

SUD BOSNE I HERCEGOVINE



СУД БОСНЕ И ХЕРЦЕГОВИНЕ

Number: KPŽ 32/05  
Sarajevo, 4 April 2006

**IN THE NAME OF BOSNIA AND HERZEGOVINA!**

The Court of Bosnia and Herzegovina, sitting in the Panel of the Appellate Division consisting of Judge Hilmo Vučinić, as the Presiding Judge, and Judges Finn Lynghjem and Pietro Spera, as members of the Panel, with participation of Legal Officer Dženana Deljkić, as record taker, in the criminal case against the Accused, Abduladhim Maktouf, for criminal offense of War Crimes against Civilians, in violation of Article 173 (1) (e), in conjunction with Article 31 of the Criminal Code of Bosnia and Herzegovina (hereinafter: CC B-H), after a hearing held before the Appellate Panel of the Court of Bosnia and Herzegovina, public having been excluded from parts of the hearing, and in the presence of Prosecutors Peter Kidd and Slavica Terzić for the Prosecutor's Office of Bosnia and Herzegovina, and the Accused, Abduladhim Maktouf, and his Defense Attorneys, Ismet Mehić and Bajro Čilić, Attorneys-at-Law from Sarajevo, and Adil Lozo, Attorney-at-Law from Travnik, having deliberated and voted, on 4 April 2006, has reached and publicly announced the following,

**VERDICT**

The Accused, Abduladhim Maktouf, son of Mohamed and Sabiha née Saber, born on 3 January 1959, in Basra, Iraq, with residence in Travnik, at Fatmić Str.-Lamela III-35, citizen of Bosnia and Herzegovina and Iraq, married with four children, M.A. in food technology.

**HAS BEEN FOUND GUILTY**

**In as much as he:**

On 19 October 1993, in Travnik, Bosnia and Herzegovina, during the war in Bosnia and Herzegovina, contrary to Article 3 (1) (b) of the IV Geneva Convention Relative to the Protection of Civilian Persons in Time of War, as a member of the Army of Bosnia and Herzegovina, intentionally helped the person under a pseudonym Abu Džafer and other members of the Al Mujahid Unit abduct civilians Ivo Fišić and Kazimir Pobrić in order to exchange them for members of the Al Mujahid Unit captured by the HVO\*, by driving his own green Volkswagen van to the building called Amerikanka at Hadži Ali Bega Hasanspahića Street in Travnik at around 2000 hrs on that day. Abu Džafer and several other members of the Al Mujahid Unit were also on board the van.

\* Croat Defense Council; translator's note



When they arrived to the building, the Accused stayed in the van to wait, while Abu Džafer and other members of the Unit got out of the van and entered the Amerikanka building armed and then entered the apartment of Ivo Fišić on the second floor.

Ivo Fišić and Kazimir Pobrić were in the apartment at that time. They were citizens of Travnik, civilians in civilian clothes and did not carry arms. The Al Mujahid Unit members first took Ivo Fišić out of the apartment forcibly and under threat and took him to the van waiting in front of the building. There they forced him to get into the trunk of the van. Then they did the same to Kazimir Pobrić.

After both hostages were bundled into the trunk of the van, the trunk door closed. The Accused, who was at the driver's seat at the relevant time, started the engine and drove through the town to the camp of the Al Mujahid Unit in the nearby village of Orašac. Kazimir Pobrić was released from this camp on 23 October 1993 and Ivo Fišić on 6 November 1993.

Thereby the Accused committed the criminal offense of War Crimes against Civilians, in violation of Article 173 (1) (e), in conjunction with Article 31 of the CC B-H, therefore, pursuant to the abovementioned Article and with application of Article 49 of CC B-H and in conjunction with Article 50 (1) (a), the Appellate Panel of the Court of B-H

### **SENTENCES HIM TO IMPRISONMENT FOR A TERM OF FIVE (5) YEARS**

Pursuant to Article 56 of CC B-H, the time the Accused will have spent in custody from 12 June 2004 until the commencement of the execution of sanction shall be counted as part of the sentence of imprisonment.

Pursuant to Article 188 (1) of the Criminal Procedure Code of Bosnia and Herzegovina (*hereinafter*: CPC B-H), the Accused must reimburse the costs of the criminal proceedings, and the amount of the reimbursement shall be decided on in a separate decision upon obtaining of the relevant data.

Pursuant to Article 198 (2) of CPC B-H, the injured parties, Ivo Fišić and Kazimir Pobrić, with claims under property law, are instructed to take civil action.

### **Reasoning**

In the Indictment of the Prosecutor's Office of B-H number KT-H-1/04 of 10 September 2006<sup>\*</sup>, amended on 23 June 2005, Abduladhim Maktouf was accused of having committed the criminal offense of War Crimes against Civilians, in violation of Article 173 (1) (e).

<sup>\*</sup> Year as rendered in the Bosnian text; translator's note



conjunction with Article 31 of CC B-H, by having intentionally helped the person under a pseudonym Abu Džafer and other members of the Al Mujahid Unit abduct civilians Ivo Fišić, Kazimir Pobrić and Ivan Rajković, citizens of Travnik.

By the Verdict of the Court of B-H, Sarajevo, number K-127/04 of 1 July 2005, the Accused, Abduladhim Maktouf, was found guilty because "on or about 19 October 1993, in Travnik, Bosnia and Herzegovina, during the war in Central Bosnia, contrary to Article 3 (1) (b) of the IV Geneva Convention Relative to the Protection of Civilian Persons in Time of War, as a member of the Army of Bosnia and Herzegovina, [he] intentionally helped Abu Džafer and other members of the Al Mujahid Unit abduct the following Croat civilians, Ivo Fišić, Kazimir Pobrić and Ivan Rajković, by driving his green Volkswagen van to the building called Amerikanka at Hadži Ali Bega Hasanpašića Str. in Travnik around 2000 hrs". The Court sentenced him to imprisonment for a term of five years.

The Defense Attorneys for the Accused filed an Appeal moving the Court to accept the Appeal, revoke the first instance Verdict and acquit the Accused. The Prosecutor's Office of B-H also filed an Appeal against the Verdict insofar as it concerned the sentence requesting the Court to revise the first instance Verdict and sentence the Accused to a longer-term imprisonment.

On 23 November 2005, pursuant to Article 315 (1) (b) of CPC B-H, the Appellate Panel of the Court of B-H partially accepted the Appeal of the Defense, revoked the first instance Verdict and ordered scheduling of a hearing before the Appellate Panel of the Court of B-H.

In a retrial before the Appellate Panel, the Prosecutor's Office of B-H abided by the filed Indictment and proposed that the Accused, Abduladhim Maktouf, be pronounced guilty of the offense he was charged with in the Indictment and be punished by law. The Defense Attorneys for the Accused requested from the Court to dismiss all counts of the Indictment and acquit the Accused of criminal responsibility for the criminal offense concerned.

