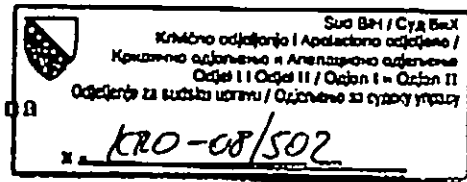


Bosnia and Herzegovina



PREIOD 92

Prosecutor's Office of Bosnia and Herzegovina

Special Department for War Crimes
Regional Prosecutorial Team V
No. KT-RZ 19/06
Sarajevo, 25 June 2008

COURT OF BOSNIA AND HERZEGOVINA
Preliminary Hearing Judge
Sarajevo

Pursuant to Article 35 (2) (h) and Article 226 (1) of the Criminal Procedure Code of Bosnia and Herzegovina, I hereby issue the following

INDICTMENT

Against:

Zrinko Pinčić, son of Marin and Ljubica, maiden name Regio, born in Sarajevo on 12 September 1948, permanent residence at St. Buna bb /no number/, Mostar municipality, PIN 1209948171511, Croat by ethnicity, metal processing worker by profession, married, father of two adult children, unemployed, receives disability pension, served the JNA /Yugoslav National Army/ in 1969/1970 in Senta and Gornji Milanovac, has the rank of a corporal, registered in the official (military) records of the Military Service Records Group in Mostar, poor financial standing, citizen of Bosnia and Herzegovina and the Republic of Croatia, previously not convicted,



currently in custody of the District Prison Doboj, based on the Decision of the Court of Bosnia and Herzegovina No. X-KRN-08/502, dated 30 May 2008,

Because:

During the war in Bosnia and Herzegovina, during the armed conflict between the Army of the Republic of Bosnia and Herzegovina and the Croat Defense Council (hereinafter the HVO) on one side, and the armed forces of the Serb Republic of Bosnia and Herzegovina on the other, in the place Donje Selo, Konjic municipality, as a member of the Croat Defense Council in the capacity of the secretary of the HVO Hrasnica within the Herceg Stjepan Brigade in Konjic, acted contrary to the regulations of international humanitarian law by violating Article 3 (1) (a) and (c) and Article 27 (2) of the Geneva Convention relative to the Protection of Civilian Persons, dated 12 August 1949, in the way that:

During the time period starting from November 1992 until March 1993 in the place Donje Selo, Konjic Municipality, during the night, dressed in military uniform and armed, he used to come to a house in which civilians were captured – women, two under-age girls, one under-age boy and two girls of the Serb ethnicity, including the person "A" and her bed-ridden mother, and on several occasions he took the person "A" out of the room where the captured civilians were sitting, and forced her into another room where every time he ordered her to undress and forced her to a sexual intercourse with him, all the time holding the rifle by the bed and every time threatening that he would bring 15 soldiers and that she would then see what would happen to all of them;

Therefore, during the war in Bosnia and Herzegovina, during the armed conflict between the Army of the Republic of Bosnia and Herzegovina and Croat Defense Council (hereinafter the HVO) on one side, and the armed forces of the Serb Republic of Bosnia and Herzegovina on the other, acting contrary to the regulations of international law, he coerced another person to sexual intercourse by threat of immediate direct attack upon her limb,

by which he committed the criminal offence of War Crimes against Civilians in violation of Article 173 (1) (e) of the CC of BiH, in conjunction with Article 180 (1) of the CC of BiH.

Therefore,

I P R O P O S E

1. To invite the following persons:

- prosecutor of the Prosecutor's Office of BiH,
- the suspect Zrinko Pinčić and his defense counsel,
- Velimir Marić, attorney at law from Mostar

2. To present the evidence:

a) By hearing the following witnesses:

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b) By hearing the following persons as expert witnesses:

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c) To review the following documents:

- Decision of the Presidency of the Republic of Bosnia and Herzegovina on proclamation of state of war (Official Gazette of BiH No. 7/92);
- Decision of the Presidency of the Republic of Bosnia and Herzegovina on revocation of proclamation state of war (Official Gazette of BiH No. 50/95);

