

SUD BOSNE I HERCEGOVINE



СУД БОСНЕ И ХЕРЦЕГОВИНЕ

Суд БиХ  
Кривично одjeljenje и Апелационо одjeljenje  
Одјел I / Одјел II / Одјел I и Одјел II  
Одјел за судску управу, Одјел за судску управу

693

X-KR/05/161

72 (St./Срп.)

20-03-2007

Number: X-KR-05/161  
Sarajevo, 16 February 2007

## IN THE NAME OF BOSNIA AND HERZEGOVINA

The Court of Bosnia and Herzegovina, Section I for War Crimes, in the Panel comprised of judges Zorica Gogala, as the President of the Panel and Roland Dekkers and Tore Lindseth as the Panel members, with the legal officer Amela Skrobo as the minutes taker, in the criminal case against the Accused Gojko Janković, for the criminal offence of Crimes against Humanity referred to in Article 172 paragraph 1 items a), d), e), f) and g) of the Criminal Code of Bosnia and Herzegovina, upon the Indictments of the Prosecutor's Office of Bosnia and Herzegovina number KT-RZ 163/05 of 14 February 2006 as amended on 22 December 2006 and number KT-RZ: 43/06 of 27 June 2006, following the main trial from which public was partially excluded, rendered and in the presence of the Accused and his Defense counsel – attorney Milan Trbojević and the prosecutor of the Prosecutor's Office of BiH – Philip King Alcock, on 16 February 2007 publicly announced the following

## VERDICT

**ACCUSED GOJKO JANKOVIĆ**, son of Danilo, mother's name Radojka nee Salamadija, born on 31 October 1954 in the village of Trbušće, municipality of Foča, with permanent residence at Foča, I.G. Kovačića street no.13, last known registered address in the village of Trnovača, municipality of Foča, citizen of Bosnia and Herzegovina, of Serb nationality, married, father of 3 children, literate, secondary school qualifications, no prior convictions. served the army in Kraljevo in 1973 with the rank of Lieutenant, awarded with the medal "Miloš Obilić" in 1993, Personal Identity Number 3110954131530, surrendered to the authorities of Republika Srpska on 13 March 2005, transferred to the International Criminal Tribunal for the Former Yugoslavia (ICTY) on 14 March 2005, and transferred to the Court of Bosnia and Herzegovina Detention Unit on 8 December 2005, where he is currently detained,

## I

## IS GUILTY

### BECAUSE:

Between April 1992 and November 1993, within the territory of the Foča municipality, as the leader of an military unit acting within the Foča Brigade of the Army of the Serb Republic of Bosnia and Herzegovina (hereinafter referred as 'the Army'), he took part in a

Kraljice Jelene br. 88, 71 000 Sarajevo, Bosna i Hercegovina, Tel: 033 707 100, Faks: 033 707 225  
Крљице Јелене бр. 88, 71 000 Сарајево, Босна и Херцеговина, Тел: 033 707 100, Факс: 033 707 225

widespread or systematic attack by the Army, members of the Police and paramilitary formations against the non-Serb civilian population in the wider area of Foča municipality, whereby those civilians were methodically captured, being physically abused and killed in the attack, separated according to sex, and detained in several facilities including the Foča Correctional Institute, for the men, and Buk Bijela, the Foča High School, Partizan Sports Hall, a house at Ulica Osmana Đikića no.16, a house in Miljevina known as Karaman's house, a house in Trnovača and other places for the women and girls where they were detained under harsh conditions and subjected to physical, mental and sexual abuse by their captors, while Muslim houses and apartments in Foča and neighboring municipalities were looted, destroyed and burnt down, as more particularly set out below:

1. On 14 April 1992 the Accused Gojko Janković, commanded a group of soldiers who attacked the hamlet of Brežine/Zubovići inhabited by civilians of Muslim nationality, ordering the group that he commanded the unlawful arrest and taking away of Enes Hrnjičić, Halid Konjo, Halim Konjo, Enes Uzunović, Esad Mezbur, Osman Ramić, Osman Dedović and Haso Glušac, who were then forcefully taken by other soldiers to detention in Brod where they were interrogated and beaten, and then transferred to the KPD camp in Foča.

2. On 3 July 1992 Gojko Janković commanded a group of soldiers who attacked Muslim civilians hiding in the woods on the Kremenik hills, wounding several of them and killing Fadila Odobašić, Selima Pekaz and Izet Čolo, and also capturing about thirty women and children and seven men, namely Husein Barlov, Ziad Barlov, Meho Barlov, Armin Pekaz, Mujo Pekaz, Adem Čolo and Sifet Čolo; these captives, particularly the men, were questioned and brutally beaten, then brought to a clearing where Gojko Janković was waiting for them; beatings continued; then the women were walked away whilst Gojko Janković and some of his soldiers remained with the seven male captives who were then shot causing bullet injuries to them, principally head injuries: Sifet Čolo- shattering of the cranial vault bones and bones of the base of the skull, Armin Pekaz -fracture of the cranial vault bones and bones of the base of the skull, upper and lower mandible, right upper arm, right scapula and right femur, Zijad Barlov - fracture of the cranial vault and the base of the skull, fracture of the upper mandible, right thigh bone, right clavicle, right pubic bone and injury to the right upper arm, Meho Barlov - fracture of the cranial vault bones and bones of the base of the skull, Husein Barlov- fracture of the cranial vault bones and bones of the base of the skull, Adem Čolo- head injury with fractures of the skull bones and Mujo Pekaz- head injury with fracture of the temporal-parietal bone, which injuries caused the deaths of all of the seven captured men; all these acts being Gojko Janković's part within a greater attack by the army upon the villages of Trošanjan and Mješaja that day, involving killings of Muslim civilians and the ransacking and burning of their houses.

3. On the same day the captured women and children were forced to walk to Buk Bijela, a temporary detention and interrogation facility, under the escort of some of Gojko Janković's soldiers, where the Accused Gojko Janković arrived later with the remainder of his group, and there they questioned the captured women; the Accused, together with Dragan Zelenović and Janko Janjić interrogated female detainee FWS-75 and Gojko Janković threatened to gang-rape her if she lied; he then allowed one of the soldiers to take the female detainee in another hut where she was raped by at least ten unidentified soldiers and lost consciousness.

4. From mid July until mid August 1992, at Partizan Sport Hall in Foča, many Muslim civilians were detained in inhumane conditions, including female detainees FWS-87, FWS-95, FWS-48, FWS-105,

- between the above dates the Accused Gojko Janković, together with an unidentified soldier, took FWS-95 and FWS-48 out of Partizan Sports Hall to a house in Gornje Polje where the Accused raped FWS-95 vaginally;
- a few days after the rape described above the Accused Gojko Janković came again to Partizan Sports Hall with three other unidentified soldiers and they forced FWS-95 and three other Bosniak women captives to walk to a premises in Foča where they were all ordered to undress and wash and where the Accused raped FWS-95 vaginally;
- on a date in late July or very early August 1992 the Accused Gojko Janković and Beban Vasiljević drove FWS-95 and FWS-87 from Partizan Sports Hall to a house in Trnovača where Gojko Janković raped both FWS-95 and FWS-87 vaginally and where Beban Vasiljević also raped FWS-87 vaginally;

5. On an unknown date in late July or early August 1992 the Accused, Gojko Janković, together with Beban Vasiljević took the female detainees FWS-105 and DB from the detention Center at Partizan Sports Hall to a house in the village of Trnovača in the municipality of Foča where the Accused Gojko Janković spent the whole night with female detainee FWS-105 and raped her twice, while Beban Vasiljević raped female detainee DB and the next morning, on the order of the Accused, they were returned by Beban Vasiljević to the detention Center at Partizan.

6. On 2 August 1992 Gojko Janković, together with Dragoljub Kunarac and Dragutin Vuković (Gaga), removed female detainees FWS-186, FWS-191 and JG, all teenagers, from a house in Aladža and took them to a private house in Trnovača, occupied by Gojko Janković; female detainee JG only remained there a few days but both female detainees FWS-186 and FWS-191 were kept there until the end of January 1993 and throughout that time Gojko Janković raped female detainee FWS-186 many times; Dragoljub Kunarac raped female detainee FWS-191 many times during the first two months with Gojko Janković also raping female detainee FWS-191 on one occasion within that period; when female detainees FWS-186 and FWS-191 were moved to another apartment in January 1993 Gojko Janković continued to rape female detainee FWS-186 there until the end of November 1993; both Gojko Janković and Dragoljub Kunarac used female detainees FWS-186 and FWS-191 as sexual and general servants at the Trnovača House, treating them as objects and personal possessions and exercising complete control over their lives.

7. In late October or early November 1992 the Accused, Gojko Janković, together with Dragan Zelenović and Janko Janjić removed female detainees FWS-75, FWS-87, AS and twelve year old AB from the detention Center known as „Karaman's house“ in Miljevina, and drove them by car to an apartment in Foča near a fish restaurant where Janko Janjić ordered the female detainees FWS-75 and AB to give a bath to the Accused Gojko Janković, who raped underage female detainee AB in the bathroom, while Dragan Zelenović raped female detainee FWS-87 and Janko Janjić raped FWS-75.

**Therefore,**

Within a widespread or systematic attack against the Bosniak civilians in the area of Foča Municipality, with a knowledge of such attack and willingly participating in it by his actions he committed the actions described under counts 1 through 7 of the operative provision of the convicting part of this Verdict,

**Whereby he,**

Committed the Criminal Offence of Crimes against Humanity under Article 172 paragraph 1 of the Criminal Code of Bosnia and Herzegovina (CC of BiH), as follows:

**With reference to Count 1** he committed: forcible transfer of population and imprisonment under Article 172 (1) items d) and e) in conjunction with Article 29 CC of BiH.

**With reference to Count 2** he committed: murders, tortures and forcible transfer of population under Article 172 (1) items a), f) and d) in conjunction with Article 29 CC of BiH.

**With reference to Count 3** he committed: torture and rape under Article 172 (1) items f) and g) in conjunction with Article 29 CC of BiH.

**With reference to Count 4** he committed: torture and rape of the injured parties FWS-95 and FWS-87, under Article 172 (1) items f) and g) CC of BiH, and aided and abetted the torture and rape of the injured party FWS-87, as prescribed under Article 172 (1) items f) and g) in conjunction with Article 180 (1) CC of BiH.

**With reference to Count 5** he committed: torture and rape of the injured party FWS-105, under Article 172 (1) items f) and g) CC of BiH, and aided and abetted the torture and rape of the injured party DB, as prescribed under Article 172 (1) items f) and g) in conjunction with Article 180 (1) CC of BiH.

**With reference to Count 6** he committed: torture and sexual slavery of the injured parties FWS-186 and FWS-191, under Article 172 (1) items f) and g) in conjunction with Article 29 CC of BiH.

**With reference to Count 7** he committed: rape and torture of the injured party AB, under Article 172 (1) items g) and f) CC of BiH and aided and abetted the torture and rape of the injured parties FWS-75 and FWS-87, as prescribed under Article 172 (1) items f) and g) in conjunction with Article 180 (1) CC of BiH.

**Consequently, pursuant to the above-referred legal provisions as read with the provisions of Articles 39, 42 (2) and 48 of the Criminal Code of Bosnia and Herzegovina the Court:**

## SENTENCES HIM

### TO LONG TERM IMPRISONMENT OF 34 (thirty four) YEARS

Pursuant to Article 56 of the Criminal Code of Bosnia and Herzegovina the time that the Accused spent in custody pending trial as of 14 March 2005, shall be counted as part of the pronounced sentence of imprisonment.

Pursuant to Article 188 (1) of the Criminal Procedure Code of Bosnia and Herzegovina the Accused must reimburse the costs of criminal proceedings that will be settled by the Court in a separate Decision.

Pursuant to Article 198 (2) of the Criminal Procedure Code of Bosnia and Herzegovina the injured parties are referred to take civil action to pursue their claim under property law.

## II

Conversely, pursuant to the provision of Article 284 (c) of the Criminal Procedure Code of Bosnia and Herzegovina (CPC of BiH):

**The Accused Gojko Janković**

**IS ACQUITTED OF CHARGES**

**That:**

Between April 1992 and November 1993, within the territory of the Foča municipality, as the leader of an intervention unit acting within the Foča Brigade of the Army of the Serb Republic of Bosnia and Herzegovina (hereinafter referred to as 'the Army'), he took part in a widespread or systematic attack by the Army, members of the Police and paramilitary formations against the non-Serb civilian population in the wider area of Foča municipality, whereby those civilians were methodically captured, being frequently beaten and killed in the attack, separated according to sex, and detained in several facilities including the Foča Correctional Institute, for the men, and Buk Bijela, the Foča High School, Partizan Sports Hall, a house at Ulica Osmana Đikića no.16, a house in Miljevina known as Karaman's house, a house in Trnovača and other places for the women and girls where they were detained under harsh conditions and subjected to physical, mental and sexual abuse by their captors, while Muslim houses and apartments in Foča and neighboring municipalities were looted, destroyed and burnt down, as more particularly set out below:

1. On 3 July 1992, a number of soldiers under the command of the Accused Gojko Janković, brought a captured elderly man Redžo Pekaz from the village of Trošanjanj in front of huts at Buk Bijela where he was beaten and the other detainees and the Accused Gojko Janković himself could hear his screams; then they took him near the bank of Drina River and shot him dead.

2. In the period from 7 April to early May 1992, together with Janko Janjić, Ljuban Kalajdžić and an unidentified soldier, Gojko Janković came to a Muslim house in Foča occupied by the protected witness E, where she was forced to sexual intercourse in that she was being held by the suspect and the unidentified soldier while Janko Janjić raped her; and then on 10 to 15 closely succeeding but unknown dates between late April 1992 and late May 1992 Gojko Janković, Janko Janjić and the unidentified soldier came to her house and on each occasion Gojko Janković raped protected witness E who was also raped on many of those occasions by Janko Janjić or the unidentified soldier, or by both of them; and in late May 1992 Gojko Janković, Janko Janjić and the unidentified soldier deprived protected witness E of her liberty by forcefully taking her to Partizan Sports Hall in Foča where she remained in detention for several weeks together with other women including Witness J, and where she saw Gojko Janković on further occasions, and was also raped once by a soldier she did not know.

**Whereby** he would have committed the criminal offence of Crimes against Humanity under Article 172 (1) CC of BiH, items a) and f) as read with Article 180 (1) CC of BiH, and items e), f) and g), as read with Article 180 (2) CC of BiH, under Count 1 and Count 2 of the acquitting part of the operative provision, respectively.

### **1. Transfer of cases from the ICTY**

Under the amended Indictment of the ICTY, case no. IT-96-23/2-1, dated 5 October 1999, Gojko Janković was accused of Crimes against Humanity referred to in Article 5 (f) of the Statute of the Tribunal and the violation of laws and customs of war referred to in Article 3 (1) item a) of the Geneva Convention, which, according to the allegations of the Indictment, he committed in the territory of Foča Municipality. He voluntarily surrendered to the Republika Srpska authorities on 13 March 2005, whereupon on 14 March 2005 he was transferred to the ICTY detention.

On 22 July 2005, in keeping with Rule 11bis of the ICTY Rules of Evidence and Procedure, the ICTY Referral Bench decided to transfer the case *Prosecutor vs. Gojko Janković* to the authorities of the State of Bosnia and Herzegovina. On 15 November 2005, this decision was confirmed and on 8 December 2005 the Accused Janković was transferred to the authorities of Bosnia and Herzegovina and handed over to this Court for further proceedings.

On 8 December 2005, the Prosecution filed to the Court a Motion for ordering custody against the Accused in accordance with Article 135 (1) CPC of BiH in conjunction with Article 132 (1) items a), b) and d) of the CPC of BiH. In his decision of 8 December 2005 the Preliminary Hearing Judge of this Court did not accept the Motion for ordering custody and decided that the custody ordered against the Accused at the order of the ICTY Trial Chamber, which commenced from 14 March 2005, shall remain in force pending the decision of the Court of BiH on acceptance the adapted Indictment of the Prosecutor's Office of Bosnia and Herzegovina.

In the implementation of the decision of the ICTY Referral Bench, based on Article 2 (1) and (2) of the Law on the Transfer of Cases from the ICTY to the Prosecutor's Office of BiH and the Use of Evidence collected by ICTY (Law on Transfer) in proceedings before the Courts in BiH, and Article 35 (2) (h), Article 226 (1) and Article 227 CC of BiH, in accordance with the Counts of the amended ICTY Indictment and the facts mentioned therein, the Prosecutor's Office of BiH filed the adapted Indictment on 14 February 2006 which is also amended by adding Counts 1, 2, 4, 7 and 8.

Under the adapted and amended Indictment No. KT-R3-163/05 dated 14 February 2006, the Prosecutor's Office of BiH, Section I for War Crimes accused Gojko Janković of the perpetration of the criminal offence of Crimes against Humanity in violation of Article 172 (1) items a), c), d), e), f) and g), in conjunction with Article 180 (1) and (2) of the CC of BiH, committed at the time and in the manner described in detail in the filed Indictment, in Counts 1 through 9.

On 20 February 2006, deciding on the filed Indictment, the Preliminary Hearing Judge of the Court of BiH accepted Counts 3, 5, 6 and 9 of the Indictment and confirmed its Counts 1, 2, 4, 7 and 8.

On 16 March 2006, the Accused pleaded not guilty on any Count of the Indictment.

On 27 June 2006, the Prosecutor's Office of Bosnia and Herzegovina filed another Indictment against the Accused Gojko Janković under No. KT-RZ:43/06, charging him with the Crimes against Humanity in violation of Article 172 CC of BiH, specifically torture and rape, which also occurred at the material time and place, referred to in items e) and f) of Article 172 (1) CC of BiH.

On 4 July 2006, the Preliminary Hearing Judge of the Court of BiH confirmed this Indictment. On 18 July 2006 the Accused Gojko Janković pleaded not guilty as charged.

Deciding on the Motion of the Prosecutor's Office of BiH to joinder the proceedings concerning these two Indictments, having heard the parties, the Court rendered a decision on 3 August 2006 on joinder of the proceedings, whereupon the proceedings against the Accused Gojko Janković continued jointly according to both Indictments.

The Court rendered such a decision having in mind the provision of Article 25 CPC of BiH, primarily the reasons of cost-effectiveness of the proceedings and the right of the Accused to have trial within reasonable time and the fact that the Accused didn't object to the joinder of the proceedings.

## **2. Presented evidence**

During the main trial, presented were pieces of evidence of the Prosecution and the Defense, as well as those presented upon the order of the Court.

Upon the Motion of the Prosecution, in addition to the witnesses whose identity was revealed, examined were also the witnesses on whom certain identity protection measures were applied, and they are mentioned in this Verdict under pseudonyms. The Prosecution

also presented physical evidence, the admission of which was considered by the Court on individual basis.

The following witness were examined: witnesses under pseudonyms FWS-75, FWS-74, FWS-87, FWS-96, FWS 88, FWS-95, FWS-191, FWS-175, FWS-190, FWS-192, DB, B, C, D, E and J, as well as witnesses Enes Hrnjičić, Gordana Igrić, Jusuf Čolpa, Ferida Glušac, Habiba Musić, ZDŽ, Dr. Nuredin Aščerić, whilst Dr. Marija KOMŠIĆ was examined in the capacity of both an expert witness and a witness, and Dr. Alma Bravo Mehmedbašić as an expert witness.

Deciding on the Motion of the Prosecution, with the exception of direct presentation of evidence by reading the statements of witnesses FWS-132, FWS-105, FWS-186, AS and witness Zada Čedić, following the submission of the Defense, and based on Article 273 (2) CPC of BiH, the Court decided that, except for the statement of AS, some statements of these witnesses be read, which will be explained in the part concerning procedural decisions of the Court.

