co-operate with the Prosecution and therefore this cannot be considered a mitigating circumstance.³⁰⁴⁶

1092. The Trial Chamber heard evidence of instances during the war when Sredoje Lukić provided assistance to Muslims. VG064 gave evidence that after her husband and her brother-in-law were taken away to the Vlina Vlas hotel in late May 1992 or early June 1992, Sredoje Lukić returned them to her home after she had asked for his help.³⁰⁴⁷ Mevsud Poljo also testified that Sredoje Lukić released his Muslim neighbour Muradif Kalić from detention.³⁰⁴⁸ The Sredoje Lukić Defence submits that he risked his own safety in so doing.³⁰⁴⁹ The Trial Chamber notes the Prosecution submission that this evidence also suggests that Sredoje Lukić had the means to assist Muslims and instead opted to participate in a mass killing and multiple beatings against them.³⁰⁵⁰ The Trial Chamber does not underestimate that rendering assistance to Muslims might have been difficult for Sredoje Lukić, and would not negate the mitigating weight of his actions simply because he did not help more people. The Trial Chamber will give some weight to Sredoje Lukić's rendering of assistance to a few individuals. However, his rendering of assistance to these individuals does not warrant any substantial reduction in the sentence that must attach to the grave and heinous crimes in which Sredoje Lukić willingly participated as an aider and abettor.

1093. The Sredoje Lukić Defence submits that Sredoje Lukić surrendered voluntarily to the custody of the Tribunal and has conducted himself in an exemplary manner during his detention in the United Nations Detention Unit and before the Trial Chamber.³⁰⁵¹ The Prosecution has not made any submission that he did not surrender voluntarily. The Trial Chamber recalls that these factors have been found to be mitigating factors by the Appeals Chamber, and accordingly will treat them

³⁰⁴⁵ See also *Alekovski* Appeal Judgement, which held that an appropriate sentence must reflect both the fact that the Appellant had a secondary role in the crimes, but also that he was in a position of authority and "could have prevented the crimes [...] and certainly should not have involved himself in them". *Alekovski* Appeal Judgement, para. 184.

³⁰⁴⁶ Prosecution final trial brief, para. 627.

³⁰⁴⁷ P159, pp 9-10.

³⁰⁴⁸ Mevsud Poljo, 26 Aug 2008, T. 580, 583-584.

³⁰⁴⁹ Sredoje Lukić final trial brief, para. 569.

³⁰⁵⁰ Prosecution final trial brief, para. 628.

³⁰⁵¹ Sredoje Lukić final trial brief, paras 580-581.

as such. The Trial Chamber also notes that Sredoje Lukić is married with two children, but ascribes little weight to it as a mitigating factor in sentencing.³⁰⁵²

1094. The Sredoje Lukić Defence also submits that expressions of regret by the accused may be a mitigating factor in sentencing, and notes that the Sredoje Lukić Defence has expressed sympathy for victims on behalf of Sredoje Lukić.³⁰⁵³ The Trial Chamber accepts the sincerity of these statements by counsel. However, it does not consider them to be expressions of remorse of Sredoje Lukić of the kind contemplated by the law. While the Trial Chamber has taken these statements into account as expressions of sympathy and compassion for the suffering of the victims of the crimes, it holds that the statements are not substantial enough to warrant great weight to be placed upon them as a mitigating factor.³⁰⁵⁴

(d) The character of Sredoje Lukić as a mitigating factor in his sentencing

(i) The character of Sredoje Lukić prior to the war

1095. Defence witnesses and Prosecution witnesses testified that prior to the war Sredoje Lukić was well-liked, friendly and of good character.³⁰⁵⁵ On cross-examination, Huso Kurspahić, a former police colleague of Sredoje Lukić, agreed that prior to the war Sredoje Lukić socialised with Serbs and Muslims alike and that he was a “good colleague”.³⁰⁵⁶ He further testified that Sredoje Lukić’s first child was born in a Muslim house and that Sredoje Lukić would travel with Muslim friends.³⁰⁵⁷ Branimir Bugarski described Sredoje Lukić as “a cheerful man” who “was very attached to his family”.³⁰⁵⁸ VG042, who is Muslim, testified that “he was like he was my own son” and that her son “loved Sredoje as though Sredoje were his own brother”.³⁰⁵⁹

(ii) The character of Sredoje Lukić after his April 1992 detention

1096. The Prosecution presented evidence that Sredoje Lukić’s character changed after his capture during the early days of the war, in April 1992. Huso Kurspahić described that when he met Sredoje Lukić after his release, Sredoje Lukić appeared terrified and did not appear “normal”.³⁰⁶⁰ In cross-examination, Branimir Bugarski testified that he saw Sredoje Lukić a day or two after footage of the incident was broadcast and that Sredoje Lukić “was despondent, in a bad mood, even afraid” and

³⁰⁵² Sredoje Lukić final trial brief, para. 583.

³⁰⁵³ Sredoje Lukić final trial brief, paras 586-587.

³⁰⁵⁴ *Vasiljević* Appeal Judgement, para. 177; *Orić* Trial Judgement, para. 752.

³⁰⁵⁵ Ferid Spahić, 26 Aug 2008, T. 569, 570; Mevsud Poljo, 26 Aug 2008, T. 580, 585; VG013, 2 Sep 2008, T. 1005; VG017, 9 Oct 2008, T. 2760; VG024, 3 Nov 2008, T. 3279; 2D47, p. 3.

³⁰⁵⁶ Huso Kurspahić, 1 Sep 2008, T. 913.

³⁰⁵⁷ Huso Kurspahić, 1 Sep 2008, T. 913-914. See also VG042, 27 Oct 2008, T. 2837; VG024, 3 Nov 2008, T. 3215-3216.

³⁰⁵⁸ 2D47, p. 3.

³⁰⁵⁹ VG042, 27 Oct 2008, T. 2836- 2838.

that he showed him “certain scars on his arms”.³⁰⁶¹ VG115 also testified that Sredoje Lukić “changed a lot” when the war started.³⁰⁶² The Trial Chamber considers the Prosecution’s submission that Sredoje Lukić’s detention should not be a mitigating factor with regards to his future crimes,³⁰⁶³ as well as the Appeals Chamber’s finding in *Bralo* that “[a]n individual whose house has been attacked cannot expect, on this ground alone, any mitigation of his sentence for subsequent wrongdoings”.³⁰⁶⁴ It therefore does not consider the change in Sredoje Lukić’s demeanour after his detention to be a mitigating factor with regard to his sentence.

(e) Findings with regards to the offences committed by Sredoje Lukić

1097. In the Trial Chamber’s view, the sentence for Sredoje Lukić should take account of his role in the Pionirska street incident as an aider and abettor of a series of crimes that culminated in the barbaric killing of 59 people. As an armed participant in these crimes, Sredoje Lukić, a police officer, rendered practical assistance which had a substantial effect on the crimes committed at Jusuf Memić’s house. The majority has found that he participated in the transfer of the victims to Adem Omeragić’s house where he knew that they were to be burned alive. In the Trial Chamber’s opinion, the sentence should also reflect that while Sredoje Lukić visited the Uzamnica camp on only a few occasions, he personally and physically beat detainees in a savage manner. Lastly, his sentence must reflect the mitigating factors that the Trial Chamber has identified.

1098. Having considered all the evidence relating to sentencing, including the gravity of the crimes and matters of mitigation, the Trial Chamber finds that Sredoje Lukić’s actions warrant a severe penalty.

³⁰⁶⁰ P38, T. 873.

³⁰⁶¹ Branimir Bugarski, 2 Dec 2008, T. 3730.

³⁰⁶² VG115, 28 Aug 2008, T. 718.

³⁰⁶³ Prosecution final trial brief, para. 630.

³⁰⁶⁴ *Bralo* Sentencing Appeal Judgement, para. 18; Prosecution final trial brief, para. 630.

V. DISPOSITION

1099. The Trial Chamber finds Milan Lukić **GUILTY** pursuant to Article 7(1) of the Statute on the following counts:

- Count 1:** Persecutions, a crime against humanity,
- Count 2:** Murder, a crime against humanity,
- Count 3:** Murder, a violation of the laws and customs of war,
- Count 4:** Inhumane acts, a crime against humanity,
- Count 5:** Cruel treatment, a violation of the laws and customs of war,
- Count 6:** Murder, a crime against humanity,
- Count 7:** Murder, a violation of the laws and customs of war,
- Count 10:** Murder, a violation of the laws and customs of war,
- Count 11:** Inhumane acts, a crime against humanity,
- Count 12:** Cruel treatment, a violation of the laws and customs of war,
- Count 15:** Murder, a violation of the laws and customs of war,
- Count 16:** Inhumane acts, a crime against humanity,
- Count 17:** Cruel treatment, a violation of the laws and customs of war,
- Count 18:** Murder, a crime against humanity,
- Count 19:** Murder, a violation of the laws and customs of war,
- Count 20:** Inhumane acts, a crime against humanity,
- Count 21:** Cruel treatment, a violation of the laws and customs of war.

1100. The Trial Chamber by majority, Judge Van den Wyngaert dissenting, finds Milan Lukić **GUILTY** pursuant to Article 7(1) of the Statute on the following counts:

- Count 8:** Extermination, a crime against humanity, which disposes of count 9, murder, a crime against humanity,
- Count 13:** Extermination, a crime against humanity, which disposes of count 14, murder, a crime against humanity.

1101. The Trial Chamber sentences Milan Lukić to a term of imprisonment for the remainder of his life.

1102. Milan Lukić has been detained since 8 August 2005. Pursuant to Rule 101(C), Milan Lukić is entitled to credit for time spent in detention, which as of the date of this judgement amounts to 1443 days, and for such additional time as he may serve pending the determination of any appeal. This information is provided in the event that it becomes necessary in any subsequent proceedings. Pursuant to Rule 103(C), Milan Lukić shall remain in the custody of the Tribunal pending finalisation of arrangements for his transfer to the State where he shall serve his sentence.

1103. The Trial Chamber by majority, Judge David dissenting, finds Sredoje Lukić **NOT GUILTY** on the following counts:

- Count 8:** Extermination, a crime against humanity,
- Count 13:** Extermination, a crime against humanity,
- Count 14:** Murder, a crime against humanity,
- Count 15:** Murder, a violation of the laws and customs of war,
- Count 16:** Inhumane acts, a crime against humanity,
- Count 17:** Cruel treatment, a violation of the laws and customs of war.

1104. The Trial Chamber finds Sredoje Lukić **GUILTY** pursuant to Article 7(1) of the Statute on the following counts:

- Count 1:** Persecutions, a crime against humanity,
- Count 11:** Inhumane acts, a crime against humanity,
- Count 12:** Cruel treatment, a violation of the laws and customs of war,
- Count 20:** Inhumane acts, a crime against humanity,
- Count 21:** Cruel treatment, a violation of the laws and customs of war.