- Decision to establish the Army of Serb Republic of Bosnia and Herzegovina No. 03-234/92, dated 12 May 1992, (Official Gazette of Serb People in BiH No. 6/92);
- Decree-Law on the Armed Forces of the Republic of Bosnia and Herzegovina PR No. 1163/92, dated 20 May 1992, (Official Gazette R BiH No. 4/92);
- Decision to establish the Croat Defense Counsel No. 2/92, dated 8 April 1992, ("People's Gazette of the Croat Community of Herceg Bosna" No. 1/92);
- Final Judgment of the ICTY Trial Panel No. IT-96-21, dated 16 November 1998, in the case "Prosecutor vs. Zejnil Delalić, Zdravko Mucuća a.k.a. Pavo, Hazim Delić and Esad Landžo a.k.a. Zengai"- paragraphs 188, 189, 190, 191 and 192;
- Certified copy of the personal file of officer Zrinko Pinčić with the certified copy of the address card issued for Zrinko Pinčić;
- Original document of Sarajevo Canton MOI – Police Administration – Crime Police Sector – Department for Special Purposes No. 02/2-3-confidential "O" 389/07, dated 5 November 2007, (Certificate that Zrinko Pinčić's name was not registered in the criminal records);
- Certified copy of the military booklet of the Croat Republic Herceg Bosna No. 0036807 issued for Zrinko Pinčić;
- Certified copy of the Disabled Veteran Booklet No. 004809, issued for Zrinko Pinčić; booklet issued by the Association of Croat Disabled Veterans of the Croat Republic Herceg Bosna;
- Certified copy of the military booklet No. AA07685, issued for Zrinko Pinčić;
- Copy of the Decision of HVO of the Croat Republic Herceg Bosna No. 550, dated 2 September 1992, on the establishment of HVO Hrasnica, signed by the President of the Croat Community Mate Boban, which establishes the HVO Hrasnica and appoints Zrinko Pinčić the secretary of HVO Hrasnica;
- Certified copy of the Certificate No. 17- 19-07-96-622, dated 22 March 1996, which was issued by the Ministry of Defense of the Croat Republic Herceg Bosna VP (Military post) 17 19, Organization and Personnel Department in Ljubuški, which confirms that Zrinko Pinčić was a member of the HVO Hrasnica within the Brigade "Herceg Stjepan" Konjic during the period from 22 May 1992 to 1 June 1994;
- Certified copy of the Certificate HR H-B, HVO Hrasnica, dated 27 July 1994, No. 0114-7/94, which confirms that Zrinko Pinčić was a

- member of HVO Hrasnica from the day of its establishment (14 July 1992), where he performed the duty of a secretary;
- Certified copy of the Certificate issued by the Ministry of Defense of the Croat Republic Herceg Bosna VP 17 19, Organization and Personnel Department No. Ur. 17 19-05-94-636, dated 31 October 1994;
 - Copy of the Certificate regarding the circumstances of tragic events involving Zrinko Pinčić, issued in Mostar on 31 May 2004, No. 2926-4/41-1/12-5501/04; (Prosecutor's Office of BiH required the relevant ministry to provide the original document or a certified copy)
 - Certified copy of the Certificate regarding the circumstances of tragic events involving Ivica (Marin) Pinčić, suspect's brother, No. Ur. 17 19-07-97/78 dated 24 January 1997;
 - Copy of the Certificate No. 17-22-01-41-1-234/06-1, dated 20 March 2006, which confirms that Zrinko Pinčić was a member of the HVO from 22 May 1992 until 1 June 1994 and was injured in the line of duty at the VP 1719 on 28 December 1993 in the place Borci, Konjic; (Prosecutor's Office of BiH required the relevant ministry to provide the original document or a certified copy);
 - Certified copy of the excerpt from the Decision of the President of the Presidential Council of the Croat Republic Herceg Bosna No. Ur. No.: P-UK-644/96, dated 8 June 1996, on the promotion of Zrinko Pinčić to the rank of JUNIOR LIEUTENANT in the Armed Forces of the Croat Republic Herceg Bosna;
 - Certified copy of the Certificate issued by the Defense Office in Konjic No. 02-45-02/96-01, dated 25 February 1997;
 - Certified copy of the Certificate issued by the HVO Hrasnica No. 031/94, dated 3 October 1994, which confirms that Zrinko Pinčić was a member of the HVO-Hrasnica from the day of its establishment, from 14 July 1992 until 3 October 1993, where he performed the duty of a secretary of the HVO Hrasnica;
 - Copy of the Certificate issued by the Federation Ministry of Defense, Joint Command of the AoF, 1st Guards Corps of the AoF No. 2926-4/41-1/12-1501/04, dated 31 May 2004, which confirms, among other things, that Zrinko Pinčić at the moment of his tragic event (28 December 1993 in the place Borci, Konjic) performed the duties of the secretary of the HVO Hrasnica and the assistant commander for training in the HVO Hrasnica; (Prosecutor's Office of BiH required the relevant ministry to provide the original document or a certified copy);

- Certified copy of the Certificate regarding the circumstances of tragic events involving Zrinko Pinčić issued by HR H-B, unit of HVO VP 1719, 56th Home Guard Regiment "Herceg Stjepan Konjic" No. 1719-07-78, dated 24 January 1997, which confirms, among other things, that Zrinko Pinčić at the moment of his tragic event performed the duties of the secretary of HVO Hrasnica and assistant commander for training in HVO Hrasnica;
- Scanned copy of the Passenger Vehicle Driver Record No. 447 for Pinčić Ivica (Prosecutor's Office of BiH required the relevant ministry to provide the original document or a certified copy).

Injured party's medical records:

- Referral to a specialist dated 7 September 1994;
- Report of the physician specialist No. 2683 dated 8 September 1994;
- Discharge sheet with epicrisis issued by the Clinical Center of Serbia – Gastroenterology and Hepatology Clinic No. 70104;
- Report of the physician specialist of the Clinical Center of Serbia, dated 18 December 1995, with a diagnosis by Dr. Nadežda Gostović, dated 22 December 1995;
- Referral to a specialist dated 25 August 1994;
- Referral to a physician specialist dated 6 July 1994;
- Findings dated 3 February 1998, 22 February 1998, and 19 February 1999, with the ultrasound image;
- Referral to the Health Center in Bileća dated 14 April 1998;
- Referral to a specialist dated 20 February 2000;
- Discharge sheet from the hospital No. 1551/2003 with a diagnosis, dated 30 June 2003;
- Findings dated 29 January 1996;
- Echo check-up dated 23 December 1997;
- Findings dated 28 April 1998;
- Findings dated 20 March 2000 with ultrasound images;
- Referral to a specialist dated 13 August 1999 with a diagnosis dated 16 August 1999 and ultrasound images;
- Findings dated 27 June 2003 with ultrasound images;
- Findings dated 23 April 2003;
- Laboratory findings dated 06 September 1994;
- Findings dated 21 March 1995;
- Findings dated 22 May 2001 and findings dated 26 July 2003;
- Findings dated 24 October 2000.