During the main trial, proposed and presented were the following pieces of physical evidence of the Prosecution: a set of 4 photographs of the house in Brežine, List of Detainees in the Penal and Correctional Facility Foča, Official Letter of the Federation Commission on Missing Persons No. 01-41-2106/2006 dated 3 May 2006, Official Letter of the Federation Commission on Missing Persons No. 01-41-2126/2006 dated 5 May 2006, Official Letter of the Federation Commission on Missing Persons No. 01-41-2020/2006 dated 27 April 2006, Official Letter of the BiH Ministry of Defense No. 08-04-360-5/06 dated 3 March 2006, a copy of Military Booklet of Gojko Janković, Official Note of the investigator of the Prosecutor's Office of BiH No. KTA – RZ-163/05 dated 3 May 2006, BiH Census of 1991 – an Excerpt from the Federation Institute for Statistics, Records of Examination of Enes Hrnjičić dated 23 August 2005 and 6 January 2006, Records of Examination of the Witness B dated 10 August 2005 and 6 January 2006, Video of BBC panorama broadcast, a photograph of Buk Bijela marked by the witness FWS-75, Records of Examination of the Witness FWS-75 dated 18 November 1995, 6 March 1998, 22 October 2003, 30 December 2005, and the transcript of this witness' testimony before the ICTY, Record of Examination of the Witness FWS-88 dated 21 January 1996, Oslobođenje Article titled "The Day when Trošanj fell down", Record of Examination of the Witness C dated 11 January 2006, Record of Examination of the Witness D dated 11 January 2006, Official Letter of the Federation Commission on Missing Persons No. 01-41-55/2006 dated 13 January 2006 on the exhumation conducted in Trošanj on 2 June 2001, Records of Exhumation – Official Letter of the Cantonal Court in Sarajevo No. 009-0-Su-06-000108 dated 25 January 2006, photo documentation No. 17-13/1-7-02/06 compiled by SIPA on 18 January 2006, photographs of the Kamernik hill, ICTY Internal Memorandum dated 22 March 2000 – Official Note on the interview with the witness DB, Record of Examination of the Witness DB dated 11 October through 15 October and 6 December 2003, Transcripts of the testimony of the Witness DB before the ICTY, photographs of Buk Bijela, 3 photographs of the house in Trnovača, Record of Examination of the Witness FWS-192 dated 4 May 2000, a sheet of paper containing the names of the husband and sons of the witness FWS-96, a photograph of Gojko Janković signed by the witness 96 in the ICTY, a sheet of paper containing the names of 6 men killed on the meadow, a photograph of Buk Bijela marked by the witness FWS-96, Permit to leave Foča issued to the name of witness

FWS-96, Records of Examination of the Witness FWS-96 dated 12 February and 13 February 1996, Transcript of the testimony of the witness FWS-96 before the ICTY dated 27 April 2000, Record of Examination of the Witness FWS-190 dated 7 June and 8 June 1998, transcript of the testimony of the witness FWS-190 dated 16 May and 17 May 2000 before the ICTY, Official Letter of the Federation Commission on Missing Persons dated 5 May 5 2006 – information on Redžo Pekaz, Record of Examination of the Witness FWS 175 dated 21 August 1997, Transcript of the testimony of the witness FWS-175 before the ICTY dated 18 May and 22 May 2000, NIN Article titled “Guys on the Hague List”, by Gordana Igrić, dated 23 August 1996, audio tape - Gordana Igrić’s interview with Gojko Janković, plan - layout of the house in Trnovača made by the witness FWS-191, a photograph of the witness FWS-191, letter of the witness FWS-92 addressed to the witness FWS-191, bulletin-board marked by the witness FWS-95, Record of Examination of the Witness FWS-191 dated 23 September 1998, ICTY Internal Memorandum dated 15 June 1998, Transcripts of testimonies of the witness FWS-191 dated 15 May and 16 May 2000. Record of Examination of the Witness FWS-95 dated 9 February through 11 February 1996, a sheet of paper on which the witness FWS-95 wrote the name of the person who recognised the Accused in Buk Bijela, a sheet of paper on which the witness FWS-95 wrote the name of the person who was taken to the stadium on 12 August 1992, transcript of the testimony of the witness FWS-95 before the ICTY dated 25 April 2000, Record of Examination of the Witness FWS-74 dated 15 November 1995, Records of Examination of the Witness 87 dated 19 January and 20 January 1996, and 5 December 2003, Transcripts of the testimonies of the witness FWS-87 dated 4 April and 5 April 2000, bulletin-board containing 12 photographs used in identification process, signed by the witness E, a sheet of paper on which the witness E wrote the name of another person who was in the “Partizan” Sports Hall, Record of Examination of the Witness E dated 27 March 2006, Record of Examination of the Witness E - identification procedure dated 27 March 2006, Record of Examination of the Witness J dated 12 June 2006, Record of Questioning the Suspect Gojko Janković, No. KT – RZ -163/05 dated 2 February 2006 made on the premises of the Prosecutor’s Office of BiH, ICTY Indictment against the Accused Gojko Janković, Judgements of the ICTY Trial and Appellate Chambers in the case of Dragoljub Kunarac et al. No. IT -96 -23-T and IT – 96-23/1-T dated 22 February 2001 and 12 June 2001, Record of Questioning the Suspect Gojko Janković, No. KT – RZ -43/06 dated 17 April 2006 made on the premises of the Prosecutor’s Office of BiH, Letter recommending Gojko Janković’s appointment as “Vojvoda” No. 01/705 -1 dated 13 August 1993, Video recording of interview with Miroslav Stanić and transcript of the recording, Information report on activities of Srbinje Police Station from April 1992 to April 1994, made in June 1994, certified excerpts from the records of the Republika Srpska Ministry of Labour and Veterans’ Issues, Records of Exhumation and Autopsy of Redžo Pekaz, Order of the Army Post Office 7141 Foča dated 28 October 1992, Order of the Foča Tactical Group Command dated 30 June 1993, a sheet of paper containing the maiden name of the witness E, a photograph of the bar run by Gojko Janković during the war, VINS magazine Article, Official Letter of the Supreme Prosecutor’s Office of the Republic of Montenegro No. KRZ:2/06 dated 15 December 2006 – Receipt of the General Hospital in Kotor, Statement of Milica Janković given in the Public Security Station in Foča/Srbinje on 13 December 2004 under number: 13-1-8(4)/02-230, statement of the witness FWS-105 given to Dr. Aščerić, statement of the witness ZDŽ given to the Sandžak Committee on Human Rights, statement of the witness FWS-48 given to the Sandžak Committee on Human Rights, a photograph of the “Foča group” patients of Dr. Aščerić, a photograph of Dr. Aščerić with

colleagues, statement of Dr. Ašćerić, Decision of the Public Security Station Foča dated 26 June 1992 that witness Zada Čedić leave Foča, Record of Examination of Witness Habiba Musić, No. KT –RZ-163/05 dated 22 December 2006, findings on expert analysis and opinion of Dr. Alma Bravo Mehmedbašić, Statement of witness Ferida Glušac given before the ICTY, report of P. Koulischer, statement of the witness FWS-96 – excerpt from the report of P. Koulischer, military records for the Accused Gojko Janković, Agreement on Admission of Guilt made between Dragan Zelenović and the ICTY Office of the Prosecutor, interview of Dragoljub Kunarac given before the ICTY, transcript of the testimony of Dragoljub Kunarac before the ICTY, letter of the Foča Municipality General Administration Section No. 04-835/4 dated 22 January 2007.

The Defense adduced the following witnesses at the main trial: Papović Ljubinka, Papović Milomir, Paprica Anđa, Paprica Miloš, Paprica Milenko, Pavlović Zoran, Šušnjević Radmila, Pavković Branka, Kulić Sanja, Todorović Mirjana, Živanović Zorica, Kalajdžić Ljubomir, Miletić Ljubomir, Šipčić Mitar, Pavlović Bogdan, Elezović Stevo, Partalo Boško, Arsenić Savo, Kovačević Soniboj, Dostić Ljubomir, Smrekić Zoran, Milomira Aćimovića, Petar Aćimović, Lazarević Mladen, Čalasan Ilija, Paprica Dragan, Tomović Radmilo, Pljevaljčić Milan, Rangelov Stamen, and the wife of the Accused, Milica Janković.

The Defense also adduced the following documentary evidence: Witness examination records composed by attorney Milan Trbojevića, Defense Counsel for the Accused, as follows: statement of Branka Pavković dated 24 July 2006, Sanje Kulić dated 26 July 2006, Milomir Aćimović dated 8 January 2007, Ljubomir Dostić dated 28 October 2006, Mirjana Todorović dated 28 October 2006, Zoran Smrekić dated 24 July 2006, Milan Pljevaljčić dated 24 July 2006, Zorica Živanović dated 29 October 2006, Dragan Paprica dated 10 December 2006, Radmilo Tomović dated 10 December 2006, Milenko Paprica dated 10 December 2006, Ilija Čalasan dated 24 July 2006, Bogdan Pavlović dated 25 July 2006, Stamen Rangelov dated 28 October 2006, Boško Partal dated 24 July 2006, Ljubomir Kalajdžić dated 26 July 2006, Mitar Šipčić dated 26 July 2006, Stevo Elezović dated 25 July 2006, Savo Arsenić dated 24 July 2006 and Milica Janković dated 27 December 2006, and also the Decision for Milenko Paprica, reference number 04-589-625/01 dated 17 July 2002, copy of Gojko Janković's military booklet, Official letter of the Defense Ministry number 08-04-188-1/06 dated 1 November 2006, a birth certificate for Marko Paprica, Certificate for Slobodan Janković dated 2 November 1992, Official letter of the Basic Court in Herceg Novi number: Su -23/06 dated 14 September 2006 with the enclosed copy of the portion of the criminal case file, Certificate for Radivoje Vasiljević, number 05-1/365 dated 11 April 1993, Certificate for Milenko Jojić, number 05-1/366 dated 11 April 1993, Decision on permanent closing down of STR minimarket „Lala“ number 02-Up/1-570-92 dated 6 July 1992, issued by the relevant section of the town hall of Herceg Novi, Discharge sheet for Gojko Janković number 2505/780, Official letter of the Veterans Organization number 01-70/06 dated 21 December 2006, medical findings of a specialist cardiologist and thoracic surgeon, issued to the name of Gojko Janković dated 7 October 1996, Certificate on Disability number 03-2-560-354-1/99 dated 19 June 2001.

On the basis of Article 239 (2) in conjunction with Article 261 (1) item (e) of the CPC of BiH, and during the main trial the Court ordered the presentation of the following documentary evidence: List of persons who left the Foča municipality in August 1992 in Osanica – 61 adults + 17 children, copy of the military booklet for the witness Milomir

Aćimović, a note book containing records kept by the witness Mitar Šipčić at the Foča High School, a copy of the military booklet for Petar Aćimović, and an official letter sent to the Hospital in Kotor (Montenegro) on 22 January 2007.

### **3. Closing arguments; a summary.**

#### **a. Prosecution**

The Prosecution (for the full text of the closing arguments, see the annex) considered that a widespread or systematic attack by the Army of the Serb Republic of Bosnia and Herzegovina, members of the Police and paramilitary formation targeting the non-Serb civilian population in the wider area of the Foča municipality at the time relevant to the Indictment existed. This arises from the adjudicated facts from the ICTY Judgments accepted by the Court in its decision of 4 August 2006, and it is supported by the testimonies before the Court. The Prosecutor considered the knowledge of the Accused concerning the existence of a widespread or systematic attack proven since evidence has shown that the Accused was the leader of a platoon acting within the Foča Brigade of the Army of the Serb Republic of Bosnia and Herzegovina and, in such capacity, was attending meetings of the Crisis Committee on an almost daily basis, from which it follows that he must have been fully aware of the existence of the attack. The Prosecutor stated furthermore that the acts of the Accused were part of the attack and that he knew that his acts were part of the attack, since it is apparent that the acts of the Accused, by their nature, by the choice of the victims and by the consequences for them, objectively constitute an indissoluble part of the broader attack.

Before addressing each Count of the Indictment separately, the Prosecutor went into several claims that ensued from the Defense witnesses and explained why these claims are „untruths“: the soldier-witnesses that claimed that the Accused only became leader of his Unit after the departure Mr. Babic; the claim that the Accused left for Montenegro on 3 July 1992 by car at 7 AM and that his Unit never was in Trosanj but just waited in a hill nearby and that they only heard shooting in the distance; the guards called by the Defense to give the Accused an alibi of non-entry or involvement in Partizan Sports Hall; the claim that one Sretko Đajić had occupation of the "Trnovace house" during spring, summer and autumn of 1992.

The Prosecutor found that the stories matched too well, that witnesses remembered identical things that some lies have been collectively orchestrated and told by several witnesses in concert and thus concluded (the majority of) the Defense witnesses completely unreliable. The Prosecutor furthermore reiterated some documentary evidence supporting his position in relation to the Defense witnesses' testimonies. The Prosecutor also found the testimonies of Radmila Šušnjević, Branka Pavković, Sanja Kulić, Mirjana Todorović and Zorica Zivanović as not undermining the testimony of FWS-191.

In relation to Count 1 of the Indictment, the Prosecutor stated that on the basis of the good and convincing testimonies of Enes Hrnjičić, Ferida Glušac and witness B, it was proven beyond a reasonable doubt that the Accused on 14 April 1992, together with the men in his platoon, unlawfully arrested and took away eight Bosniak men whereby he committed "Imprisonment or other severe deprivation of physical liberty in violation of fundamental

rules of international law" as well as "forcible transfer of population" as a co-perpetrator pursuant to Article 29 CC of BiH. The apprehension and taking away of the eight Bosniak men was carried out by subordinates of the Accused acting under his direct orders. He thus made a decisive contribution to the joint perpetration of the criminal offense. By this single action the Accused violated two different provisions, which is possible since it's a case of ideal concurrence, meaning that both provisions contain materially distinct elements and protect different values.

In relation to the events of 3 July 1992 on Kremenik, covered by Count 2, stated that the sheer weight of numbers of witnesses who place the Accused on Kremenik Hill and ensuing events rule out mistake in relation to his presence and identity. In relation to events on Kremenik Hill the consistent and compelling evidence against the Accused made it unnecessary to rehearse these testimonies in relation to what happened on Kremenik. By his actions the Accused is guilty as a co-perpetrator pursuant to Article 29 CPC of BiH as it was clear that the Accused at least *de facto* had command and control over the men committing the crimes and thus by his acts and omission made a decisive contribution to the perpetration of those crimes on Kremenik and is guilty of murder, torture and forcible transfer of population. As a subordinate position the Prosecution submitted that by his acts and omissions the Accused provided support and encouragement that had a substantial effect on the commission of the crime and is therefore responsible as an aider and abettor under Article 180 (1) CPC of BiH.

In relation to the rapes in Buk Bijela on 3 July 1992, covered by Count 3, the Prosecutor stated that his presence and actions can be based on the testimonies of FWS-74 and FWS-75 and is furthermore supported by the Plea Agreement signed by Dragan Zelenovic. According to the Prosecutor, pursuant to Article 29 CC of BiH, the Accused is responsible as co-perpetrator of the gang-rape of FWS-75, since he made a decisive contribution to the commission of gang-rape, because he transferred FWS-75 to an unidentified soldier with the agreement that she would be raped after having threatened FWS-75 with gang-rape. As a subordinate position, the Prosecution submitted that the Accused rendered practical assistance and encouragement that had a substantial effect on the commission of the crime, for which he is responsible as an aider and abettor pursuant to Article 180 (1) CC of BiH. The Accused is also charged as an instigator pursuant to Article 180 CPC of BiH with the rape of FWS-87 by Dragan Zelenovic and the rape of FWS-74 by Janko Janjic in Buk Bijela since by the positions of authority the Accused held and by his words and actions towards FWS-75 he gave to the present Zelenović and Janjic a direct invitation to commit similar crimes.

In relation to the beating and murder of the only male victim in Buk Bijela on 3 July 1992, the Prosecutor stated that it is beyond doubt that Redžo Pekaz was beaten and executed by soldiers in Buk Bijela and that the Accused was aware that this was taking place. Despite his awareness, the Accused did nothing to stop the abuse. His failure to act despite his presence at the crime scene, coupled with his position of authority as platoon leader, provided encouragement and moral support to the perpetrators that had a substantial effect on the commission of the crime. The Accused could not fail to appreciate that by his omissive conduct he was supporting the perpetrators and therefore, he is responsible for aiding and abetting the torture and murder of Redžo Pekaz pursuant to Article 180 (1) of the CC of BiH.

In relation to Count 5, in which the Accused is charged with taking from Partizan Sports Hall amongst others FWS-95 on three different occasions and raping her, the Prosecutor stated that the testimony of FWS-95 was reliable. Witness 95 managed to identify the Accused on an ICTY photo board as her triple rapist. The third instance of rape, taking place in the Trnovaca house, was furthermore corroborated by FWS-87.

Count 6 charges that the Accused, together with Beban Vasiljević, took FWS-105 and DB from Partizan Sports Hall to a house in Trnovača (the Trnovača house) in the municipality of Foča where the Accused raped FWS-105 twice, while Beban Vasiljević raped female detainee D.B. The Prosecutor stated that even though FWS-105 was not heard by the Court, but only a testimony was read in pursuant to Article 273(2) CPC of BiH, this Count was proven. Count 8 mainly relied on testimonies of FWS-87 and FWS-75, who both remember how they together with AS and 12 year old AB were taken from Karaman house. Witnesses FWS-75 and FWS-87 testified in Court that they were raped, FWS-75 by Janjić and FWS-87 by Zelenović. On the basis of these statements, especially FWS-75, the Prosecutor submitted that the rape of AB by the Accused is proven. In relation to the rape of AS by the Accused, the Prosecutor conceded that a reasonable doubt exists concerning witness AS.

The Prosecutor dealt with legal qualification and liability of the Accused for Counts 5, 6 and 8 jointly, since they all charge the Accused with rape that he himself perpetrated on FWS-95, FWS-87, FWS-105, AB and AS. In these Counts, the Accused is furthermore charged as a co-perpetrator in the rapes physically perpetrated by Beban Vasiljević on FWS-87 and DB, by Dragan Zelenović on FWS-87, and by Janko Janjić on FWS-75. In relation to the rapes physically perpetrated by the others, the Prosecutor stated that for all those incidents the Accused participated in the selection of the girls and their transport to the locations where they were raped jointly with the other co-perpetrators. According to the Prosecutor, the concerted actions of the co-perpetrators reveal a mutual understanding that each of them would rape one or more girls. Moreover, the Accused was in a position of seniority with respect to the other perpetrators which aggravates the significance of his participation in these crimes. In relation to the rapes perpetrated by Beban Vasiljević, the Accused contributed by making available the house of Halim Čedić (or the Trnovaca House) which he occupied at that time. According to the Prosecutor, the Accused thus is responsible as a co-perpetrator pursuant to Article 29 CC of BiH for the rapes committed by the other men. Alternatively, the Prosecutor submitted that the Accused aided and abetted in those rapes pursuant to Article 180 (1) CC of BiH. All the acts of rape in those Counts are also charged as torture. For all claims the Accused is charged with both rape and torture (ideal concurrence).

In relation to Count 7 of the Indictment, the Prosecutor stated that the testimony of FWS-191 was of excellent quality and corroborated the transcripts of testimonies of witness FWS-186 that were admitted by the Court pursuant to Article 273 (2) CPC of BiH. FWS-186 was not able to testify before the Court. Both witnesses FWS-191 and FWS-186 are furthermore supported by other witnesses. According to the prosecutor, Count 7 of the Indictment should be dealt with in three parts. Firstly, sexual slavery of GJ, FWS-191 and FWS-186 at the Trnovača house, amounting to sexual slavery and torture (ideal concurrence), pursuant to Article 172 (1) items f) and g) CC of BiH. Since the Accused willfully participated in the joint perpetration of the sexual slavery and torture of JG, FWS-

191 and FWS-186 at the Trnovača house, he is responsible as co-perpetrator pursuant to Article 29 CC of BiH. Secondly, the rape of FWS-191 at the Trnovača house amounting to rape pursuant to Article 172 (1) item g) CC of BiH. In relation to this incident the Prosecutor submitted that it may have lacked the element of prohibited purpose necessary for that rape to qualify as torture and thus the Accused is not also charged with torture. Lastly, the rapes of FWS-186 at Ribarsko Naselije 95 amounting to rape pursuant to Article 172 (1) item g) CC of BiH for which is also the prohibited purpose might have lacked.

In relation to the second Indictment, the Prosecutor stated that, if believed the evidence shows that on a night around 10 to 15 April 1992 the Accused, together with Janko Janjić, Ljuban Kalajdžić and another unidentified soldier broke into witness E's house and forced her to undress. She was then raped by Janko Janjić while the Accused and the unidentified soldier were holding her down. After that night the Accused, Janko Janjić and the unknown soldier returned to E's house every night for approximately 10 days, and raped her on each of these occasions. After this, the Accused, together with Janko Janjić and the unidentified man forced witness E into a car and they transported her to Partizan Sports Hall. She was detained in Partizan for more than a month until she managed to escape with help of her brother in law Ljubisa Militic. The Accused raped her on all or almost all of these occasions. Thereby the Accused would be guilty of rape and torture (ideal concurrence) of E and also guilty as a co-perpetrator pursuant to Article 29 CC of BiH because of his decisive contribution to the rapes of E by Janko Janjić and the unknown soldier. Alternatively, the Accused is responsible as an aider and abettor to the rapes not perpetrated by himself pursuant to Article 180 CC of BiH. The Accused would furthermore be guilty of co-perpetration pursuant to Article 29 CC of BiH of imprisonment of E pursuant to Article 172 (1) item e) CC of BiH. The Prosecutor mentioned that the behavior of witness E during cross-examination and her admission, as stated by the Prosecutor during the main trial, when asked by him to confront Defense witnesses Militic and Kalajdžić, that she wasn't sure of her identification of Militic and Kalajdžić may raise doubts for the Court in relation to the second Indictment. On the other hand, the testimony of rebuttal witness Jusuf Colpa contradicts parts of the testimony of the Defense witnesses and supports witness E's testimony according to the Prosecutor.

The Prosecutor ended by proposing a long-term imprisonment sentence of not less than 30 years given the fact that the Accused was leader of his platoon, the escalation of the crimes committed by the Accused, the discriminatory motives, the age of his victims, the consequences of his action and circumstances under which the offenses were perpetrated.

#### **b. Defense**

The Defense opened his closing arguments by stressing objections against the criminal proceedings against the Accused before this Court, stating first of all that the Accused did not receive an equal treatment vis-à-vis the rights of the Prosecution (for the full text of the closing arguments, see the annex).

The Defense objected to the application of CC of BiH, pointing out that the Criminal Code of the Socialist Federal Republic of Yugoslavia (CC of SFRY), which was applicable at the time of the events concerned, should be applied as it is clear that at the time when the incidents covered by the Indictment took place the CC of SFRY was in effect and since it is

clear to everyone that the punishments defined by the CC of SFRY are more lenient to the perpetrator than the punishments defined by the current CC of BiH. According to the Defense, application of any other Law than the CC of SFRY, amounts to a violation of the principle of legality. The Defense referred to Article 7 (1) European Convention on Human Rights (ECHR) and Article 15 (1) of the International Pact on Civil and Political Rights. By applying to the Law on the Transfer and the Law on the Protection of Witnesses under Threat and Vulnerable Witnesses (Law on Protection of Witnesses), this trial, like many other trials, was conducted in accordance with regulations which were not passed prior to the commission of the acts, which drastically violate the rights of the Accused even contrary to the regulations of the applicable CPC of BiH. Furthermore, the Prosecutor used all privileges prescribed to the detriment of the Accused, through examination of witnesses via video link, reading statements of witnesses who refused to attend the trial making it impossible for the Defense to cross examine the witnesses, by moving to accept as proven facts adjudicated in other final Verdicts and reading statements of witnesses given in proceedings against other persons.

In relation to the presented evidence in general, the Defense stated that the evidence presented by the Prosecution was not reliable, fabricated and falsified. Furthermore, the Prosecution threatened witnesses presented by the Defense with prosecution for war crimes, for false testimony, calling their allegations nonsense etc, intimidated them, expanded the subject of testimony beyond the domain of the direct examination, while that was harmful for the Defense and unlawful. The Accused, being a private, could not have issued orders for forcible transfer of civilians and the Prosecution failed to prove that he personally issued the order to open fire or to execute anyone. With regards to the rape charges there is no possibility to establish accountability of the Accused on reliable grounds.

With reference to the second Indictment the Defense takes the position that there is no evidence that the Accused committed this criminal offense. The Defense stated and extensively explained why witnesses E and J, on the basis of whose testimonies the second Indictment is based, cannot be considered reliable. Their statements are irreconcilable with and contradicted by Defense witnesses.

With reference to Count 1 the Defense takes the position that the Accused did not hold any command position, did not command open fire, did not decide on and take part in the arrest of the villagers -of the hamlet of Brezine- who were there, did not take part in sending back some of them and then taking them again, is not responsible for the persecution and detention of the villagers from the hamlet of Brezine as the Indictment alleges. All the members of the unit, which was later commanded by the Accused, stated unanimously that the group of soldiers responsible for the attack of the hamlet Brezine were commanded by a certain Radmilo Babic and not by the Accused in the time period including the incidents of 14 April 1992. Thus, the Prosecution failed to prove this Count.

With reference to Count 2 the Defense takes the position that, although it is not disputable that there was a widespread attack on the villages of Trosanj and Mješaja on 3 July 1992 and that the Accused was commanding a group of around twenty soldiers, there is no evidence that this group opened fire on the villagers; there is no evidence that this group of soldiers killed seven villagers from fire weapons and there is no evidence that the Accused was present during the execution. On the contrary, it appears from the testimony of soldiers

that the Accused left early in the morning for Herceg Novi, which was confirmed by his wife who testified before the Court, which was also confirmed by his brother-in-law Milenko Paprica and Ljubinka Papović who described in a persuasive manner that she had found the Accused in his sister Borka's apartment, who had been expecting to go into labor. Furthermore, there is no evidence that Izet Colo, Fadila Odobašić and Selima Pekaz, who got killed during the operation while they were hiding in the woods, got killed from the fire of the Accused or his soldiers, nor is there evidence that they were on that particular axis of operation. The testimonies of the Prosecution witnesses FWS-132, FWS-75, FWS-74 and FWS-96 are unreliable, especially in view of the Defense witnesses, all members of the unit of the Accused, who confirmed that that morning the majority of them left by a van, that the driver was Milomir Aćimović and they took positions in the field in the early morning hours without approaching the spot where the fire was opened. The Defense stated that as the operation of 3 July 1992 was extensive, this implies that at the least a number of units must have participated since the Accused did not hold any rank.