1105. The Trial Chamber by majority, Judge Robinson dissenting, finds Sredoje Lukić **GUILTY** pursuant to Article 7(1) of the Statute on the following counts:

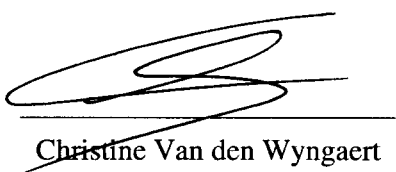
- Count 9:** Murder, a crime against humanity,
- Count 10:** Murder, a violation of the laws and customs of war,

1106. The Trial Chamber sentences Sredoje Lukić to a sentence of 30 years of imprisonment.

1107. Sredoje Lukić has been detained since 16 September 2005. Pursuant to Rule 101(C), Sredoje Lukić is entitled to credit for time spent in detention, which as of the date of this judgement amounts to 1404 days, and for such additional time as he may serve pending the determination of

any appeal. Pursuant to Rule 103(C), Sredoje Lukić shall remain in the custody of the Tribunal pending finalisation of arrangements for his transfer to the State where he shall serve his sentence.

Done in English and French, the English version being authoritative.



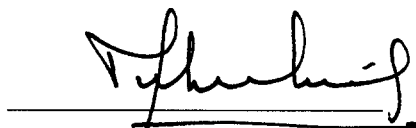
Christine Van den Wyngaert

Judge



Patrick Robinson

Presiding Judge



Pedro David

Judge

Dated this twentieth day of July 2009

At The Hague

The Netherlands

[Seal of the Tribunal]

Judge Robinson appends two separate opinions. Judge Van den Wyngaert and Judge David append dissenting opinions.

VI. SEPARATE OPINION OF JUDGE ROBINSON

A. Defence challenge to Mitar Vasiljević's presence at Pionirska street on 14 June 1992

1108. The majority of the Trial Chamber has found that the Užice hospital logbook entry and Užice hospital case history are false and they arrive at this conclusion on the basis that the evidence of Dr. Raby that the 1992 x-ray presented by Mitar Vasiljević during his trial in support of his alibi, does not match an x-ray taken of his leg in 2001. As a consequence of their finding that the hospital records are false, the majority accepts the evidence of the Prosecution witnesses that Mitar Vasiljević was present at Pionirska street on 14 June 1992 during the periods of the transfer and the house burning. I disagree with that finding.

1109. In my view, no conclusive evidence has been presented to contradict the authenticity of the Užice hospital logbook entry and the Užice hospital case history. While the evidence of Dr. Raby may cast some doubt on their credibility, I do not regard that as a sufficient basis to reject them as false. Innocuous factors, including clerical error in accurately identifying Mitar Vasiljević's 1992 x-ray, may provide an explanation for the findings of Dr. Raby. My concurrence with the Trial Chamber's acceptance of the evidence of Dr. Raby must therefore be read subject to the conclusion I have arrived at and reflected in this paragraph.

1110. Nevertheless, the fact that certain Prosecution witnesses place Mitar Vasiljević on Pionirska street during the periods of the transfer and house burning, does not in and of itself, destroy their credibility with regard to their identification of either Milan Lukić or Sredoje Lukić. Both Accused in the current case are separate and distinct from each other and from Mitar Vasiljević. Accordingly, the circumstances of each witness' identification of either or both Milan Lukić and Sredoje Lukić must be individually assessed. Factors for consideration would therefore include whether there was prior knowledge of either of the accused and the quality of any such prior knowledge; whether either of the accused introduced themselves to the Koritnik group within the hearing and/or visual range of any of the Prosecution witnesses, and the conditions under which witnesses may have observed Milan Lukić and Sredoje Lukić.

1111. In conclusion, while I accept the hospital records as true, and therefore find that Mitar Vasiljević was not present on Pionirska street on 14 June 1992 during the transfer and house burning, that finding does not necessarily oblige me to treat as discredited the Prosecution witnesses who placed Milan Lukić and Sredoje Lukić on Pionirska street on 14 June 1992, and in the result, I accept those witnesses as credible.

VII. SEPARATE OPINION OF JUDGE ROBINSON

1112. The majority has found that sufficient evidence has been presented by the Prosecution which proves beyond reasonable doubt that Sredoje Lukić aided and abetted in the murder and extermination of 59 people at Adem Omeragić's house along Pionirska street on 14 June 1992. I disagree with that finding.

1113. It is clear that Sredoje Lukić did not participate in setting Adem Omeragić's house on fire or in shooting at the windows of Adem Omeragić's house as persons attempted to escape, as there is no reliable evidence to that effect. The question is whether his involvement in the transfer was at a level sufficient to meet the test for aiding and abetting, that is, whether he provided practical assistance, encouragement or moral support, which had a substantial effect on the perpetration of murder and extermination. In my view, the evidence does not substantiate such a finding: VG-084 was not able to distinguish between Milan Lukić and Sredoje Lukić, VG-018 was confused in her identification of both Milan Lukić and Sredoje Lukić as was VG-038. All that the evidence shows is that Sredoje Lukić was present. There is no evidence, or no credible evidence showing that he rendered practical assistance, encouragement or moral support which had a substantial effect on the perpetration of the crimes of murder and extermination, such as to incur legal responsibility.

VIII. PARTLY DISSENTING OPINION OF JUDGE VAN DEN WYNGAERT

1114. The majority of this Trial Chamber found that Milan Lukić is guilty of two counts of extermination, a crime against humanity pursuant to Article 5(b) of the Statute, for having killed 59 persons in the Pionirska street fire and at least 60 persons in the Bikavac fire, respectively. I respectfully dissent from that finding. Although I concur that Milan Lukić is guilty of murder with regards to the Pionirska street fire incident and the Bikavac fire incident, I cannot agree that the killings in Pionirska street and Bikavac are of the scale of massiveness required for extermination. Consequently, I would acquit Milan Lukić of the crime of extermination.

A. Extermination is a crime of massiveness

1115. The crime of extermination is defined as “killing on a large scale”.³⁰⁶⁵ The massiveness of the killing is the distinctive element which distinguishes the crime of extermination from the crime of murder. This single material element reflects the gravity of the crime of extermination. An extermination need not be carried out with discriminatory intent³⁰⁶⁶ or pursuant to a pre-existing plan or policy.³⁰⁶⁷ Further, extermination is not the “killing of certain named or described persons”.³⁰⁶⁸ Indeed, the crime of extermination almost necessarily must be of such a scale of killing as to be prohibitive to identifying, naming, or counting the victims with specificity.³⁰⁶⁹ In my opinion, the massive scale reflects of the unique gravity of the crime of extermination.

1116. This gravity must be preserved by retaining a high standard for the requirement of massiveness. To lower the threshold by which we measure massiveness necessarily lowers the threshold by which exterminations are defined, to the detriment of the standards of gravity the Appeals Chamber has set for the crime of murder and for the crime of extermination.

1117. I recognise that the Appeals Chamber has not set a numerical minimum for the crime and has rejected the submission that the threshold must be at least thousands of deaths.³⁰⁷⁰ Notably, the Appeals Chamber has held that an extermination can be found when the required scale of killings arise in a single incident of mass killing or in the aggregation of a series of killing incidents.³⁰⁷¹ However, in my opinion, the sheer scale of killings continues to be the most relevant factor in determining whether a mass killing incident has reached the “required threshold of massiveness” for

³⁰⁶⁵ *Stakić* Appeal Judgement, para. 259; *Ntakirutimana* Appeal Judgement, para. 516.

³⁰⁶⁶ *Akayesu* Appeal Judgement, para. 469.

³⁰⁶⁷ *Krstić* Appeal Judgement, para. 225. See also *Kunarac et al.* Appeal Judgement, para. 98.

³⁰⁶⁸ *Ntakirutimana* Appeal Judgement, paras 517, 521.

³⁰⁶⁹ See *Ntakirutimana* Appeal Judgement, paras 518, 521.

³⁰⁷⁰ See e.g. *Brdanin* Appeal Judgement, para. 471; *Stakić* Appeal Judgement, paras 260-261; *Ntakirutimana* Appeal Judgement, para. 516; *Blagojević and Jokić* Trial Judgement, para. 573.

the crime of extermination.³⁰⁷² The circumstances of the killings may be a factor in a determination of massiveness,³⁰⁷³ but it cannot replace this requirement.

1118. In making its findings of extermination, the majority of this Trial Chamber also relied on the population density of the particular area from which the victims came. In determining the correct threshold for a finding of extermination, the majority found that there may be a higher threshold with regard to the number of persons killed in a very densely populated area and that it would not be inappropriate to find extermination in a less densely populated area on a lower threshold. In my opinion, this introduces a new and highly subjective element into the crime of extermination. An analysis of population density is dependent upon how one defines the relevant reference area. Including this element into the crime grants the Prosecution enormous discretion to determine the relevant reference area by the way in which it formulates the indictment, or requires the Chamber to assess the subjective boundaries of the community in question. I cannot concur with the inclusion of such relativity and uncertainty in the law of extermination.

1119. Even if an objective standard for defining reference areas could be agreed upon, I believe that the definition of massiveness should not hinge upon the victims' affiliation to a community. This reflects the Appeals Chamber's conception of the crime, the only material element of which is that killing must be on a large scale. An area's population density should not bear on the absolute massiveness of a killing event that occurs in that area. To suggest otherwise may lead to the legally untenable result in which the killing of twenty people in a small village is found to constitute extermination, but the killing of thousands of people in a large city does not. Further, killing incidents involving victims who did not all come from the same area would require an assessment of the population density of a number of reference areas. Depending on the respective population density of each area, this may lead to the odd result that a killing incident may be qualified as extermination only in relation to some of the victims.

B. The threshold for making a legal determination of extermination must remain high

1120. The multiple killings at Pionirska street and at Bikavac were brutal and cruel. The fact that I do not believe they reach the threshold of extermination does not reflect my belief that they are not extremely grave offences. Rather, my decision reflects the very high level of gravity that has been ascribed to the crime of murder. Indeed, I am concerned that if we find that mass killings of increasingly low scale to be extermination, then this inadvertently may suggest that the charge of

³⁰⁷¹ *Martić* Trial Judgement, para. 404; *Brdanin* Trial Judgement, para. 391. See also *Brdanin* Appeal Judgement, paras 471-472.

³⁰⁷² *Brdanin* Appeal Judgement, para. 472.

³⁰⁷³ *Stakić* Trial Judgement, para. 640.

murder is not significant enough to convey the seriousness of the crimes. Murder charges, particularly given the weight judges may give to the circumstances of the killing in sentencing,³⁰⁷⁴ are appropriate for individual and multiple killings. To hold extermination to a lower standard because a multiple killing is considered to be particularly vicious would, I fear, have the unintended result of trivialising both the crime of murder and the crime of extermination.