Under the decision of the Appellate Panel pursuant to Article 317 (2) of CPC B-H, the following evidence was presented in the course of the hearing before the Appellate Panel: Audio recordings of witness testimonies given in the first instance proceedings were listened through, namely, the testimony of Ivo Fišić, witness for the Prosecutor's Office of B-H, given at the main trial in the first instance proceedings on 18 February and 25 February 2005, as well as on 13 June and 20 June 2005, the testimony of "the Witness", witness for the Prosecutor's Office of B-H, of 15, 18 and 25 March 2005, the testimony of Salko Beba, witness for the Prosecutor's Office of B-H, of 11 January and 1 February 2005, and the testimony of Husein Delić of 22 March and 29 March 2005.

For the purpose of additional clarification of the facts and upon a joint proposal of the Prosecutor's Office of B-H and the Defense, witness Ivo Fišić again directly testified at the hearing on 28 February 2006, as did "the Witness" on 2 March 2006. New witnesses for the Defense, whose examination had been proposed in the Appeal, also testified, namely witness Elvis Ribo on 3 March 2006 and witness Ramo Durmiš on 13 March 2006.

The following material evidence was reviewed at the hearing: parts of the Record examination of "the Witness" at the Prosecutor's Office of B-H on 6 August 2004, which



the audio recording was listened through, and the other version of the Witness Examination Record of 6 August 2004; a copy of the statement given by witness Ramo Durmiš to CSB<sup>\*</sup> Zenica on 23 October 1993 and his statement of 15 August 2005 to an investigator of the International Criminal Tribunal for the Former Yugoslavia (ICTY); Exhibit 141 A) – Verdict by the District Military Court in Zenica number IKa 185/98 and of the High Military Court Zenica number K-65/98, Decision of the High Military Court number KŽ 6/94, Decision of the Supreme Court of the Federation of B-H number K 406/94, Records of the case number Ki 309/93 of the High Court in Zenica, Record number Kri 143/93, Decision of the High Court in Zenica Kri 140/93; Exhibit 141 A) – Verdict by the High Court in Zenica number K 83/90; Exhibit 142 – criminal record data for witness Ramo Durmiš; Exhibit 143 – statement of witness Durmiš before the ICTY; Exhibit 144 – Zenica Prison record for witness Durmiš dated 23 October 1993; Exhibit 145 A) – criminal record data for witness Elvis Ribo; Exhibit 145 B) – Verdicts by the Municipal Court in Travnik for witness Ribo number K 14/04, K 13/04 and K 70/01; Exhibit 146 – weather report issued by the Federation Meteorological Institute dated 18 October 1993.

The following evidence of the Defense was reviewed: Exhibit 4 – a photograph of a green Volkswagen van; Exhibit 139 – a photograph and statement of witness Ivo Fišić to the ICTY Prosecutors of 14 and 20 November 1999 in the *Prosecutor v. Kubura and Hadžihasanović* case; Exhibit 130 – report of interpreter Salih Indžić of 15 August 2005; Exhibit 131 – Decision number 02-49-483/05 of 8 July 2005; Exhibit 132 – Decision number 01-90/92 of 24 April 1992; Exhibit 133 – Approval issued by HVO number 000250.

The following evidence of the Court of B-H was reviewed: respective Verdicts by the Court of B-H number KPV 11/05 in the criminal case against Murat Silajdžija of 15 August 2005 and 19 September 2005.

As a witness for the Prosecutor's Office of B-H, witness Ivo Fišić, one of the injured parties in the case, testified on 28 February 2006 about his abduction and taking to the Orašac camp near Travnik. According to this witness' testimony, the offense that the Accused is charged with – accessory to the commission of the criminal offense of War Crimes against Civilians – took place on Tuesday, in the night between 18 and 19 October 1993. Witness Fišić said that on the relevant evening he had been in his apartment in the so-called Amerikanka building in Travnik until approximately 2000 hrs, when he was taken out of his apartment by several persons of Arab origin. He remembered the moment when unknown persons of the appearance not typical for the region had entered his apartment and told him to get ready. The person he saw on that occasion had a saber and a Palestinian cap. They took money and other valuables from the apartment and he was then taken out and bundled into the vehicle waiting in front of the building. He was bundled into the rear part of the vehicle, in the semi-right position in the left corner of the trunk. At that moment he tried to find out who was driving him and why and whether he knew the person taking him away. All that time, a barrel of a firearm, which he assumed was an M 48 rifle, was pointed at his right shoulder from the co-driver's direction. He recognized the driver by the back of the driver's head and part of the profile as the Accused, Maktouf. The witness states that he did not notice that the Accused had a beard. The lights went on at the moment of ignition and were on for some 250-300 meters, before a traffic light and the intersection left toward Sarajevo.

<sup>\*</sup> Security Service Center; translator's note



At that point he was blindfolded and he no longer knew where the vehicle was moving. The vehicle was an all-terrain vehicle, like Lada Niva or Land Rover, not bigger, dark green. When he was being placed into the vehicle, Kazimir Pobrić was bundled into the vehicle as well. He had previously thought, due to the restricted space, that Ivan Rajković had also been inside the vehicle together with him and Kazimir Pobrić, also an injured party. However, in this testimony he refuted it and said that he was absolutely sure that Rajković had not been in the vehicle. The witness remembered that they had been driven to and thrown out next to an iron gate. The witness was shown a photograph (Prosecutor's Office's Exhibit 8d and 8e – photograph of the Orašac camp), which he confirmed was the place they had been taken to. Ivan Rajković, Dalibor Adžaić and Dragoljub Popović were also brought in that evening. The witness stated that they had been physically mistreated by members of the Al Mujahid Unit in the camp and Dragoljub Popović had been beheaded in a ceremonial rite. Witness Fišić states that he was released from the camp on 6 November 1993 and that Kazimir Pobrić was released a few days after the abduction.

The witness knows the Accused from Travnik, as a foreigner of Arab origin and different skin color and someone he would see downtown occasionally. He says that the Accused had a video rental shop often visited by his children. In 1999, the witness gave statements before the investigating judge and prosecutor in Travnik concerning this event, as he had done before the EU Monitoring Mission in 1998 and the ICTY investigators. In these statements, the witness did not reveal the identity of the driver of the motor vehicle. The primary reason for his previous failure to provide this information was fear for his and his family's safety, as he did not have confidence in the then authorities in Travnik. He said that on that occasion he had also requested protection from the EU monitors and the Hague investigators. In addition to the abovementioned statements, the witness also confirmed the statement he had given as a witness in the *Prosecutor v. Kubura et al.* case of the ICTY in The Hague. He did not reveal the identity of the driver in the statements. He gave a complete statement only in 2004 before Prosecutor Jonathan Schmidt.