With reference to Count 3 the Defense takes the position that this count cannot be proven. The events described in Count 3 took place on the same day, namely 3 July 1992. The Defense stated, that early that morning the Accused immediately after returning from the area of the villages of Trošanj and Mješaja, left for Herceg Novi and thus can not have been present in Buk Bijela. Furthermore the mentioned "unidentified soldiers" have not proven to be under the effective control of the Accused. In addition, the testimony of FWS-74 was unreliable. The testimony of FWS-87 in respect to this count can not be relied upon either, amongst others because she was only 15 at that time which requires the pay extra attention to her alleged recollections. Moreover, this witness stated she was raped in Buk Bijela and that when she was walking towards the bus, her legs were covered with blood but this was not mentioned by her mother, who was waiting for her, or any other witness.

With reference to Count 4 the Defense takes the position that there is no evidence to corroborate that a number of soldiers under the command of the Accused killed Redzo Pekaz on 3 July 1992 in Buk Bijela, the same as there is no evidence corroborating that the Accused was present there at all and that he knew about the event in any way, and there is no evidence as to the manner in which Redzo Pekaz was deprived of his life. The testimony of witness FWS-75, who claimed that she had been interrogated by the Accused in Buk Bijela, his presence there on 3 July 1992, is unreliable, especially when not corroborated by the testimonies of witnesses FWS-74, FWS-87, FWS-88, FWS-48 FWS-90, FWS-96, DB and FWS-105.

With reference to Count 5 the Defense takes the position that there is not sufficient evidence for the criminal charge that the Accused on several occasions raped witness FWS-95 in the period between 13 July and 13 August 1992, whom he took out of the Partizan Sports Hall. This witness is unreliable because her testimony has been changed comparing with her previous statement to such an extent that it can not be justified by anything. Also the fact that the medical status of this witness, as described by the forensic neuropsychiatrist, is such that it is no use for any serious establishment of facts.

With reference to Count 6 the Defense takes the position that there is no evidence that the Accused raped the witness FWS-105 in a house in Trnovaca in late July or early August 1992. The witness FWS-105 was not heard in the proceedings and, as can be concluded

from the closing arguments, the Court should reject the record on testimony of FWS-105 given to BiH Prosecutors Office and the transcript of her testimony at the ICTY. By reading out the statements of this witness at the trial the human rights of the Accused were violated.

With reference to Count 7 the Defense takes the position that the Accused did not participate in the rape of the witnesses FWS-186 and FWS-191, nor did he hold them detained. In the contrary; they begged him to let them stay under his protection. Furthermore, there is no evidence that the Accused was the person who ordered or in any other way requested these two witnesses use the non-Muslim names. The several witnesses the Defense offered to the Court are indicative for the fact that the Accused did not rape her. Witness FWS-186 was not heard in the proceedings and there is no excuse for it, thus her statement given to ICTY investigators on 9 May 1998 can not be used to establish the state of facts. Furthermore, the fact that this statement has no signature affixed makes this statement inadmissible as reliable evidence. Furthermore, the claim by FWS-191 that she was raped by the Accused lacks a minimum reality.

With reference to Count 8 the Defense takes the position that there is no evidence for the allegation that the Accused on one evening in late October or early November 1992 raped the minor AB and the detainee AS. On the contrary; Defense evidence clearly proved that the Accused was not at all in Foca or its surroundings "in late October or early November 1992". The statements of the witnesses FWS-75 and FWS-87 with regard to the allegations in the Indictment are unreliable.

#### **4. Procedural decisions**

As the case of the Accused Gojko Janković was transferred to the Prosecutor's Office of Bosnia and Herzegovina pursuant to Law on the Transfer, some of the procedural decisions made by the Trial Panel are directly related to the decisions issued in the proceedings which were conducted in this case before the ICTY. For this reason, the Court intends to provide the reasoning behind its procedural decisions by firstly explaining the decision on the manner of the examination and further protection of the witnesses, the majority of who had been already assigned the measures of protection of their identity by the ICTY.

##### **a. Manner of examination and further protection of witnesses who had already been assigned the measure of protection of their identity**

Deciding on the Motion of the Prosecutor's Office of BiH, the Preliminary Proceedings Judge of the Court of BiH issued the Decision dated 30 January 2006 ordering that all of the personal details of the witnesses who had been already identified in other cases before the ICTY should be kept confidential, including the following witnesses: DB, FWS-75, FWS-87, FWS-132, FWS-175, FWS-190 and FWS-191 identified in ICTY, *Prosecutor vs. Stanković*, case no. IT-96-23/2 PT, and witnesses FWS-74, FWS-88, FWS-90, FWS-95, FWS-96, FWS-105, FWS-186 and FWS-192 identified in ICTY, *Prosecutor vs. Kunarac*, case no. IT-96-23 and IT-96-23/1).

By its Decision dated 3 February 2006, the Court ordered that the personal details of the witnesses A, B, C and D should be kept confidential. As for the protection of the witness E personal data the Court decided by its Decision dated 19 April 2006 and by the Decision dated 19 June 2006 for the witness J.

In these Decisions, the Court ordered the Prosecutor's Office to be mindful of its obligation foreseen under Article 12 paragraph 8 of the Law on Protection of Witnesses. The Defense was informed on the identity of all of the witnesses who were identified in those decisions, except for the witness J within the deadline of at least 30 days before the testimony of those witnesses at the main trial. The Defense was finally also informed about the identity of the witness J, although within a rather shorter notice, that is, 15 days before this witness testified at the main trial.

The Court concludes that the Defense was informed about the identity of the witnesses, as mentioned above, as well as about the protective measures.

In his attempt to ensure that the image of those witnesses be protected, the Prosecutor filed a motion to hear those witnesses behind the screen which would allow for the witness to be seen by the parties, the Defense Counsel and the Trial Panel, while the public could not see him. The Defense did not object to the Motion of the Prosecutor's Office and the Court decided pursuant to Article 13 (2) of the Law on Protection of Witnesses.

The course of the proceedings and the testimony of the above-mentioned witnesses have entirely justified the ordering of such protective measures, which, in terms of those witnesses, provided them to a significant extent with a feeling of security and put them in the position to testify freely on everything that occurred to them, in relation to Gojko Janković and they did testify.

Having in mind all of the above-mentioned, the conduct of the witnesses during their testimony in particular, as well as their personally forwarded requests, at the motion of the Prosecutor, the Court made a decision pursuant to Article 13 (2) of the Law on Protection of Witnesses.

The Court submits that this manner of examination of the witnesses has truly served the purpose of their protection; whilst the Accused's right to question the witnesses whose testimonies are incriminating him has been also preserved. All of the witnesses, except for those provided hereinafter, testified comprehensibly and freely in the presence of the Accused, and the exceptions were only made with respect to the witnesses E and J, which is going to be explained in the text below under paragraph (d), whereas the witness ZDŽ testified through a video-link, and in this way established contact with the Accused during his testimony, although through technical means.

The Court has found that there is a justified fear that the disclosure of some or all of the personal details of the witnesses would seriously endanger the personal security of the witnesses or their families, even after they gave their testimony before this Court. The Court took into consideration the efforts that were put forward just to ensure the presence of the protected witnesses before the Court, and particularly the fact that every new testimony exposes these witnesses to a new trauma and returns them back to the life and the world

they are trying to escape from. Having this in mind, the Court decided that the personal details of the witness shall remain confidential for 15 years following the day when the Verdict becomes final.

#### **b) Adjudicated Facts**

On 4 August 2006, the Court partially accepted the Motion of the Prosecutor's Office of Bosnia and Herzegovina No. KT-RZ-163/05, dated 25 April 2006, based on Article 4 of the Law on Transfer, related to the acceptance as proven of the facts established by the ICTY. For elaborate reasoning, the Court refers to its written decision of 4 August 2006.

The Prosecutor's Office moved the Court to take judicial notice of facts established by legally binding decision at the ICTY in its judgments in case no. IT-96-23-T & IT-96-23/1-T (*Prosecutor v. Dragoljub Kunarac et al.*, Trial Chamber Judgement of 12 June 2002, paragraphs 567, 568, 570-577, 724, 759, 761, 765, 780); in case no. IT-96-23 & IT-96-23/1-A (*Prosecutor v. Dragoljub Kunarac et al.*, Appeals Chamber Judgement of 22 February 2001, paragraphs 2-3) and in case no. IT-97-25-T (*Prosecutor v. Milorad Krnojelac*, Trial Chamber Judgement of 15 March 2002, paragraphs 116, 118-121).

In total the Prosecutor's Office moved the Court to accept as proven 22 facts established by the above mentioned judgments. The parties were heard on 16 May 2006 and during this hearing the Defense orally objected the motion because it was unfounded. The Court accepted 15 facts as proven facts established by the ICTY. The essence that can be summarized as follows:

From 8 April 1992 until at least February 1993, there was an armed conflict between Bosnian Serbs and Bosnian Muslims in the area of Foča. Non-Serb civilians were killed, raped or otherwise abused as a direct result of the armed conflict. The conflict involved a systematic attack by the Bosnian Serb Army and paramilitary groups against the civilian population in the wider area of the municipality of Foča. The campaign was successful in its aim of "cleansing" the Foča area of non-Serbs. One specific target of the attack was Muslim women, who were detained in intolerably unhygienic conditions in places such as the Kalinovik School, Foča High School and the Partizan Sports Hall, where they were mistreated in many ways, including being raped repeatedly. For the full text of the paragraphs accepted by the Court, see the annex.

According to Article 4 of the Law on Transfer, the Court may, at the request of a party or *proprio motu*, decide to accept as proven facts that are established by legally binding decisions in proceedings before the ICTY. The Court accepted the facts, amongst other finding guidance in the ICTY jurisprudence on to Rule 94(B) of the Tribunal's Rules of Procedure and Evidence (See e.g. ICTY, Trial Chamber, *Prosecutor v. Momcilo Krajisnik*, case no. IT-00-39-T, Decision on third and fourth Prosecution motions for judicial notice of adjudicated facts, dated 24 March 2005, p.8; ICTY, *Prosecutor v. Zoran Kupreškić et al.*, case no. IT-95-16-A, Appeals Chamber Decision on the motions of Drago Josipović, Zoran Kupreškić and Vlatko Kupreškić to admit additional evidence pursuant to Rule 115 and for judicial notice to be taken pursuant to Rule 94(B)). The Court considered the accepted facts, concrete and identifiable, general in their nature and not attesting the individual criminal responsibility of the Accused. They were furthermore relevant to the case against Gojko

Jankovic since for the criminal case against the Accused conducted before the Court of BiH, since he is charged with the criminal offenses that were indeed committed within the widespread or systematic attack by the Army of the Serb Republic of Bosnia and Herzegovina, police forces and paramilitary formations against the non-Serb civilian population, conducted in the broader territory of the Foča municipality.

The Court considered taking judicial notice of facts established by the ICTY as achieving judicial economy. Such purpose is in accordance with the defendant's right to be tried without delay as guaranteed by Article 13 CPC of BiH and by Article 6 (1) ECHR. This purpose must nonetheless be reconciled with the principle of presumption of innocence and the defendant's right to a fair trial under Article 6 ECHR.

The facts that were not accepted as established by the ICTY were found by the Court to be too specific and too closely connected with the individual factual allegations against the Accused and as such tend to indirectly attest to his criminal responsibility. For this reason, and in order not to infringe on the defendant's right to a fair trial, the Panel does not admit these facts into evidence as established facts pursuant to Article 4 of the Law on Transfer. Other facts were not accepted as these facts were repetitive and of minor relevance to the present case.

#### **c) Exception from imminent presentation of evidence**

On 22 June 2006, in the course of main trial, the Prosecutor filed a oral Motion pursuant to Article 273 (2) CPC of BiH, to move the Court to read in parts of a statement of FWS-132, dated 14 June 1996. In support of this motion, the Prosecutor stated that this witness had testified before this Court in the case against *Nedo Samardžić* (Ref. No: X-KR-05/49), as a consequence of which she was severely emotionally affected. Furthermore, the Prosecutor submitted a document signed by Dr. Fadila Filipovic-Mehmedbasic which stated that the witness was suffering from Post Traumatic Stress Disorder and was in such a condition that she was not capable of testifying on this occasion. The Defense did not object to the reasons advanced by the Prosecutor in favour of reading the statement, however, they did object to only a partial reading of the statement. Once the parties had reached an agreement on what they wanted to have read as evidence at the main trial, the Court accepted this motion by its decision on 23 June 2006.

On 21 July 2006 the Prosecution filed a Motion for the exception from the imminent presentation of evidence of the witnesses known under the pseudonyms of FWS-48, FWS-105, FWS-186 and AS, so that the records on testimony given during the investigative phase, as well as the records of depositions and transcripts of testimony given before the ICTY as specified in the motion can be read out and used as evidence at the main trial.

The Prosecution based its Motion on Article 273 (2) CPC of BiH in conjunction with Article 11 of the Law on Protection of Witnesses and Articles 5 (1) and Article 7 of the Law on Transfer.

On 3 August 2006 the Defense objected to this Motion arguing that Article 6 (3) d of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) prevented the Prosecution from reading to the Trial Panel the evidence of Protected

Rape Witnesses. The Defense insisted that they had the right to cross-examine the witnesses at a public trial in order to challenge the statements in which they incriminated the Accused. On the same date the Prosecution withdrew its Motion in relation to the testimonies of witness FWS-48.

In a letter to the Court dated 4 September 2006 the Prosecution replied to the Defense's objection.

On 27 September 2006 the Court orally rendered its decision to grant the Motion in part on for reasons as explained below.

Article 273 CPC of BiH provides for the possibility that records on testimony given during the investigative phase can be read or used as evidence at the main trial without examining the persons who gave the statements. This exception from the general rule of the imminent presentation of evidence can be granted if, inter alia, the persons are *"dead, affected by mental illness, cannot be found, or if their presence in Court is impossible or very difficult due to important reasons"*. (para. 2).

This provision is supplemented by Article 11 of the Law on Protection of Witnesses which states that the Court, when deciding whether to grant an exception to the imminent presentation of evidence, *"... shall also take into account the need to provide for [...] the protection of a vulnerable witness who would expose himself to significant emotional distress by appearing at the main trial"*.

Furthermore, in accordance with Article 7 of the Law on Transfer provides for the possibility to likewise read in witness statements given to ICTY investigators during the investigative phase. Article 5 (1) of the Law on Transfer provides for the admissibility to transcripts of testimonies of witnesses given before the ICTY and records of depositions of witnesses made before the ICTY, before the Courts in BiH. Nevertheless, this shall not prejudice the defendant's right to request the attendance of these witnesses for the purpose of cross-examination (para. 3).

It is apparent from a systematic reading of the law that, once these foreign transcripts are admitted as evidence in domestic BiH proceedings, they must be subject to the ordinary rules of evidence set forth by the BiH CPC including, for the purposes of excepting from the imminent presentation of evidence, Article 273 (2) CPC of BiH.

The Prosecution moved the Court to allow to be read and used as evidence at the main trial the following records on testimony as well as records of disposition and transcripts of testimony given before the ICTY:

1. The statement by witness FWS-105 given to the ICTY investigators, dated 9-11 February 1996, the record on testimony given to BiH Prosecutors Office on 16 January 2006 and the transcript of testimony at the ICTY in the case against the Accused Dragoljub Kunarac et al., dated 13 June 2000.

By way of justification, the Prosecution stated that witness FWS-105 is neither fit nor willing to testify at the main trial, because she remained extremely traumatized

as a consequence of the abuses she suffered during the conflict. She suffers from chronic Post Traumatic Stress Disorder and she is under psychiatric treatment. She also suffers from high blood pressure.

In support of this the Prosecution submitted to the Court medical documentation, Protocol no. 3516/06 from dr. Senadin Ljubovic from the Klinika Centar Univerziteta Sarajevo dated 23 March 2006, as well as two letters concerning information about the witness dated 10 May 2006, 21 and 29 September 2006 by Mss. Jasmina Pusina and Lucia Dighiero of the Witness Support Office respectively.

2. The statement by witness FWS-186 given to ICTY investigators dated 9 May 1998 and the transcript other testimony at the ICTY in the case against Dragoljub Kunarac et al. On 4 May 2000.

As a reasoning the Prosecution states that this witness is traumatized as a consequence of the abuses she suffered during the conflict. She suffers from post traumatic stress syndrome. Her mental decrease has been diagnosed as stable as long as she is not forced to talk about those events. There have been numerous contacts by the Prosecution (including a personal visit outside of BiH) and by the Witness Support Office, but they have failed to persuade the witness to attend and testify in Court.

In support of this the Prosecution submitted to the Court medical documentation dated 25 April 2006 by Jane Otto, General Practicien at Odense, Denmark, as well as a handwritten declaration dated 8 July 2006 explaining her reasons for not testifying.

3. The transcript of the testimony by witness AS in the case against Dragoljub Kunarac et al. on 19 April 2000 as evidence.

As a reasoning the Prosecution stated that he failed despite numerous efforts both by the Prosecution and the WSO, to get in contact with witness AS, who resides in another country. Furthermore, members of her family have not cooperated with the Prosecution in contacting her, and have informed the Prosecution that she is seriously ill.

As can be concluded from the previous, the position regarding the witness FWS-105 (affected by mental illness), witness FWS-186 (affected by mental illness) and AS (cannot be found), fulfill the general requirements of Article 273 (2) CPC of BiH. The Law on Transfer is a *lex specialis*, and is designed to avert the risk that the CPC might make ICTY evidence unusable. *Lex specialis* amounts to special rules which pre-empt the CPC as to evidence collected by the ICTY and rules on admissibility and use. As *lex specialis*, as relevant to the proffered evidence under discussion, the Law on Transfer either derogates from and pre-empts the CPC of BiH where it is inconsistent or reverts to the CPC of BiH to cover those issues not specifically addressed by the Law on Transfer (See also the Decision of the Court of BiH, dated 4 December 2006, case no. No. X-KR-05/24). The Law on Transfer, under the requirements as set out in its provisions, explicitly allows this Court to consider material collected by the ICTY. As long as these rules are complied with, the Court

may use the evidence as it would if the evidence were offered according to the CPC of BiH. But even if the evidence is permitted under the CPC of BiH or Law on Transfer, it is still subject to evaluation by the Court for fairness, reliability, authenticity, and probity as defined in the overriding requirements of the European Convention, which is directly applicable before this Court.

The Court's task under the ECHR is to ascertain whether the proceedings in their entirety (*taken as a whole*), including the way in which evidence was taken, were fair. Article 6 (1) ECHR which guarantees the right to a fair trial and Article 6 (3) ECHR that provides the right to confrontation and production of witnesses are the relevant provisions of the ECHR relating to the admission of evidence. The Law on Transfer does not remove the obligation of the Court to assure fairness in the proceedings to the Accused. Article 6 (3) d ECHR provides in relevant part that the Accused has the (minimum) right to examine or have examined witnesses against him/her, and to obtain the attendance and examination of witnesses on his/hers behalf under the same conditions as witnesses against him/her.

In the European Court of Human Rights's jurisprudence it has been established that principles of fair trial include the right of the Accused to be confronted with witnesses and evidence against him at a public hearing, and a meaningful right to challenge the evidence and cross examine the witnesses (see amongst others, *Barbera, Messegue and Jabargo v. Spain*, judgement of 6 December 1988, Series A vol. 146, para. 78, *Asch v. Austria*, judgement of 26 April 1991, Series A no. 203, paragraphs 26-31, *Ludi v. Switzerland*, judgement of 15 June 1992, Series A no. 238, paragraphs 43-50 and *Luca v. Italy*, judgement of 27 February 2001, no. 33354/96, paragraphs 39-45).

As can be concluded in principle, all evidence relied on by the prosecution must normally be produced in the presence of the Accused at a public hearing with a view to adversarial argument. However, the use as evidence of statements obtained at the stage of the police inquiry and the judicial investigation (in the same case) is not in itself inconsistent with Article 6 (3) d ECHR, provided that the rights of the Defense have been respected.

As a rule these rights require that the defendant be given an adequate and proper opportunity to challenge and question a witness against him either when he was making his statements or at a later stage of the proceedings (see, amongst others, the *Delta v. France* judgement of 19 December 1990, Series A no. 191, para. 36 and the *Windisch v. Austria* judgement of 27 September 1990, Series A no. 186, para. 26). However, Article 6 ECHR does not grant the Accused an unlimited right to secure appearance of witnesses in Court.

Problems will therefore arise if the Prosecution introduces written statements by a person who does not appear as a witness at the main trial and the Defense wants to cross-examine the witness. Only exceptional circumstances will permit the prosecution to tender into evidence statements from the witness that the Accused has been unable to cross examine. The general principle is therefore that the Accused persons must be allowed to call or examine any witness whose testimony they consider relevant to their case, and must be able to examine any witness who is called, or whose evidence is relied on, by the Prosecutor.

The European Court of Human Rights will review whether the use of evidence accepted in violation of the rights of the Accused deprived him of a fair trial. In case the testimony of a witness is either solely or to the decisive extent the sole basis of a conviction of the Accused and neither at the stage of the investigation nor during the trial the applicant was able to

(cross-)examine or have examined the witness concerned, the lack of any confrontation will deprive him in certain respects of a fair trial (see amongst others, the *Saidi v France* judgement of 20 September 1993, Series A no. 261-C, para. 44).

Article 3.2. Law on Transfer is in line with this: *'The Courts shall not base a conviction of a person solely or to a decisive extent on the prior statements of witnesses who did not give oral evidence at trial.'* Written or transcribed statements of testimony of lay and expert witnesses, absent cross examination of the witness by the Accused in the Court, at the best, can only be used to corroborate other direct evidence of guilt.

The Law on Transfer leaves it up to the Court to decide whether the witness should be produced for cross examination. In the ICTY, which uses the written statements or transcript of a previous testimony of a witness into evidence in lieu of compelling the witness to attend the trial and present the evidence orally, under Rule 92bis of the Tribunal's Rules of Procedure and Evidence (Admission of Written Statements and Transcripts in Lieu of Oral Testimony, as adopted 1 December 2000 and 13 December 2000 and amended 13 September 2006), requests for cross examination must be specific as to the particular parts of the prior testimony or statements about which the Defense intends to cross examine. Rule 92 bis also allows the admission of transcripts of testimony from witnesses appearing before other ICTY chambers, although the admission of a testimony is only allowed as long as it does not go to the acts and conduct of the Accused as charged in the Indictment. From Rule 92ter ensues that if the Prosecutor does want to submit a transcript from other ICTY proceedings that goes *'to proof of the acts and conduct of the Accused as charged in the Indictment'* the witness has to be present in Court; the witness must be available for cross-examination and any questioning by the Judges and the witness attests that the written statement or transcript accurately reflects that witness' declaration and what the witness would say if examined.

The Court furthermore notes that none of the evidence collected or used by the ICTY needed to comply with the European Court of Human Rights (see ICTY, *Prosecutor v. Dusko Tadic* (IT-94-1), Decision on the Prosecutor's Motion Requesting Protective Measures for Victims and Witnesses, dated 10 August 1995, para. 27).