1121. My decision reflects the specific, distinct gravity that I believe must be prescribed to the crime of extermination. When the United Nations recognised genocide as an act and as a crime, it gave credence to the fact that the crime of genocide is of such heinousness as to far exceed even the crime of murder.³⁰⁷⁵ As a crime that defied available definitions, genocide therefore required its own definition. However, the crime of genocide excluded a category of crimes that involved mass murder of comparable scale as genocide but which may not have been carried out with the same discriminatory intent.³⁰⁷⁶ The crime of extermination is the only crime that might encompass these incidents. Extermination therefore must be distinguished as a crime that, like genocide, is distinct from and of higher gravity than the individual murders that made up the entire incident.

1122. Extermination has been the legal characterisation used by the ICTY and the ICTR to define the massacre of thousands in Srebrenica³⁰⁷⁷ and the massacres of hundreds or thousands, often in safe haven locations, in Rwanda during the Rwandan genocide.³⁰⁷⁸ Mass killings of this scale warrant a distinct name that reflects the particular gravity of the offence.

C. Neither the Pionirska street incident nor the Bikavac incident meet the threshold for extermination

1123. In my opinion, neither the Pionirska Street incident nor the Bikavac incident meet the threshold of massiveness as established in the case-law of the Tribunal, even when taking into

³⁰⁷⁴ Statute of the International Criminal Tribunal for the Former Yugoslavia, art. 24(2). See also *Aleksovski* Appeal Judgement para. 182; *Delalić et al.* Appeal Judgement, para. 825.

³⁰⁷⁵ The Crime of Genocide, United Nations General Assembly Resolution 96(I), 11 December 1946.

³⁰⁷⁶ Convention on the Prevention and Punishment of the Crime of Genocide, Art. 2.

³⁰⁷⁷ *Blagojević and Jokić* Trial Judgement, para. 577; *Krstić* Trial Judgement, paras 79, 84, 426, 505.

³⁰⁷⁸ For example, thousands of people were massacred at the Catholic Church and Home St. Jean Complex, *Kayishema and Ruzindana* Trial Judgement, paras 353, 577; thousands of people were massacred at the Stadium in Kibuye, *Kayishema and Ruzindana* Trial Judgement, paras 378, 577; thousands of people were massacred at Mubunga Church, *Kayishema and Ruzindana* Trial Judgement, paras 402, 577; thousands of people were killed at the massacre at ETO and the massacre of ETO survivors at Nyanza school, *Rutaganda* Trial Judgement, paras 299, 300-301, 416; several hundred of people were killed at Mugonero Complex, *Ntakirutimana* Appeal Judgement, para. 521; 1,500 people were killed at Nyange Church, *Seromba* Appeal Judgement, paras 190, 206. Several Chambers have found the killings of thousands of people during several mass killing incidents in Biseseo to be extermination, *Ntakirutimana* Appeal Judgement, para. 521; *Kayishema and Ruzindana* Trial Judgement, paras 406, 471, 577; *Musema* Trial Judgement, paras 949, 951, 1002. Incidents of mass killing in Biseseo include the massacre of thousands of people on Gitwa Hill, *Musema* Trial Judgement, paras 309-310, 679; *Ndindabahizi* Trial Judgement, paras 460, 483; the massacre of thousands of people during attacks against 15,000-40,000 refugees at Muyira Hill, *Musema* Trial Judgement, paras 363, 695, 747, 750; and the killing of more than 300 people at Nyakavu Cave, *Musema* Trial Judgement, para. 780.

account the circumstances of the killings. I believe that they must be distinguished from undisputed cases of extermination. For example, the Trial Chamber in *Krstić* determined that extermination was committed at Srebrenica, after finding that approximately 7,000 to 8,000 men were killed.³⁰⁷⁹

1124. I have also considered that the Appeals Chamber in the *Brdanin* case acknowledged that five incidents of mass killing, each of which resulted in the deaths of between 68 and 300 victims, were of such a scale as to meet the required threshold of massiveness for the purposes of extermination.³⁰⁸⁰ The Trial Chamber in *Stakić* and the Trial Chamber in *Krajišnik* also held that several specific incidents of mass killings individually fulfilled the requisite level of massiveness.³⁰⁸¹ While many of these incidents were of a larger scale than either the Pionirska Street or Bikavac incidents, several were of comparable scale. Indeed, the *Krajišnik* Trial Judgement specifically identified the Pionirska street incident as extermination,³⁰⁸² a finding with which I cannot concur.

1125. I also note that *Brdanin*, *Stakić*, and *Krajišnik* each were charged with and found guilty of only one count of extermination. In finding the accused guilty of extermination, the Chambers aggregated all the indicted killings that occurred during the timeframe of the indictment. Ultimately, *Brdanin* was found guilty of extermination for the death of 1,669 people, *Stakić* was found guilty of extermination for the death of 1,500 people, and the Trial Chamber found *Krajišnik* guilty of extermination for the death of approximately 3,000 people.³⁰⁸³ I also consider the massacre at Nyakavu cave, in which armed assailants killed at least 300 Rwandans who had taken refuge in the cave by closing off the cave's entrance with wood and leaves and setting fire to it. All but one person died in the fire.³⁰⁸⁴ Musema, the accused in the case, was charged with and found guilty of only one count of extermination, inclusive of the Nyakavu massacre and several other mass killings

³⁰⁷⁹ *Krstić* Trial Judgement, paras 79, 84, 426, 505.

³⁰⁸⁰ *Brdanin* Appeal Judgement, para. 472.

³⁰⁸¹ *Krajišnik* Trial Judgement, para. 720; *Stakić* Trial Judgement, paras 653-654. Neither finding was brought up on appeal. The Appeals Chamber in *Stakić* relied on the entire series of incidents, in which 1,500 were killed, when it upheld *Stakić*'s conviction of extermination, *Stakić* Appeal Judgement, paras 90, 229, 242.

³⁰⁸² *Krajišnik* Trial Judgement, para. 720. The Appeal Chamber found that the Trial Chamber "failed to make the findings necessary for *Krajišnik*'s conviction" of extermination under Joint Criminal Enterprise and reversed the conviction, *Krajišnik* Appeal Chamber, paras 177, 820. The Defence did not challenge the Trial Chamber's determination that the Pionirska street incident individually, and the killing incidents cumulatively, constituted an extermination.

³⁰⁸³ *Krajišnik* Trial Judgement, paras 717, 721, 1182; *Brdanin* Trial Judgement, para. 465; *Stakić* Trial Judgement, paras 654-655. The conviction was upheld on appeal in *Brdanin* and *Stakić*, *Brdanin* Appeal Judgement, para. 471; *Stakić* Appeal Judgement, paras 90, 229, 242. *Krajišnik*'s conviction was overturned on appeal, *Krajišnik* Appeal Judgement, paras 177, 820.

³⁰⁸⁴ *Musema* Trial Judgement, paras 768, 780.

of thousands of people.³⁰⁸⁵ Indeed, most of the exterminations identified by the ICTY and ICTR have involved hundreds or thousands of killings.³⁰⁸⁶

1126. It is my opinion that the crimes at Pionirska street and Bikavac can be more closely compared to the incidents of mass killings considered by the Trial Chamber in the *Martić* case. That Trial Chamber did not find the accused guilty of extermination for the killings of approximately 30 civilians at Krečane near Baćin because the killings did not meet the threshold of massiveness, despite having been carried out in an “organised and callous manner”.³⁰⁸⁷ The *Martić* Trial Chamber also held that the multiple killing incidents charged in the indictment, which were committed within a limited period of time and within a limited territory, did not amount to extermination “on an accumulated basis”.³⁰⁸⁸

1127. As discussed above, I dissent with the majority’s finding that population density should be considered when assessing the threshold of massiveness. I also note that the population density of Višegrad was such that 60 or 70 killings would not meet the large-scale threshold in relation to the municipality’s population. The municipality of Višegrad was inhabited by over 21,000 persons and Višegrad town had about 9,000 inhabitants in 1991.³⁰⁸⁹ Although parts of Višegrad municipality may be considered thinly populated areas, the same does not necessarily hold true for Višegrad town and its surroundings. I believe that the village of Koritnik and the neighbourhood of Bikavac are artificially narrow reference areas and should not be considered as the reference areas of extermination in relation to the Pionirska street fire and the Bikavac fire, respectively. In addition, the victims of these two fires did not all come from these reference areas. Seven of the Pionirska street fire victims were from Sase, not Koritnik, and many of the Bikavac victims were from different villages in Višegrad municipality.

1128. For the reasons set out, I cannot concur that the Pionirska street and Bikavac incidents, grave and brutal as they are, qualify as extermination.

³⁰⁸⁵ *Musema* Trial Judgement, paras 308, 363, 403, 695, 945 (thousands killed in multiple incidents).

³⁰⁸⁶ See e.g. *Seromba* Appeal Judgement, para. 190; (upholding Trial Judgement’s finding of extermination); *Seromba* Trial Judgement, paras 364-365 (1,500 killings in one incident); *Blagojević and Jokić* Trial Judgement, para. 577 (7,000 killings); *Ntakirutimana* Appeal Judgement, para. 521 (hundreds of killings in one incident, thousands in a second incident); *Krstić* Trial Judgement, paras 426, 505 (7,000-8,000 killings); *Musema* Trial Judgement, paras 363, 403, 679, 695, 747, 750, 780, 945, 951, 1002 (thousands killed in multiple incidents).

³⁰⁸⁷ *Martić* Trial Judgement, para. 405.

³⁰⁸⁸ *Martić* Trial Judgement, para. 404.

³⁰⁸⁹ See P118, p. 11; Adjudicated Facts Decision, 22 Aug 2008, facts nos. 1, 2.

IX. PARTLY DISSENTING OPINION OF JUDGE DAVID

1129. On 25 September 2008, Zehra Turjačanin testified as follows regarding the armed men who herded her, her family and others, into Meho Aljić's house:

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

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

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

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

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

MR. GROOME:

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

A. No. I no longer can recall.

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

A. Yes.

Q. Please do so.

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

1130. The Prosecution tendered into evidence financial records of the SJB Višegrad for the months of May,³⁰⁹⁰ June³⁰⁹¹ and July 1992³⁰⁹² which clearly show that there was only one police officer in Višegrad named "Lukić", namely, Sredoje Lukić.

1131. In the context of a small community such as Višegrad, characterised by intensive and sustained personal, family and neighbourhood interactions, I attach great weight to Zehra Turjačanin's evidence that she recognised the only police officer in Višegrad named Lukić, that is, Sredoje Lukić. On the basis of Zehra Turjačanin's evidence alone, I would find that Sredoje Lukić was present amongst the armed men who herded Zehra Turjačanin into Meho Aljić's house. Given the extremely stressful conditions under which Zehra Turjačanin had to make this identification, I do not believe that her characterisation that he was "about 50 years of age" in any way diminishes her identification of Sredoje Lukić.