"The Witness", that is, a protected witness whose identity is known to the Court, Prosecutor's Office and the Defense, also testified at the hearing. Such a status of this witness arises from the Order of the Court of B-H of 9 September 2004 ordering that the personal information about this witness must remain confidential.

"The Witness" testified directly only about his potential agreement with the Prosecutor's Office concerning no criminal prosecution against him, considering the fact that he had previously indicated his involvement in the offense concerned. He said that the Prosecutor's Office had summoned him to give a statement, primarily regarding certain activities that had been undertaken during the investigation of the Accused, Maktouf, over the business operations of his Palma company. He was then told that he was not accused in this case and the Prosecutor told him that he would be protected, without indicating precisely the manner of protection. The witness said that he had never received a written document indicating that he had been a protected witness, except for the Decision in the Silajdžija case reading that he had been a protected witness in another case as well (the Maktouf case). With regards to his testimony in the first instance proceedings, the audio recording of which the Panel listened through at the trial, it arises that "the Witness" has known the Accused since May or June 1993 when he met the Accused in Bugojno. In 1998, he was employed in the company of the Accused when he also moved to the Accused's house in Travnik.

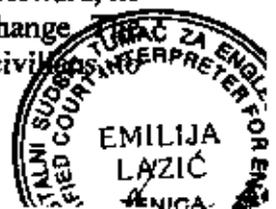


regards to the event concerned, "the Witness" states that four members of the Al Mujahid Unit were captured by the HVO in September 1993. He also states that, after that, he contacted Salko Beba, person "in charge of" exchange. He requested information about the captured persons from Beba, whether they were alive. The Accused went with him to interpret for him, as he did not know the Bosnian language well at the time. He received an order to talk to Beba from Abu Haris, Emir, that is, Commander of a Muslim unit. The witness further states that the Accused had a green Volkswagen van. The witness rode in this van several times with the Accused, as he could not drive at the time.

The witness states that he participated in the commission of the offense concerned together with the Accused. The Accused was given the names of the persons, Croats from Travnik, by Halid Genjac, because he knew where these persons were. On the said evening, five or six persons arrived in the green Volkswagen van to the Amerikanka building. Two persons were abducted in this building, but at that time he did not know who these persons were. "The Witness" states that he was at the staircase in the building at the time of the abduction. He saw two persons from the building being arrested and bundled into the vehicle. The Accused drove the van and "the Witness" was sitting next to him. Several days after the event concerned, he met Husein Delić, police commander at the time, in Travnik. He states that he told Delić everything on that occasion, mainly because he wanted to explain that he had not been responsible for the murder of Dragoljub Popović, one of the abducted persons, which murder took place on the evening concerned. On that occasion, he told Husein Delić who had been in the van with him. He could talk with him since Husein Delić speaks Arabic.

With regards to the indirect evidence presented at the hearing before the Appellate Panel, the Panel listened through the audio recording of the testimonies of Salko Beba and Husein Delić, witnesses for the Prosecution.

Witness Salko Beba had testified in the first instance proceedings on 11 January 2005 and 1 February 2005 and the audio recordings of the said testimonies were listened through at the hearing before the Appellate Panel. Salko Beba works in the Federation Ministry for Veterans and Disabled Veterans. One of the offices he held in June 1993 was that of the chairman of the PoW Exchange Commission in Travnik Municipality. He has known the Accused from the time when donor delegations came from the East to donate funds for the army, as the Accused was their interpreter at the time. He would sometimes also see the Accused in the company of Abu Džafer, the person with whom he had mostly unpleasant experience. The witness states that Abu Džafer belonged to an armed Muslim unit which was not under the command of the Bosanska Krajina Operational Group and which was only afterward named the Al Mujahid Unit. Some time in late September or early October 1993, witness Beba, in the capacity as an official of the PoW Exchange Commission, was visited by the Accused, Maktouf, and Abu Džafer, who informed him that some members of that Muslim unit had been captured by the HVO. Abu Džafer asked Beba to do something in order to have them exchanged. The witness told them that they should fill in a questionnaire and that the Commission did not have any HVO prisoners at the time that it could offer for exchange. Abu Džafer was very aggressive on that occasion and threatened witness Beba with a pistol saying he would kill the witness if required. Shortly afterward, he said that Travnik was full of Croats and that he would bring someone for exchange. The witness then told him that such persons could not be exchanged, as they were civilians.



which he answered: "We understand each other." Then he left. The witness informed his commander about Abu Džafer's threats to harm civilians. The witness also states that Abu Džafer was in his office on the day the civilians were taken hostage. On that occasion, the witness tried to explain to him the PoW exchange procedures, but he was very aggressive. Abu Džafer accused the witness of protecting Croats and said that something had to be done and that he would take people from their homes. Witness Beba responded that he would attack Abu Džafer, under the order of Commander Alagić, should Abu Džafer do it. After that meeting, he saw Abu Džafer at Donja Čaršija in Travnik together with several mujahidin between 1700 and 2000 hrs. He saw Maktouf with them, too. On the following morning, after the abduction, the witness learned of the incident. As soon as he learned it, he went to see Commander Alagić who ordered him to go to Mehurići and tell Abu Haris that they would be attacked unless they released the civilians, which the witness did. Abu Haris was the Emir, leader of the unit whose headquarters was in Mehurići near Travnik. Abu Haris then told him that the HVO did not want to release their member Kadirić and that they would soon release the abducted Croats. After that, he returned to Travnik and met Abu Džafer, who boasted that he had abducted the said persons and that he had managed to obtain an offer for release of one of the captured members of the Muslim unit.

Furthermore, witness Husein Delić testified in the first instance proceedings on 22 March and 29 March 2005. In the course of the hearing before the Appellate Panel, the audio recording of his testimony was listened through. In the relevant period, Husein Delić lived in Travnik and held the office of chief of police – Public Security Center. He graduated in Arabic language and English language and literature. The witness has known the Accused since before the war. He also knows Abu Džafer, who was a member of the Muslim unit and whom he often met in the company of the Accused. Seven or eight days after the event concerned, Husein Delić accidentally met Abu Džafer in Travnik and asked him who had abducted the said persons and why. Abu Džafer told Delić that he, Abu Džafer, had done it together with "Abduladhim Maktouf" in order to exchange those persons for "some Arabs". The witness states that Halid Genjac gave a list of persons to be abducted to the Accused because the Accused knew where those persons lived.

Elvis Ribo and Ramo Durmiš, two new witnesses, who had not been heard in the first instance proceedings, testified at the hearing as witnesses for the Defense.