The Prosecutor moved the Court to admit under Article 5 (1) of the Law on Transfer transcripts of witness testimony from an ICTY proceeding in which the Accused was directly Accused of crimes as charged in the Indictment, while the possibility to cross-examine was not available. Even under the lighter standards of the ICTY, the witness must be present for cross-examination.

In order to allow the Accused to cross-examine the witness FWS-105, FWS-186 and AS, whose testimony the parties consider relevant to the case or whose evidence is relied on by the prosecutor, the witnesses were summoned to the Court.

On 4 September 2006 witness FWS-105 was summoned to the Court on 26 September 2006. However she did not appear. On 27 June 2006 Witness FWS-186 was summoned to the Court to appear on 19 July 2006. This summon was forwarded to her through the diplomatic channels to the local foreign authorities, because she resides in another country. The Court has been informed by these authorities that witness FWS-186 has received the summon, but she did not appear at the trial to testify. On 27 June 2006 Witness AS was

summoned to the Court on 3 August 2006. She did not appear and the Court got no information from the foreign authorities whether she received the summon. All attempts from the Prosecution to get in contact with this witness failed. Furthermore, members of her family have not cooperated with the Prosecution in contacting her.

Now, the compatibility with Article 6 (3) d ECHR comes into question. From the abovementioned jurisprudence from the European Court of Human Rights, it appears that in order for a statement given in the investigative phase of the proceedings to be accepted, the Court must have done everything possible to ensure attendance. This has been the case. Crucial furthermore in this assessment is the question whether the relevant testimony will be the sole evidence for a possible conviction for a specific count in the Indictment. In relation to witness AS, who is claimed to be raped by the Accused, this requirement has not been met and thus should not be read into evidence.

The Court notices further that facts in the case against the Accused are unique in the sense that the Prosecution wants also to be accepted as evidence records on testimony as well as the records of depositions and transcripts of testimony given before the ICTY in other cases; the case against Dragoljub Kunarac et.al. (Case no. IT-96-23-I).

On 26 June 1996 the ICTY confirmed an Indictment against Dragoljub Kunarac, Radomir Kovac, Zoran Vukovic, Dragan Gagovic, Dragan Zelenovic, Janko Janjic, Radovan Stankovic and the Accused (Case no. IT-96-23-I). The Indictment charged rape and torture as crimes against humanity, torture as a grave breach and as a violation of the laws and customs of war and enslavement as a Crime against Humanity.

Following the death of Dragan Gagovic, on 30 July 1999 and Janko Janjic, the Prosecutor withdrew the Indictment against them.

Kunarac was severed from the original indictees in an amended Indictment, confirmed on 19 August 1998. On 3 September 1999, a second amended Indictment was confirmed joining Kunarac and Kovac following the latter's detention. A third amended Indictment was confirmed on 1 December 1999 (Case no. IT-96-23). On 10 February 2000 Vukovic requested a joint trial with Kunarac and Kovac. This request was granted by the ICTY Trial Chamber on 15 February 2000.

It can thus be concluded that testimonies given before 19 August 1998 were given 'in the investigative phase' of the case against Dragoljub Kunarac and others (including the Accused). In other words, evidence records on testimony as well as the records of depositions and transcripts of testimony given before the ICTY in the case against Kunarac and others after this date have to be considered to be given in another case. The Court notices that in this case (against Kunarac, Kovac and Vukovic) the charges are strongly interrelated with the case before this Court against Gojko Jankovic. The Accused Kunarac, Kovac and Vukovic *de jure* had the opportunity to cross examine during the ICTY main trial testimonies of the witnesses and may have tried to exculpate themselves and by that put the burden on other persons involved, among them the Accused Gojko Jankovic. This causes in itself substantial doubt on its reliability and the overall fairness and breaches ECHR standards. Furthermore, as long as the case also included the Accused Gojko Jankovic, he had his rights as an Accused and had the possibility to contradict statements

and present rebuttal evidence. Likewise, the evidence goes to the criminal acts of the Accused himself and as such will be relied upon by the Court, unless first put to the test of cross examination. Article 7 of the Law on Transfer does not change this.

It follows from the previous that in relation to the transcript of testimony at the ICTY in the case against the Accused Dragoljub Kunarac et al., dated 13 June 2000 by witness FWS-105; the transcript of testimony at the ICTY in the case against Dragoljub Kunarac et al. on 4 May 2000 by witness FWS-186 and the transcript of the testimony by witness AS in the case against Dragoljub Kunarac et al. on 19 April 2000 can not be accepted as evidence.

Mutatis mutandis it follows that the other aforementioned statements can be considered given in the 'investigative phase' of the case against the Accused at ICTY (statement of witness FWS-105, dated 9-11 February 1996, and the statement of witness FWS-186 dated 9 May 1998) and at the Court (the record on testimony of witness FWS-105 given to BiH Prosecutor's Office on 16 January 2006). Furthermore, the Court did everything to secure the presence of the witnesses and there is a legitimate reason for the absence of the witnesses. The Court is also satisfied that these statements are corroborated by other evidence, as the statements of DB, FWS-96 and FWS-74 in relation to FWS-105 (Item 5 of this Verdict) and the statements of Sanja Kulic, FWS 190 and FWS-191 in relation to FWS-186 (Item 6 of this Verdict). Thus, the Court accepted the statement by witness FWS-105 given to ICTY investigators dated 9-11 February 1996, her statement given to BiH Prosecutor's Office on 16 January 2006 and the statement by witness FWS-186, dated 9 May 1998 to be read and used as evidence at the main trial.

**d. Removal of the Accused from the Courtroom; exclusion of the public from (a part of) the main trial and questioning of the witnesses through a video link**

Although the earlier part of the proceedings was partially excluded for the public, which is explained in the further paragraphs, the Court shall start with the reasoning of these procedural decisions from 31 August 2006, when the decision to remove the Accused from the Courtroom was also made in addition to the decision to exclude the public from (a part of) the main trial.

On 31 August 2006, before bringing in to the stand the witnesses planned for that date, the Prosecutor orally filed a motion to hear the witnesses E and J by use of the technical devices for transferring the voice of the witness, whilst the image would only be visible to the Trial Panel.

The Prosecutor based his motion on the fact that those were very vulnerable witnesses who were testifying for the first time on what had happened to them, adding that neither their close relatives are familiar with what their hardships, stressing that nobody knew that they were summoned to testify as witnesses before the Court of BiH. The Prosecutor also submitted that their appearance before the Court was very uncertain, as the witnesses were of such mental state where the testimony would be an extremely traumatic step for them to make, which can be confirmed by the Prosecutor's Office staff members who conducted an interview with the witnesses as well as the employees of the Witness Protection Department, who composed an official note on the condition of these witnesses. To this end, the Prosecutor reminded that witness FWS-74 was anxious and distressed and she could not

even tell how old she was in 1992. The Prosecutor put forward the motion in order to prevent that the same happens to the injured parties, witnesses E and J, who are the only Prosecution witnesses in the additional Indictment against the Accused Gojko Janković.

The Defense counsel for the Accused, and the Accused himself, were entirely against such a manner of the examination of the witnesses stating that the only reason for their refusal of confrontation with the Accused was the untruth that they were to tell about him.

The Panel, trying to reach a compromise, offered an option in which the witnesses would give evidence in the Courtroom with the exclusion of the public, and the Accused taken to a different room in which he would receive the sound of the testimony through audio equipment, and he would be granted the opportunity to consult with his Defense counsel after the direct examination in order to conduct the cross-examination of the witnesses.

In the present case, the Court decided as follows:

Although a public hearing is an essential feature of the right to a fair trial, the Court, pursuant to Article 235 CPC of BiH, has the discretion at any time, *ex officio* or on motion of the parties and the Defense attorney, after hearing the parties and the Defense attorney, to exclude the public for the entire main trial or a part 'to protect the personal and intimate life of the Accused or the injured or to protect the interest of a minor or a witness.

The witnesses were women-injured parties who will testify about rapes and/or other humiliating treatment of which they were victim(s). Some of them were at the time when the crimes were committed under-aged and some of the witnesses even today suffer psychological and physical problems as a consequence of the crimes perpetrated against them. Since then they have tried to build up private, family and social life.

Testifying in public about such delicate and traumatic matters, even with identity protective measures, is a risk to personal and intimate life of the witnesses, since there was a real risk that their identity would be revealed by the substance of the testimony from and about them, even if technical devices were used to distort their appearance and voice during the testimony.

Moreover, it was very likely that the witnesses could give names of persons who were linked to the criminal offences of rape and sexual slavery and some of those persons could be prosecuted. In addition, it was also likely, and this proved to be justified in the course of the proceedings, that the witnesses would mention the full names of other victims who were protected witnesses in the present case heard by the Court under respective pseudonyms.

Having heard the submission of the parties on all proposed options with regard to the examination of these two witnesses, the Panel pursuant to Article 235 CPC of BiH decided that the public be excluded during the testimonies of witnesses E and J, with the primary aim to protect their personal and intimate life. If these witnesses were to give evidence in public, taking into consideration when and where the events on which they spoke took place, those generally known facts about the sufferings in Foča would easily lead to the disclosure of their identity which could be devastating not only for them but also for their families.

In order to provide further protection to those witnesses the Court pursuant to provision of Article 10 of the Law on Protection of Witnesses rendered decision that the Accused be removed from the Courtroom during the examination of those witnesses. At the same time the Court decided that the Accused be allowed to follow their testimony through means for transferring sound, so that after the direct examination he could consult his Defense attorney regarding the cross examination.

By applying such a method of hearing the witnesses, the right of the Accused to examine the witnesses against him has been fully honoured and the fact that the Accused only heard, but did not see the witnesses while his Defense attorney had both possibilities, in no circumstances, according to the Court, reduces his opportunity to prepare the Defense, that is, cross examination. Such a decision of the Court did not violate the right provided for in Article 6 (3) (d) ECHR.

As mentioned in the introductory text, the Court issued decision to exclude public even in the earlier stage of the proceedings, but only in part which refers to examination of witness FWS-75 when with a view to identifying the Accused by this witness a video recording, made in Germany by the end of 1993, which clearly shows the witness FWS-75, was presented in the Courtroom. The name of the witness FWS-75 is mentioned in this recording. Since it did not want to endanger the witness by public presentation of this piece of evidence and upon the motion of the Prosecutor and with the approval of the Defense and with the intention to protect personal life and life of witness family the Court issued decision to exclude public in part pertaining to examination of the witness FWS-75 which involved the presentation of this part of the video recording. Once the presentation of this material piece of evidence was completed the trial was re-opened to public.

Pursuant to provision of Article 236 (2) CPC of BiH the exclusion of public did not apply to representatives of the OSCE, whose function it is to monitor the proceedings to assure that they comply with international standards of human rights. Likewise public officials were never excluded from any part of the trial.

At the very close of the evidentiary proceedings, in deciding upon the motion of the Prosecutor's Office filed pursuant to provision of Article 261 (2) (c) CPC of BiH on 15 January 2007 that referred to presentation of evidence to rebut the allegations of the Defense, and after the decision to admit tendered evidence the Court also decided that the proposed witness ZDŽ be heard through the technical means for transferring image and sound, so on 26 January 2007 there was a video link established with Denmark, where the witness was along with the appointed legal adviser and other staff of the relevant Court in Denmark. The Court made such a decision having in mind that it was the witness who is not a direct witness against him or against the actions of the Accused Gojko Janković, but the witness whose testimony wants to be used to rebut the statement of one of the witnesses for the Defense. Having in mind the circumstances that this witness was summoned to testify about and which arises from the aforementioned motion and the fact that the Prosecutor did not find those circumstances to be critical for the charge against the Accused, summoning of the witness to testify directly in the courtroom would, apart from the high costs of appearance before the Court, would represent the additional mistreatment of the witness. Thus, the Court found that that was not necessary and decided to conduct examination by

video link. The decision was issued pursuant to Article 86 (6) CPC of BiH in conjunction with Article 9 of the Law on Protection of Witnesses.

However, as it turned out to be necessary at the very beginning of the examination of this witness and asked by the Defense attorney of the Accused about the exclusion of public during the examination of this witness and the reply of the Prosecutor about it, the Court was moved by the witness in person and also by her appointed legal adviser that the public be excluded during this testimony. They reasoned their proposal by the fact that the witness for the first time after 14 years is talking about torture and rape experienced at the age of 17.

Taking into account such a proposal and the agreement of parties with it the Court pursuant to provision of Article 235 CPC of BiH and with a view to protect personal life and family of the witness issued decision to exclude public during the testimony of ZDŽ.

Based on everything presented above it follows that the Court made the assessment of every single motion to exclude public in keeping with the provision of Article 6 (1) ECHR, which guarantees a right to fair and public hearing, which right is also guaranteed by the provision of Article 234 CPC of BiH. The Court issued the said decisions on complete or partial exclusion of public during testimony of a number of the aforementioned witnesses by assessing the exception to the rules on publicity of the main trial laid down in Article 235 through Article 237 CPC of BiH. The reasons which guided the Court are clear and have already been explained, but it is necessary to emphasize that almost all witnesses for the Prosecution, especially those with protected identity, are the direct victims of various types of torture, but that all of them, except the mentioned E, J and ZDŽ testified in the open Court. The only type of protection from public was a screen. However, it also turned out to be necessary to protect the witness ZDŽ from presenting her story of rape to the public. The story that was not disclosed for 14 years. It was also necessary not to allow repetition of the testimony like the one given by the witness FWS-74, so the Court decided to remove the Accused from the Courtroom and excluded the public during the testimony of witnesses E and J. Furthermore, what would actually be the purpose of approved protection of identity of the witness FWS-75 if the Court did not decide to exclude the public during presentation of the video recording in which the image and the name of this witness appears. The Court also decided to protect personal and family lives of those witnesses, trying at least in this manner to lessen a trauma which will definitely be part of them until the end of their lives. The Court, while doing so, had in mind the right of the Accused to be tried in the open Court and the Court is of the view that those decisions have not violated this right of the Accused.

#### **e. Denial of the Motion by the Defense for the free passage of a Defense witness**

On 16 October 2006, the Defense filed a motion for free passage of the Defense witnesses. The Defense requested for the Court to guarantee that 17 witnesses who, according to allegations, were all members of the same unit as the Accused, would not be imprisoned, detained or apprehended by any authority of Bosnia and Herzegovina or in any other manner restricted in free movement regardless whether there is some ongoing proceedings against them or the restriction would be the consequence of actions or previous convictions as well as for that immunity to last 15 days before they appear before the Court and 15 days after their testimony.

The Defense attorney stated in his submission that this motion is in accordance with the ICTY practice and that it is based upon the obligation of the Court to provide the fair trial and respect of the Accused's right to defend himself. The Defense attorney further stated that this motion is also in keeping with provision of equality of arms, which is also envisaged in provision of Article 6 (3) (d) ECHR. The Defense attorney pointed out that the said witnesses can expose "themselves to criminal prosecution and are avoiding appearing before the Court because of that fear."

The Prosecutor in his response stated that he could not give a perfect guarantee as requested, but that as far as he knew no warrant was issued against the said witnesses, although he could not claim that for lower Courts.

The Court, after hearing the parties, decided to reject the Motion. Article 84 (1) CPC of BiH which reads as follows: "The witness shall be entitled to refuse to answer such questions with respect to which a truthful reply would result in the danger of bringing prosecution to him". The immunity for prosecution may be granted by the Prosecutor (para. 3) and the witnesses shall answer the same questions provided that immunity is granted to such witnesses (para. 2).

As follows from Article 84 (3) CPC of BiH, the immunity for prosecution is part of an agreement between the witness and the Prosecutor's Office, which regulation de jure excludes the Court in deciding the issue of immunity of witnesses requested by the Defense attorney. Therefore, the Court is of the opinion that this provision, except in case the witness doesn't speak the whole truth in the Court after taking an oath or affirmation, in context of the Prosecutor's response, provides enough guarantees for the witnesses to appear before the Court without having a fear that they will be prosecuted.

Additionally, although the Defense attorney invokes the ICTY practice, the fact that the ICTY is the international tribunal, which orders and decisions should be construed versus national regulations, is in favor of the absence of provision which in the national legislation would represent a parallel to the provision of the Rule 54 of the ICTY Rules of Procedure and Evidence, stipulates that "*at the request of either party or proprio motu, a Judge or a Trial Chamber may issue such orders, summonses, warrants and transfer orders as may be necessary for the purposes of an investigation or for the preparation and conduct of the trial.*" All rights and obligations that the witnesses in the proceedings before the Court of BiH are subject of are prescribed in the provisions of Article 81 through 91 CPC of BiH, including in such a process the right to refuse answering the incriminating questions, but also the possibility of apprehension or payment of fine if the witness fails to respond to summons or fails to justify his absence.

And finally, although the measures proposed by the Defense attorney can not be ordered by the Court according to the CPC of BiH, the obligation to respect and apply the European Convention on Human Rights entirely provides the guarantee to the Accused that the witnesses on his behalf shall have the equal treatment as the witnesses against him. That is the obligation prescribed in Article 6 (3) (d) ECHR: "*Everyone charged with a criminal offence has the following minimum rights: ... to examine or have examined witnesses*

*against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him."*

#### **f) Inadmissibility of certain evidence for the Prosecution**

Although the Court in the introductory part of the reasoning of this Verdict listed all pieces of evidence presented during the main hearing, not all of them were admitted into evidence. Their inadmissibility, that is, reasons that made them as such, was discussed during the main trial and it was decided that the following shall not be admitted into evidence: audio tape of the interview of Gordana Igrić with the Accused Gojko Janković; transcripts of testimony at the ICTY in the case against the Accused Dragoljub Kunarac et.al, dated 13 June 2000 by witness FWS-105; the transcript of testimony at the ICTY in the case against Dragoljub Kunarac et al. on 4 May 2000 by witness FWS-186 and the transcript of the testimony by witness AS in the case against Dragoljub Kunarac et al. on 19 April 2000; and the video record of conversation with Janko Janjić (also known as "Tuta").

The Court ruled about the reasons not to accept certain evidence obtained from the ICTY under the item c) of procedural decisions and here shall only comment on audio recording – tape of the conversation of the witness Gordana Igrić with the Accused Gojko Janković and video record of the conversation with Janko Janjić.

The said tape, without knowledge of the Accused and his Defense attorney, was presented as evidence by the Prosecution. The witness Gordana Igrić, who was at the time present in the Courtroom, had conducted interview with Gojko Janković which was recorded on tape. The Defense strongly objected to listening through this tape because it was recorded without permission and without giving any warning to the then free citizen Gojko Janković that it might be used in some criminal proceedings against him. After listening to the Defense the Prosecution *de facto* abandoned this piece of evidence.

Nonetheless the Court allowed a short listening off the tape in order for the witness to confirm that the voice on the tape is hers.

Having considered the objection of the Defense and pursuant to provision of Article 263 (2) CPC of BiH the Court decided to refuse admission of this evidence. The Court shall make asses the authenticity and validity of the NIN Article by Gordana Igrić in the context of assessing all presented evidence, and especially versus the testimony of the author Gordana Igrić, given before this Court on 18 July 2006.

The Court also refused to admit the video recording of the conversation with Janko Janjić, also known as "Tuta". The Defense, quite justifiably, made a reference to the irrelevance of the personal stance and the opinion of this person about the events in Foča during the incriminated period, and especially about the personality of the Accused Gojko Janković.

The examined witnesses as well as the material pieces of evidence presented directly during the proceedings before this Court spoke about the incriminated period, personality and the offence of the Accused Gojko Janković so the admission of this video recording did not turned out to be necessary. Furthermore, Janko Janjić had died and could therefore not be examined about the allegations made in the interview.

## 5. Applicable Law

As regards the applicable substantive law, the Defense objected to the application of CC of BiH, pointing out that the CC of SFRY, which was applicable at the time of the events concerned, should be applied. According to the Defense, application of any other Law than the CC of SFRY, amounts to a violation of the principle of legality. The Defense referred to Article 7 (1) ECHR and Article 15 (1) of the International Pact on Civil and Political Rights.

Article 3 CC of BiH stipulates the principle of legality; that is, that criminal offenses and criminal sanctions shall be prescribed only by law and that no punishment or other criminal sanction may be imposed on any person for an act which, prior to being perpetrated, has not been defined as a criminal offence by law or international law, and for which a punishment has not been prescribed by law. Furthermore, Article 4 CC of BiH stipulates that the law that 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 after the criminal offense was perpetrated, the law that is more lenient to the perpetrator shall be applied.

Also in Article 7 (1) ECHR the principle of legality is laid down. The ECHR supersedes all national legislation of BiH pursuant to Article 2 (2) of the BiH Constitution. This provision of the ECHR furthermore contains the general principle prohibiting imposing a heavier penalty than the one that was applicable at the time when the criminal offense was committed, but does not prescribe the imposition of the most lenient law.

Article 4a CC of BiH states that Articles 3 and 4 CC of BiH 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 according to the general principles of international law.*"

Also paragraph 2 of Article 7 ECHR gives the same exemption, providing that paragraph 1 of the same Article "*...shall not prejudice the trial and punishment of any person of 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*". (see also, Article 15 paragraph 1 and 2 of the International Covenant on Civil and Political Rights contains similar provisions. The State of Bosnia and Herzegovina, as a successor of Yugoslavia, ratified this Covenant.

This provides the possibility to depart, under the described circumstances, from the principles laid down in Articles 3 and 4 CC of BiH (and Article 7 (1) ECHR) and thus to depart from an application of the criminal code applicable at the time of commission and of a more lenient law in proceedings constituting criminal offenses under international law.

While considering the objection raised by the Defense, it has to be noted that in the CC of the SFRY, which was applicable in the period relevant to this case, no provision explicitly dealt with against humanity as provided for in Article 172 CC of BiH. However, taking into consideration other provisions of the valid substantive law as well as the general principles of international law, this objection of the Defense could not be accepted as well-founded.

The Court points out that the crimes for which the Accused has been found guilty constituted crimes under international customary law and thus fall under "*the general*

*principles of international law*" as stipulated in Article 4a of the Law on Amendments to the CC of BiH and "*the general principles of law recognized by civilized nations*" as stipulated in Article 7 (2) ECHR and thus the CC of BiH can be applied in this case on the basis of these provisions.

The customary international law status of Crimes against humanity and the attribution of individual criminal responsibility in the period relevant to the Indictment was among others by the Report of the Secretary General of the United Nations pursuant to paragraph 2 of Security Council Resolution 808, dated 3 May 1993, International Law Commission, Comments on the Draft Code of Crimes against the Peace and Security of Mankind (1996) and jurisprudence of the ICTY and ICTR. These institutions found that the punish ability of crimes against humanity represents an imperative standard of international law or *jus cogens* (International Law Commission, Commentary on Draft Articles on State Responsibility for Internationally Wrongful Acts (2001), Article 26). Therefore, it appears to be beyond dispute that in 1992 Crimes against Humanity were part of international customary law.