³⁰⁹⁰ P210

³⁰⁹¹ P209

³⁰⁹² P211 and P212.

1132. The Trial Chamber has already found that Zehra Turjačanin is a witness of truth. Personally, I was greatly impressed by her testimony. Despite her severe wounds and the immeasurable suffering of losing her family members in the fire at Meho Aljić's house, Zehra Turjačanin gave a coherent and truthful account of the various events that occurred before, during and after the fire at Meho Aljić's house. I am convinced Zehra Turjačanin testified only as to what she remembered, and that her memory was sufficiently accurate. That testimony, considered in conjunction with the SJB financial records, is, in my opinion, sufficient to implicate Sredoje Lukić as a participant in the Bikavac incident.

1133. There is, however, other evidence confirming Sredoje Lukić's presence in Bikavac before, during and after the incident at Meho Aljić's house. VG-035 testified she saw Sredoje Lukić at her house in Bikavac on 27 June 1992 at around 4 p.m. Both eye-witnesses to the Bikavac fire, VG-058 and VG-115, claim to have seen Sredoje Lukić at Meho Aljić's house at the time of the Bikavac fire. VG-119 testified that Sredoje Lukić came to her house immediately before and after the Bikavac fire. Lastly, both VG-119 and Huso Kurspahić claim that Zehra Turjačanin, when she was being treated for her wounds in Mededa, said that Sredoje Lukić was amongst the perpetrators of the Bikavac incident.

1134. I am not convinced by the alibi proffered by the Sredoje Lukić Defence. First, I believe that very little weight should be attached to the evidence of a direct family member (in the instant case, Zorka Lukić, who is married to one of Sredoje Lukić's brothers) when it concerns a defence of alibi. Furthermore, I am not convinced by Branimir Bugarski, who testified that Sredoje Lukić came to his house on the evening of 27 June 1992. As the Trial Chamber noted, it is not clear when Niko Vujičić first joined Sredoje Lukić and why he was in the car with Sredoje Lukić, or why Sredoje Lukić did not pick up the pig prepared by Branimir Bugarski when Sredoje Lukić had enough space in his car. The Trial Chamber was further not convinced by Branimir Bugarski's explanation as to how he is able to remember that Sredoje Lukić came to his house on that particular evening. In conclusion, and particularly in light of the Prosecution evidence set out above that Sredoje Lukić was not in Obrenovac on 27 June 1992, I reject the alibi proffered by Sredoje Lukić as not being reasonably possible true.

1135. In light of Zehra Turjačanin's testimony regarding Sredoje Lukić's involvement in the Bikavac incident, and given her evidence that all the exits to the house were already blocked from the inside when she entered it, together with VG115's testimony that Sredoje Lukić assisted in blocking the last available exit on the outside shortly before the house was set on fire, I am convinced Sredoje Lukić was at least aware of the intent to murder the approximately 60 Muslim

civilians he helped trap inside Meho Aljić's house. By his acts and conduct during the incident, he contributed to the commission of murder at Meho Aljić's house.

1136. On the basis of the foregoing, I am satisfied beyond reasonable doubt that Sredoje Lukić participated as an aidor and abettor in the Bikavac incident, and that he is guilty of aiding and abetting the crime of murder of the approximately 60 Muslim civilians in Meho Aljić's house. As a consequence, I also find Sredoje Lukić guilty of aiding and abetting extermination (as a crime against humanity), as well as cruel treatment (as a violation of the laws and customs of war) and inhumane treatment (as a crime against humanity) of the sole survivor, Zehra Turjačanin. Lastly, and on the basis of the foregoing, I find Sredoje Lukić guilty of aiding and abetting persecution (as a crime against humanity) by lending practical assistance to the following underlying persecutory acts: the murder of approximately 60 Muslim civilians, unlawful detention and confinement, harassment, humiliation, terrorisation and psychological abuse of Zehra Turjačanin, and the destruction of Meho Aljić's house. Accordingly, I would impose a higher prison sentence on Sredoje Lukić, that is, at least 40 years of imprisonment.

X. ANNEX

A. Procedural history

1. Pre-trial proceedings

1137. On 26 October 1998, the indictment against Milan Lukić, Sredoje Lukić and Mitar Vasiljević was confirmed.³⁰⁹³ On 20 July 2001, the Prosecution was granted leave to file an amended indictment.³⁰⁹⁴ On 24 July 2001, after his transfer to the Tribunal, Trial Chamber II ordered Mitar Vasiljević to be tried separately.³⁰⁹⁵

1138. Following the transfer of Sredoje Lukić to the Tribunal on 19 September 2005, the case *Prosecutor v. Sredoje Lukić* was assigned to Trial Chamber III.³⁰⁹⁶ Milan Lukić was transferred to the Tribunal on 21 February 2006 and the case *Prosecutor v. Milan Lukić* was assigned to Trial Chamber III on the same day.³⁰⁹⁷ The Trial Chamber granted the Prosecution's motions to amend the amended indictments against Sredoje Lukić and Milan Lukić on 1 February 2006 and on 22 March 2006, respectively.³⁰⁹⁸ The 22 March 2006 decision also made the second amended indictment the operative indictment against both Milan Lukić and Sredoje Lukić. Both Accused pleaded not guilty to all counts in the second amended indictment.³⁰⁹⁹

1139. On 1 February 2005, the Prosecution filed a request pursuant to Rule 11 *bis* for referral of the indictment against Milan Lukić and Sredoje Lukić to the BiH authorities.³¹⁰⁰ On 5 April 2007, the Referral Bench granted the request.³¹⁰¹ The Milan Lukić Defence appealed the decision.³¹⁰² On 11 July 2007, the Appeals Chamber reversed the Referral Bench's decision in relation to Milan

³⁰⁹³ *Prosecutor v. Milan Lukić, Sredoje Lukić and Mitar Vasiljević*, Case No. IT-98-32-I, Review of the indictment, filed confidentially on 26 October 1998. The indictment was filed on 21 October 1998.

³⁰⁹⁴ *Prosecutor v. Milan Lukić, Sredoje Lukić and Mitar Vasiljević*, Case No. IT-98-32-PT, Pre-trial conference, 20 Jul 2001, T. 60.

³⁰⁹⁵ *Prosecutor v. Mitar Vasiljević*, Case No. IT-98-32-PT, Order, 24 Jul 2001. The trial against Mitar Vasiljević commenced on 10 September 2001 and concluded on 29 November 2002. *Prosecutor v. Mitar Vasiljević*, Case No. IT-98-32-T, Judgement, 29 Nov 2002, pp 114, 117.

³⁰⁹⁶ *Prosecutor v. Sredoje Lukić*, Case No. IT-98-32/1-I, Order assigning case to Trial Chamber, 16 Sep 2005. See also *Prosecutor v. Sredoje Lukić*, Case No. IT-98-32/1-I, Corrigendum, Scheduling order for initial appearance, 19 Sep 2005.

³⁰⁹⁷ *Prosecutor v. Milan Lukić*, Case No. IT-98-32/1-I, Order assigning case to Trial Chamber, filed on 21 February 2006. See also *Prosecutor v. Milan Lukić*, Case No. IT-98-32/1-I, Scheduling order for initial appearance, 21 Feb 2006.

³⁰⁹⁸ *Prosecutor v. Sredoje Lukić*, Case No. IT-98-32/1-PT, Decision granting Prosecution's motion to amend indictment and scheduling further appearance, 1 Feb 2006; *Prosecutor v. Milan Lukić and Sredoje Lukić*, Case No. IT-98-32/1-PT, Decision granting Prosecution's motion to amend indictment with regard to Milan Lukić, 22 Mar 2006.

³⁰⁹⁹ *Prosecutor v. Sredoje Lukić*, Case No. IT-98-32/1-PT, Hearing, 13 Feb 2006, T. 20-22; *Prosecutor v. Milan Lukić and Sredoje Lukić*, Case No. IT-98-32/1-PT, Hearing, 31 Mar 2006, T. 37-40.

³¹⁰⁰ *Prosecutor v. Milan Lukić and Sredoje Lukić*, Case No. IT-98-32/1-I, Request by the Prosecutor under Rule 11 *bis*, 1 Feb 2005.

³¹⁰¹ *Prosecutor v. Milan Lukić and Sredoje Lukić*, Case No. IT-98-32/1-PT, Decision on referral of case pursuant to Rule 11 *bis* with confidential annex A and annex B, 5 Apr 2007.

³¹⁰² *Prosecutor v. Milan Lukić and Sredoje Lukić*, Case No. IT-98-32/1-AR11*bis*.1, Notice of appeal of Milan Lukić from 5 April 2007 decision on referral of case pursuant to Rule 11 *bis*, filed on 19 April 2007.

Lukić and ordered that his trial was to proceed before this Tribunal.³¹⁰³ The Appeals Chamber also permitted the Referral Bench to reconsider its decision regarding Sredoje Lukić.³¹⁰⁴ On 20 July 2007, the Referral Bench revoked its decision in relation to Sredoje Lukić, finding it to be the interest of justice for the two cases to be tried together.³¹⁰⁵

1140. The Prosecution submitted its pre-trial brief on 14 March 2008,³¹⁰⁶ and both Defence teams filed their pre-trial briefs on 25 April 2008.³¹⁰⁷ The Trial Chamber ordered each Defence team to file submissions clarifying their pre-trial briefs by 29 May 2008.³¹⁰⁸

2. Trial proceedings

(a) Overview

1141. Judge Patrick Robinson (Presiding), Judge Christine Van den Wyngaert and Judge Pedro David were assigned to hear the case.³¹⁰⁹ The Prosecution and the Milan Lukić Defence made opening statements when the case commenced on 9 July 2008.³¹¹⁰ The Sredoje Lukić Defence did not make an opening statement.³¹¹¹

1142. The Prosecution opened its case on 9 July 2008, and closed it on 11 November 2008.³¹¹² It was permitted to call a number of alibi rebuttal witnesses both during the Prosecution case-in-chief and following the close of the Defence cases. On 13 November 2008, the Trial Chamber, pursuant to Rule 98 *bis*, ruled that the Prosecution had adduced evidence capable of supporting a conviction for each of the 21 charges in the indictment.³¹¹³

1143. The Sredoje Lukić Defence opened its case on 1 December 2008 and closed on 2 December 2008.³¹¹⁴ The Milan Lukić Defence was scheduled to commence its case immediately thereafter. However, because its witnesses were unavailable to testify as scheduled during the weeks beginning

³¹⁰³ *Prosecutor v. Milan Lukić and Sredoje Lukić*, Case No. IT-98-32/1-AR11bis.1, Decision on Milan Lukić's appeal regarding referral, 11 Jul 2007. See, in particular, paras 21, 22.

³¹⁰⁴ *Id.*, para. 27.