- Findings and opinion of the witness expert, neuropsychiatrist [REDACTED] dated 10 March 2008, and witness expert, psychologist [REDACTED] dated 06 February 2008;
- Witness Examination Record of witness "A" No. KT-RZ 19/06, dated 25 August 2006;
- Witness Examination Record of witness "A" No. KT-RZ 19/06, dated 30 October 2007;
- Witness Examination Record of witness "A" No. KT-RZ 19/06, dated 26 February 2008, with a set of photographs. The identification of a person was carried out during the witness interview, pursuant to Article 85 (3) of the CPC of BiH;
- Record on Person Identification No. 02/2-2-sl/08, dated 29 May 2008, the identification conducted in the MOI Canton Sarajevo – Crime Police Sector Sarajevo No. 02/2-POV"O" -136/08, dated 29 May 2008;
- Witness Examination Record, witness [REDACTED] No. KT-RZ 19/06, dated 9 October 2007, with a series of photographs. The identification of a person was carried out during the witness interview, pursuant to Article 85 (3) of the CPC of BiH;
- Witness Examination Record, witness [REDACTED] No. KT-RZ 19/06, dated 9 October 2007, with a series of photographs. The identification of a person was carried out during the witness interview, pursuant to Article 85 (3) of the CPC of BiH;
- Witness Examination Record, witness [REDACTED] No. KT-RZ 19/06, dated 11 March 2008;
- Witness Examination Record, witness [REDACTED] No. KT-RZ 19/06, dated 3 June 2008;
- Witness Examination Record, witness [REDACTED] No. KT-RZ 19/06, dated 13 June 2008;
- Witness Examination Record, witness [REDACTED] No. KT-RZ 19/06, dated 17 June 2008.

INVESTIGATION RESULTS

The results of the investigation carried out by the Prosecutor's Office of Bosnia and Herzegovina in this criminal case undoubtedly confirm the grounds of the Indictment, that is, the allegations that the suspect committed

the criminal offense of War Crimes against Civilians in violation of Article 173 (1) (e) in conjunction with Article 180 (1) of the Criminal Code of Bosnia and Herzegovina in the manner, at the time and place and under the circumstances described in the operative part of the Indictment.

The evidence obtained by the Prosecutor's Office during the investigation, both documentary and witness statements, showed the following:

- that the suspect **Zrinko Pinčić** committed the criminal offense he is charged with in this Indictment during the war in Bosnia and Herzegovina, during the armed conflict between the Army of the Republic of Bosnia and Herzegovina and the Croat Defense Council (hereinafter the HVO) on one side, and the armed forces of the Serb Republic of Bosnia and Herzegovina on the other;
- that the criminal act the suspect **Zrinko Pinčić** is charged with in the operative part of the Indictment constitutes a grave violation of the Geneva Convention relative to the Protection of Civilian Persons in Time of War dated 12 August 1949;
- that the injured party witness "A" was a civilian, and during the time period relevant to this Indictment she was a person protected under the Geneva Convention relative to the Protection of Civilian Persons dated 12 August 1949;
- that the criminal act the suspect is charged with was committed in the area of the Konjic municipality, in the place of Donje Selo;
- that the suspect **Zrinko Pinčić** committed the criminal offense he is charged with in this indictment as a member of the Croat Defense Council, HVO Hrasnica, that is, as a member of one of the sides involved in the conflict;
- that the criminal acts the suspect **Zrinko Pinčić** committed were not justified by a military necessity.

The war in Bosnia and Herzegovina

Pursuant to Article 8 of the Decree-Law on the defense (Official Gazette of RBiH, No. 4/92), following the proposal of the General Staff of the Armed

Forces of the Republic of Bosnia and Herzegovina, the Presidency of the Republic of Bosnia and Herzegovina at the session held on 20 June 1992 issued the Decision on the proclamation of the state of war. Under this Decision, the state of war was proclaimed in the territory of the Republic of Bosnia and Herzegovina. The Decision on the proclamation of the state of war was published in the Official Gazette of RBiH No. 7/92 and entered into force on the day of its publishing in the Official Gazette of RBiH on 20 June 1992.

The state of war in the territory of Bosnia and Herzegovina lasted until 20 June 1995 when the Presidency of Bosnia and Herzegovina revoked the decision on the proclamation of the state of war.

It is evident from the operative part of the Indictment that Zrinko Pinčić is charged with the perpetration of the criminal offense of War Crimes against Civilians, perpetrated during the time period between November 1992 and March 1993.

The abovementioned facts undoubtedly suggest that the criminal offense the suspect is charged with in the Indictment of the Prosecutor's Office of Bosnia and Herzegovina was committed during the war in Bosnia and Herzegovina.