Furthermore, the fact that the criminal acts set forth in Article 172 CC of BiH can also be found in the law which was in effect at the critical time period – at the time of the perpetration of the offense, specifically under Articles 134, 141, 142, 143, 144, 145, 146, 147, 154, 155 and 186 of the CC of SFRY, or, in other words, that the criminal acts were punishable under the criminal code then in effect, additionally supports the conclusion of the Court regarding the principle of legality.

Finally, the application of the CC of BiH is additionally justified by the fact that the imposed sentence is in any event more lenient than death penalty that was applicable at the time of perpetration of the offense, thereby satisfying the principle of time constraints regarding applicability of the criminal code, i.e. application of a law that is more lenient to the perpetrator.

The above is in line with the Appellate Division of Section I of the Court of BiH in its Verdict against Abduladhim Maktouf, no. KPŽ 32/05, dated 4 April 2006 and Verdict against Dragoje Paunović, no KPŽ 05/16, dated 27 October 2006.

## **6. Findings of the Court**

### **a. General considerations regarding the evaluation of evidence**

The Court has assessed the evidence in this case in accordance with the applicable procedural Code, i.e. the Criminal Procedure Code of Bosnia and Herzegovina. The Court has applied to the Accused the presumption of innocence stated in Article 3 CPC of BiH, which embodies a general principle of law, so that the Prosecution bears the onus of establishing the guilt of the Accused and the Prosecution must do so beyond reasonable doubt.

In evaluating the evidence of the witnesses that testified before the Court, the Court has considered their demeanor, conduct and character as far as this was possible. With regard to all the witnesses it has also considered the probability, consistency and other evidence and

the circumstances of the case. Furthermore, the Court has been conscious throughout that the credibility of witnesses depends upon their knowledge of the facts upon which they gave evidence, their integrity, their veracity and the fact that they are bound to speak the truth in terms of the solemn declaration taken by them.

It is insufficient that the evidence given by a witness has been given honestly. The true issue in relation to identification evidence is not whether it has been honestly given, but also whether it is reliable. The Trial Panel has been conscious, throughout, that evidence about facts that occurred sometimes (many) years prior to giving evidence, involves inherent uncertainties due to vagaries of human perception and recollection of traumatic events.

As regards hearsay evidence, the Court underlines that it is well settled in the practice and jurisprudence of the Court that hearsay evidence is admissible. Furthermore, pursuant to Article 15 CPC of BiH the Court is free in its evaluation of evidence. The approach taken by the Court has been that it ought to be satisfied that such evidence is reliable in the sense of being voluntary, truthful and trustworthy. Furthermore, the probative value of a hearsay statement will depend upon the context and character of the evidence in question and/or if the evidence has been corroborated by other pieces of evidence.

The Court considered circumstantial evidence as being such evidence of circumstances surrounding an event or offence from which a fact at issue may be reasonably inferred. Since the crime seems to be committed when many witnesses were not present at the crime scene itself, and since the possibility of establishing the matter charged by the direct and positive testimony of eye-witnesses or by conclusive documents is problematic or unavailable, circumstantial evidence may become a critical ingredient not only for the Prosecution but also for the Accused. The individual items of such evidence may by themselves be insufficient to establish a fact, but, taken together, their collective and cumulative effect may be revealing and sometimes decisive.

In the present case, the documentary evidence has been voluminous and is of particular importance. In the course of the trial, several documents were tendered into evidence, which were contested by the Defense. The Court has examined each and every document objected to by the Defense with a view to deciding on their reliability and probative value.

The Defense submitted that some of the documents 'for which there is no evidence of authorship or authenticity' is unreliable, and can carry now weight. In particular, the Defense contests the admissibility of the statement of witness FWS-186 of 9 May 1998 tendered by the Prosecution and which does not bear a signature and thus devoid of an element required for its authenticity.

The fact that a document is unsigned or unstamped does not necessarily render that document non-authentic. The Court did not consider unsigned or unstamped documents, a priori, to be void of authenticity. Keeping in mind that at all the times the principle that the burden of proving authenticity remains with the Prosecution, Court reviewed all the presented documents, one by one, and is satisfied that the Prosecution has proved their authenticity beyond reasonable doubt. In order to assess the authenticity of documents, the Court considered them in light of evidence such as other documentary evidence and witness testimonies. In addition, even when the Court was satisfied of the authenticity of a particular

document, it did not automatically accept the statements contained therein to be accurate portrayal of the facts. Indeed, the Court evaluated these statements in light of the entire evidence before it.

#### **b. Chapeau elements of Crimes against Humanity and knowledge Accused**

The Accused has been charged with the criminal offense of Crimes against Humanity under Article 172 paragraph 1 items a), c), d), e), f) and g) of the CC of BiH.

For a criminal act to qualify as a Crime against Humanity, the law requires, besides the specific elements of the individual act, for the Prosecution to proof all the general or chapeau elements of Crimes against Humanity, namely:

1. *That there was a widespread or systematic attack directed against any civilian population;*
2. *That the Accused knew of the existence of such an attack;*
3. *That the acts of the Accused were part of the attack and that he knew that his acts were part of the attack.*

As follows from the previous as stated in the reasoning of the Decision on Acceptance of Established Facts dated 4 August 2006 and supported by the testimonies of the several witnesses heard during the evidentiary proceedings, the Court found indisputably and it considers established the fact that at the time relevant to the Indictment, in the territory of Foča Municipality there was a widespread or systematic attack directed by the Army of the Serb Republic of Bosnia and Herzegovina, members of the Police and paramilitary formation targeting non-Serb civilian population, with such an attack, in the context of Crimes against Humanity, pursuant to international customary law, not being limited exclusively to the existence of the "armed conflict".

As to the other necessary key elements of Crimes against Humanity, by evaluation of all the presented evidence individually and in their correlation, the Court established beyond any reasonable doubt that in the incriminated period the Accused was staying in the area of the Foča municipality, that he was a leader of a unit that was part of the Foca Tactical Brigade of the Army of the Serb Republic of Bosnia and Herzegovina and, in such capacity, he was attending meetings of the Crisis Staff, which follows from the testimony of Ljubomir Dostic who was a witness for the Defense. It can be concluded that he was fully aware of the existence of the widespread or systematic attack targeting non-Serb civilian population and his acts were part of that attack, thus all the essential elements of Crimes against Humanity are met.

#### **c. Charges against the Accused**

1. **With regard to Item 1** of the convicting part of the Verdict (Count 1 of the amended Indictment), the Accused was found guilty, in as much as, he on 14 April 1992 commanded a group of soldiers who attacked the hamlet of Brežine/Zubovići inhabited by civilians of Muslim nationality ordering the group that he commanded the unlawful arrest and taking away of Enes Hrnjičić, Halid Konjo, Halim Konjo, Enes Uzunović, Esad Mezbur, Osman Ramić, Osman Dedović and Haso Glušac, who were then forcefully taken by other soldiers to detention in Brod where they were interrogated and beaten, and then transferred to the KPD camp in Foča.

Consequently, he, as part of a systematic or widespread attack against the Bosniak civilians of which was aware, carried out forcible transfer of population and imprisonment, in violation of fundamental rules of international law, thereby committing the criminal offense of Crimes against Humanity in violation of Article 172 (1) items d) and e) in conjunction with Article 29 CC of BiH.

It is an indisputable fact that an attack was launched against the village of Brežine or Zubovići as it called by witnesses, and that taking men away to captivity was a consequence of that attack. The Court undoubtedly concluded this both based on the Defense witnesses and prosecution witnesses' statements

After evaluation of the statements of Prosecution witnesses Enes Hrnjičić, Ferida Glušac and the witness B, including the Defense witnesses, in particular Dragan Paprica, Radmilo Tomović, Zoran Pavlović and Milenko Paprica all alleged soldiers of the Accused, the Court concluded doubt that it was the Accused himself who commanded group of soldiers attacked the hamlet of Brežine/Zuboviće inhabited by civilians of Muslim which resulted in the arrest Enes Hrnjičić, Halid Konjo, Enes Uzunović, Esad Mezbur, Osman Ramić, Osman Dedović and Haso Glušac. These captives were then forcefully taken by other soldiers and detained in Brod, where they were interrogated and beaten, before being transferred to the KPD camp in Foča.

Witness Enes Hrnjičić and witness B both stated that they were in the house of Asim Nezbur at the moment when the attack was launched. They both describe how people, including elderly, women and children, were hiding in the basements of the house when they heard shooting and how they were subsequently forced out. Ferida Glušac was in the house of Osman Ramić. There was a distance of about 50 meter between these two houses and white flags were noticeably erected on both houses.

Witness B was certain as to the identity of the Accused. She emphasized that she had known him since 1979 or 1980; further, she worked together with his wife, in the same organization, as a result of which she would see the Accused when he visited his wife. She was aware that the Accused was in the catering business, and stressed that they lived in a small community where people generally knew each other.

The Accused's presence and participation in the attack against Brežine on 14 April 1992 is apparent from Witness B's clear recollection that she only recognized the Accused amongst the group of soldiers who participated in the attack. For this reason she stated that she was looking ceaselessly at him, hoping that he would recognize her so that she and her husband would enjoy some kind of a more favorable treatment.

Witness B stated further that the order of the Accused was that *"women should be taken to the garage and men towards Brod by a road behind the house"*. This confirms that the Accused was indeed in command of this group of soldiers, which is also borne out in the following testimony: *"I am a layperson as regards the military. But there has to be a person in charge. Even in a house, there is a host; let alone in a group of soldiers. When he says: "You do this, you do that, you go there", I mean., I consider him a commander. I may be*

wrong... but if someone issues an order, when he tells his soldier: "Take that group there", then you must be dealing with a commander."

The witness Ferida Glušac remembered clearly how she approached the Accused and asked him, "Where are you taking my Hasan?" He replied that Hasan was being taken for interrogation and would be returned within two hours, which did not happen. Having worked together in the saw-mill in Brod, this witness is certain as to the identity of the Accused. She remembered him wearing a JNA uniform, stating: "he was wearing a uniform we all swore at!" Ferida Glušac also had the impression that the Accused was the commander, in charge of everything which was going on during the critical moments. She stated: "All who came asked "Commander, where should we go next", and he ordered one group to go towards Tabaci, which is about 1.5 kilometer from Brežine." She is sure that the Accused ordered the captured men to be taken away – in response to one of the soldiers asking: "Commander, what should we do next?", she heard the Accused give further instructions, after which the aforementioned men were taken away.

The witness Enes Hrnjičić also testified about the Accused, Gojko Janković, as the person who commanded this group of soldiers. He identified the Accused in the Courtroom as the same person who led the attack. At the time of the attack, the witness did not know the Accused's name, however, he knew him by sight. In terms of other personal details, the witness knew that the Accused lived at Trnovača, owned a bar and a house in Montenegro. The witness also knew the Accused's brother. He learnt of this commander's name from the men with whom he was taken away towards Brod, and with whom he spent quite some time in captivity. Later, the witness' sister, who was together with them in Brežine on the day of the attack, also told him more about the Accused. The witness heard soldiers calling the Accused by the title 'Commander', and so he used the same word to address him when explaining to the Accused that a wireless phone charger was not a radio station. Witness B corroborated the fact that this conversation took place, as she clearly remembered Enes Hrnjičić talking to the Accused Gojko Janković. Furthermore, when it was ordered that men be separated from women and children and taken towards Brod, it was the Accused whom the witness spoke to and asked to leave at least one man with women and children. The Accused did allow a person, by the name of Čamil, to remain and this was the last time that the witness saw the Accused.

The statement of witness Enes Hrnjičić, who was among the captive men, establishes that after they were separated from women and children, he, Halid Konjo, Halim Konjo, Enes Uzunović, Esad Mezbur, Osman Ramić, Osman Dedović, Hazo Glušac and others, were taken towards Brod. The same also ensues from the statements of both the witness B and the witness Ferida Glušac who saw how these men, including their husbands, were taken away. Although Hrnjičić did not know any of the other captured men at the moment when they were taken away, as he was not a local resident of Brežine, he discovered their names in the following days. Having been taken away on the basis of the Accused's orders, the men reached a road where they joined other groups of prisoners who were being escorted by soldiers in blue uniforms. As stated by the witness, these people were civilians from another place, who had been arrested by another group. This evidence establishes that the attack on Brežine was not an isolated incident, but part of a bigger operation.

Subsequently, this larger group of approximately forty to fifty people according to witness Hrnjičić, were taken to Brod, where they were imprisoned in a hall. They stayed there for three nights, during which some of them were taken out one by one. The witness stated that some returned and some did not. From Brod, the prisoners were taken to Solana, in the residential area of Aladža in Foča, where they remained for around 2 hours. Finally, they were transferred to KPD Foča, where the witness Hrnjičić stayed until 18 August 1994. During that period of time he was subjected to much torture, in addition to witnessing both the torture and killing of many other prisoners.

Witness B testified that whilst searching for her husband, she indirectly learnt of the fate of many of the men who were taken away: amongst other things, that they were imprisoned in KPD Foča.

When she went to visit her husband on 27 April 1992 he told her that he had experienced some problems in Brod, but he did not mention anything regarding his stay in KPD, except that he was cold and hungry. However, on the occasion of her visit of 15 May, she found her husband in such a poor condition that she could not comprehend how a person could change so much within those twenty days. The witness Ferida Glušac, whose husband Haso Glušac spent five months in the camp, also spoke about the fate of the men who were taken away.

Statements of the Defense witnesses, who all claimed to be fellow soldiers of the Accused, assisted the Court in reaching its conclusions about the attack on Brežine.

By means of the statements of these witnesses, the Defense challenged the assertions made in the indictment and sought to persuade the Court that the attack was not launched by the Unit to which these soldiers belonged, but by some "guardists". Further, the witnesses' Unit was *not commanded* by the Accused, but by a person called Radmilo Babić, the Accused being only an ordinary soldier. The Court found these statements were neither credible, nor logical and, therefore had no probative value.

The witnesses Dragan Paprica, Radmilo Tomović, Zoran Pavlović, Milenko Paprica, as well as others who will be mentioned in the text which follows, all claimed to be members of a "voluntary" unit formed at the beginning of April 1992. In certain respects, the details in these witnesses' statements are in complete harmony. Nevertheless, they are illogical and unconvincing: on the one hand, the witnesses were all able to remember similar, unimportant details, whilst at the same time, they were completely unable to recall any actions taken by their unit. They claim they did not even go to actions, but mainly stayed at "repetitor"(relay).

The Court even has serious doubts about whether all of the aforementioned witnesses served in the army, as several witnesses could not substantiate this by producing any military documentation, such as their military booklets. This, despite the Court expressly requesting such evidence from the Defense in advance of these witnesses being called.

These witnesses stated that after it had been announced on radio that war had broken out in Bosnia, around thirty volunteers gathered, who wished to go to defend their area, namely, Foča. They gathered in "Maglić" vacation establishment, from where they set off to

Podgorica, the location of a former JNA barracks and where they were issued with uniforms and weapons. Since this group of volunteers was supposed to have somebody in charge of it, those who received them at the barracks asked whether anyone held any military rank. Only Radmilo Babić reported himself, because, as the witnesses stated, he worked "for the army". Once they had organized themselves, they headed towards Foča, where they were first placed in Brod on Drina. All the witnesses agreed that Radmilo Babić commanded their unit until the former JNA withdrew from BiH, which happened on 15 or 18 May 1992.

These witnesses are, as they claim themselves, from Foča, having been born there and spent a considerable part of their life in the area. They went to Montenegro only to find employment. They also agreed that they knew each other, considering that Foča was a small community, where people generally knew each other, if not by name, then by sight or through family connections. Bearing these facts in mind, it remains unclear why none of these witnesses were able to give more details about Radmilo Babić, in particular, where he is living now. This, despite the assertion that he was the person who, at those irregular times for all of them, commanded their unit. It also remains unclear why none of these witnesses were able to give a physical description of their leader. The only witness who attempted to describe this alleged commander spoke about a short man in uniform. These witnesses were not able to provide any other identification data concerning their commander, over and above another witness stating that he was originally from Brod, and is probably now in Montenegro and again employed with the "army". The defense witnesses did not even know the correct name of their unit, nor whom it reported to, yet they were persistent that it was commanded by Radmilo Babić and repeatedly referred to themselves as members of a "reconnaissance unit", "special unit", "unit of volunteers". They also stated that the unit which did commit the attack may have been a company or a platoon or some other type of formation.

With regard to the Accused, the witnesses are explicit in saying that he held no rank, whilst also stating that those who did hold ranks did not necessarily display them on their uniforms. The witness Ljubomir Dostić was also persistent about the Accused's lack of rank. Dostić was the Commander of IV Battalion at the critical time. In response to a question from a Panel member, this witness stated that many units were commanded by persons without any rank, that is, they were ordinary soldiers. Of course, as such, they were permitted to, and did, attend the meetings of the command.

The Court has evaluated all these statements within the context of the surrounding events and other corroborating and contradictory evidence, and has come to the undoubted conclusion that the Accused did command, *at the least de facto*, the unit that attacked Brežine/Zuboviće. The Prosecutor's witnesses gave convincing and corroborating testimonies that the Accused was there, gave orders and was listened to. The Court finds the assurances of the defense witnesses, that their unit did not launch an attack against Bržine, but that it was done by "some guards", are unfounded and illogical. More specifically, the witnesses say that they went to Brežine two days in a row, in order to negotiate the handover of weapons. On the first day, they came back immediately because the village was empty. They set off to Brežine the following day and it was empty again. Despite this, they say that while descending towards the highway, they saw "Guards" taking away about fifteen residents of Brežine.

The Court is not convinced that one Radmilo Babic was Commander of the Unit. That it was the accused who commanded the Unit, is supported by the letter of the Foča Municipality General Administration Section No. 04-835/4, dated 22 January 2007, from which it follows that the Gojko Jankovic at least from 9 April 1992, was leader of Unit 8078/2. This certificate is a public document and as such there is a presumption as to its accuracy, which Court notes the Defense failed to refute. When combined with the convincing and credible witness testimonies which describe the Accused as the one giving orders, the Court is convinced beyond a reasonable doubt that the Accused commanded the group of soldiers involved in the events described in this Court. In any event, even if Mr Babic was the nominal commander of that Unit, it is not of crucial importance, since it is clear from the presented evidence that the Accused was in effective command in Brežine on 14 April 1992.

The apprehension and taking away of the eight men from Brežine was executed by soldiers who were following the Accused's orders. By these actions, the Accused made a decisive contribution, as a co-perpetrator pursuant to Article 29 CC of BiH, to the joint commission of the criminal offenses of forcible transfer of population and imprisonment under Article 172 (1) items d) and e) CC of BiH.

In relation to the criminal offense of imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law, the Court notes from the presented evidence that the deprivation of the physical liberty of the eight men was arbitrary and without legal justification. The Accused had direct intent with regard to the initial deprivation of their physical liberty. He also had indirect intent for the longer period of imprisonment, as, in light of the circumstances (namely, the larger operation, demonstrated by the capture of others at the same moment), it was a foreseeable consequence that the eight men would be held captive for a longer period of time.

In relation to the criminal offense of forcible transfer, the Court notes that the eight Bosniak men were expelled under coercion from the area in which they were lawfully present, without grounds permitted under international law, as detailed above.

**2. With regard to Item 2** of the convicting part of the Verdict (Count 2 of the amended Indictment), the Court established that the Accused on 3 July 1992 commanded a group of soldiers who attacked Muslim civilians hiding in the woods on the Kremenik hills, wounding several of them and killing Fadila Odobašić, Selima Pekaz and Izet Čolo, and also capturing about thirty women and children and seven men, namely Husein Barlov, Ziad Barlov, Meho Barlov, Armin Pekaz, Mujo Pekaz, Adem Čolo and Sifet Čolo; these captives, particularly the men, were questioned and brutally beaten, then brought to a clearing where the Accused was waiting for them; beatings continued; then the women were walked away whilst the Accused and some of his soldiers remained with the seven male captives who were then shot causing bullet injuries to them, principally head injuries: Sifet Čolo shattering of the cranial vault bones and bones of the base of the skull Armin Pekaz – fracture of the cranial vault bones and bones of the base of the skull, upper and lower mandible, right upper arm, right scapula and right femur Zijad Barlov – fracture of the cranial vault and the base of the skull, fracture of the upper mandible, right thigh bone, right clavicle, right pubic bone and injury to the right upper arm Meho Barlov – fracture of the cranial vault bones and bones of the base of the skull Husein Barlov fracture of the cranial

vault bones and bones of the base of the skull Adem Čolo head injury with fractures of the skull bones and Mujo Pekaz head injury with fracture of the temporal-parietal bone, which injuries caused the deaths of all of the seven captured men; all these acts being the Accused's part within a greater attack by the army upon the villages of Trošanjanj and Mješajja that day, involving killings of Muslim civilians and the ransacking and burning of their houses.

Consequently, as part of a systematic or widespread attack against the Bosniak civilians of which he was aware, the Accused carried out murders, tortures and forcible transfer of population, in violation of fundamental rules of international law, thereby committing the criminal offense of Crimes against Humanity in violation of Article 172 (1) items a), f) and d) in conjunction with Article 29 CC of BiH.

When deciding on the charges under Count 2 of the Indictment, the Court evaluated the testimonies of the Prosecution's witnesses, the material evidence corroborating the charges and the testimonies of the Defense witnesses tendered. On the basis of this evidence, the Court finds that the attack on the Muslim civilian refugees, who hid in the woods in the Kremenik hill, is an indisputable fact. The Court also finds the time, place and manner, as well as the consequences of the attack, to be indisputable.

The consistent, corroborating and credible testimonies of witnesses FWS-75, FWS-88, FWS-96, DB, FWS-74, FWS-105 and FWS-87, who were among the attacked refugees, indicated that many villagers from Trošanjanj hid on the Kremenik hill, which is above the village. Having watched many villages on fire, they feared that their villages would also be attacked and burned down. In the woods they slept under nylon tents. On 3 July 1992, shots woke them up. It was early in the morning, between 5 and 6 a.m. As they started running away up the hill, they were shot, as one of the witnesses testified, as if they were animals. In the course of that "shooting" as the witnesses refer to it, some were killed and some wounded, as will be explained further. A group of seven men was taken captive, namely, Huscin Barlov, Ziad Barlov, Meho Barlov, Armin Pekaz, Mujo Pekaz, Adem Čolo and Sifet Čolo. These captives, particularly the men, were questioned and brutally beaten, before being brought to a clearing on the hill, where the Accused and more soldiers were awaiting them. The continuation of their sufferings will be discussed below, in the second part of the explanation of this Count.

FWS-95, who lived in Mješajja, testified how her village came under attack. She stated that they could also hear shooting coming from the direction of Trošanjanj.

Due to the complexity of the factual descriptions, the gravity of the attack and its consequences, certain parts of the charges against the Accused require a more detailed explanation. This is divided as follows: firstly, the Court addresses the Accused's command over the events on Kremenik hill on 3 July 1992, secondly, the wounding, tortures and killings resulting from the attack and, lastly, the Defense witnesses and potential alibi for the Accused.

#### a. The role of the Accused

As per the previous Count, the role of the Accused in this attack and, indirectly, the role played by the Unit he commanded, was contested by the Defense.