³¹⁰⁵ *Prosecutor v. Milan Lukić and Sredoje Lukić*, Case No. IT-98-32/1-PT, Decision on Prosecutor's request pursuant to Rule 11 *bis*(F) with regard to Sredoje Lukić and incorporated decision vacating scheduling order, 20 Jul 2007, p. 3.

³¹⁰⁶ Prosecution's pre-trial brief, filed on 14 March 2008 with confidential annex.

³¹⁰⁷ Milan Lukić's preliminary pre-trial brief pursuant to Rule 65 *ter*(F) and continued request for extension of time, filed confidentially on 25 April 2008; Sredoje Lukić's defence pre-trial brief pursuant to Rule 65*ter* (F), filed confidentially on 25 April 2008.

³¹⁰⁸ Decision on Prosecution's response and motion for clarification of Defence pre-trial briefs, 15 May 2008, p. 6. See also Prosecution response and motion for clarification of Defence pre-trial briefs, 9 May 2008, p. 2.

³¹⁰⁹ Order regarding composition of Trial Chamber for trial proceedings, 8 Jul 2008.

³¹¹⁰ Hearing, 9 Jul 2008, T. 229-278; Hearing, 10 Jul 2009, T. 280-283.

³¹¹¹ Hearing, 1 Dec 2008, T. 3603.

³¹¹² Hearing, 11 Nov 2008, T. 3509.

³¹¹³ Hearing, 13 Nov 2008, T. 3580-3594.

³¹¹⁴ Hearing, 1 Dec 2008, T. 3603; Hearing, 2 Dec 2008, T. 3769.

1 and 9 December 2008,³¹¹⁵ the Milan Lukić Defence presented its first witness on 17 December 2008.³¹¹⁶ The Milan Lukić Defence closed its case on 21 April 2009.³¹¹⁷

1144. The Prosecution and the Sredoje Lukić Defence submitted their final trial briefs on 12 May 2009,³¹¹⁸ and the Milan Lukić Defence filed its final trial brief on 13 May 2009.³¹¹⁹ The Prosecution and the Milan Lukić Defence made their closing arguments on 19 May 2009.³¹²⁰ The Sredoje Lukić Defence made its closing argument on 20 May 2009.³¹²¹ The Trial Chamber permitted Milan Lukić to address the Trial Chamber briefly thereafter.³¹²²

(b) Presentation of witnesses and evidence

1145. The Trial Chamber permitted the Prosecution and the Milan Lukić Defence to call 45 witnesses, and allocated both parties 60 hours to present their respective evidence-in-chief.³¹²³ The Trial Chamber later permitted the Prosecution to call an additional nine alibi rebuttal witnesses.³¹²⁴ Ultimately, the Prosecution called 46 witnesses, including three expert witnesses. The Milan Lukić Defence called 28 witnesses, including six expert witnesses. The Sredoje Lukić Defence called three witnesses. In addition, the Trial Chamber called four witnesses.

1146. The Trial Chamber granted protective measures to 30 Prosecution witnesses, 14 Milan Lukić Defence witnesses, and two Chamber witnesses. One Prosecution witness and two witnesses for the Milan Lukić Defence testified via video-link.³¹²⁵ The Trial Chamber issued subpoenas for four Prosecution witnesses and six Milan Lukić Defence witnesses.³¹²⁶

1147. The Trial Chamber admitted 347 exhibits tendered into evidence by the Prosecution, 250 exhibits tendered into evidence by the Milan Lukić Defence, and 70 exhibits tendered into evidence by the Sredoje Lukić Defence. It also admitted into evidence three Chamber exhibits.

³¹¹⁵ Hearing, 1 Dec 2008, T. 3648. See also Hearing, 2 Dec 2008, T. 370-3702, 3703; Hearing, 9 Dec 2008, T. 3777.

³¹¹⁶ Hearing, 17 Dec 2008, T. 3839.

³¹¹⁷ Hearing, 21 Apr 2009, T. 7118.

³¹¹⁸ Prosecution final trial brief, 12 May 2009; Sredoje Lukić Defence final trial brief, 12 May 2009.

³¹¹⁹ Milan Lukić Defence final trial brief, 13 May 2009.

³¹²⁰ Prosecution closing argument, 19 May 2009, T. 7157-7185; Milan Lukić Defence closing argument, 19 May 2009, T. 7185-7218.

³¹²¹ Sredoje Lukić Defence Closing Argument, 20 May 2009, T. 7230-7252.

³¹²² Statement of Milan Lukić, 20 May 2009, T. 7222-7229.

³¹²³ Pre-trial conference, 9 Jul 2008, T. 202; Decision on Motions relating to Milan Lukić's updated witness list, filed confidentially on 4 December 2008, p. 6.

³¹²⁴ Decision on rebuttal witnesses, filed confidentially on 25 March 2009; Decision on Prosecution motion for leave to amend witness list (Hamdija Vilić), filed confidentially on 6 November 2008.

³¹²⁵ VG119, 1 Oct 2008, T. 2383; MLD17, 4 Feb 2009, T. 4696; Radomir Simšić, 21 Apr 2009, T. 7095.

³¹²⁶ Decision on the Prosecution's application for the issuance of a subpoena, filed confidentially on 1 April 2009; Decision on the Defence motion for the issuance of subpoenas, filed confidentially on 13 March 2009; Decision on Prosecution motion for issuance of subpoenas, filed confidentially on 18 September 2008.

1148. On 22 August 2008, the Trial Chamber took judicial notice of 52 adjudicated facts from the *Vasiljević* trial judgement.³¹²⁷ On 12 November 2008, the Trial Chamber took judicial notice of nine additional adjudicated facts from the *Vasiljević* trial judgement.³¹²⁸

(c) Adjournments and postponements

1149. At the request of the Prosecution, the Trial Chamber extended the summer adjournment of the trial until 25 August 2008.³¹²⁹

1150. At the request of the Milan Lukić Defence, the Trial Chamber ordered a sitting schedule of four days per week and granted a break in the proceedings from 13 October to 22 October 2008.³¹³⁰ The Trial Chamber then extended this to 27 October 2008, and postponed the deadline by which the Defence teams were to file their Rule 65 *ter* lists to 13 November 2008.³¹³¹

1151. On 6 November 2008, the Trial Chamber granted the Defence teams an additional week before the commencement of their cases and further extended the deadline for their Rule 65 *ter* submissions to 19 November 2008.³¹³² On 18 November, the Trial Chamber postponed the commencement of the Defence cases by another another week. The Sredoje Lukić Defence case began on 1 December 2008 and the Milan Lukić Defence case began on 17 December 2008.³¹³³

3. Significant issues arising during the proceedings

(a) Requests for amendment to the indictment

1152. On 12 June 2008, the Prosecution sought leave to amend the second amended indictment in order to plead joint criminal enterprise with greater specificity and to add new charges for rape, enslavement, and torture.³¹³⁴ On 8 July 2008, the Trial Chamber denied the Prosecution's request on the ground that the Prosecution had failed to provide adequate notice to the Milan Lukić Defence and Sredoje Lukić Defence and that amendment so close to the scheduled commencement of the trial would unfairly prejudice the Accused.³¹³⁵

³¹²⁷ Decision on Prosecution's motion for judicial notice of adjudicated facts, 22 Aug 2008.

³¹²⁸ Decision on Sredoje Lukić's amended motion for judicial notice of adjudicated facts with Annex A, 12 Nov 2008.

³¹²⁹ Hearing, 11 Jul 2008, T. 460-462.

³¹³⁰ Hearing, 15 Sep 2008, T. 1691; Hearing 11 Sep 2008, T. 1570-1572; Decision on Milan Lukić's motion for extension of time to prepare the Defence case-in-chief, 18 Nov 2008.

³¹³¹ Hearing, 9 Oct 2008, T. 2763-2764.

³¹³² Scheduling Order, 6 Nov 2008, p. 3.

³¹³³ Decision on Milan Lukić's motion for extension of time to prepare the Defence case-in-chief, 18 Nov 2008.

³¹³⁴ Prosecution motion seeking leave to amend the second amended indictment, filed on 16 June 2008 with confidential annexes (initially filed on 12 June 2008), para. 3.

³¹³⁵ Decision on Prosecution motion seeking leave to amend the second amended indictment and on Prosecution motion to include United Nations Security Council resolution 1820 (2008) as additional supporting material to proposed third

1153. On 18 March 2009, the Prosecution requested the indictment be amended by removing the names of three alleged victims from Schedule A.³¹³⁶ The Trial Chamber deferred its decision until after the close of evidence.³¹³⁷ The motion is disposed of earlier in this Judgement.³¹³⁸

(b) Notice of alibi and notice of witnesses

1154. After being granted extensions of time by the pre-trial Judge, the Milan Lukić Defence submitted its alibi notices pursuant to Rule 67(A)(i)(a), on 10 January 2008, and the Sredoje Lukić Defence submitted its alibi notices on 10 December 2007 and 8 January 2008.³¹³⁹ The pre-trial Judge ordered the Defence teams to submit clarifications to several enumerated aspects of the notices.³¹⁴⁰ The Sredoje Lukić Defence filed its notice of clarification on 2 June 2008,³¹⁴¹ and the Milan Lukić Defence filed its notice of clarification on 16 June 2008.³¹⁴²

1155. The pre-trial Judge ordered the Milan Lukić Defence to submit a complete list of alibi witnesses by 30 June 2008.³¹⁴³ The Milan Lukić Defence was unable to meet this deadline.³¹⁴⁴ It ultimately filed its list of alibi witnesses on 18 July 2008, in compliance with a further order by the Trial Chamber.³¹⁴⁵

1156. The Trial Chamber required both Defence teams to submit their Rule 65 *ter*(G) witness lists by 19 November 2008.³¹⁴⁶ It denied the Milan Lukić Defence's request for a two-month

amended indictment as well as on Milan Lukić's request for reconsideration or certification of the pre-trial Judge's order of 19 June 2008, 8 Jul 2008, pp 26-27.

³¹³⁶ Hearing, 18 Mar 2009, T. 5626.

³¹³⁷ Hearing, 2 Apr 2009, T. 6593.

³¹³⁸ See *supra* para. 391.

³¹³⁹ Decision on the Prosecution's motion for an order requiring the accused Milan Lukić to clarify alibi notice served under Rule 67(A)(i)(a) and on the Defence of Milan Lukić's second motion concerning protective measures for alibi witnesses, filed confidentially on 8 May 2008, p. 2; Decision on Prosecution's motion for an order requiring the accused Sredoje Lukić to clarify alibi notice served under Rule 67(A)(i)(a), 15 May 2008, p. 2.