The evidence collected during this investigation clearly suggests that there is a nexus between the war, that is, armed conflict, and the perpetrated criminal offense from the operative part of the Indictment, and that the suspect Zrinko Pinčić used his "superior" military position as well as the position of the injured party - witness "A" - "as a subordinate person" so as to coerce her to sexual intercourse on several occasions.

Existence of an armed conflict

The existence of an armed conflict between the Army of the Republic of Bosnia and Herzegovina and the Croat Defense Council (hereinafter the HVO) on one side, and the armed forces of the Serb Republic of Bosnia and Herzegovina on the other, in the area of the Konjic municipality, during the period relevant to the Indictment, was established in the ICTY Judgment No.

IT-96-21, dated 16 November 1998, in the case "Prosecutor vs. Zejnil Delalić, Zdravko Mucić a.k.a. Pavo, Hazim Delić and Esad Landžo a.k.a. Zenga, which became final on 20 February 2001.

Para: 188. As it was described in detail in Section II, the Konjic municipality itself was a place of considerable armed violence during 1992. The municipal Territorial Defense was mobilized and the War Presidency was formed in April 1992. The JNA units *[JNA - Yugoslav national army]* located in various military and other facilities across the municipality participated, in cooperation with the local SDS *[Serb's Democratic Party]*, in mobilizing Serb volunteers and distributing weapons to them. In addition, it seems that the JNA itself participated in some military operations at least until May 1992.

Para: 189. The Trial Panel was provided with ample evidence regarding the military strikes against Konjic and the shelling of the town itself as well as many other villages in that municipality to include Borci, Ljubina, Džajići and Gakići which were carried out by the mentioned Serb forces. Furthermore, it is undisputable that the forces of municipal authorities which included the Territorial Defense, MOI and, at the time when joint command was in force, HVO, organized military operations, inter alia, against villages of Donje Selo, Bradina, Bjelovčina, Cerići and Brađani. As a result of those operations people were detained in the Čelebić prison/camp.

Para: 190. The battles which took place in Konjic in particular, and in Bosnia and Herzegovina in general, were obviously fierce and therefore caused concerns with the UN Security Council and General Assembly as well as other international organizations. Acting in accordance with Chapter VII of the Charter of the United Nations, the Security Council issued numerous resolutions regarding the conflict and consistently called upon the involved parties to cease military operations.

Para: 191. The Territorial Defense and MOI in Konjic were joined, for a short period of time, by the HVO as part of the Joint Command which was formed and organized to fight Serb forces. These forces which represented "government authorities" were, as a minimum, organized to fight the forces of Bosnian Serbs – JNA and VRS – and were joined by local volunteers and militia which themselves also represented "government authorities" or "organized armed groups". This conclusion does not presume the possibility that the conflict might have been international and that the parties involved were the states or their representatives.

Para: 192. The Trial Panel must conclude that the "armed conflict" existed in Bosnia and Herzegovina during the period relevant to the Indictment (May–December 1992), and concludes that, regardless of whether it was internal or international, it implicated the Konjic municipality...

The evidence proving that there was an armed conflict in the territory of the Konjic municipality during the period relevant to the Indictment is found in the statements of interviewed witnesses: witness "A", [REDACTED]
[REDACTED] ...

Injured party

The injured party – witness "A" is of Serb ethnicity. She spent her entire life living in Bradina, Konjic municipality. She lived in a family house together with her bed-ridden mother. After the military operations in Bradina, which took place in late May 1992, she stayed and lived in Bradina until 12 July 1992 when five members of the Military Police of the Army of the Republic of Bosnia and Herzegovina and three civilians were murdered and, at that time, members of the Serb people were suspected of committing the murder which resulted in the expulsion of those Serb civilians who remained to live in Bradina, including witness "A". They were expelled by having been transported in trucks and escorted out of Bradina by soldiers of the Army of the Republic of Bosnia and Herzegovina and the Croat Defense Council, and taken to the place called Donje Selo near Konjic, where they remained until April 1993, that is, until the onset of conflict between the Army of the Republic of Bosnia and Herzegovina and the Croat Defense Council, more precisely until 23 April 1993, when they were exchanged.

Therefore, she was a civilian, a person who took no part in the hostilities whatsoever.

The fact that the injured party was a civilian throughout the time relevant to this Indictment is also confirmed by her statement given to the Prosecutor's Office as well as statements of other witnesses interviewed in this criminal case [REDACTED].

She was not in a position to fight, nor did she have a possibility to do so, she was unarmed, while the suspect Zrinko Pinčić violated international

law by committing, on several occasions, the criminal acts against her as a civilian belonging to the opposite side of the side which at the time controlled the territory of the Konjic municipality.