Based on the coherent testimonies of the witnesses FWS-75, FWS-88, FWS-96, DB, FWS-74, FWS-105 and FWS-87, who were among the attacked refugees, the Court finds unequivocally that the Accused, had de facto command over the events on Kremenik Hill on 3 July 1992. This conclusion is furthermore substantiated by the material evidence, as will be explained later.

Witness FWS-75, who was among the refugees with her parents, gave evidence without any doubt as to the identity of the Accused and the fact that he was the person who commanded the attack. She stated that she first heard this person's voice over the walky talky of one of the soldiers, directing them: "*Do not do anything without orders*". She knew that voice well as the voice of the Accused, whom she knew since the 5th grade of elementary school, when on her way back from school, she and her friend used to often visit her cousin who worked at the Accused's catering establishment. When the soldiers subsequently caught up with the refugees, some of whom had already been wounded, and forced them to the meadow, she saw the Accused standing next to a rock. He was holding a radio set in his hand. The witness was about 10 meters away from the Accused at this point and she testified convincingly that it was indeed him and not someone else, stating: "*When I first saw him, I felt relieved, I thought he would help me*". According to the witnesses Radomir Kovac and Janko Janjić, the soldiers Dragan Zelenović, Slavo Ivanović and others, around twenty soldiers in total, were with the Accused. Witness Janko Janjic, nicknamed 'Tuta', states: "*I feared meeting him even before the war*".

The BBC recording made in late 1993 also conclusively proves that this witness knew the Accused: in that recording, when talking about the crimes in the area of Foča, witness FWS-75 spoke about the Accused, who she immediately recognized in the photos shown to her.

Witness FWS-88, who was among the refugees in the woods on the Kremenik Hill, also testified about the role of the Accused as the commander. Her evidence was that the soldiers, having caught up with the refugees, took the survivors and wounded to the meadow, where she saw the Accused standing next to a rock and holding a radio set in his hand. Although, she could not hear what the Accused was saying with the radio set, as she was around twenty meters away, the witness' impression was, nevertheless, the Accused was the person in charge there, as he was the only one with the radio set.

Witness DB also saw the Accused on the meadow on the Kremnik hill and testified convincingly that this person was the Accused Gojko Janković. She stated that she knew him from before the war. Although she learnt of his name from other refugees with whom she was in captivity, she remembered the Accused as the person whom she met frequently before the war and who had a coffeebar. In addition to the critical incident, Witness DB also saw the Accused and had direct contact with him whilst in captivity. On the basis of this familiarity, the Court is of the opinion that her testimony unequivocally demonstrates that the Accused was the person who was seen by the witness holding a radio set in his hand on the meadow on the Kremenik hill on 3 July 1992.

The witness FWS-96 was also among the group of attacked people. She recognized Nešo Janković, Slavo Ivanović, and the Accused, whom she knew very well, among the soldiers. This witness identified the Accused in the course of her testimony before the ICTY. The Defense sought to contest this identification, as well as the witness' assertion that she knew the Accused well. The Court found this witness to be very compelling when she described the Accused as the best man of her sister-in-law's son, with whom she often attended the same parties and whose bar she frequented.

Witness FWS-74 speaks about the role of the Accused as the commander of the unit of soldiers who attacked the refugees on the Kremenik hill. She remembers well that the Accused had a walkie-talkie, that it was he who negotiated about something and who was addressed by everyone. She knows the Accused from before the war; she knows he owned a bar in front of which she often had to wait for a bus. She also used to see him frequently both in Brod and in Foča, but they did not greet each other.

In her statement the witness FWS-105 also placed the Accused on the meadow on the Kremenik hill. She had not known him before. According to her evidence, he was the commander, because he seemed to be in charge of the soldiers and they received orders from him. The witness did not have any doubts as to the identity of this person. According to FWS-105 this was the same person who raped her at a later point during the war.

In her statement, Witness FWS-87 indirectly corroborates the fact that the Accused was the commander in this event: having seen him in the meadow, she later learnt from others that he had commanded over the attack.

Further indirect corroboration of the Accused's role as commander is provided by the testimony of witness, Nuredin Aščerić. This witness was a doctor to whom the refugees from Foča, some of whom originated from Trosanj, went upon their arrival in Novi Pazar. In the second half of August 1992, in recounting to him the attack, they mentioned the Accused Gojko Janković and his soldiers as the persons who attacked them.

From the convincing witness testimonies detailed above, the Court concludes beyond doubt, that the Accused had at least *de facto* command over the group of soldiers executing the attack on Kremenik Hill.

The senior role of the Accused is also established by the wealth of material evidence presented by the Prosecutor's Office in the course of the main trial. In particular: the letter of the Foča Municipality General Administration Section No. 04-835/4, dated 22 January 2007, containing information on the Accused's own military files, which detail that he was Unit leader of 8078/2 at least from 9 April 1992; the proposal to declare him a "Vojvoda", given by the command of the Foča Tactical Group under the internal reference number 01/705-1 on 13 August 1993 and signed by the Commander, Colonel Marko Kovač; and finally, the Article in the NIN magazine "Guys on the Hague List" (23 August 1996), written after the author, Gordana Igrić, had visited Foča and interviewed, amongst others, the Accused. Further, the Court was shown a news reel of an interview with Miroslav Stanić, a leading member of the SDS in Foca at the relevant time. In this interview, Stanić praised the Accused, Gojko Jankovic, as an early hero of the war.

The proposal to declare the Accused a "Vojvoda", sent to the president of the Serb Radical Party, Vojislav Šešelj, indicates that during the eighteen months of war, the Accused made a huge contribution to the preparation and organization of Serb people for combat, especially to the collecting of weapons and combat training, given his vast experience in fighting "Ustaše" in Croatia.

It is especially emphasized that the Accused established a special detachment with which he participated in the liberation of Foča, Čajniče and other municipalities, setting the example for others as to how to fight. It is stated also that he gave huge contribution to the liberation of the remaining territories of Foča, particularly Čajniče, Kalinovik, Trnovo and Gacko. It is also stated that he regarded no impossible missions when executing tasks.

The NIN magazine article, referred to above, is also noteworthy in establishing the Accused's role as a commander. The authenticity of the article's content was confirmed by the testimony of the author Gordana Igrić. Despite the Defense challenging its authenticity in cross-examination, the author's evidence remained consistent, to the effect that the article was written following her return from Foča, where she had spoken, amongst others, first to Dragan Gagović, the Chief of the police in Foča in 1992, and, a day later, to the Accused, Gojko Janković. When she came to a restaurant in Foča to interview the Accused, he was escorted by three bodyguards, (she could not be not sure of the exact number), one of whom sat very close to their table. At the beginning of the interview she placed a tape recorder on the table, but she also took notes, because she knew the tape recorder was not in full working order.

The Court evaluated the testimony of the witness Gordana Igrić as credible. The Defense contested what the Accused Gojko Janković had said back in 1996, at a time when anarchy was considered the normal state of society, especially in Foča. However, Igrić testified that the Accused had told her he had a group of forty to fifty young men, the numbers having grown over time. He stated they gathered around him because he was a trader and of good economic standing, meaning he had more money than others. The article states that he became military-engaged immediately, which in the Panel's opinion means April 1992 – the beginning of the war. Further, the Accused talks about himself as the commander.

The Court finds sufficient evidence to conclude that the Accused did command the group of soldiers on Kremenik Hill, which, in terms of status was a platoon within the Foča Brigade of the Army of the Serb Republic of Bosnia and Herzegovina. This conclusion is based on the aforementioned proposal to declare him a "Vojvoda", the abovementioned letter containing information that he was leader of his Unit at least from 9 April 1992, and the fact that, according to the information of the Ministry of Defense of the Republika Srpska, he was a member of the RS Army, to wit D5- GJ Military Post Office 7141 Foča, from 8 April 1992 until 31 January 1997, in the capacity of Lieutenant, and that he was awarded the "Miloš Obilić" Medal of Honor, which was only given to the most accomplished soldiers, combined with the credible and clear testimonies of the prosecution's witnesses,

#### b. Wounding, tortures and killings

The Court finds beyond doubt that some of the refugees were injured during this attack, whilst Fadila Odobašić, Selima Pekaz and Izet Čolo were killed. Around thirty women and children and seven men were captured and taken to a clearing where many of them, the men in particular, were questioned and seriously beaten. Thereafter, the women and children were taken away, while the captured men, Husein Barlov, Zijad Barlov, Meho Barlov, Armin Pekaz, Mujo Pekaz, Adem Čolo and Sifet Čolo, were kept in the meadow and then shot dead. The perforating wounds inflicted are described in detail in the operative part of the Verdict, and also in the aforementioned autopsy reports.

The indisputability of these facts arises, amongst others, from the testimonies of some of the refugees and from those who subsequently came upon the scene and found the corpses of those who had been murdered. The Court fully believes these witnesses' testimonies as they were consistent, credible and corroborated. Witnesses FWS-75, FWS-74, FWS-96, FWS-88, FWS-105 and witness DB testified about the following: the beginning of the Attack which woke up the refugees and forced them to run uphill through the forest; the first victims, whose lifeless – dead bodies were seen rolling down the Kremenik hill; the many who got injured, including a three-year old boy, Amir Odobašić, whose mother had been killed at the beginning of the attack; the wounding of FWS-96, DB and others, and the severe beating of their closest family members, including FWS-96's husband and sons before her own eyes; the taking away of women and children to Buk Bijela; and, finally, the subsequent murder of the seven men left behind in the meadow. The witnesses all confirmed the names of these men who were left behind in the meadow, who were their relatives and neighbors.

Having discovered the bodies of their dead parents, Witness C, who was thirteen years old at the time, and her younger brother set off towards the Kremenik hill in the hope of at least finding someone alive there. However, as soon as they reached the bottom of the hill, they saw items and photographs scattered about and in the forest they found dead bodies which were, as she phrased it, fresh and the blood was steaming. This witness recognized the murdered people as all those whose names are cited above.

The witness D, who subsequently came to the scene, also saw these killed people. His description of the condition of bodies corroborates the fact that men were first severely abused before they were shot dead. This witness also saw bodies of Fadila Odobašić, Selima Pekaz and Izet Čolo without traces of bloodshed. This is fully consistent with averments of other witnesses that these three were killed as soon as the attack commenced they were trying to escape uphill through the forest.

Indirect corroboration is provided by witness FWS-75, who testified that her father had told her that he had seen the dead bodies of these men in the meadow on the Kremenik hill, including the body of his son, as well as seeing the body of his wife who was killed as soon as the attack had begun.

Despite maintaining that the Accused was not even present at the attack, the Defense insisted that, in any event, none of the witnesses saw the actual killing of these men. Further, they asserted that it was proven that they were killed at that place and on that

occasion. In this regard, all witnesses were consistent in stating that soon after leaving the meadow, they heard shots coming from that direction where they had seen the Accused, the 7 male captives and some other soldiers for the last time and that the shots could mean only one thing, given that armed soldiers remained in the meadow. These soldiers had not hidden their brutality even from the eyes of the seven men's family members. The Court finds such evidence fully corroborates the suggestion in the Indictment that the seven men were killed soon after the women and children had been taken away. The Court further finds that once some of the soldiers had been ordered to and had taken the women and children away, the Accused, being an authoritative figure, remained in the meadow with the rest of the soldiers and the seven male captives. The soldiers escorting them, told them to lie down and that it was the Muslims firing at them.

Witness FWS-88, when asked how she connected those shots which were heard from the direction of the meadow with the killings, stated that given how they were shot at, she knew that they would not survive.

Based on such consistent testimony about the beginning of the attack and the soldiers' targeted brutality even at that stage, and the evidence of those who saw the corpses of the seven murdered men, together with the autopsy reports on their deaths, the Court unequivocally concludes this Count to have been proven. The captured women and children were taken to Buk Bijela, whilst the seven captured men were killed in the meadow of the Kremenik hill.

The Court will now explain why it does not accept the Defense's assertions in relation to this Count.

#### c. Challenging of Prosecution witnesses

The Defense contested the testimonies of witnesses FWS-75, FWS-96 and FWS-74. Further, they tendered witnesses who purported to provide the Accused with an alibi for the day of the attack, arguing that the Accused could not have been present on the Kremenik hill at the relevant time.

The Defense contested the testimony of witness FWS-75 in its entirety arguing that she has been a witness in further cases and thus could recall things from her memory. However, the Court views her testimony as credible and corroborated by other witnesses. The fact that this witness appeared in another case is not a reason, in itself, to challenge her testimony. On the contrary, her consistency in relation to her previous statements and testimonies underlines her credibility.

The Defense also contested part of the testimony of witness FWS-96, using her inability to remember what the Accused was wearing to demonstrate that this witness did not see the Accused at the location of the attack. Taking into account that the witness was at that time being forced to watch the severe beating of her husband and sons, only to learn soon after that they had been killed, her inability to remember the clothes of the Accused is, in the Court's opinion, not decisive against her identification of the Accused, which she has thoroughly explained.

The Court also concludes that the Defense's allegation that witness FWS-74's testimony was vague, in that she was unable to state whether or not she had entered the bar which she referred to as being owned by the Accused, is not decisive against her identification of the Accused. The Accused and witness lived in the same small community where almost everybody knew each other: as the Defense attorney stated in his closing arguments, the community where "*everyone knows each other through and through.*"

The fact that the witness referred to a walkie-talkie, rather than a radio set, as it was called by most of the other witnesses, also does not constitute a factor that would undermine witness FWS-74's identification of the Accused as the person who held this walkie-talkie. In the Court's opinion, knowledge of these type of technical devices is not within the every civilian's general knowledge.

When evaluating the minor discrepancies or occasional lack of detail in these testimonies, the extremely distressing experiences which these witnesses endured has to be taken into account. By their very nature, these events were traumatic for them at the time they were endured, and thus witnesses cannot reasonably be expected to recall every detail of the particular incidents charged, such as the precise sequence or the exact dates and times, of the events they have described.

#### d. Alibi of the Accused

As referred to above, the Defense also denied the Accused's presence at, and, by implication, his involvement in the events of 3 July 1992, the day on which the incidents alleged under Counts 2, 3 and 4 of the Indictment occurred. The Defense summoned as witnesses, soldiers of the Accused's Unit, who testified that he left Foča very early that day in order to go to Montenegro, as his sister was due to give birth imminently. She indeed gave birth the following day. Spouses Ljubinka and Milomir Papović, spouses Anđa and Miloš Paprica, Milenka Paprica and soldiers of Gojko Janković testified about his arrival in Montenegro. Further, despite having being instructed about her right to refuse to testify, the Accused's wife also insisted on giving evidence.

The witnesses who gave evidence on behalf of the Defense, all of whom claimed to be members of the Accused's Unit, agreed that the Accused departed for Montenegro in the early morning of 3 July 1992. However, they did not agree as to whether he left immediately, that is, directly from the front line or if he returned to Foča before leaving for Montenegro.

Witness Zoran Pavlović also testified about the Accused's departure. According to his evidence, he was a member of the reconnaissance platoon under the command of Gojko Janković. This witness confirmed that the Accused was present in the immediate vicinity of the Kremenik hill, early in the morning of 3 July 1992. The witness stated that his platoon was only deployed as a reserve unit. They were stationed about one kilometer away from the village of Trošanjanj, as the crow flies, a position they reached at approximately 4:00 a.m. At around 6 a.m., they heard shooting which lasted about fifteen minutes and once it had stopped, his unit retreated upon the Accused's orders. According to this witness, the Accused went to Herceg Novi immediately upon their arrival in Foča, which was around 7:20 a.m.

The witnesses Mladen Lazarević and Petar Aćimović testified that the Accused went in a van, together with his soldiers, to the asphalt road where his Golf car was parked. Having disembarked the van, he went in the direction of Montenegro via the road through Šćepan Polje. These witnesses later joined him in Montenegro. The witness Milomir Aćimović gave the same evidence in his statement given to the Accused's wife (see below). However, in the course of his testimony at the main trial, he contradicted this account, stating they had returned to Foča all together: their leader, Gojko Janković, was then the first to leave Foča, and the other members of the unit did so later the same day. This is not the first inconsistency apparent in Milomir Aćimović's evidence. The witness' testimony was that he had given his signed statement to the Defense attorney ten days prior to his appearance at trial. However, the Defense attorney stated that he could not meet this witness, due to other commitments, and so his written statement was actually taken by the Accused's wife, who followed the template given to her by the Defense attorney. Only when confronted with this fact did the witness state that he indeed gave his statement to "Lala", the Accused's wife. This witness also stated that he had not discussed his testimony with any of the other witnesses, although he traveled from Foca to the Court, together with Petar Acimovic.

Although instructed about her right, under Article 86 of the CPC of BiH, to refuse to testify, Milica Janković, wife of the Accused, gave evidence at the main trial. As the Defense Attorney had previously explained, she testified at her own insistence.

In response to one Panel member's question regarding whether she had discussed the case with any of the Defense witnesses, Milica Janković admitted that she was the initiator of calling "these people". She realized who was mentioned under the Counts of the Indictment and she contacted them respectively. She also confirmed that she, herself, took the Milomir Aćimović's written statement. Her testimony focused on providing her husband with an alibi. According to this witness, on the critical dates, such as 3 July 1992 and late October, that is, 31 October 1992, the Accused was in Montenegro.

The Accused's wife stated that on 3 July 1992, he arrived in Herceg Novi, where they lived and ran a store. The day before, a fight had almost broken out between the witness and the lessor of the store and this was the reason for his visit. Her recollection was that he arrived between 10.00 and 10.30 a.m. and that, on this occasion, he stayed for around ten days. The witness claimed that it was a mere coincidence that his sister gave birth at that time. On the day that the Accused arrived, his sister went into labour and his brother-in-law, Defense witness Milenko Paprica, took her to the hospital in the Accused's car. The model of this car was a Golf. At around 21.30, the brother-in-law returned in the Accused's car, whilst the Accused's sister, Borka, remained in hospital.

When asked to explain why the certificate issued by the Kotor Hospital states that her husband's sister, Borka Paprica, was admitted on 4 July 1992, when she delivered the baby, witness Milica Jankovic asserted that this certificate contained only the data necessary for the Register of Births. The real hospital record would contain the date when her sister-in-law was actually admitted to hospital. The Defense's justification for failing to obtain this written certificate on hospitalization was that the archives containing it were burnt in a fire in 1994. However, the Prosecutor's Office proved this not to be the case by obtaining the certificate in question and presenting it at the very end of the evidentiary proceedings. According to this certificate, the Accused's sister was admitted to hospital on 4 July 1992.

The Court notes that all the Defense witnesses who testified about this matter claim that the Accused's sister was taken to hospital on 3 July 1992.

When evaluating the evidence of the Accused's wife in the context of the testimony of other witnesses who spoke about the Accused's involvement in actions which occurred during the same period when according to her, he was "covered by an alibi", and, in light of the fact that the testimony of other alibi witnesses contain almost indiscernible, yet crucial, differences, the Court cannot help but contemplate the following thought: that through their contact with the wife of the Accused, the witnesses have been consciously or unconsciously influenced by her.

Furthermore, with regard to the hour of the Accused's arrival, the Court notes the discrepancies between the different witnesses, ranging from 10 AM to around 1 PM.

Bearing in mind the consistency of the testimonies given by the attacked refugees and the material evidence detailed above, the Court does not find the defense of alibi to have been established. The suggestion that the Accused was in, or en route to Montenegro at the moment the events of this Court occurred is irreconcilable with the findings of this Court, based on overwhelming evidence, that the Accused was present during the attack on Kremenik hill. Moreover, the Court notes that the assertions of some Defense witnesses, in relation to the hour the arrival of the Accused in Igalo, do not exclude the possibility that the Accused participated in the attack. This alibi does not exclude the possibility that the Accused could have reached these destinations in Montenegro after the attack, considering that it took place at dawn, around 6 a.m.: the distance between Foča and Herceg Novi/Igalo, according to the testimony of witness Milenko Paprica, could have been crossed in less than a three hour's drive.

The Court notes that the Defense's evidence as to alibi and the assertion of his soldiers, that he and his unit were merely present in the vicinity of Trosanj but did not participate in the attack, are insufficient to persuade the Court that there is doubt as to the role of the Accused, as pronounced in the convicting part of this Verdict. This is especially so in light of the consistent and corroborating statements of the Prosecution witnesses. As already stated, the Court has allowed for possibility that he went to Montenegro on 3 July 1992. However, it certainly was not as early in the morning and in the manner described by his soldiers.

Drawing together the above evidence – the testimonies of witnesses who saw the Accused at the time and the location of the attack on the Kremenik hill; then, making a connection between the Accused's presence and the fact that his position as the leader of his respective platoon has been established – the Court found it indisputable that the Accused had at least a *de facto* commanding role during the attack on the Kremenik hill. Even though some of the men, such as Dragan Zelenovic, were not part of his Unit, it follows from the testimonies that the Accused was in charge of this entire operation and it was he who gave orders, initially by walky-talky, which were followed by the soldiers involved. By doing so, the Accused made a decisive contribution to the perpetration of the criminal offenses committed against the civilians hiding on Kremenik hill, and thus is guilty, pursuant to Article 29 CC of BiH as a co-perpetrator for jointly, with the soldiers, perpetrating the criminal actions as described in the operative part.

These actions involved the murder of Izet Čolo, Fadila Odobašić and Selima Pekaz, contrary to Article 172 (1) item a) CC of BiH and the beating of the captured Bosniaks, amounting to torture, contrary to Article 172 (1) item f) CC of BiH, as the beatings caused severe pain and suffering and were done in all cases on the discriminatory ground of the victims' Bosniak ethnicity. The taking away of the women and children amounts to forcible transfer contrary to Article 172 (1) item d) CC of BiH, as the women and children were taken away by force from an area in which they were lawfully present, in order to cleanse the area of Bosniaks. The murder of Sifet Čolo, Armin Pekaz, Zijad Barlov, Meho Barlov, Huscin Barlov, Adem Čolo and Mujo Pekaz, amounts to murder contrary to Article 172 (1) item a) CC of BiH. In relation to those murdered, the Court notes that they did not take active part in the hostilities and that they died as the result of acts intended to have this consequence.

**3. With regard to Item 3** of the convicting part of the Verdict (Count 3 of the amended Indictment), the Accused was found guilty, in that on the same day (meaning on 3 July 1992), the captured women and children were forced to walk to Buk Bijela, a temporary detention and interrogation facility, under the escort of some of the Accused's soldiers, where the Accused arrived later with the remainder of his group, and there they questioned the captured women; the Accused, together with Dragan Zelenović and Janko Janjić interrogated female detainee FWS-75 and he threatened to gang-rape her if she lied; he then allowed one of the soldiers to take the female detainee into another hut where she was raped by at least ten unidentified soldiers and lost consciousness.

The testimonies of witnesses FWS-75, FWS-88, FWS-96, DB, FWS- 74, FWS-105 and FWS-87 irrefutably establish that the group of captured women and children that was walked away from Kremenik Hill by soldiers (the events described in Count 2 (Item 2)), was then taken to Buk Bijela.

Witness FWS-75 stated this group arrived in Buk Bijela around 10 or 11 a.m... Beban Vasiljević and Janko Janjić were amongst the group of soldiers who accompanied them. The witness was able to identify Buk Bijela on photos shown to her by the Prosecutor and admitted into evidence. The witness recounted how one soldier led her to one of the barracks, which she indicated on the photos of Buk Bijela. There she saw Janko Janjić, Dragan Zelenović and the Accused, all of whom she all knew. At the time, she was surprised at the fact that the Accused had got there so quickly.