³¹⁴⁰ Decision on the Prosecution's motion for an order requiring the accused Milan Lukić to clarify alibi notice served under Rule 67(A)(i)(a) and on the Defence of Milan Lukić's second motion concerning protective measures for alibi witnesses, filed confidentially on 8 May 2008; Decision on Prosecution's motion for an order requiring the accused Sredoje Lukić to clarify alibi notice served under Rule 67(A)(i)(a), 15 May 2008.

³¹⁴¹ Sredoje Lukić's clarification of Defence notices under Rule 67(A)(i)(a), filed confidentially on 2 June 2008.

³¹⁴² Milan Lukić's notice of compliance with disclosures and clarification of notice pursuant to Rule 67(A)(i)(a), and motion for extension of time for filing the remainder, filed confidentially on 16 June 2008, p. 2 (stating that information previously disclosed to the Prosecution meets Rule 67(A)(i)(a) disclosure standards).

³¹⁴³ Status conference, 12 Jun 2008, T. 7-8.

³¹⁴⁴ Milan Lukić further notice of alibi witnesses pursuant to ICTY Rule 67(B)(i)(a) and request for protective measures, filed confidentially on 7 July 2008; Milan Lukić further notice of alibi witnesses pursuant to ICTY Rule 67(B)(i)(a), filed confidentially on 30 June 2008; Milan Lukić's notice of compliance with disclosure and clarification of notice pursuant to Rule 67(A)(i)(a), and motion for extension of time for filing the remainder, filed confidentially on 16 June 2008.

³¹⁴⁵ Pre-trial conference, 9 Jul 2008, T. 204-205; Milan Lukić's further submissions in regard to defence of alibi, filed confidentially on 18 July 2008.

³¹⁴⁶ Scheduling Order, 6 November 2008.

extension.³¹⁴⁷ After rejecting two witness lists submitted by the Milan Lukić Defence for non-compliance with the Trial Chamber's direction as to the number of witnesses and time allowed,³¹⁴⁸ on 4 December 2008 the Trial Chamber ordered the Milan Lukić Defence to file by 9 December 2008 a list of witnesses to be called in the second and third weeks of its case, and a list of all of its witnesses by 5 January 2009.³¹⁴⁹ The Trial Chamber also ordered the Defence to provide revised witness summaries in accordance with Rule 65 *ter*.³¹⁵⁰ The Trial Chamber later ordered the Milan Lukić Defence to file a list of its first ten witnesses by 26 December 2008 and a list of the remaining 35 witnesses by 5 January 2009.³¹⁵¹

1157. The Prosecution twice requested that the Trial Chamber bar the alibi-related evidence of Defence witnesses on the basis that the Milan Lukić Defence had failed to provide proper notification, pursuant to Rule 67.³¹⁵² The Trial Chamber dismissed the Prosecution's 12 December 2008 motion as premature,³¹⁵³ and denied its 9 January 2009 motion to bar the testimony of four witnesses.³¹⁵⁴

(c) Presentation of alibi rebuttal evidence

1158. During the pre-trial conference, the Trial Chamber ordered the Prosecution to lead any evidence in rebuttal of the Defence alibis during its case-in-chief.³¹⁵⁵ The Prosecution appealed this decision on 3 September 2008.³¹⁵⁶ On 16 October 2008, the Appeals Chamber reversed the Trial Chamber's order, permitting the Prosecution to elect when to present its alibi rebuttal evidence.³¹⁵⁷ By this time, much of the evidence already had been led.

³¹⁴⁷ Decision on Defence motion for reconsideration, or certification to appeal oral ruling on scheduling Rule 65 *ter* submissions and Defence case, 5 November 2008; Milan Lukić's motion for reconsideration or certification to appeal the oral scheduling decision, filed confidentially on 16 October 2008. See Hearing, 9 Oct 2008, T. 2763-2765.

³¹⁴⁸ Milan Lukić's submissions pursuant to Rule 65 *ter* (G), filed confidentially on 19 November 2008 with confidential annexes; Milan Lukić's updated witness list pursuant to Order of the Trial Chamber, filed confidentially on 2 December 2008 with confidential annex.

³¹⁴⁹ Decision on Motions relating to Milan Lukić's updated witness list, 4 Dec 2008 (Judge Robinson dissenting in part).

³¹⁵⁰ Decision on Motions relating to Milan Lukić's updated witness list, 4 Dec 2008 (Judge Robinson dissenting with regard to Rule 65 *ter*(G)(b) requirements), p. 6.

³¹⁵¹ Hearing, 18 Dec 2008, T. 4031.

³¹⁵² Prosecution urgent motion to bar testimony of proposed Defence witnesses for failure to comply with Rule 67 (B)(i)(a), filed confidentially on 9 January 2009; Prosecution Motion to bar testimony of proposed Defence witnesses for failure to comply with Rule 67(A)(i)(a), filed confidentially on 12 December 2008.

³¹⁵³ Hearing, 18 Dec 2008, T. 4028-4029.

³¹⁵⁴ Decision on Prosecution urgent motion to bar testimony of proposed Defence witnesses and on Milan Lukić's motion for video-link testimony, filed confidentially on 20 January 2009. See also Decision on Prosecution motion for reconsideration of or certification to appeal the Trial Chamber's decision on motion to bar non-noticed alibi evidence, filed confidentially on 3 March 2009.

³¹⁵⁵ Pre-trial conference, 9 Jul 2008, T. 223.

³¹⁵⁶ *Prosecutor v. Milan Lukić and Sredoje Lukić*, Case No. IT-98-32/1-AR73.1, Prosecution appeal of oral decision to call Prosecution's alibi rebuttal evidence during its case-in-chief, 3 Sep 2008.

³¹⁵⁷ *Prosecutor v. Milan Lukić and Sredoje Lukić*, Case No. IT-98-32/1-AR73.1, Decision on the Prosecution's appeal against the Trial Chamber's order to call alibi rebuttal evidence during the Prosecution's case-in-chief, 16 Oct 2008.

(d) Disclosure by the Prosecution during the trial

1159. The Milan Lukić Defence alleged on several occasions that the Prosecution had failed to disclose relevant information in a timely manner. In response, the Trial Chamber granted the Defence additional time to prepare for cross-examination of a witness when late disclosure otherwise would have left the Defence with insufficient preparation time.³¹⁵⁸ The Trial Chamber decided that excluding witness testimony was the appropriate remedy only with regard to VG094.³¹⁵⁹ The Trial Chamber subsequently permitted the Prosecution to call VG094 as an alibi rebuttal witness.³¹⁶⁰

1160. The Milan Lukić Defence also submitted that the Prosecution had breached its Rule 68 obligations by not disclosing in full an internal memorandum containing certain exculpatory information. Instead, the Prosecution had disclosed only a summary of the memorandum. On 4 December 2008, the Trial Chamber found that the Prosecution had not fulfilled its Rule 68 obligations and ordered the disclosure of the memorandum.³¹⁶¹ The Trial Chamber subsequently ordered the Prosecution to disclose the identifying information of women referred to in the memorandum.³¹⁶²

1161. The Trial Chamber ordered the Prosecution to disclose the contact details of a number of witnesses and potential witnesses to the Milan Lukić Defence, finding that, contrary to provisions in the Statute and the Rules, the Prosecution had redacted this information from witness statements without first requesting protective measures from the Trial Chamber.³¹⁶³

(e) Issues surrounding the Prosecution handwriting expert Dr. Wilhelmus Fagel

1162. On 3 November 2008, the Trial Chamber granted a Prosecution request to add Dr. Wilhelmus Fagel, a handwriting expert, to its witness list as an alibi rebuttal witness, but held that his testimony would only become relevant if and when certain documents that he had analysed were tendered into evidence by the Milan Lukić Defence.³¹⁶⁴ The Milan Lukić Defence had introduced

³¹⁵⁸ See *e.g.* Decision on Milan Lukić's motion to suppress testimony for failure of timely disclosure with confidential annexes A and B, 3 Nov 2008, pp 6-7; Decision on Defence motion to bar testimony and report of Ewa Tabeau, filed confidentially on 23 October 2008.

³¹⁵⁹ Decision on Prosecution failure to comply with Rule 66(A)(ii) disclosure obligations, filed confidentially on 5 November 2008, p. 2.

³¹⁶⁰ Decision on motion for reconsideration of decision to preclude VG094's testimony, filed confidentially on 18 December 2008 (Judge Robinson dissenting), p. 11; VG094, 8 Apr 2009, T. 6980-7052.

³¹⁶¹ Decision on Milan Lukić's motion to compel Rule 68 disclosure, filed confidentially on 4 December 2008.

³¹⁶² Decision on Prosecution motion to redact identifying information, filed confidentially on 27 January 2009.

³¹⁶³ Decision on Milan Lukić's motion to compel disclosure of contact information and on the Prosecution's urgent motion to compel production of contact information, 30 Mar 2009.

³¹⁶⁴ Decision on Prosecution motion to amend Prosecution's witness list (Dr. Fagel), 3 Nov 2008, p. 4. See also Decision on rebuttal witnesses, filed confidentially on 25 March 2009, pp 4, 9.

one of these documents into evidence (exhibit 1D25),³¹⁶⁵ and, on 3 April 2009, the Prosecution introduced the remaining four documents into evidence.³¹⁶⁶

1163. The Trial Chamber initially determined that it was “not in the interest of judicial economy” for Dr. Fagel to attend to testify solely about exhibit 1D25, but it authorised the Prosecution to tender into evidence the portions of the report that related to that document.³¹⁶⁷ This decision was reconsidered, and Dr. Fagel testified in respect of exhibit 1D25 on 19 May 2009.³¹⁶⁸ Dr. Fagel’s report was not admitted into evidence.³¹⁶⁹

(f) Contempt allegations

1164. The Trial Chamber twice ordered the Prosecution to investigate allegations of possible contempt, each time following a Prosecution motion pursuant to Rule 77.³¹⁷⁰ On 6 October 2008, the Trial Chamber found pursuant to Rule 77(D) that there were not sufficient grounds to proceed with regard to the first contempt allegations.³¹⁷¹ On 13 March 2009, the Trial Chamber found that there were not sufficient grounds to proceed with regard to a portion of the second contempt allegations.³¹⁷² A decision with regard to the remaining aspects of the second contempt allegations has been issued immediately before the issue of this Judgement.

1165. The Trial Chamber allowed all parties to make applications to introduce evidence or call witnesses relevant to the contempt allegations.³¹⁷³ It subsequently granted a Prosecution motion to add Hamdija Vilić to its witness list as an alibi rebuttal witness with regard to the first contempt charge,³¹⁷⁴ and a separate motion to add VG145, VG146 and one other person to its witness list as alibi rebuttal witnesses with regard to the second contempt charge.³¹⁷⁵

³¹⁶⁵ Hearing, 1 Sep 2008, T. 912.

³¹⁶⁶ Hearing, 3 Apr 2009, T. 6692, 6693, 6694.

³¹⁶⁷ Hearing, 7 Apr 2009, T. 6969.