Suspect

Documentary evidence obtained during the investigation of the suspect Zrinko Pinčić (address card issued for the officer Zrinko Pinčić; personal record of officer Zrinko Pinčić; Military Booklet of the Croat Republic Herceg Bosna No. 0036807 issued for Zrinko Pinčić; Disabled Veteran Booklet No. 004809 issued for Zrinko Pinčić, booklet issued by the Association of Croat Disabled Veterans of the Croat Republic Herceg Bosna; Military booklet No. AA07685 for Zrinko Pinčić; Certificate dated 27 July 1994 No. 0114-7/94 confirming that Zrinko Pinčić was a member of the HVO Hrasnica from the day of its establishment (14 July 1992), where he performed the duty of a secretary; document of the Ministry of Defense of the Croat Republic of Herceg Bosna, VP 17 19, Organization and Personnel Department No. Ur. Br. 17 19-05-94-636 dated 31 October 1994; Excerpt from the Decision of the President of the Presidential Council of the Croat Republic Herceg Bosna Ur. Broj: P-UK-644/96 dated 8 June 1996 on the promotion of Zrinko Pinčić to the rank of Junior Lieutenant; Certificate issued by the Defense Office in Konjic No. 02-45-02/96-01 dated 25 February 1997; Certificate of the HVO Hrasnica No. 031/94 dated 03 October 1994 confirming that Zrinko Pinčić was a member of HVO),

indisputably suggests that Zrinko Pinčić, during the period relevant to the Indictment, was a member of the HVO Hrasnica, within the "Herceg Stjepan" Brigade in Konjic, that he was performing the duty of a secretary, that is, that he was a member of one of the sides involved in the conflict.

The fact that Zrinko Pinčić was a member of the HVO is confirmed by the witness "A", and other interviewed witnesses [REDACTED]

[REDACTED] ..

Injured party – witness "A" – was interviewed three times at the Prosecutor's Office of BiH, and during the interviews she asked, among other things, to be heard as a protected witness considering the circumstances under which the criminal offense was committed, its gravity

and sensitivity, and possible consequences which could arise as a result of her testimony in this criminal case.

With respect to this, on 30 May this year the Prosecutor's Office of Bosnia and Herzegovina filed with the Court of Bosnia and Herzegovina the Motion No. KT-RZ-19/06 to grant witness protection measures to the injured party.

Under the Decision of the Court of Bosnia and Herzegovina No. X-KRN-08/502, dated 30 May 2008, the following protection measures were ordered - all personal details of the witness shall remain confidential, the witness shall appear before the Court of Bosnia and Herzegovina under the pseudonym "A"...

The existence of grounded suspicion that Zrinko Pinčić committed this criminal offense, at the time and place, and in the manner as described in the operative part of the Indictment also ensues from the Finding and Opinion issued by the expert witnesses, neuropsychiatrist Dr. [REDACTED] and psychologist [REDACTED], the statement of the injured party - witness "A", statements of witnesses [REDACTED] and [REDACTED], Identification Record No. 02/2/POV"O"-136/08 dated 29 May 2008, witness statements of [REDACTED].

Specifically, the Prosecutor's Office of BiH, regardless of the fact that it had direct knowledge of the evidently present and visible vulnerability of the witness, and taking into account the fact that she does not have enough knowledge about medicine, issued an Order to the court-appointed expert, neuropsychiatrist [REDACTED] to perform a medical examination of witness "A". It was stated in the Order that if necessary the witness expert is authorized to hire another expert - psychologist - and, once the expert witnesses review the medical records and interview the witness "A", they need to provide their professional opinion and findings regarding the psychological consequences which resulted from the torture of witness "A" which included multiple rapes that she survived.

In the findings and opinion given by the court-appointed expert, neuropsychiatrist Dr. [REDACTED] concluded, among other things, "that the witness "A" showed symptoms of chronic posttraumatic stress disorder and permanent personality change after the catastrophic experience of torture, which results in clinical symptoms of depression,

anxiety, hyper-arousal, revival of traumatic events through intrusion of thoughts, memories and dreams about traumatic experiences..."

In the findings and opinion of psychologist [REDACTED] it is stated, among other things, that permanent personality changes are noticeable in the witness "A" as a result of catastrophic experience, and that the witness shows symptoms of increased psychological vulnerability experiencing difficulties in concentrating and falling asleep, which are all posttraumatic reactions to stress...

Pursuant to Article 85 (2) of the Criminal Procedure Code of Bosnia and Herzegovina, witnesses "A", [REDACTED] described the physical appearance of the perpetrator of this criminal offense and after that, they were presented a series of photographs and they identified Zrinko Pinčić as the perpetrator of the criminal offense based on those photos. This series of photographs is a constituent part of the witness examination records of the said witnesses.

The Record on identification of persons No. 02/2-2-SI/08 indicates that the identification of persons was carried out on 29 May 2008, on the premises of the Ministry of Interior of Canton Sarajevo, Crime Police Sector, in Sarajevo. The identification was done in the presence of an authorized official person of this Ministry by the witness "A" who, after she gave a physical description of the perpetrator, identified with certainty the person under No. 3 (ZRINKO PINČIĆ) as the perpetrator.