Inside the barrack, the witness remembers the Accused was sitting on a table. He informed the witness that if she told the truth, nothing would happen to her, however, if she lied, they would gang-rape her. The witness did not understand what the Accused meant. He proceeded to interrogate her, demanding to know which of the residents of her village had weapons and who was supplying them with arms. Then he asked her to make a list of all the villagers, from the smallest child to the oldest man. The witness stated that she tried to say whatever it was the Accused seemed to want from her. In particular, she made a list of all the villagers, only leaving out her father.

Following this interrogation, the witness was taken to another barrack. On a picture shown to her by the Prosecutor, she identified this building as the barrack immediately adjacent to

the Drina River... On her way to this barrack she witnessed unknown soldiers taking her uncle Redžo Pekaz in the direction of the Drina River. He was covered with blood. Once inside this barrack, the witness recounted: *"And [...] there Gojko did what he had promised. He orchestrated my gang-rape. I know only that I had counted till ten, I couldn't anymore, I lost consciousness. And all the time I could hear my uncle and his screams while they were beating him. How he was roaring and screaming. How [...] they were beating him, suddenly shots were heard[...]and he was gone, he became silent."*

The witness recalled the queue of people in front of the barrack's door. The people were standing there expectantly, as if waiting for their salary or some food, as one would wait before the war. But, as she stated, *"they were queuing for rape."*

The next thing she remembered was being in the toilets of the barracks, and having water splashed in her face. Then two soldiers led her to the bus which took the group of women and children away from Buk Bijela. The last occasion on which the witness saw the Accused was when she left the barrack in which she had been interrogated...

Although unable to testify directly about what happened to witness FWS-75 as they were not present, all the Kremenik Hill captives, in particular, witnesses FWS-96, FWS-87, FWS-74, FWS-88, FWS-105 and DB, spoke about interrogations and rapes taking place during their time in Buk Bijela.

Witness FWS-74 saw the Accused in Buk Bijela on July 3 1992. Further, she stated that she saw him arrive there by car with two others.

Witnesses FWS-87 and FWS-74 both testified that they were also raped in one of the barracks in Buk Bijela. This establishes a pattern of conduct that goes beyond coincidence, thereby reinforcing the credibility of those witnesses who claim to have been raped in Buk Bijela. Witness FWS-74 told the Court how Janko Janjić took her to a room, where an unidentified soldier was waiting. There, the soldier ordered her to undress and raped her vaginally. FWS-87 stated how she was also taken for interrogation and raped by at least four soldiers, one of them being Dragan Zelenovic.

Apart from the victim FWS-75 herself, there were no other direct witnesses to her gang-rape. However, evidence provided by other witnesses serves to corroborate her account. Some witnesses saw the victim being taken to "interrogation" and returning from it, whilst others testified about her condition as a result of the rapes in Buk Bijela. At the time, the victim also spoke to other witnesses about her experiences in the barracks.

Witness FWS-96 was wounded during the attack on the Kremenik Hills and it was according to her only by virtue of the massive bleeding which resulted, that she avoided being raped by Janko Janjić. She had been taken to one of the barracks and he had ordered her to take off her clothes. This witness stated: *"...and other women were taken for interrogation, I saw when they were returned. One of them had the worst luck, it this one FWS 87. She was not 15 yet. Both she and FWS 75 did badly – there were several of them to rape them."*

Witness FWS-88 stated she was in Buk Bijela with FWS-75, FWS-48, FWS-96, FWS 74, FWS-105, FWS-87 and DB. Some of these women had told her they were taken to huts and raped.

Witness DB also testified about the rapes in Buk Bijela. Her schoolmate, whose name is known to the Court, approached her and took her to an area between the barracks informing her it would be safer for her to sit there, rather than to go to the interrogations. The witness stated: "*He probably knew what they were doing there so I avoided that interrogation and I was not mistreated while I was in Buk Bijela.*"

It follows from witness FWS-105's prior statement, given to the Prosecutor on 16 January 2006, that she was interrogated at Buk Bijela, but not raped. Some soldiers interrogated her about arms in her village, SDA members and other matters, before searching her for valuable items. She was aware of presence of another person in the room on this occasion, but through fear did not look in his direction. However, this witness testified that she later learnt from the Accused that he was there. Having later taken this witness from the Partizan Sports Hall, the Accused raped this witness in the house in Trnovača (item 5 of the Verdict). During this event, the Accused asked the detained witness whether she saw a man lying on the bed during her interrogation in Buk Bijela. She answered that she was afraid to look. The Accused then told her: "*I was lying on the couch. It was me.*" This fact is confirmed by the witness' prior statement of 9-11 February 1996 in which she stated: later on, "*during my detention in Partizan, Gojko Jankovic told me that he was the soldier who was present during my interrogation at Buk Bijela.*"

The Court is convinced of the Accused's presence in Buk Bijela at the relevant time, and, for the reasons set out in Count 2 dismisses the Defense's assertion that he had already departed for Montenegro and his alleged alibi. The Court gives full credence to the statements of both witness FWS-75 and witness FWS-74, who clearly identify the Accused as being present in Buk Bijela. This fact is also corroborated by the statement of FWS-105.

In addition to the other Prosecution witnesses, the Defense particularly disputes the entirety of FWS-75's testimony, on the basis that her statement was not confirmed by others. The Court considers this to be an incorrect depiction of the evidence. Apart from the actual moments of her interrogation and subsequent gang-rape, the remainder of her testimony is corroborated both directly and indirectly by other witnesses. The Court further notes that the experiences which this witness endured that day were extremely traumatic: she witnessed the murder of her mother and brother, was repeatedly raped, during the course of which she heard the screams of her uncle who was being beaten. Then she heard shots and it became silent. In these circumstances, the witness cannot reasonably be expected to recall the minutiae, such as the precise sequence or the exact time, of the events she described.

Thus, the Court considers it established beyond reasonable doubt that the Accused, together with Dragan Zelenović and Janko Janjić, interrogated female detainee FWS-75 and threatened to gang-rape her if she lied. He then allowed one of the soldiers to take the female detainee into another hut where she was raped by at least ten unidentified soldiers and lost consciousness.

It follows from the previous reasoning, that within a widespread or systematic attack against the Bosniak civilians in the area of Foca Municipality and with knowledge of such attack and willingly participating in it by his actions, the Accused is guilty under Article 172 (1) items g) and f) CC of BiH and Article 29 CC of BiH as a co-perpetrator of the criminal offenses of rape and torture of FWS-75.

The court notes that cumulative convictions based on the same conduct are permitted, providing that each of the crimes contains a distinct element which requires proof of a fact not required by the other. This is so for rape and torture: for rape, it is sexual penetration and for torture, it is the prohibited purpose (such as obtaining information or a confession, punishing, intimidating or coercing the victim or a third person, or discrimination on any ground).

In addition to the legal requirements for rape having been met, the legal requirements for torture under Article 172 (1) item f) CC of BiH are also met, as the gang-rape of the injured party, FWS-75, caused her severe pain and suffering, was intentional and prohibited purposes were present. In the first place, the rape was discriminatory, as it was based on the victim's Bosniak ethnicity. Furthermore, the Accused threatened the victim with gang-rape if she did not tell the truth. As he was apparently not content with the answers she gave, she was punished by being gang-raped.

The Accused is liable as a co-perpetrator pursuant to Article 29 CC of BiH, as his actions "decisively" contributed to the joint perpetration of the aforementioned criminal acts. The Accused handed FWS-75 over to one of the soldiers, following which she was gang-raped as he had "promised". This suggests an understanding between the Accused, who was a figure of authority, and the soldier about the injured party's fate. This degree of involvement makes him a co-perpetrator.

The Prosecutor charged the Accused with instigating the rapes of FWS-87 and FWS-74, since he threatened FWS 75 with gang-rape in front of the eyes of Janko Janjic and Dragan Zelenovic. The fact that the Accused was *at least in de facto* command of the soldiers on Kremenik Hill, the act which preceded the bringing of children and women to Buk Bijela, (see section 2 of the sentencing part of the Verdict), cannot by itself mean the same was true for every soldier in Buk Bijela. In this regard, the Court notes that it is unknown who the other soldiers were next to Dragan Zelenovic and Janko Janjic, in relation to the rapes of FWS-87 and FWS-74. Furthermore, neither Dragan Zelenović nor Janko Janjić were part of the Accused's Unit. The Court cannot on the basis of the presented evidence, conclude beyond a reasonable doubt whether or not the Accused's behavior indeed prompted the rapes of FWS-87 and FWS-74.

**4. With regard to Item 4** of the convicting part of the Verdict (Count 5 of the amended Indictment), the Accused was found guilty. From mid-July until mid-August 1992, many Muslim civilians were detained in inhumane conditions at Partizan Sports Hall in Foča, including female detainees FWS-87, FWS-95, FWS-48 and FWS-105. In that context, the Accused committed the following acts:

- between the above dates the Accused Gojko Janković, together with an unidentified soldier, took FWS-95 and FWS-48 out of Partizan Sports Hall to a house in Gornje Polje, where the Accused raped FWS-95 vaginally;
- a few days after the rape described above, the Accused Gojko Janković came again to Partizan Sports Hall with three other unidentified soldiers and they forced FWS-95 and three other Bosniak women captives to walk to a premises in Foča, where they were all ordered to undress and wash. There, the Accused raped FWS-95 vaginally;
- on a date in late July or very early August 1992, the Accused Gojko Janković and Beban Vasiljević drove FWS-95 and FWS-87 from Partizan Sports Hall to a house in Trnovača, where Gojko Janković raped both FWS-95 and FWS-87 vaginally and where Beban Vasiljević also raped FWS-87 vaginally;

The Court established these facts on the basis of the statements of the following witnesses.

Witnesses FWS-75, FWS-88, DB, FWS-96, FWS-95, FWS-74 and FWS-87 testified about the circumstances relating to the detention of women in the detention Centers of Foča High School and Partizan Sports Hall. In particular, they gave evidence about the conditions in which they were held, the rape of female detainees and the role of the Accused in these events. Of these testimonies, the statements of witnesses FWS-95 and FWS-87 were especially convincing and relevant to the role of the Accused.

It is clear from the testimony of FWS-75, FWS-88, DB and FWS-96, that the group of women captured on 30 July 1992 in Trosanj and brought to Buk Bijela (see Item 3) was subsequently forced to board a bus and taken to Foča High School. As determined by the ICTY and accepted by this Court as an established fact, the conditions in the detention Centers Foča High School (and Partizan Sports Hall and Kalinovak School) were extremely poor. Prisoners were provided with insufficient food and hot water; further, while imprisoned in Foča High School, women and young girls were the victims of rape. Soldiers were able to, and did enter Foča High School and take out women and young girls in order to rape them. This appears from the testimonies of, amongst others, FWS-75, FWS-88, FWS-87 and FWS-95, who were all raped in the period they were held in Foča High School. After approximately two to three weeks, these women were transported to Partizan Sports Hall.

In Partizan Sports Hall, the conditions were equally bad, if not even worse than in Foča High School, as stated by witness DB. Upon arrival the women were forced to clean the hall. This Court accepted as a fact established before the ICTY that the women were kept in intolerably unhygienic conditions, were badly mistreated, were provided with insufficient food and their freedom of movement was curtailed. This fact was also confirmed by the witnesses who testified before this Court about their imprisonment in Partizan Sports Hall. Further, as determined by the ICTY and accepted by this Court as an established fact, the women detained in Partizan Sports Hall lived in fear. This is confirmed in the testimonies of the witnesses that appeared before this Court. Soldiers, both as individuals and in groups,

could enter at any time and take women out to rape them, as happened to FWS-95 and FWS-87.

In mid-August 1992, after approximately a month of detention, those detainees who were still held in Partizan Sports Hall were removed and expelled from Foča to Novi Pazar, Republic of Serbia. This can be inferred from the testimonies of witnesses FWS 96, FWS-95 and Doctor Asčerić.

The rape and humiliation did not end in mid-August 1992 for all of the victim-witnesses mentioned above who were initially detained in Partizan Sports Hall in mid July 1992. The credible and consistent testimonies of Witness FWS-75, FWS-87 and D.B. establish that they were removed from Partizan Sports Hall and taken to 'Karaman's House', where their pain, suffering and humiliation continued.

Witness FWS-95, who was married and had two young children at the time these offences were committed, stated that she was raped five or six times at Foča High School. When she got to Partizan Sports Hall, the incidents of rape became much worse.

Witness FWS-95 testified that she was *not* raped by the Accused in Foča High School. However, during her period as a captive in Partizan Sports Hall she was raped three times by the Accused.

In relation to the first incident, she stated that the Accused together with another soldier, in camouflage uniform arrived in dusk - one could still see - and he took them, her and FW-48, to a house. The witness recalled that this house was in Gornje Polje. They went there on foot. She did not know the other man. Upon arrival, the Accused ordered her to undress. Then she and FWS-48 had to take a shower, before the Accused took her to another room and the other man stayed with FWS-48, the other woman. In this room, Witness FWS-95 was subsequently vaginally raped, which, according to her statement, took some half an hour. The witness could not recollect whether there were other soldiers in or near this house. She did recall the place she was taken to, in particular, that it had café-bar downstairs and upstairs there was an apartment.

In relation to the second incident, witness FWS-95 stated that after some three or four days the Accused came again and took her and three persons out of Partizan Sports Hall. He came with three soldiers. They went on foot. The witness states that she doesn't recall the place or the date when it happened. When they arrived at their destination, they were ordered to remove their clothes and take a bath, one after another. According to her testimony, the Accused later told Witness FWS-95 to go to another room with him. He then took her into the living room, where two other girls were present and they had to wait for a third girl. The witness stated that only the Accused had sexual intercourse with her. In relation to this incident, she does not recall other details or conversations, or the names of the women with whom she was taken.

In relation to the third occasion of rape, Witness FWS-95 stated that the Accused came by a car and took them away to a certain house in Trnovaca. She was together with another woman but she could not recall whom. The Witness stated she was subsequently ordered to take a bath and was then raped by the Accused. Later, the women were brought back to

Partizan Sports Hall. They were taken to the house in Trnovaca by the Accused and as the witness described it, a friend of the Accused. When shown a picture of the Trnovaca house, the witness stated she was not sure whether it was the house to which she was taken. She did recall that it was a separate building. The witness could not estimate a date when the third alleged incident occurred. In response to options given by the Prosecutor, she placed it in August, rather than July 1992, and early in August, rather than later.

The witness testified with absolute conviction that it was the Accused, Gojko Janković, who raped her on those three occasions. Furthermore, she was able to pick the Accused out from the picture board she was shown by the Prosecutor.

According to Witness FWS-95, 12 August 1992 was the last day she was held captive in Partizan. On that date she was taken by soldiers from Partizan Sports Hall to the town stadium, together with another person whose name the witness wrote on a piece of paper and is thus known to the Court. Amongst these soldiers was Dragan Zelenovic. The next day, the witness, together with others who still remained in Partizan, were put in a bus and transported to Novi Pazar. Witness FWS-95 stated that she was subjected to a total of approximately one hundred and fifty rapes during the war. As a consequence of all these rapes, she stated that she still suffers greatly, both physically and mentally. She is withdrawn and cries a lot. Moreover, she often cannot sleep and has "dreams about the camp."

The Court notes that this witness appeared to be suffering greatly whilst she was testifying. It is unquestionable that the rapes she suffered caused her severe mental and physical pain.

In cross-examination, the Defense attorney asked the witness why she never mentioned the Accused in the ten-page statement she gave in 1996. The witness stated it was a short statement if she would have told everything that had happened to her, it would have been a "novel", not a short statement. Furthermore, she is now taking medication and can remember more.

In relation to witness FWS-95's testimony, the Court takes especial note of the testimony of the expert witness, Doctor Causic Comic Marija, a specialist in neuropsychiatry. Having seen the witness' medical file and met with the witness herself, Dr Marija stated that the witness' slow speech is attributable to trauma and not caused by drugs/medication. Further, although the witness suffers from Post Traumatic Stress Syndrome, she is capable of giving an honest testimony as a result of the drugs/medication she uses. In particular, the Doctor was of the opinion that, owing to use of these prescribed drugs, it was perfectly feasible that the witness can remember things now which she was unable to recall in 1996.

In relation to third instance of rape described in Count 5 of the Indictment, the Court notes the testimony of FWS-87, who described how she and another woman were taken away from Partizan Sports Hall. Witness FWS-87 remembered that this woman was married, but could not recall her name. They were taken to a house in Trnovaca, there were the Accused, Gojko Janković and another soldier. She stated she was raped by both of them. She didn't know about this other woman because she did not see it. The witness stated that this was the only time I was taken to this house in Trnovaca. The rapes were vaginal. With regard to the

other person who raped her, the witness stated that she knew his last name was Vasiljevic and he had a nickname which was either Boban or Beban.

She stated that they came by car from Partizan Sports Hall to Trnovaca and arrived at night time. She described the house they were taken to as having two storeys', which is true of the Trnovaca house in question. When shown pictures of the Trnovaca house, the witness stated that it might be the same house but that she could not say with certainty that it was indeed the house to which she was taken, together with the married woman. The witness also thought that the following morning they were taken back to Partizan Sports Hall.

In his cross examination of FWS-87, the Defense underlined that there was no mention of this incident in the testimony which this witness gave to the ICTY investigators on 19 and 20 January 1996. Therefore, he suggested that her testimony was unreliable.

The Court does not agree with the Defense for the following reasons. On pages 9-11 of the statement which FWS-87 gave to ICTY investigators, she gives a general description of the rapes she endured while detained in Partizan Sports Hall. She never attempted to state exact details in relation to every rape and these pages must be read in this context. In her statement, she describes how women in Partizan were taken mostly to apartments and houses in Foca and to places like 'Brena, Donje Polje, Trnovaca, near the Primary School in Foca, to the Alada area. Notably, she specifically mentioned that in Trnovaca and Aladža they were taken to houses not apartments - the place to which she was taken in Trnovaca was indeed a house, not an apartment. The statement reads: "*Tuta, Jankovic, Vasiljevic Beban, and Bojat were also raping me during these times. Again I cannot remember exactly who raped me and were.*" Although this statement is not as detailed as the testimony witness FWS-87 gave before this Court, not only does the witness mention the Accused explicitly as one of the men who raped her, but she also mentions a house in Trnovaca as a location where rape took place.

The Defense, relying on the testimony of the witnesses Savo Arsenić, Boško Partalo, Stevo Elezović, Bogdan Pavlović, Soniboj Kovačević, disputed that the Partizan Sports Hall served as detention center for Muslim women and children, from which women were selected and raped. All these witnesses were guards at the guard-post in front of the Partizan Sports Hall. According to the Defense, it can be concluded from their testimonies that no women were taken out from the Partizan Sports Hall. Furthermore, none of them had ever seen the Accused nearby the Partizan Sports Hall. Mitar Šipčić, the person in charge of the refugees accommodated in the Foča High School, testified about the arrival of civilians to the Partizan Sports Hall.

In the Court's opinion, there is a lack of logic and consistency between the testimony of these witnesses and the Court will deal with their statements briefly.

The above-mentioned guards were all deployed in front the Partizan Sports Hall in order to watch the Secretariat of Internal Affairs which was located opposite the Hall. According to these witnesses, Muslim refugees from the vicinity of Foča, and also from other places, suddenly appeared in the Partizan Sports Hall. As the witness Boško Partalo says: "*these people simply came, they were there*"; moreover, these "people" were free and could leave and enter the Partizan Sports Hall whenever they wished. Being free, "*these people*" one

day, says the witness Stevo Elezović, "*simply left the Partizan Sports Hall and got into the buses...*" The Court note that these were the buses from which they were transported from Foča. This witness also stated that there was not a single person younger than forty-five to fifty years old and that he guaranteed it was a lie that there were also younger women.

As the witnesses confirm, they (only) guarded the Secretariat of Internal Affairs. Witness Soniboj Kovačević for example states: "*We never had Partizan. Other people were in charge of the Partizan Sports Hall.*" The witness Partalo points out: "our primary task was the Secretariat of Internal Affairs and these people were detailed to us". Then he said: "Nobody has ever taken out anyone". However, in the cross-examination, he explained: "When I was on duty there was no such thing. I heard it from my colleagues and they did not dare to object." Without the need to restate any more testimony, close examination of these witnesses' statements reveals that one point on which they all agreed was that nobody was ever taken out of the Hall whilst they were on duty.

The indisputable fact that women were taken out from Partizan Sports Hall also arises from the statement of the witness, Bogdan Pavlović, who said: "*My female neighbors were there, we were removing them, and then returning to the Partizan Sports Hall for the overnight stay.*" However, he also claimed that nobody was taken out during his shift, whilst he could not account for what happened during others' shifts. He further stated: "*...there were some drunk and armed [...] who were coming and we opposed as much as we could not to allow them to enter the Partizan Sports Hall*". This witness said that he remembered FWS-75, FWS-48 and DB as the female detainees in the Partizan Sports Hall.

It is clear that the summoned guards did not know what and whom they were guarding. Although they claimed never to be sick or replaced by other guards, they nevertheless still heard from some colleagues that during other shifts there was "some taking out".

Thus, the Court concludes that Defense witnesses in no way provided the Accused with an alibi of non-entry or involvement in Partizan Sports Hall.

On the basis of the evidence cited above, the Court is satisfied beyond a reasonable doubt as to the identification of the Accused by witnesses FWS-95 and FWS-87 and his role in the events described above. In relation to the third incident described in this Count, the Court relied on the credible and convincing testimonies of witnesses FWS-87 and FWS-95. These testimonies are consistent and corroborate each other.

The only evidence presented to the Court in relation to the first and second item of this count was the testimony of FWS-95 and thus, in convicting, the Court relies solely on her testimony. Nevertheless, the Court is free in its evaluation of the evidence submitted and corroboration is not required in general or in particular. This rule applies equally to the testimony of a victim of sexual assault.

Despite the fact that FWS-95 did not provide many details about her rapes by the Accused, especially about the second occasion, the Court considers her testimony reliable and convincing. With regard to the second rape, she remembered that they went on foot and the number of other women taken. Furthermore, she was able to clearly recount and distinguish between the incidents of rape. Given the length of time which has elapsed since the incident

and the trauma of the event, she cannot be expected to be able to provide streets names, exact dates or locations. It must be taken into account that this witness had been a captive for a substantial period of time while living in fear for her life, integrity and children. The judgment as to the credibility of a witness lies solely in the domain of the Court, with judges free to draw any conclusion they see fit, providing it passes the threshold of reasonableness. Witness FWS-95 clearly passed this threshold beyond a reasonable doubt in the eyes of the Court and thus has been given full credence.

The intention of the Accused to effect the sexual penetration and the knowledge that it was done without the consent of the victim clearly ensue from the presented evidence.