³¹⁶⁸ Decision on Prosecution submission regarding expert report of Dr. Wilhelmus Fagel and exhibits P320 through P323, filed confidentially on 13 May 2009, pp 4-5; Wilhelmus Fagel, 19 May 2009, T. 7128-7154.

³¹⁶⁹ Wilhelmus Fagel, 19 May 2009, T. 7150.

³¹⁷⁰ Order on Prosecution’s application under Rule 77, filed confidentially and *ex parte* on 10 February 2009; Order on Prosecution’s urgent motion to investigate potential contempt of the Tribunal, filed confidentially and *ex parte* on 29 August 2008.

³¹⁷¹ Decision on Prosecution’s submission of report pursuant to order to investigate potential contempt of the Tribunal, as amended, decision on motion for leave to amend Prosecution’s list of witnesses, and decision on third Prosecution urgent motion in connection with contempt proceedings, filed confidentially and *ex parte* on 6 October 2008.

³¹⁷² Hearing, 13 Mar 2009, T. 5512-5513.

³¹⁷³ Hearing, 13 Mar 2009, T. 5513; Decision on Prosecution’s submission of report pursuant to order to investigate potential contempt of the Tribunal, as amended, decision on motion for leave to amend Prosecution’s list of witnesses, and decision on third Prosecution urgent motion in connection with contempt proceedings, filed confidentially and *ex parte* on 6 October 2008.

³¹⁷⁴ Decision on Prosecution motion for leave to amend witness list (Hamdija Vilić), filed confidentially on 6 November 2008.

³¹⁷⁵ Decision on rebuttal witnesses, filed confidentially on 25 March 2009, pp 5, 10.

(g) Disqualification of Trial Chamber

1166. On 15 December 2008, the Defence for Milan Lukić applied for disqualification and withdrawal of the Trial Chamber, alleging that the Prosecution's *ex parte* applications for contempt created "a risk of an appearance of prejudice".³¹⁷⁶ The matter was referred to the Presiding Judge of the Trial Chamber, Judge Iain Bonomy, in accordance with Rule 15(B).³¹⁷⁷ In his report to the Vice-President of the Tribunal, Judge Bonomy found that the motion for disqualification of the Trial Chamber should be denied because there was no evidence of actual bias or an impression of bias.³¹⁷⁸ The Vice-President of the Tribunal denied the motion.³¹⁷⁹

³¹⁷⁶ Milan Lukić's application for disqualification and withdrawal of the Trial Chamber based on Prosecution *ex-parte* applications against the accused, the Defence team, and Defence witnesses during trial creating a risk of an appearance of prejudice, 15 Dec 2008.

³¹⁷⁷ Order directing motion to President of Trial Chamber III, 17 Dec 2008.

³¹⁷⁸ Report of Presiding Judge of Trial Chamber III to Vice-President of Tribunal pursuant to Rule 15(B)(i) in re Milan Lukić motion for disqualification of Trial Chamber, 2 Jan 2009.

³¹⁷⁹ Decision on motion for disqualification, 12 Jan 2009.

B. List of cases and sources

1. ICTY

<i>Aleksovski</i> Appeal Judgement	<i>Prosecutor v. Zlatko Aleksovski</i> , Case No. IT-95-14/1-A, Judgement, 24 Mar 2000
<i>Aleksovski</i> Trial Judgement	<i>Prosecutor v. Zlatko Aleksovski</i> , Case No. IT-95-14/1-T, Judgement, 25 Jun 1999
<i>Blagojević and Jokić</i> Appeal Judgement	<i>Prosecutor v. Vidoje Blagojević and Dragan Jokić</i> , Case No. IT-02-60-A, Judgement, 9 May 2007
<i>Blagojević and Jokić</i> Trial Judgement	<i>Prosecutor v. Vidoje Blagojević and Dragan Jokić</i> , Case No. IT-02-60-T, Judgement, 17 Jan 2005
<i>Blaškić</i> Appeal Judgement	<i>Prosecutor v. Tihomir Blaškić</i> , Case No. IT-95-14-A, Judgement, 29 Jul 2004
<i>Blaškić</i> Trial Judgement	<i>Prosecutor v. Tihomir Blaškić</i> , Case No. IT-95-14-T, Judgement, 3 Mar 2000
<i>Bralo</i> Sentencing Appeal Judgement	<i>Prosecutor v. Miroslav Bralo</i> , Case No. IT-95-17-A, Judgement on Sentencing Appeal, 2 Apr 2007
<i>Bralo</i> Sentencing Judgement	<i>Prosecutor v. Miroslav Bralo</i> , Case No. IT-95-17-S, 7 Dec 2005
<i>Brdanin</i> Appeal Judgement	<i>Prosecutor v. Radoslav Brdanin</i> , Case No. IT-99-36-A, Judgement, 3 Apr 2007
<i>Brdanin</i> Trial Judgement	<i>Prosecutor v. Radoslav Brdanin</i> , Case No. IT-99-36-T, Judgement, 1 Sep 2004
<i>Boškoski and Tarčulovski</i> Trial Judgement	<i>Prosecutor v. Ljube Boškoski and Johan Tarčulovski</i> , Case No. IT-04-82-T, Judgement, 10 Jul 2008
<i>Delalić et al.</i> Appeal Judgement	<i>Prosecutor v. Zejnil Delalić, Zdravko Mucić (a.k.a. "Pavo"), Hazim Delić and Esad Landzo (a.k.a. "Zenga")</i> , Case No. IT-96-21-A, Judgement, 20 Feb 2001
<i>Delalić et al.</i> Trial Judgement	<i>Prosecutor v. Zejnil Delalić, Zdravko Mucić (a.k.a. "Pavo"), Hazim Delić and Esad Landzo (a.k.a. "Zenga")</i> , Case No. IT-96-21-T, Judgement, 16 Nov 1998
<i>Delić</i> Trial Judgement	<i>Prosecutor v. Rasim Delić</i> , Case No. IT-04-83-T, Judgement, 15 Sep 2008
<i>Deronjić</i> Sentencing Appeal Judgement	<i>Prosecutor v. Miroslav Deronjić</i> , Case No. IT-02-61, Judgement on Sentencing Appeal, 29 Jul 2005
<i>Erdemović</i> Sentencing Judgement	<i>Prosecutor v. Dražen Erdemović</i> , Case No. IT-96-22, Sentencing Judgement, 29 Nov 1996
<i>Furundžija</i> Appeal Judgement	<i>Prosecutor v. Anto Furundžija</i> , Case No. IT-95-17/1-A, Judgment, 21 Jul 2000
<i>Furundžija</i> Trial Judgement	<i>Prosecutor v. Anto Furundžija</i> , Case No. IT-95-17/1-T, Judgement, 10 Dec 1998
<i>Galić</i> Appeal Judgement	<i>Prosecutor v. Stanislav Galić</i> , Case No. IT-98-29-A, Judgement, 30 Nov 2006
<i>Galić</i> Trial Judgement	<i>Prosecutor v. Stanislav Galić</i> , Case No. IT-98-29-T, Judgement, 14 Dec 2003
<i>Hadžihasanović and Kubura</i> Appeal	<i>Prosecutor v. Enver Hadžihasanović and Amir</i>

Judgement	<i>Kubura</i> , Case No. IT-01-47-A, Judgement, 22 Apr 2008
<i>Halilović</i> Trial Judgement	<i>Prosecutor v. Sefer Halilović</i> , Case No. IT-01-48-T, Judgement, 16 Nov 2005
<i>Haradinaj et al.</i> Trial Judgement	<i>Prosecutor v. Ramush Haradinaj, Idriz Balaj and Lahi Brahimaj</i> , Case No. IT-04-84-T, Judgement, 3 Apr 2008
<i>Jelišić</i> Appeal Judgement	<i>Prosecutor v. Goran Jelišić</i> , Case No. IT-95-10-A, Judgement, 5 Jul 2001
<i>Jelišić</i> Trial Judgement	<i>Prosecutor v. Goran Jelišić</i> , Case No. IT-95-10-T, Judgement, 14 Dec 1999
<i>Jokić</i> Sentencing Judgement	<i>Prosecutor v. Miodrag Jokić</i> , Case No. IT-01-42-1-T, Sentencing Judgement, 18 Mar 2004
<i>Kordić and Čerkez</i> Appeal Judgement	<i>Prosecutor v. Dario Kordić and Mario Čerkez</i> , Case No. IT-95-14/2-A, Judgement, 17 Dec 2004
<i>Kordić and Čerkez</i> Trial Judgement	<i>Prosecutor v. Dario Kordić and Mario Čerkez</i> , Case No. IT-95-14/2-T, Judgement, 26 Feb 2001
<i>Krajišnik</i> Appeal Judgement	<i>Prosecutor v. Momčilo Krajišnik</i> , Case No. IT-00-39-A, 17 Mar 2009
<i>Krajišnik</i> Trial Judgement	<i>Prosecutor v. Momčilo Krajišnik</i> , Case No. IT-00-39-T, 27 Sep 2006
<i>Krnojelac</i> Appeal Judgement	<i>Prosecutor v. Milorad Krnojelac</i> , Case No. IT-97-25-A, Judgement, 17 Sep 2003
<i>Krnojelac</i> Trial Judgement	<i>Prosecutor v. Milorad Krnojelac</i> , Case No. IT-97-25-T, Judgement, 15 Mar 2002
<i>Krstić</i> Appeal Judgement	<i>Prosecutor v. Radislav Krstić</i> , Case No. IT-98-33-A, Judgement, 19 Apr 2004
<i>Krstić</i> Trial Judgement	<i>Prosecution v. Radislav Krstić</i> , Case No. IT -98-33-T, Judgement, 2 Aug 2001
<i>Kunarac et al.</i> Appeal Judgement	<i>Prosecutor v. Dragoljub Kunarac et al.</i> , Case No. IT-96-22&23/1-A, Judgement, 12 Jun 2002
<i>Kunarac et al.</i> Trial Judgement	<i>Prosecutor v. Dragoljub Kunarac, Radomir Kovac and Zoran Vuković</i> , Case No. IT-96-22&23-/1-T, Judgement, 21 Feb 2001
<i>Kupreškić et al.</i> Appeal Judgement	<i>Prosecutor v. Zoran Kupreškić, Mirjan Kupreškić, Vlatko Kupreškić, Drago Josipović and Vladimir Šantić (aka "Vlado")</i> , Case No. IT-95-16-A, Judgement, 23 Oct 2001
<i>Kupreškić et al.</i> Trial Judgement	<i>Prosecutor v. Zoran Kupreškić, Mirjan Kupreškić, Vlatko Kupreškić, Drago Josipović, Dragan Papić and Vladimir Šantić (aka "Vlado")</i> , Case No. IT-95-16-T, Judgement, 14 Jan 2000
<i>Kvočka et al.</i> Appeal Judgement	<i>Prosecutor v. Miroslav Kvočka, Milojica Kos, Mlado Radić, Zoran Žigić and Dragoljub Prcać</i> , Case No. IT-98-30/1-A, Judgement, 28 Feb 2005
<i>Kvočka et al.</i> Trial Judgement	<i>Prosecutor v. Miroslav Kvočka, Milojica Kos, Mlado Radić, Zoran Žigić and Dragoljub Prcać</i> , Case No. IT-98-30/1-T, Judgement, 2 Nov 2001
<i>Limaj et al.</i> Appeal Judgement	<i>Prosecutor v. Fatmir Limaj, Haradin Bala and Isak Musliu</i> , Case No. IT-03-66-A, Judgement, 27 Sep