Rape under the international humanitarian law

a) There is no doubt, whatsoever, that rape and other forms of sexual violence are strictly prohibited under the international humanitarian law. Article 27 of the Fourth Geneva Convention specifically prohibits rape, any type of indecent assault and enforced prostitution of women. Prohibition of rape, enforced prostitution and any other form of indecent assault is also referred to in Article 4 (2) of the Protocol II Additional to the Geneva Convention relative to internal armed conflicts. Article 4 (1) of this Protocol implicitly prohibits rape and sexual violence and provides that all persons are entitled to respect for their person and honor. Moreover, Article 76 (1) of the Additional Protocol explicitly requires protection of women from rape, forced prostitution or any other forms of indecent assaults. An implicit prohibition of rape and sexual violence can also be found in Article 46 of the

Hague Convention IV from 1907 which provides for the protection of family honor and rights. Finally, rape, as a crime against humanity, is prohibited under Article 6 (c) of the Nurnberg Statute and specified as such in Article 5 of the Statute.

b) Definition of rape – Final ICTY Judgment - Pavo Mucić

478. Even though the prohibition of rape is obvious under the international humanitarian law, there is not a single convention or some other international instrument which contains a definition of this term. The trial panel, when deliberating on this issue, took into account a recent judgment of the ICTR which recently discussed the definition of rape in the context of crimes against humanity in the judgment delivered in the case *Prosecutor vs. Jean-Paul Akayesu* [492¹] (hereinafter "the Judgment in Akayesu case"). The trial chamber seised of this case concluded that the international law does not contain a commonly accepted definition of this term, and accepted the fact that even though rape has been defined in some national jurisdictions as "non-consensual intercourse" there are different variations of the definition of such an act. The Chamber concluded that rape is a form of aggression and that the central elements of the crime of rape cannot be captured in a mechanical description of objects and body parts. The Convention against torture and other cruel, inhumane or degrading treatment or punishment does not list specific acts in its definition of torture; rather, it focuses on the conceptual framework of the state-sanctioned violence. This approach is more useful in the international law....

The Chamber defines rape as a physical invasion of a sexual nature, committed on a person under circumstances which are coercive. It is thought that sexual violence which includes rape is considered to be any act of a sexual nature which is committed on a person under circumstances which are coercive...

479. This trial panel agrees with this explanation and finds no reason to depart from the conclusion of the ICTR on this issue reached in the judgment in the Akayesu case. Therefore, the trial panel finds that rape is a physical invasion of a sexual nature, committed on a person under circumstances which are coercive. Having reached this conclusion, the

¹ *Prosecutor vs. Jean-Paul Akayesu*, Case No. ICTR-96-I-T, Trial Panel I, 2 September 1998.

trial panel moves on to a short deliberation of the case law of international courts regarding the rape as a form of torture.

Material corroborating allegations from the Indictment

- Decision of the Presidency of the Republic of Bosnia and Herzegovina on proclamation of state of war (Official Gazette of BiH No. 7/92);
- Decision of the Presidency of the Republic of Bosnia and Herzegovina on revocation of proclamation state of war (Official Gazette of BiH No. 50/95);
- Decision to establish the Army of Serb Republic of Bosnia and Herzegovina No. 03-234/92, dated 12 May 1992, (Official Gazette of Serb People in BiH No. 6/92);
- Decree-Law on Armed Forces of the Republic of Bosnia and Herzegovina PR No. 1163/92, dated 20 May 1992, (Official Gazette R BiH No. 4/92);
- Decision to establish the Croat Defense Counsel No. 2/92, dated 8 April 1992, ("People's Gazette of the Croat Community of Herceg Bosna" No. 1/92);
- Final Judgment of the ICTY Trial Panel No. IT-96-21, dated 16 November 1998, in the case "Prosecutor vs. Zejnil Delalić, Zdravko Mucuća a.k.a. Pavo, Hazim Delić and Esad Landžo a.k.a. Zengai"- paragraphs 188, 189, 190, 191 and 192;
- Certified copy of the personal file of officer Zrinko Pinčić with the certified copy of the address card issued for Zrinko Pinčić;
- Original document of Sarajevo Canton MOI – Police Administration – Crime Police Sector – Department for Special Purposes No. 02/2-3-confidential "O" 389/07, dated 5 November 2007, (Certificate that Zrinko Pinčić's name was not registered in the criminal records);
- Certified copy of the military booklet of the Croat Republic Herceg Bosna No. 0036807 issued for Zrinko Pinčić;
- Certified copy of the Disabled Veteran Booklet No. 004809, issued for Zrinko Pinčić; booklet issued by the Association of Croat Disabled Veterans of the Croat Republic Herceg Bosna;
- Certified copy of the military booklet No. AA07685, issued for Zrinko Pinčić;
- Copy of the Decision of HVO of the Croat Republic Herceg Bosna No. 550, dated 2 September 1992, on the establishment of HVO Hrasnica, signed by the president of the of the Croat Community Mate