Witness Elvis Ribo, living in Travnik, testified about his acquaintanceship with the person under a pseudonym Abu Džafer. He has known Abu Džafer since 2000 or 2001, when he met Abu Džafer in a café in Travnik. Then they started socializing more often. At the time they first met, Abu Džafer worked in Palma, the company of the Accused, and lived in a house that was property of the Accused. Approximately 15 days after they had first met, Abu Džafer told the witness that he had been fired and no longer worked at Maktouf's. Soon afterward a robbery ensued in the apartment of the Accused. The witness states that Abu Džafer was probably involved in it, because he took some documents and money belonging to Maktouf from the apartment. The documents were mostly invoices that he took in order to hand them over to SFOR and thus take revenge on the Accused. The documents were related to the business operations of Palma company and huge amounts of money were indicated in them. Shortly afterward, the witness stopped socializing with Abu Džafer as a result of their falling out over a girl Abu Džafer suspected had a relationship with. The witness.



Witness Ramo Durmiš testified about the person that was driving the vehicle in which Ivo Fišić and Kazimir Pobrić were brought to the Orašac camp. Ramo Durmiš is a former member of the Muslim unit which was later transformed into the Al Mujahid Unit. In the beginning, he was one of the soldiers in the unit and was later promoted to the position of the commander of the Travnik Unit. Allegedly, after he had been wounded in one military operation, he was first hospitalized in the hospital in Zenica and then transferred to the Orašac camp where he stayed, as he states, from 1 to 28 October 1993. He also states that he was severely wounded at Bijeli Buć in June 1993 and that his recovery lasted approximately four to six weeks. The witness states that at dusk on the evening concerned he was sitting in front of the *medžlis* in the camp when he saw Abu Džafer with another three men entering a van and leaving the camp. He states that the night before Maktouf's Volkswagen van had been driven to the camp and prepared for the "action" planned for the following day. The "action", as the witness describes the event concerned, was approved by *šura*, religious council of the Muslims of the Unit. He alleges that at dusk on the relevant evening he saw Abu Džafer entering the Volkswagen van with another four men and leaving the camp. A black Nissan Patrol Jeep followed after the van and then Lada Niva left after them taking a separate road. The witness waited for the van to return and he confirms that he saw Abu Džafer driving it on that occasion as well. As he states, he did not see the Accused. He did not have any contact with the abducted civilians, but he learned that they were being mistreated. He also states that from 23 October 1993 to 28 October 1993 he was in custody, ordered by the Court in Zenica over a criminal offense he was suspected of.

The Court tried to confront "the Witness" and witness Ramo Durmiš. "The Witness" refused to testify unless granted immunity by the Prosecutor's Office. The Prosecutor's Office did not agree, therefore, the confrontation did not result in further explanation of the facts.

In addition, on 14 March 2006, the Panel intended to examine witness Jonathan Schmidt, who was in the United States at that time, by simultaneous transmission of image and sound. Examination of the witness in this manner was not possible due to technical problems. The Defense objected the proposal of the Prosecutor's Office to conduct examination by phone, given that, pursuant to Article 86 (6) of CPC B-H, examination has to be carried out by transmission of "image and sound". In this regard, the Panel decided to waive the execution of this examination since, in addition to the quoted provision, this matter is also regulated by the European Convention on Mutual Assistance in Criminal Matters while Additional Protocol No. 2 stipulates that witness can also be examined by phone. Therefore, given that Bosnia and Herzegovina is signatory to the basic text of the Convention, but not to the Protocol 2 to the Convention, and that the United States, whose citizen the witness is, is not signatory to the abovementioned Protocol, either, the Panel sustained the objection of the Defense and waived this piece of evidence.

The Appellate Panel reviewed the evidence presented both by the Prosecutor's Office and the Defense, evaluated them individually, as well as in terms of their correlation, and rendered a decision as quoted in the enactment clause for the following reasons:

First, during the trial before the Appellate Panel, the Panel decided to exclude the public from the parts of the trial referring to the identity of the "protected witness". Such decision



of the Panel is in compliance with the Order of the Court of B-H dated 9 September 2004 ordering that all personal data of this witness had to remain confidential.

It is indisputable that at the time of the event in question in 1993, in the territory of Travnik in Bosnia and Herzegovina, an international conflict between Bosnian Croats and Bosniaks was underway in Central Bosnia. This has been established by the ICTY Judgments number IT-95-14/02 of 17 December 2004 and of 26 February 2001 in the *Prosecutor v. Dario Kordić and Mario Čerkez* case which the Panel accepts pursuant to Article 4 of the Law on the Transfer of Cases from the ICTY to the Prosecutor's Office of B-H and the Use of Evidence Collected by ICTY in Proceedings Before the Courts in B-H, stipulating acceptance of the facts established by legally binding decisions of ICTY, which the parties have made indisputable as well.

It is also indisputable that the Muslim Unit was the predecessor of the Al Mujahid Unit, which was a part of the armed force of the Republic of Bosnia and Herzegovina and which was composed of Muslim soldiers, mainly Arabs who had come to Bosnia and Herzegovina in the beginning of the war, and that nearby Travnik, in the village of Orašac, there was military barracks -- Orašac camp under the supervision of this unit and that the main military barracks of the unit was located in Mehurići, a place also nearby Travnik.

It is also an indisputable fact that shortly before the incriminated event some members of Muslim unit were captured by the HVO and that purpose of abduction was to exchange the abducted Croats for the captured Muslims. The captured persons were members of the unit, four of them were of Arab origin and one was from Bosnia and Herzegovina.

The fact that the Accused was the owner of dark green Volkswagen van is also indisputable, the fact that the Accused himself presented his opinion about in the closing argument before this Panel.

The Court accepts the above mentioned facts as established and will not further elaborate them given that the parties did not make them disputable.

However, disputable circumstances refer to the perpetration of the criminal offense - War Crimes against Civilians and elements constituting subject matter of this criminal offense, in other words, whether a criminal offense and criminal responsibility of the Accused exist as well as whether the abducted persons were civilians and hostages.

First, Article 3 of the IV Geneva Convention stipulates: (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 (...) shall in all circumstances be treated humanely, without any adverse distinction founded on race, color, religion or faith, sex, birth or wealth, or any other similar criteria. 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: (...) (b) Taking of hostages;

Article 173 (1) of CC B-H stipulates:



"Whoever in violation of rules of international law in time of war, armed conflict or occupation, orders or perpetrates any of the following acts: (...) e) Taking of hostages (....) shall be punished by imprisonment for a term not less than ten years or long-term imprisonment."

The fact is that the committed offense represents a violation of values protected by the international law in time of war (Article 3 of the IV Geneva Convention, 1949). Also, considering the fact that both parties agreed that an international conflict was underway in the territory of Travnik in October 1993, the Panel finds that the two primary elements of the criminal offense under Article 173 (1) (e) are met.

In respect to status of the captured persons, according to testimony of Ivo Fišić, the relevant evening he was with Kazimir Pobrić in his apartment, in civilian clothes and unarmed. Article 3 of the IV Geneva Convention protects persons considered civilians and these are persons who: ".....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 (....)". Therefore, broader interpretation of this Article indicates that it is irrelevant whether at that moment these persons were members of the HVO, as the Defense tries to present it. The relevant facts which indisputably indicate that these were civilians are the facts that in the moment of abduction these persons were not in the zone of combat activities, they were not uniformed and they were not armed.