	2007
<i>Limaj et al.</i> Trial Judgement	<i>Prosecutor v. Fatmir Limaj, Haradin Bala and Isak Musliu</i> , Case No. IT-03-66-T, Judgement, 30 Nov 2005
<i>Martić</i> Appeal Judgement	<i>Prosecutor v. Milan Martić</i> , Case no. IT-95-11-A, Judgement, 8 Oct 2008
<i>Martić</i> Trial Judgement	<i>Prosecutor v. Milan Martić</i> , Case no. IT-95-11-T, Judgement, 12 June 2007
<i>Dragomir Milošević</i> Trial Judgement	<i>Prosecutor v. Dragomir Milošević</i> , Case No. IT-98-29/1-T, Judgement, 12 Dec 2007
<i>Milutinović et al.</i> Trial Judgement	<i>Prosecutor v. Milan Milutinović et al.</i> , Case No. IT-05-87-T, Judgement, 26 Feb 2009
<i>Mrkšić et al.</i> Appeal Judgement	<i>Prosecutor v. Mile Mrkšić et al.</i> , Case No. IT-95-13/1-A, Judgement, 5 May 2009
<i>Naletilić and Martinović</i> Appeal Judgement	<i>Prosecutor v. Mladen Naletilić (a.k.a. "Tuta") and Vinko Martinović (a.k.a. "Štela")</i> , Case No. IT-98-34-A, Judgement, 3 May 2006
<i>Naletilić and Martinović</i> Trial Judgement	<i>Prosecutor v. Mladen Naletilić (a.k.a. "Tuta") and Vinko Martinović (a.k.a. "Stela")</i> , Case No. IT-98-34-T, Judgement, 31 Mar 2003
<i>Dragan Nikolić</i> Sentencing Appeal Judgement	<i>Prosecutor v. Dragan Nikolić</i> , Case No. IT-94-2-A, Judgement on Sentencing Appeal, 4 Feb 2005
<i>Dragan Nikolić</i> Sentencing Judgement	<i>Prosecutor v. Dragan Nikolić</i> , Case No. IT-94-2-S, 18 Dec 2003
<i>Momir Nikolić</i> Sentencing Appeal Judgement	<i>Prosecutor v. Momir Nikolić</i> , Case No. IT-02-60/1-A, Judgement on Sentencing Appeal, 8 Mar 2006
<i>Orić</i> Trial Judgement	<i>Prosecutor v. Naser Orić</i> , Case No. IT-03-68, Judgement, 30 Jun 2006
<i>Plavšić</i> Sentencing Judgement	<i>Prosecutor v. Biljana Plavšić</i> , Case No. IT-00-39&40/1-S, Sentencing Judgement, 27 Feb 2003
<i>Rajić</i> Sentencing Judgement	<i>Prosecutor v. Ivica Rajić</i> , Case No. IT-95-12-S, Sentencing Judgement, 8 May 2006
<i>Simić et al.</i> Appeal Judgement	<i>Prosecutor v. Blagoje Simić, Miroslav Tadić, and Simo Zarić</i> , Case No. IT-95-9-A, Judgement, 28 Nov 2006
<i>Simić et al.</i> Trial Judgement	<i>Prosecutor v. Blagoje Simić, Miroslav Tadić, and Simo Zarić</i> , Case No. IT-95-9-T, Judgement, 17 Oct 2003
<i>Stakić</i> Appeal Judgement	<i>Prosecutor v. Milomir Stakić</i> , Case No. IT-97-24-A, Judgement, 22 Mar 2006
<i>Stakić</i> Trial Judgement	<i>Prosecutor v. Milomir Stakić</i> , Case No. IT-97-24-T, Judgement, 29 Oct 2003
<i>Strugar</i> Appeal Judgement	<i>Prosecutor v. Pavle Strugar</i> , Case No. IT- 01-42-A, Judgement, 17 Jul 2008
<i>Strugar</i> Trial Judgement	<i>Prosecutor v. Pavle Strugar</i> , Case No. IT- 01-42-T, Judgement, 31 Jan 2005
<i>Tadić</i> Appeal Judgement	<i>Prosecutor v. Duško Tadić (a.k.a. "Dule")</i> , Case No. IT-94-1-A, Judgement, 15 Jul 1999
<i>Tadić</i> First Sentencing Judgement	<i>Prosecutor v. Duško Tadić (a.k.a. "Dule")</i> , Case No.

<i>Tadić</i> Jurisdiction Decision	IT-94-1-T, Sentencing Judgement, 14 Jul 1997 <i>Prosecutor v. Duško Tadić</i> , Case No. IT-94-1-AR72, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, 2 Oct 1995
<i>Tadić</i> Second Sentencing Judgement	<i>Prosecutor v. Duško Tadić (a.k.a. "Dule")</i> , Case No. IT-94-1-Tbis-R117, Sentencing Judgement, 11 Nov 1999
<i>Tadić</i> Sentencing Appeal Judgement	<i>Prosecutor v. Duško Tadić (a.k.a. "Dule")</i> , Cases No. IT-94-1-A and IT-94-1-Abis, Judgement in Sentencing Appeals, 26 Jan 2000
<i>Tadić</i> Trial Judgement	<i>Prosecutor v. Duško Tadić (a.k.a. "Dule")</i> , Case No. IT-94-1-T, Judgement, 7 May 1997
<i>Vasiljević</i> Appeal Judgement	<i>Prosecutor v. Mitar Vasiljević</i> , Case No. IT-98-32-A, Judgement, 25 Feb 2004
<i>Vasiljević</i> Trial Judgement	<i>Prosecutor v. Mitar Vasiljević</i> , Case No. IT-98-32-T, Judgement, 29 Nov 2002

2. ICTR

<i>Akayesu</i> Appeal Judgement	<i>Prosecutor v. Jean-Paul Akayesu</i> , Case no. ICTR-96-4-A, Judgement, 1 Jun 2001
<i>Bagosora</i> Trial Judgement	<i>Prosecutor v. Theoneste Bagosora et al.</i> , Case No. ICTR-98-41-T, Judgement and Sentence, 18 Dec 2008
<i>Gacumbitsi</i> Appeal Judgement	<i>Prosecutor v. Sylvestre Gacumbitsi</i> , Case No. ICTR-01-64-A, Judgement, 7 Jul 2006
<i>Kajelijeli</i> Appeal Judgement	<i>Prosecutor v. Juvénal Kajelijeli</i> , Case No. ICTR-98-44A-A, Judgement, 23 May 2005
<i>Kamuhanda</i> Appeal Judgement	<i>Prosecutor v. Jean de Dieu Kamuhanda</i> , Case No. ICTR-99-54A-A, Judgement, 19 Sep 2005
<i>Kayishema and Ruzindana</i> Appeal Judgement	<i>Prosecutor v. Clément Kayishema and Obed Ruzindana</i> , Case No. ICTR-95-1-A, Judgement, 1 Jun 2001
<i>Kayishema and Ruzindana</i> Trial Judgement	<i>Prosecutor v. Clement Kayishema and Obed Ruzindana</i> , Case No. ICTR-95-1-T, Judgement, 21 May 1991
<i>Musema</i> Appeal Judgement	<i>Prosecutor v. Alfred Musema</i> , Case No. ICTR-96-13-A, Judgement, 16 Nov 2001
<i>Musema</i> Trial Judgement	<i>Prosecutor v. Alfred Musema</i> , Case No. ICTR-96-13-T, Judgement, 27 Jan 2000
<i>Nahimana et al.</i> Appeal Judgement	<i>Prosecutor v. Ferdinand Nahimana et al.</i> , Case No. ICTR-99-52-A, Judgement, 28 Nov 2007
<i>Nahimana et al.</i> Trial Judgement	<i>Prosecutor v. Ferdinand Nahimana et al.</i> , Case No. ICTR-99-52-T, Judgement, 3 Dec 2003
<i>Nchamihigo</i> Trial Judgement	<i>Prosecutor v. Siméon Nchamihigo</i> , Case No. ICTR-01-63-T, Judgement, 12 Nov 2008
<i>Ndindabahizi</i> Appeal Judgement	<i>Prosecutor v. Emmanuel Ndindabahizi</i> , Case No. ICTR-01-71-A, Judgement, 16 Jan 2007
<i>Ndindabahizi</i> Trial Judgement	<i>Prosecutor v. Emmanuel Ndindabahizi</i> , Case no.

<i>Niyitegeka</i> Appeal Judgement	ICTR-01-71-T, Judgement, 15 Jul 2004 <i>Prosecutor v. Eliézer Niyitegeka</i> , Case No. ICTR-96-14-A, Judgement, 9 Jul 2004
<i>Ntagerura et al.</i> Appeal Judgement	<i>Prosecutor v. André Ntagerura et al.</i> , Case No. ICTR-99-46-A, Judgement, 7 Jul 2006
<i>Ntakirutimana</i> Appeal Judgement	<i>Prosecutor v. Elizaphan Ntakirutimana and Gérard Ntakirutimana</i> , Cases Nos. ICTR-96-10-A and ICTR-96-17-A, Judgement, 13 Dec 2004
<i>Rutaganda</i> Trial Judgement	<i>Prosecutor v. Georges Anderson Nderubumwe Rutaganda</i> , Case No. ICTR-96-3-T, Judgement, 6 Dec 1999
<i>Seromba</i> Appeal Judgement	<i>Prosecutor v. Athanase Seromba</i> , Case No. ICTR-01-66-A, Judgement, 12 Mar 2008
<i>Seromba</i> Trial Judgement	<i>Prosecutor v. Athanase Seromba</i> , Case No. ICTR-01-66-T, Judgement, 13 Dec 2006

3. Other

Convention on the Prevention and Punishment of the Crime of Genocide	United Nations General Assembly Resolution 260A(III), 9 December 1948
Geneva Conventions of 12 August 1949	Geneva convention for the amelioration of the condition of the wounded and sick in armed forces in the field; Geneva convention for the amelioration of the condition of wounded, sick, and shipwrecked members of armed forces at sea; Geneva convention relative to the treatment of prisoners of war; Geneva convention relative to the protection of civilian persons in time of war