- Boban, which establishes the HVO Hrasnica and appoints Zrinko Pinčić the secretary of HVO Hrasnica;
- Certified copy of the Certificate No. 17- 19-07-96-622, dated 22 March 1996, which was issued by the Ministry of Defense of the Croat Republic Herceg Bosna VP (Military post) 17 19, Organization and Personnel Department in Ljubuški, which confirms that Zrinko Pinčić was a member of the HVO Hrasnica within the brigade "Herceg Stjepan" Konjic during the period from 22 May 1992 to 1 June 1994;
 - Certified copy of the Certificate HR H-B, HVO Hrasnica, dated 27 July 1994, No. 0114-7/94, which confirms that Zrinko Pinčić was a member of HVO Hrasnica from the day of its establishment (14 July 1992), where he performed the duty of a secretary;
 - Certified copy of the Certificate issued by the Ministry of Defense of the Croat Republic Herceg Bosna VP 17 19, Organization and Personnel Department No. Ur. 17 19-05-94-636, dated 31 October 1994;
 - Copy of the Certificate regarding the circumstances of tragic events involving Zrinko Pinčić, issued in Mostar on 31 May 2004, No. 2926-4/41-1/12-5501/04;
 - Certified copy of the Certificate regarding the circumstances of tragic events involving Ivica (Marin) Pinčić, suspect's brother, No. Ur. 17 19-07-97/78 dated 24 January 1997;
 - Copy of the Certificate No. 17-22-01-41-1-234/06-1, dated 20 March 2006, which confirms that Zrinko Pinčić was a member of the HVO from 22 May 1992 until 1 June 1994 and was injured in the line of duty at the VP 1719 on 28 December 1993 in the place Borci, Konjic;
 - Certified copy of the excerpt from the Decision of the President of the Presidential Council of the Croat Republic Herceg Bosna No. Ur. No. P-UK-644/96, dated 8 June 1996, on the promotion of Zrinko Pinčić to the rank of JUNIOR LIEUTENANT in the Armed Forces of the Croat Republic Herceg Bosna;
 - Certified copy of the Certificate issued by the Defense Office in Konjic No. 02-45-02/96-01, dated 25 February 1997;
 - Certified copy of the Certificate issued by the HVO Hrasnica No. 031/94, dated 3 October 1994, which confirms that Zrinko Pinčić was a member of the HVO-Hrasnica from the day of its establishment, from 14 July 1992 until 3 October 1993, where he performed the duty of a secretary of the HVO Hrasnica;

- Copy of the Certificate issued by the Federation Ministry of Defense, Joint Command of the AoF, 1st Guards Corps of the AoF No. 2926-4/41-1/12-1501/04, dated 31 May 2004, which confirms, among other things, that Zrinko Pinčić at the moment of his tragic event (28 December 1993 in the place Borci, Konjic) performed the duties of the secretary of the HVO Hrasnica and the assistant commander for training in the HVO Hrasnica;
- Certified copy of the Certificate regarding the circumstances of tragic events involving Zrinko Pinčić issued by HR H-B, unit of HVO VP 1719, 56th Home Guard Regiment "Herceg Stjepan Konjic" No. 1719-07-78, dated 24 January 1997, which confirms, among other things, that Zrinko Pinčić at the moment of his tragic event performed the duties of the secretary of HVO Hrasnica and assistant commander for training in HVO Hrasnica;
- Scanned copy of the Passenger Vehicle Driver Record No. 447 for Pinčić Ivica (Prosecutor's Office of BiH required the relevant ministry to provide the original document or a certified copy).

Injured party's medical records:

- Referral to a specialist dated 7 September 1994;
- Report of the physician specialist No. 2683 dated 8 September 1994;
- Discharge sheet with epicrisis issued by the Clinical Center of Serbia – Gastroenterology and Hepatology Clinic No. 70104;
- Report of the physician specialist of the Clinical Center of Serbia, dated 18 December 1995, with a diagnosis by Dr. Nadežda Gostović, dated 22 December 1995;
- Referral to a specialist dated 25 August 1994;
- Referral to a physician specialist dated 6 July 1994;
- Findings dated 3 February 1998, 22 February 1998, and 19 February 1999, with the ultrasound image;
- Referral to the Health Center in Bileća dated 14 April 1998;
- Referral to a specialist dated 20 February 2000;
- Discharge sheet from the hospital No. 1551/2003 with a diagnosis, dated 30 June 2003;
- Findings dated 29 January 1996;
- Echo check-up dated 23 December 1997;
- Findings dated 28 April 1998;
- Findings dated 20 March 2000 with ultrasound images;

- Referral to a specialist dated 13 August 1999 with a diagnosis dated 16 August 1999 and ultrasound images;
- Findings dated 27 June 2003 with ultrasound images;
- Findings dated 23 April 2003;
- Laboratory findings dated 06 September 1994;
- Findings dated 21 March 1995;
- Findings dated 22 May 2001 and findings dated 26 July 2003;
- Findings dated 24 October 2000.

- Findings and opinion of the witness expert, neuropsychiatrist [REDACTED] dated 10 March 2008, and witness expert, psychologist [REDACTED], dated 06 February 2008.;
- Witness Examination Record of witness "A" No. KT-RZ 19/06, dated 25 August 2006;
- Witness Examination Record of witness "A" No. KT-RZ 19/06, dated 30 October 2007;
- Witness Examination Record of witness "A" No. KT-RZ 19/06, dated 26 February 2008, with a set of photographs. The identification of a person was carried out during the witness interview, pursuant to Article 85 (3) of the CPC of BiH;
- Record on Person Identification No. 02/2-2-sl/08, dated 29 May 2008, the identification conducted in the MOI Canton Sarajevo – Crime Police Sector Sarajevo No. 02/2-POV"O" - 136/08, dated 29 May 2008;
- Witness Examination Record, witness [REDACTED] No. KT-RZ 19/06, dated 9 October 2007, with a series of photographs. The identification of a person was carried out during the witness interview, pursuant to Article 85 (3) of the CPC of BiH;
- Witness Examination Record, witness [REDACTED] No. KT-RZ 19/06, dated 9 October 2007, with a series of photographs. The identification of a person was carried out during the witness interview, pursuant to Article 85 (3) of the CPC of BiH;
- Witness Examination Record, witness [REDACTED] No. KT-RZ 19/06, dated 11 March 2008;
- Witness Examination Record, witness [REDACTED] No. KT-RZ 19/06, dated 3 June 2008;
- Witness Examination Record, witness [REDACTED] No. KT-RZ 19/06, dated 13 June 2008;