Also, the issue is whether the abducted persons could be considered hostages, which is an important element of this criminal offense. According to the International Convention against the Taking of Hostages from 1979, that is, Article 1 of the Convention, hostage is any person seized or detained and threatened to be killed, to be injured or continually detained by another person in order to compel a third party, namely, a State, an international intergovernmental organization, a natural or juridical person, or a group of persons, to do or abstain from doing any act as an explicit or implicit condition for the release of the hostage. So, it arises beyond doubt that the persons who were taken from the apartment of Ivo Fišić that night were hostages within the meaning of the said Convention because they were taken by a group of persons-members of the Al Mujahid Unit in order to force the other group, HVO members, to release the captured members of the Al Mujahid Unit.

The Indictment of the Prosecutor's Office of B-H, amended on 23 June 2005 during the first instance proceedings, charges the Accused, Abduladhim Maktouf, with criminal offense of accessory in commission of the criminal offense of War Crimes against Civilians stating, among other things, that he is responsible for helping Abu Džafer and couple of members of the Al Mujahid Unit in taking of hostages Ivo Fišić, Kazimir Pobrić and Ivan Rajković. The Indictment also alleges that on the relevant evening Dalibor Adžaić and Dragoljub Popović were also taken hostages and taken to the camp in Orašac the same night, physically mistreated and Dragoljub Popović was murdered.

The testimonies of Ivo Fišić and "the Witness" result in the fact that on 19 October 1993, during the conflict between Bosnian Croats and Bosniaks in Travnik, a large dark green vehicle stopped in front of the Amerikanka building. The Amerikanka building is a residential building in Travnik in which Ivo Fišić and Kazimir Pobrić resided. That night around 2000 hrs, a group of armed members of the Muslim Unit, which would have been



transformed into the Al Mujahid Unit, took out Ivo Fišić and Kazimir Pobrić who was in Fišić's apartment at that time. The testimony of Ivo Fišić stating that he recognized the Accused as a driver of the van in which he and the injured party Pobrić were transported to the camp in Orašac, clearly and undoubtedly indicate participation of the Accused in the incriminated event in the capacity as accessory. It is absolutely understandable that Ivo Fišić can recognize the Accused given that for many years they have been fellow citizens of a small town such as Travnik. The Appellate Panel deems the testimony of this witness credible, given that witness Fišić describes the events with utmost precision and persistence and gives a realistic course of events. Witness Fišić, presenting his observations about the incriminated event, in a simple and consistent manner speaks about the events which happened that night, objectively and with only and obvious intention to make known the event in which he directly participated without malicious intention to incriminate the Accused. It arises from the body language and conduct of this man that this event has been present in his life for many years and that it represents a kind of burden. It follows from the fact that he changed his testimony in respect to presence of Ivan Rajković that he constantly reexamines himself as to see whether his observation was complete. When he spoke about the Accused his testimony was utterly objective.

The facts presented by Fišić were accepted by the Court as established facts, in particular because they are correlated with the testimony of "the Witness", person with protected identity, known both to the Prosecutor's Office and the Defense. According to the testimony of "the Witness" given during the first instance proceedings, the audio recording of which was listened through by this Panel, the driver of the van concerned was the Accused. Such an opinion of his arises from the fact that during the incriminated event he was together with the Accused in the vehicle, sitting in the co-driver's seat. The Panel is of the opinion that this witness' testimony is credible due to all the correlated circumstances which do not support the allegation of the Defense that testimony of this witness is motivated by revenge on the Accused. If this testimony is linked with the testimony of the witness for the Prosecution Husein Delić, it follows that the Accused was really involved in the concerned event as accessory. The Panel finds the testimony of Delić to be objective and realistic given that witness Delić has no reason or motive to incriminate the Accused. The very fact that "the Witness" told witness Delić about the event at the time when there was no indication of criminal prosecution for the criminal offense whatsoever, in particular given that Delić heard the information more than 13 years ago, supports the fact that it is incorrect that the testimony of this witness is exclusively motivated by revenge for having been fired in Maktouf's company and that the witness is not reliable and credible, as the Defense alleges.

The testimony of witness Salko Beba is related to the above mentioned, who first speaks objectively and consistently about the background of the entire activities (Abu Džafer's visit to witness Beba, his threats that civilians would be abducted etc.) and he also objectively and reliably presents his observation that he saw the Accused, Abu Džafer and some other Arabs together on the relevant night between 1700 and 2000 hrs. This testimony itself does not incriminate the Accused for the concrete action, however, if considered together with the testimony of Ivo Fišić, "the Witness" and witness Husein Delić one can clearly see the involvement of the Accused in the incrimination concerned.



It results from the testimony of "the Witness" himself stating that he participated in the abduction of civilians with Maktouf the relevant night that "the Witness" is the person under a pseudonym Abu Džafer, then from the testimony of witness Delić, who said that he spoke with Abu Džafer, and the testimony of witness Beba, who explicitly stated that Abu Džafer together with the Accused visited him in order to agree the exchange of captured members of the Muslim unit and that shortly before the abduction he saw them together in the town.

Then, one has to consider potential influence on criminal responsibility of the Accused of the immunity possibly granted to "the Witness" by the Prosecutor's Office of B-H or existence of de facto agreement between "the Witness" and the Prosecutor's Office of B-H not to prosecute "the Witness". All the presented evidence establish that there is no de jure agreement between the Prosecutor's Office of B-H and "the Witness" in respect to his possible prosecution as alleged main perpetrator of the criminal offense who was assisted by the Accused. It is also concluded that the Prosecutor's Office did not take any actions in order to conduct investigation and initiate prosecution against the main perpetrator of this criminal offense although, during the trial before this Panel, the Prosecutor's Office stated that it did not grant immunity to "the Witness" nor had intention to grant it. However, such fact itself has no influence on establishment of criminal responsibility of the Accused. This is correct for two reasons: "The Witness" incriminated the Accused, as mentioned before, at the time when there was no indication that the Accused could be prosecuted for the above mentioned offense and it is also visible that at that time he was not in hostile relations with the Accused. Second, the Panel established criminal responsibility of the Accused based on the other evidence and testimony of "the Witness", as mentioned earlier, makes a part of the entire evidence and has the same importance as the other evidence presented in the proceedings. This testimony is correlated to the testimony of direct participant and victim of the criminal offense - Ivo Fišić and objective evidence - testimonies of witnesses Delić and Beba.