- Witness Examination Record, witness [REDACTED] No. KT-RZ 19/06, dated 17 June 2008.
- Record on examination of the suspect [REDACTED] No. KT-RZ 19/06, dated 29 May 2008;
- Record on examination of the suspect [REDACTED] No. KT-RZ 19/06, dated 30 May 2008;
- Record on the handover of a person deprived of liberty to the relevant prosecutor, dated 29 May 2008, No. 17-13/3-04-02-254-1/08;
- Motion of the Prosecutor's Office of BiH to order witness protection measures, No. KT-RZ 19/06, dated 30 May 2008;
- Decision of the Court of BiH No. X-KRN-08/502, dated 30 May 2008, on ordering witness protection measures.

Motion to extend custody, following the confirmation of the Indictment

Pursuant to Article 227 (3) and 137 (1) of the Criminal Procedure Code of Bosnia and Herzegovina, the Prosecutor's Office of Bosnia and Herzegovina proposes that the custody of the suspect be extended, following the confirmation of the Indictment, for the reasons set forth in Article 132 (1) (a) and (b) of the Criminal Procedure Code of Bosnia and Herzegovina, because there are specific circumstances suggesting that he will hinder the criminal proceedings by influencing witnesses and there are also circumstances indicating the risk of flight.

Specific circumstances suggesting that he will hinder the criminal proceedings by influencing witnesses

- After the confirmation of the Indictment, the suspect will become familiar with the identity of the protected witness and other pieces of evidence which point to the existence of grounded suspicion that he perpetrated the criminal offense at issue. Under these circumstances, when the suspect is facing serious charges and when he is familiar with witnesses and other evidence, there is a significant risk, and a strong motive on the part of the suspect, that, in case he is released, he will hinder the criminal proceedings by influencing witnesses so as to have them change their statements given during the investigation, in the proceedings before the Court of Bosnia and Herzegovina. It is a fact that two witnesses live in the Republic of Serbia. However, the large distance, relative to the evasion of criminal

responsibility, does not represent an obstacle for the suspect to make contact with them.

- The suspect is charged with the perpetration of the criminal offense of War Crimes against Civilians, committed by raping the witness "A" on several occasions and the consequences of this act are very severe and they are reflected in a significantly impaired psychological wellbeing of the injured party.

It is evident that this criminal case is specific because of the sensitivity of criminal acts the suspect is charged with. The injured party – witness "A" – and other witnesses as well, need to give their testimonies in the proceedings before the Court of Bosnia and Herzegovina without pressure or fear of possible consequences which might arise as a consequence of their testifying.

All these circumstances are specific and they point to a realistic possibility that the suspect, if released, could influence witnesses in an attempt to evade criminal responsibility, and they constitute the grounds for the extension of custody, pursuant to Article 132 (1) (b) of the Criminal Procedure Code of Bosnia and Herzegovina.

If the Court of Bosnia and Herzegovina confirms this Indictment, the Prosecutor's Office of Bosnia and Herzegovina moves the Court to consider ordering custody for the reasons set forth in Article 132 (1) (a) of the CPC of BiH as well, because there are also circumstances which point to the risk of flight.

Circumstances pointing to the risk of flight

- Zrinko Pinčić, as stated by himself, holds citizenships of Bosnia and Herzegovina and the Republic of Croatia. It is a fact that the Republic of Croatia does not extradite its citizens in accordance with Article 9 of the Constitution of the Republic of Croatia, and the suspect himself is well aware of this fact.

- Zrinko Pinčić has permanent residence in Buna, near Mostar, in the immediate vicinity of the border between Bosnia and Herzegovina and the Republic of Croatia.

- Zrinko Pinčić has been in custody for almost a month and he knows what it means to be deprived of liberty and spend time in a Penal-Correctional Facility.

- Zrinko Pinčić is charged with the perpetration of the criminal offense punishable by imprisonment for a term of not less than 10 years or a long term imprisonment. The threat of receiving legal sanction represents a strong motive for flight to the Republic of Croatia.

These circumstances constitute grounds for ordering custody referred to in Article 132 (1) (a) of the CPC of BiH.

Considering the above-mentioned facts, and taking into account the evidence obtained during the investigation, the Prosecutor's Office of BiH argues that there is ample evidence for the existence of grounded suspicion that the suspect Zrinko Pinčić committed the criminal offense of War Crimes against Civilians in violation of Article 173 (1) (e) of the Criminal Code of Bosnia and Herzegovina in conjunction with Article 180 (1) of the same Code, and therefore it moves the Preliminary Hearing Judge of the Court of Bosnia and Herzegovina to confirm this Indictment.

Prosecutor's Office of BiH
War Crimes Department
Prosecutor
Vesna Tančica

I hereby confirm that this document is a true translation of the original written in Bosnian/Serbian/Croatian.

Sarajevo, 11 July 2008


Certified Court Interpreter for the English Language