In reference to the above mentioned, the Panel observes that the identity of the witness on whose testimony the decision of the Panel is partially based, is protected for general public, however, it is absolutely known to the parties to the proceedings. The Panel also observes that "the Witness" directly testified before the Court of B-H during the first instance and second instance proceedings and that the Defense had the opportunity to check his testimony on several occasions. In this context, it is important to mention the Decision of the Constitutional Court of B-H No. AP 506/04 dated 23 September 2005, referring to grounds for verdict on protected witness' statement. It reads: "Considering the above mentioned jurisprudence of the European Court of Human Rights, the Constitutional Court also deems that use of testimonies of anonymous witnesses as evidence in establishing the grounds for charges may result in violation of right to fair trial under Article 6 of the European Convention, in two cases: a) if the verdict is exclusively based on testimony of an anonymous witness, and b) when an accused or his Defense Attorney is not given the possibility to contest the testimony of anonymous witness during the trial, that is, to present his opinion about it." Therefore, the Panel would like to stress that when using the evidence of this witness, in the concrete case by hearing the witness, it took into consideration the right of the Accused to a fair trial under Article 6 of the European Convention on Human Rights and Fundamental Freedoms.



The Defense Attorneys for the Accused base their defense on the allegation that the entire proceedings against the Accused is a show trial, motivated by other reasons representing a part of the world fight against terrorism and that, among other things, the witnesses for the Prosecution, Ivo Fišić and "the Witness", are motivated by their own reasons to give false testimonies against the Accused: Ivo Fišić due to his efforts to pursue his claim under the property law, while "the Witness" is motivated by his wish to revenge for having been fired in his company. Also, during the entire proceedings, the Defense, as mentioned by witness Ramo Durmiš on several occasions, imposes to the Court the notion that "the Witness" and members of the Al Mujahid Unit are followers of a different Islamic sect, different from the sect of the Accused, therefore, there are insurmountable differences due to historical deep-rooted antagonism between these two religious groups, Shiites and Sunnites, resulting in the fact that the Accused was persona non grata as far as they were concerned.

First, the Panel does not accept the allegation of the Defense for the Accused that their evidence prove that on the relevant evening the Accused did not participate in commission of the criminal offense for the following reasons:

The Panel could not accept as reliable the testimony of witness for the Defense Ramo Durmiš, who stated that on the relevant evening he was in the camp in Orašac, given that the only circumstance he is testifying about is the fact that he did not see the Accused driving the vehicle concerned. The Panel did not give credence to the testimony of this witness, because it is contradictory and mixed-up in the parts referring to his stay in the camp in Orašac, which, in the opinion of this Panel, excludes its credibility. Witness Durmiš indicates that immediately after he was wounded on the front line in Bijeli Buć and hospitalized in Zenica hospital, he was transferred to the camp in Orašac. The witness stated that he was wounded four times and on one of those occasions he was seriously wounded by shrapnels all over his body, thus he required a longer recovery. On 1 October 1993, after a short stay in Zenica hospital, he was transferred to the camp in Orašac for recovery where he stayed until 28 October 1993. He indicated that at first he could not walk and that later he was able to walk only with crutches. He also stated that he stayed in the camp in Orašac until 28 October 1993. However, he further indicates that on 23 October 1993 custody against him was ordered and that he was in custody in the period from 23 October 1993 to 28 October 1993. In his testimony he further stated that he was wounded in June 1993 and that his recovery lasted four to six weeks which at longest could last until mid August 1993. Then, in the beginning, after his transfer to Orašac, he could not walk in the first seven days and later he was able to walk only with crutches. However, then he stated that he was leaving the camp in Orašac on several occasions in order to do certain jobs as agreed with the Emir of the Unit – Abu Haris. So, for the first time he left the camp on 15 October 1993 and then also on 20 October 1993, although it is hard to believe that a seriously injured person could be mobile to such an extent, in particular if he used crutches in daily activities. Then, it is obvious that no injury is recorded in the Zenica Prison record for witness Durmiš (Exhibit 144) after he was detained pursuant to the Decision of the High Court in Zenica and brought for checkup. Likewise, the witness was not decisive as to whether he saw who was in each of the vehicles involved in the event and how many persons were involved. Everything mentioned above indicates that the stay of witness Durmiš in the camp Orašac on the relevant evening and reliability of his testimony are really disputable.

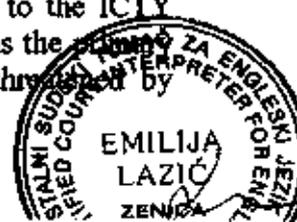


Therefore, if the testimony of this witness is compared to the testimony of witness Beba, which is completely contradictory in respect to the whereabouts of Abu Džafer the relevant evening, the Panel finds reliable the testimony of witness Beba stating that he saw Abu Džafer a couple of hours before the abduction in Travnik. So, it is beyond dispute that the same person could not be on two different places at the relevant time or shortly before, in particular if we consider that it takes an hour to hour and half by car from Travnik to the camp in Orašac. Given that the Panel concluded that the testimony of witness Durmiš is completely unreliable, it arises that Abu Džafer was really in Travnik together with the Accused couple of hours before the commission of the criminal offense.

As regard to witness Elvis Ribo, who has tried to present to the Court that "the Witness" gave his testimony against Maktouf for revenge because the Accused fired him from his company, the Court correlates it with the testimony of witness Delić. In other words, witness Delić has had knowledge about the involvement of the Accused in this event for almost 13 years. So, it follows from the presented evidence and the testimony of witness Ribo that "the Witness" and witness Ribo met in 2000 or 2001, that is, at the time when "the Witness" was still an employee of the Accused and "the Witness" was dismissed a couple of days after they met. This implies that he could be fired only after 2000 or 2001, which, if the testimony of witness Delić is taken into consideration, is not relevant for criminal responsibility of the Accused and a possible motive of revenge of "the Witness" on the Accused, given that witness Delić was decisive in respect to the time period when he learned about the abduction and its participants. It happened in 1993, shortly after "the Witness" met the Accused, that is, when he could not have a negative position about him and when he had no reason or motive to revenge on him whatsoever. In fact, the Accused, as it arises from the evidence, at that time helped "the Witness" to communicate by interpreting for him and it is logical to believe that he did not have any reason at the time, by informing Delić about his participation in the abduction, to incriminate him.

Furthermore, the allegation of the Defense that the Accused is persona non grata in the group of different sect to which "the Witness" belongs to and that due to that fact it was not possible for him to be in their vicinity, is not relevant for the period concerned. "The Witness" himself states that the Accused helped him to communicate by interpreting for him and that the Accused, prior to their final falling out and notice of the Accused, helped "the Witness" on several occasions by allowing him to live in the Accused's house, lending him money to open branch office of the Palma company in Kakanj, and financially assisting him when he was serving a 11-month sentence for the criminal offense that he had committed earlier. It is not realistic to believe that persons belonging to different religious sects with strong deep-rooted and centuries-old antagonisms would easily offer and accept mutual assistance. In this respect, also relevant is the testimony of witness Salko Beba stating that a couple of hours before the relevant evening he saw the Accused and Abu Džafer together and in the company of some Arabs.

In reference to the testimony of witness Ivo Fišić, which the Defense claimed to be inconsistent, because prior to 2004 and the involvement of the Prosecutor's Office of B-H in the case, he did not disclose the identity of the driver of the vehicle in which he had been abducted from Travnik either to the investigating authorities in Travnik or to the ICTY investigators, the Panel concludes that the reason indicated by witness Fišić as the reason was fear for his and his family's safety which could have been through

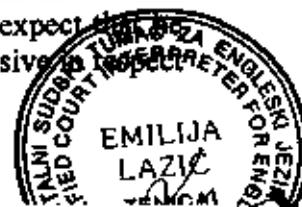


disclosure of the identity at the time the security situation in Travnik did not allow it, in his opinion. The Panel finds that the reason offered by the witness is absolutely acceptable and realistic – fear for personal and family's safety -- which he could realistically assess at the moment, being a reasonable and experienced man. It is also a fact that at that moment no concrete guarantees were offered nor were measures excluding or preventing a potential threat taken, which measures would have made him feel safe and free to disclose the facts related to the evening concerned.

Likewise, the Defense continually tried to present to the Panel that at the time of the commission of criminal offense a curfew was in effect in Travnik, due to which citizens of Travnik, including the Accused, were not allowed to move around the town. However, the Panel could not establish with certainty that a curfew had really been in force in Travnik at that time. Nevertheless, a curfew itself is not relevant for establishment of criminal responsibility of the Accused, since neither witness Fišić nor "the Witness" indicates that at the time of the commission of the offense concerned any police officer from Travnik stopped the vehicle concerned to conduct a check and possibly prevent further movement of the vehicle and persons on board. Therefore, even if curfew had been in force in Travnik at the relevant time, in the opinion of this Panel, it has no influence on establishment of the criminal responsibility of the Accused.

Furthermore, Article 31 of CC B-H stipulates that accessory in commission of criminal offense is, among other, supplying the perpetrator with tools for perpetrating the criminal offense and removing obstacles to the perpetration of criminal offense. Accessory for which this Panel deems the Accused criminally responsible is that he got the list of persons that he was supposed to take as hostages the relevant evening, that he knowingly and willingly used his knowledge of the place of residence of the persons on the list, that he drove his van to the building where the said persons lived and that, after they were abducted and placed into the vehicle, he drove the vehicle transporting them to Orašac camp. It arises beyond dispute that when the Accused carried out this activity, he acted with direct intent until completion of the preplanned activity, thus fully contributing to perpetration of this criminal offense. Therefore, the Panel deems him criminally responsible for this criminal offense. The Panel accepts this fact as established, because it is absolutely indisputable and realistic to believe that the Accused, being a citizen of B-H and Travnik for many years, has sufficient knowledge of the area of Travnik and its citizens. Given that Travnik is a smaller town, it is possible to expect that he knew where the mentioned persons resided, which supports the belief that he really committed the criminal offense charged with by the Indictment of the Prosecutor's Office of B-H.

In respect to tools for commission of the criminal offense, the testimonies of all the witnesses result in the fact that a dark green vehicle participated in the offense. "The Witness" stated that the Accused owned a dark green Volkswagen van in which he frequently rode with the Accused and that this was the vehicle in which the abducted persons were taken to the camp in Orašac. The fact that the Accused is the owner of the Volkswagen vehicle was not disputed in any moment during the trial before this Panel. Witness Fišić describes in his testimony the vehicle as an all-terrain vehicle, similar to Lada Niva. However, given that it is reasonable to believe that witness Fišić at the moment when he was taken away was afraid for his security and life, it is not realistic to expect that he could be interested to see what type of vehicle it was and he could not be decisive



to type of the vehicle in question, therefore, the Panel establishes, based on the testimony of "the Witness", that it was a dark green Volkswagen van owned by the Accused.

Further, after the trial the Panel established different facts compared to the ones presented in the Indictment and adjusted its Decision accordingly. It follows from the above mentioned that in the evening hours on the relevant night of 19 October 1993 the Accused, by personally driving the Volkswagen van to the building called Amerikanka in Travnik and then driving it to the place of Orašac nearby Travnik, in which van Ivo Fišić and Kazimir Pobrić, Croat civilians taken hostages, were transported, assisted the person under a pseudonym of Abu Džafer and some other members of the Muslim unit Al Mujahid to implement the plan of abducting Croat civilians in order to force the HVO to release the captured members of the Al Mujahid Unit.

The accessory in commission of the criminal offense ends for the Accused at the moment when he drove the vehicle with the abducted civilians to the entry of the Orašac camp. The presented evidence does not prove in any manner involvement of the Accused in the mistreatment of civilians in the camp, thus, he cannot, by any means be linked with the death of Dragoljub Popović, who was murdered on the relevant evening. It also arises from the presented evidence that two persons – Ivo Fišić and Kazimir Pobrić -- were in the vehicle of the Accused. Equally, contrary to the allegations of the Indictment, the Panel did not find with certainty based on the evidence presented, especially testimony of witness Fišić, that Ivan Rajković had been transported by the vehicle concerned driven by the Accused to the Orašac camp. Therefore, the Panel rendered the decision accordingly.

Due to all the above mentioned it arises that by the described activities the Accused committed the criminal offense of War Crimes against Civilians under Article 173 (1) (e) in conjunction with Article 31 of the Criminal Code of B-H.

In respect to the substantive law which has to be applied to this criminal offense within the context of time of perpetration of the criminal offense, the position of the Defense is that the provision of Article 142 of the Criminal Code of the SFRY (hereinafter: adopted CC) in force at the time of the commission of the criminal offense, as well as sanction prescribed, should be applied. The Defense finds arguments for such position in the fact that this is a more lenient law, given that after the abolition of capital punishment the sanction referred to in Article 142 of the adopted CC is more lenient sanction compared to the criminal sanction stipulated in Article 173 (1) of the Criminal Code of B-H and that it is a legal principle which includes mandatory application of a lenient criminal code.

The Panel finds that such arguments are not founded and that in the concrete case the provision referred to in Article 173 (1) of the Criminal Code of Bosnia and Herzegovina has to be applied.

In other words, Article 3 of the Criminal Code of B-H stipulates principle of legality, that is, that the verdict can only be founded on the principle which existed at the time when the incriminated act or failure to act happened (*nullum crimen sine lege*). Article 4 of the Criminal Code of B-H stipulates that the law which was in effect at the time when the criminal offense was perpetrated shall apply to the perpetrator of the criminal offense. If the law has been amended on one or more occasions the law that is more lenient



perpetrator shall be applied (*lex mitior*).

If we correlate these provisions with Article 7 (1) of the European Convention on Human Rights, which supersedes all the other laws in B-H (Article 2.2 of the Constitution of B-H), it can be concluded that this principle of legality referred to in Article 3 of the Criminal Code is contained in the first sentence of Article 7 (1) of the European Convention, while the other sentence of Article 7 (1) of the European Convention prohibits heavier penalty to be imposed than the one that was applicable at the time the criminal offense was committed. Therefore, this provision regulates prohibition to impose heavier penalty to the perpetrator but it does not regulate mandatory application of lenient law on the perpetrator compared with the penalty applicable at the time the criminal offense was committed. Article 7 (2) of the European Convention includes one exception and allows the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by civilized nations. This exception was included with specific aim to provide for application of domestic and international laws in respect to war crimes which entered into force during and after the World War Two.

Article 4a of the Law on Amendments to the Criminal Code of B-H (Official Gazette of B-H, No. 61/04) regulates that Articles 3 and 4 of the Criminal Code of B-H shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal offense according to the general principles of international law. This Article adopted completely the provision of Article 7 (2) of the European Convention thus providing for exceptional departure from application of the principle referred to in Article 4 of the Criminal Code of B-H, as well as from mandatory application of more lenient law in the proceedings representing criminal offenses according to international law, such as the proceedings against the Accused, because it is exactly the offense which includes violation of international law. Actually, Article 4a of the Law on Amendments to the Criminal Code of B-H is applied to all criminal offenses falling within war crimes, because these criminal offenses make part of the Chapter XVII of the Criminal Code of B-H -- Crimes Against Humanity and Values Protected by International Law.

This exception from application of more lenient law is fully justified if one takes into consideration general purpose of criminal sanctions referred to in Article 6 of the Criminal Code of B-H, since it is obvious that the maximum punishment of 20 years of imprisonment stipulated by the adopted CC (after abolition of capital punishment) could not achieve the general purpose of punishment given the gravity of these criminal offenses and their consequences, in particular if we consider the cases referred by the ICTY to the Court of Bosnia and Herzegovina.

In any case, even strict application of Article 7 (1) of the European Convention in these war crimes cases, prohibiting imposition of heavier penalty to the perpetrator than the one applicable at the time the criminal offense was committed, confirms that it is correct to apply Article 4a of the Law on Amendments to the Criminal Code of B-H, because it is evident that there is no heavier penalty than capital punishment, in force in October 1993 at the time the criminal offense was committed.

Even jurisprudence of the European Court of Human Rights (*Naletilić v. Croatia*, No. 51891/99) stresses applicability of the provision referred to in paragraph 2 rather than



application of paragraph 1 of Article 7 of the European Convention, which also justifies application of Article 4a of the Law on Amendments to the Criminal Code of B-H in these cases.

In the opinion of this Panel, the principle of mandatory application of more lenient law is excluded in processing of those criminal offenses for which at the time of their perpetration it was predictable and generally known that they were contrary to general rules of international law. In the concrete case, it is accepted as established that the Accused had to be familiar with the fact that in the state of war the application of international rules has priority and that violation of internationally protected values has grave consequences. The analysis of the provision of Article 173 (1) of CC B-H clearly shows that the subject matter of this criminal offense consists of, *inter alia*, elements of violation of international rules. This fact makes this group of offenses special, because it is not sufficient to commit the criminal offense through some physical activity, but it is necessary to be conscious of the fact that international rules are violated by commission of the offense and it is also assumed that the perpetrator must be aware of the fact that period of war or conflict or hostilities is particularly sensitive and particularly protected by generally accepted principles of international law. As such, the offense is gaining in importance and its commission has graver consequences compared with the offense committed in some other period.

Deciding on type and duration of punishment the Panel was guided by general rules for meting out the penalty referred to in Article 48 (1) of the Criminal Code of B-H, considering the circumstances influencing to impose heavier or lenient punishment. The Panel took into consideration the degree of criminal responsibility of the Accused and the fact that he assisted in commission of the criminal offense and that the Criminal Code of B-H includes possibility of more lenient punishment for accessory in commission of criminal offenses. The Panel also considered concrete contribution of the Accused to the commission of the criminal offense as well as the time period which passed after the commission. As regards to aggravating circumstances, the Court concluded that the abducted civilians were mistreated physically and mentally, beaten up, humiliated and that they witnessed ritual beheading of one of the abducted persons in the camp in Orašac. The Panel is also aware of the fact that the abduction of these persons increased the level of insecurity and fear for life of the Croat citizens who stayed in the territory of Travnik Municipality which was under the control of the Army of B-H. As regards to mitigating circumstances in favor of the Accused, the Panel concluded that he is a family man, father of four children who has not been convicted so far. The Panel also considered the contribution of the Accused in transporting the injured party Kazimir Pobrić from the camp in Orašac back to Travnik. In the opinion of the Panel, the mitigating circumstance is also the appropriate conduct of the Accused during the trial, as well as fact that the Accused assisted the main perpetrator of the criminal offense concerned who has not yet been prosecuted.

Considering the degree of criminal responsibility of the Accused and consequences of the criminal offense, as well as the fact that the Accused was accessory in commission of the criminal offense, and considering the mitigating circumstances in favor of the Accused, the Panel applied the provisions on reduction of punishment and reduced the sentence to the maximum extent possible, applying the provision of Article 50 (1) (a) of the Criminal Code of B-H, sentencing him to imprisonment for a term of five years, being of the opinion that the pronounced sentence can fully achieve the purpose of punishment and that the



pronounced sentence will influence the Accused not to commit other criminal offenses in future. At the same time the punishment will serve the general preventative purpose influencing others not to commit criminal offenses and raise awareness of citizens on threat of criminal offenses and righteousness of punishment of criminal offenses.

Pursuant to Article 56 of the Criminal Code of B-H, the time period which the Accused has spent in custody since 12 June 2004 shall be counted as part of the sentence of imprisonment.

Given that the Accused was pronounced guilty, the Panel decided that the Accused is bound to reimburse the costs of criminal proceeding the amount of which shall be defined by a separate decision pursuant to Article 186 (2) of the Criminal Procedure Code of B-H.

The injured parties Ivo Fišić and Kazimir Pobrić filed the property claim, so, pursuant to Article 198 (2) of CPC B-H, the Panel instructs them to take civil action, because it is obvious that pursuing of the property claim would significantly postpone the criminal proceedings.

This Verdict is final and no appeal is allowed against it.

**RECORD -TAKER**

Dženana Deljkić  
[signature affixed]

**PRESIDING JUDGE**

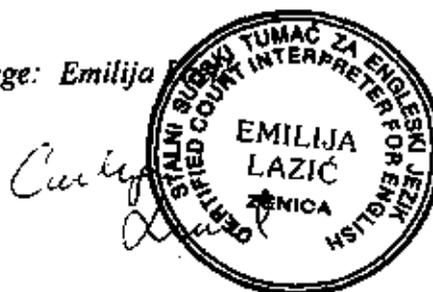
**JUDGE**  
Hilmo Vučinić  
[signature affixed]

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

*Sarajevo, 25 April 2005*

*Certified Court Interpreters for English Language: Emilija*



*Edina Neretljak*