Therefore, it follows from the previous reasoning that, within a widespread or systematic attack against the Bosniak civilians in the area of Foča Municipality and with a knowledge of such attack and willingly participating in it by his actions, the Accused committed the criminal offense of rape and torture of the injured parties FWS-95 and FWS-87, under Article 172 (1) items g) and f) CC of BiH. The Court reiterates that cumulative convictions for rape and torture which are based on the same conduct are permitted because each of the crimes contains a distinct element requiring proof of a fact not required by the other. Namely, for rape, it is sexual penetration and for torture, it is the prohibited purpose (such as obtaining information or a confession, or punishing, intimidating or coercing the victim or a third person, or discrimination on any ground). The acts of rape of injured parties FWS-95 and FWS-87 also met the legal requirements of torture under Article 172 (1) item f) CC of BiH, since, in the opinion of the Court, the acts of rape caused severe pain and suffering, were intentional and the prohibited purpose was present, namely discrimination on the basis of the victim's Bosniak nationality. The victims were taken from a detention facility where only Bosniaks were held. They were and could be the victims of the above described humiliations, as many other Bosniak women, only because they were not Serb. The Court notes that there is no requirement that the acts need to have been perpetrated solely for one of the prohibited purposes. If one prohibited purpose is fulfilled by the conduct, the fact that such conduct was also intended to achieve a non-listed purpose, such as one of a sexual nature does not make it impossible for other (prohibited) purposes to be present.

Finally, the Accused also aided and abetted the torture and rape of the injured party FWS-87 by Beban Vasiljević, as prescribed under Article 172 (1) items f) and g) in conjunction with Article 180 (1) CC of BiH. The Accused, together with Beban Vasiljevic, took FWS-87 and FWS 95 from Partizan Sports Hall, being fully aware that they were being taken away for the purpose of rape. The Accused provided practical assistance to the rape by Beban Vasiljević by allowing him access to the house at Trnovaca, which was under the Accused's effective control. There Beban Vasiljevic raped FWS-87. Thereby the Accused also aided and abetting the torture of FWS-87, since the act of rape of this witness also fulfils the legal requirements of torture for the same reasons as stated above.

**5. With regard to Item 5** of the convicting part of the Verdict (Count 6 of the amended Indictment), the Accused is found guilty in that he, on an unknown date in late July or early August 1992, together with Beban Vasiljević took the female detainees FWS-105 and DB from the detention Center at Partizan Sports Hall to a house in the village of Trnovača in the municipality of Foča, where the Accused Gojko Janković spent the whole night with female detainee FWS-105 and raped her twice, while Beban Vasiljević raped

female detainee DB and the next morning, on the order of the Accused, they were returned by Beban Vasiljevic to the detention Center at Partizan.

In relation to this Count, the Prosecution called witnesses DB, FWS-96 and FWS-74. As detailed above, in addition to these testimonies, the Court also accepted into evidence investigatory statements given by Witness FWS-105. These comprised statements given to the ICTY investigators, dated 9-11 February 1996, and a record of examination given to the BiH Prosecutor, dated 16 January 2005.

In her statement of 16 January 2005, witness FWS-105 stated that while in captivity in Partizan Sports Hall she was called by her name and taken, together with DB, to a house in Trnovaca, by the Accused and another man. There, DB and this other man went to the lower floor of the house, whilst she and the Accused remained upstairs. The Accused instructed her to have a shower and he joined her there. She was subsequently taken to the bedroom, where she was raped *"almost the whole night, there were breaks, but it lasted the whole night."* She was raped twice. The following morning, "the other soldier" took FWS-105 and DB back to Partizan Sports Hall. In her statement of 9-11 February 1996 the witness named the Accused, Gojko Jankovic, as one of the men who raped her during the period when she was detained in Partizan Sports Hall.

The Court gives full credence to these statements, in light of their corroboration by the testimony of other witnesses.

Witness DB recalled how approximately seven or eight days after her arrival at the Partizan Sports Hall, she and FWS-105 were taken out by the Accused and "Beba" at around 8 PM. D.B. and FWS-105 were taken to a house in Trnovaca, which Witness DB was able to identify on the pictures shown to her by the Prosecutor. According to DB, they were brought to this house by vehicle and in the course of the journey were informed that they were being taken for interrogation. Upon arrival at the house in Trnovaca, they were first made to prepare some food, before later washing dishes. However, they were not interrogated. Witness DB testified that "Beba" took her from the kitchen to the room upstairs next to the bathroom. She spent the whole night there and she stated that she was raped once. Witness DB confirmed that FWS-105 remained in the kitchen with the Accused. The next time she saw FWS-105 was the following morning, at 7 or 7:30 a.m. FWS-105 was making coffee. The Accused was also there. Subsequently, Beban Vasiljevic took them back to Partizan. DB could not recall whether the Accused Gojko Jankovic accompanied them. She did not talk to FWS-105 about the incident, however, they could see from their faces and condition what happened.

The Court is further convinced by the certainty with which DB testified about the two men's identity. At the time of the offence, she knew the Accused Gojko Jankovic by sight. She later became aware of his name, stating that only on the meadow she knew again, when other people informed her of this information. This occurred on 3 July 1992, when her village, Trosanj, was attacked. On this occasion, she was also told Beban Vasiljevic's name.

Witness FWS-96 stated that from Foca High School, she and other women were taken to Partizan Sports Hall. When asked by the Prosecutor if she knew the names of those women taken out by the Accused, FWS-96 confirmed that FWS-105 and DB were taken out

together. According to her testimony, the Accused undertook this act with someone but she did not know this second person's identity. FWS-96 explained that she knew of this incident because FWS-105 told her that she was raped by Gokjo Jankovic at Trnovača, in the house of her neighbour Halim Čedić. Furthermore, she added that she knew where that house is; that is near to Gojko's house and that he knows that well.

Further corroboration is provided by Witness FWS-74, who testified that whilst she was never raped by the Accused in Partizan Sports Hall, she knew of FWS-105's rape by the Accused because on one morning she came back and FWS-105 told her that she was raped by Gojko Jankovic in Trnovaca.

The events which the witnesses experienced were, by their nature, extremely traumatic. Thus, they can not be expected to recall every precise detail, sequence of events or the exact dates of the events described. Additionally, the witnesses were detained for weeks or, in some cases, months, without an opportunity to record their experiences.

The Court does not consider the minor differences between DB's testimony and the statements of FWS-105 as discrediting their evidence, since the essence of their accounts is the same, and both were convincing witnesses. When considered together, the testimonies of FWS-74, DB, FWS-96 and the transcripts of FWS-105's testimony at ICTY provide clear, corroborating, consistent and highly credible evidence on which to base a finding of the Accused's guilt.

The intention of the Accused to effect the sexual penetration and the knowledge that it was done without the consent of the victim, clearly ensue from the presented evidence.

Therefore, it follows from the previous reasoning that, as a part of a widespread or systematic attack against the Bosniak civilians in the area of Foča Municipality and with knowledge of such attack and willingly participating in it by his actions, the Accused committed the criminal offense of rape of the injured party FWS-105, under Article 172 (1) item g) CC of BiH. He also committed the criminal offense of torture of the injured party FWS-105, under Article 172 (1) item f) CC of BiH, since the act of rape of this witness also fulfils the legal requirements of torture: the act of rape caused severe pain and suffering, was intentional and the prohibited purpose was present, namely, discrimination on the basis Bosniak nationality. The victim was taken from a detention facility where only Bosniaks were held. She was and could be the victim of the above described humiliations, as for many other Bosniak women, only because she was not Serb.

The Accused furthermore aided and abetted the rape of DB, as prescribed under Article 172 (1) item g) in conjunction with Article 180 (1) CC of BiH. The Accused, together with Beban Vasiljevic, took DB and FWS-105 from Partizan Sports Hall, despite being fully aware that DB was also being taken away for the purpose of rape. The Accused provided practical assistance to the rape by Beban Vasiljević by allowing him access to the house at Trnovaca, which was under the Accused's effective control. There Beban Vasiljevic raped FWS-DB. Thereby the Accused also aided and abetting the torture since the act of rape of this witness also fulfils the legal requirements of torture for the same reasons as stated above.

6. With regard to Item 6 of the convicting part of the Verdict (Count 7 of the Indictment) the Accused was found guilty, in as much as he, on 2 August 1992, together with Dragoljub Kunarac and Dragutin Vuković ("Gaga"), removed female detainees FWS-186, FWS-191 and JG, all teenagers, from a house in Aladža and took them to a private house in Trnovača, occupied by the Accused; female detainee JG only remained there a few days but both female detainees FWS-186 and FWS-191 were kept there until the end of January 1993 and throughout that time the Accused raped female detainee FWS-186 many times; Dragoljub Kunarac raped female detainee FWS-191 many times during the first two months, with the Accused also raping female detainee FWS-191 on one occasion within that period; when female detainees FWS-186 and FWS-191 were moved to another apartment in January 1993, the Accused continued to rape female detainee FWS-186 there until the end of November 1993; both Gojko Janković and Dragoljub Kunarac used female detainees FWS-186 and FWS-191 as sexual and general servants at the Trnovača House, treating them as objects and personal possessions and exercising complete control over their lives.

In relation to this Count, the Prosecution presented FWS-191 as their principal witness. Before the Court, witness FWS-191 testified as follows: she lived in Gacko and was seventeen years old when the events alleged in the Indictment occurred. FWS-191, together with her brother, mother and sister, was part of a group of Bosniaks captured near Ulog. A couple of days after their capture, around 7 July 1992, they were taken by truck to the school in Kalinovik. The witness stated that on 2 August 1992 she was taken away by Kunarac, aka "Zaga", and a soldier nicknamed "Gaga". She described how she sat herself next to a small baby, which was not hers, to give the impression that she was a young mother. However, Kunarac came directly over to her and told her to get up. Her mother stood up, trying to offer herself in her daughter's place, however, this plan failed. FWS-191 was taken away together with seven or eight other detainees, among them FWS-186, FWS-190 and JG. A guard said to them he did not dare to intervene because "Zaga" was dangerous man. According to this witness, FWS-186 was sixteen years of age at the time, FWS-190 was sixteen or seventeen and JG was twelve or thirteen. They were subsequently taken away by a red Lada vehicle, which passed through the centre of Kalinovak, before being loaded into a Refrigerator truck. In Miljevina, the truck stopped so that the soldiers could check what they looked like.

Eventually, they arrived at a house in the Aladža area of Foca. Inside the house were soldiers, of whom the witness particularly remembered Vojvodo Govodarica and Iure Ivanović. Ivanović told her to remain with him in order to avoid gang rape. She recalled how Govodarica, a tall man with grey hair and a grey beard, entered the room and told them about ambushing a Muslim - how he had decapitated him and kicked the victim's head along the ground. The witness stated that she was not maltreated in this house. Some time later, Kunarac came together with the Accused. This was the first time the witness met the Accused, Gojko Janković, whom other soldiers referred to as "Gojan" or "Gosjo". It was obvious that Kunarac and the Accused held some higher rank as when they entered everyone stood up and made space for them to sit. Then Kunarac told FWS-191, JG and FWS-186 to go with him and the Accused. The witness FWS-191 looked to Iure Ivanović for help, however, as she testified, he simply "shrunk." They were taken in white Golf driven by Kunarac. They drove first to the Partisan Sports Hall, where Kunarac got out of the vehicle. The Accused stayed in the car and questioned the three girls as to whether they were virgins, which they confirmed.

When Kunarac returned, they went to a house in Trnovaca, which the witness recognized on the photos shown to her by the Prosecutor and later submitted as evidence. FWS-191 later learnt from locals that the original owner, a Muslim, had been killed. However, she stated that at the time she came to the house, it belonged to the Accused, because his name was on the door. The witness FWS-191 testified about the fear she felt that evening. . Eventually, the Accused informed them about who should go into which room. He sent her to the ground floor which was some type of summer kitchen. JG had to go to a small room with "Gaga" and FWS-186 was to go to a room on the 1<sup>st</sup> floor, where the Accused was supposed to spend the night with her. The witness FWS-191 stated: "*Žaga and I went down to the room below, and he sat down on the bed and told me to sit next to him and then he said that his name was Dragoljub Kunarac and that he was called Žaga; he showed me a pendant and explained that the reason why he was wearing it was that it was like a form of identification, in case he was killed. Then he told me to undress. I asked him if I could bring a sheet, because I was ashamed. I was a child at that time and I felt like a child.*" The witness stated that for her at time sex for her was a taboo subject. She stated: "*I come from the family where morals were very high. I asked him to bring a sheet in case blood passes through. And he sent me up, "Go and ask Janković", I asked Janković and Janković gave me a sheet. He put a bayonet next to the bed.*" On that first night, Kunarac did not penetrate the witness because she was stiff, which, as she stated, was the only way to defend herself.

The next morning, FWS-186 told her that the Accused had raped her and that he had placed a pistol under the pillow or next to the bed. Speaking about JG, the witness said: "*She was only 13 years old and she was ashamed to say anything. She kept saying that she had not been raped*" FWS-191 said that they asked Kunarac and Gaga to take her back to her mother in Kalinovik, but instead they took her to Karaman's house in Miljevina.

The Court notes that although the Prosecutor addressed the rape of JG in his closing arguments, the Indictment does not charge the Accused, Dragoljub Kunarac or Dragutin Vokovic (Gaga) with such criminal offense.

The injured party FWS-191 stayed in this house, together with FWS-186, until January 1993. During the first two months, she was constantly raped by Dragoljub Kunarac, aka Žaga, who left at the end of September. Kunarac raped FWS-191 at least twenty times. In that period, she was also raped by Zoran Nikolić on two occasions. She recalled that Nikolić was from Nikšić in Montenegro. FWS-191 was also raped once by the Accused. This occurred after the wedding of one of his soldiers. The Accused had taken both her and the injured party FWS-186 to the wedding. Upon their return, the Accused, who was noticeably drunk, locked FWS-186 in a room and then raped FWS-191. The witness testified that the Accused was not able to ejaculate, so her rape lasted for at least one hour. During her testimony, FWS-191 stated that, notwithstanding all the suffering, both she and FWS-186 were aware that they could have met the same fate as those female captives who were detained in centres which in effect served as brothels. These women and girls were raped by multiple soldiers. However, the Accused did not allow Kunarac to take her and FWS-186 to Montenegro, as he knew that Kunarac would allow them to be used as prostitutes. They had no alternative, as stated by FWS-191, since, if they left, they would, as she stated, go into circulation either to Karaman's house or somewhere else. She stated that Janković gave

them the security of being with the same people. As stated by FWS-191, they simply did not have any control over their destinies.

When questioned by the Prosecutor, FWS-191 stated that the sex was not voluntary. This was also true for FWS-186, for whom she said she could speak. In the period spent in the Trnovaca house, they had to continuously cook, iron, and clean. They were not allowed to use their own names. Moreover, Kunarac named her Gordana aka "Goca". The Accused named FWS-186 "Sanja". Later, when they saw FWS-190, she had been named Anja, a name she used until she returned to Sarajevo with her children in April 1997.

Witness FWS-191 described to the Court how during her captivity she became acquainted with her future husband, who, as she stated, was very kind and treated her as a human being. According to the witness, Kunarac left the house in part due to this man; also because the Accused did not approve of how Kunarac behaved whilst there. He kept bringing in soldiers and one woman, Jadranka Žalo, who treated her and FWS-186 very badly. FWS-186 and FWS-191 left the house in January 1993 and moved to a house in Foca. When her future husband took her and FWS-186 to Pale to be exchanged, she decided to remain in Foca because she was pregnant. She had been told that pregnant as she was, Muslim doctors would massacre her and the child out of her. In relation to the Accused, the witness also testified that she knew that he was the commander of his Unit - a paramilitary unit, composed of local people from the surroundings of Mesjaja, Popov Most and Trnovaca. She stated that during their captivity they were taken to Buk Bijela, where the Accused's soldiers were deployed. He commanded a group of around forty or fifty.

The testimony of FWS-191 is given full credence by the Court. She gave accurate, extensive and truthful answers, which were corroborated in full by her mother, FWS-192, by the testimony of FWS-175 and FWS-190 and by FWS-186's written statement, accepted pursuant to Article 273 (2) CPC of BiH.

Witness FWS-192, the mother of FWS-191, testified that in early August 1992, Kunarac took FWS-191, FWS-186, FWS-190 and witness JG away from the school in Kalinovik. Some days later, this witness was summoned by her nickname (which her daughter had probably revealed to her captors) and was taken to a separate room. Kunarac and the Accused were there and they handed her a letter from her daughter, which stated that she was doing fine and was in some house in Trnovaca. The Accused introduced himself as Gojko Janković and told her she should not worry about her daughter because she was with him. This first encounter with the Accused lasted for about one hour.

The statement which FWS-186 gave to ICTY investigators was read in pursuant to Article 273 (2) CPC of BiH. In this statement, this witness completely corroborates the testimony of her peer, FWS-191. FWS-186 recounted how she was captured whilst fleeing together with other women and children from their attacked village and how she eventually ended up in a house in Trnovaca. She stated that, she, FWS-191 and JG were taken by the Accused, Dragoljub Kunarac, aka "Žaga", and Dragutin Vuković, aka "Gaga", from a house in Foča to a house in Trnovača. They were transported in a police car. This was her first meeting with the Accused. FWS-186 remembered how when they arrived at the house in Trnovača, Gojko Janković said that he would take her, Gaga would take JG and Žaga would take FWS-191. *"I had to be with Gojko Janković all the time while I was in that house. Gojko*

*Janković raped me during six months which I spent there. The first time when he raped me, he asked me if I was a virgin. I told him that I was. He threatened me with a pistol and said that, if I did not agree to have sex with him, he would take me to Miljevina. He mentioned Miljevina to threaten me, because he knew that I knew that girls were raped by a number of soldiers in Miljevina. Anyway, I did not have a choice. I do not want to speak about the details of the rapes. While I was kept as a hostage, I was not raped by anyone else except Gojko Janković. I did not become pregnant. Gojko Janković took care of that."*

FWS-186 confirmed that FWS-191 was raped by Dragoljub Kunarac during approximately the first two months of their stay in Trnovaca. She recalled that Žaga came to the house frequently, at some periods almost every night. At one point, FWS-186 asked the Accused about her friend FWS-190 and he informed her that she was in Miljevina and he would bring her to see the witness. He brought her to the house in Trnovaca and she stayed with them for about seven days. On a couple of occasions, the Accused also took her to the house of Janko Janjić to see FWS-190.

FWS-186 described the Accused as a person who ruled this house and who gave them a certain kind of protection. She pointed out that many soldiers would come to the house, mostly those under the Accused's command. She and the injured party FWS-191 were obliged to cook for them, however, they only ate and drank; the witness stated that *"they did not beat us. I think that Gojko Janković did not allow that. He was superior to those soldiers."* In her statement, the witness stressed that although they had the key to the house and very often were left alone in the house: *"We had nowhere to escape to. We were surrounded by Serb territory and we couldn't go anywhere. Janković and the others well knew that we were not there by our own will."* They would tell them that no-one was looking for them and that at the exchange, their side was searching for flour, not people.

Witness FWS-190 also testified about the removal of FWS-191 and FWS-186 from the school in Kalinovik to a house in Aladža. She was held in sexual slavery by Janko Janjić, nicknamed "Tuta", for around eight to nine months. FWS-190 testified that when FWS-186 and FWS-191 came with the Accused to Janko Janjić's mother's apartment during this period, they stated that they had been taken by the Accused and were now in a house in Trnovaca. FWS-186 was designated to the Accused and FWS-191 to Kunarac. They spoke about having sexual intercourse with the Accused and Kunarac, in return for which their captors provided them with security. The witnesses expressed to FWS-190 that it was better to be with one of 'them' than all of 'them'. FWS-190, who went to the Trnovaca house several times, testified how when she visited she saw FWS-191 and Kunarac naked, having sexual intercourse. FWS-190 further stated that she saw sexual acts taking place between FWS-186 and the Accused in the Ribarska settlement in Foca, i.e. the apartment to which FWS-191 and FWS-186 were moved from Trnovaca.

The fact that FWS-186 and FWS-191 remained in the house in Trnovača, under the control of the Accused, was corroborated by witness FWS-175, sixteen years old at that time, who testified to having spent some six to seven days with them there. "Žaga" and "Gaga" were both present in the house, but it was Gojko Janković who was in-charge. Asked to explain why she thought the Accused was in charge of the house, she said: *"Because they all called him Major and everyone asked him about everything that was needed, for a report or anything else, it all went through him. They all treated him as one a bit superior to them."*

FWS-186 and FWS-191 personally told her that they were repeatedly raped in this house; FWS-186 by Gojko Jankovic and FWS-191 by Kunarac. This witness was also raped twice by Dragutin Vuković, nicknamed "Gaga", in the Trnovača house. She was of the opinion that the Accused had it within his power to have prevented the incident she endured in this house, as she recalled how he prevented any of the girls being beaten or abused by any of the visiting soldiers. The fact that FWS-186 was being raped only by the Accused is also confirmed by this witness: *"No one was allowed to touch her, no one dared to say anything to her."* This was also the case when Gojko Jankovic was away from the house.

In relation to the period after FWS-186 and FWS-191 left the Trnovaca house, the testimonies of witnesses FWS-191, FWS-190 and Defense witness Sanja Kulić, establish that FWS-191 and FWS-186 were living together in an apartment in the Ribarska fish settlement in Foca. According to Kulic, FWS-186 stayed there until her exchange in November 1993.

The witness Sanja Kulic stated she first met FWS-191 sometime near the end of 1992 or beginning of 1993 and that she became friends with her. She would often visit the apartment where she and FWS-186 lived. Although friends with FWS-191, witness Kulic stated she rarely saw FWS-186, whom she described as a withdrawn person. With regard to the relationship between the Accused and FWS-186 during that period, she stated that on a couple of instances, when FWS-186 spoke about the Accused in her presence, she spoke about him in superlatives. Witness Kulic stated that she would speak off her desire to see him, to spend time with him.

In cross-examination, the Prosecutor asked this witness more about the relationship between the Accused and FWS-186. She stated that FWS-186 probably, or most certainly, knew the Accused very well. Witness FWS-190 saw the Accused and FWS-186 having sex in an apartment in Ribarska – they were not wearing clothes at the time. The witness FWS-191 also stated that the Accused and FWS-186 had sex in the apartment in the Ribarska area in Foca until spring 1993.

In relation to both the description of the Accused as a so-called "protector" of FWS-191 and FWS-186 and the alleged "love" between FWS-186 and the Accused, the Court takes note of expert-witness, Dr. Alem Bravo Mehmedbašić, a neuropsychiatrist requested by the Prosecutor. Dr Mehmedbašić presented her findings about whether detainees could form relationships with captors who had raped, tortured or subjected them to other similar mistreatment, in circumstances where such persons had strong power and influence over them. And, if so, what form this relationship might take on these facts?

Having evaluated the statement of FWS-186 and audio-tapes of FWS-191, FWS-175 and FWS-190, she stated that their self-esteem had been destroyed by sexual torture. For a significant period of time, they had no active control over their own bodies and minds, which in effect led to psychological regression and a complete dependency on those who had full control over their lives. As their time in captivity progressed, the impossible conditions led these witnesses to use the adaptive psychological strategy of starting their lives all over again. Dr Mehmedbašić explained that in order to survive, victims developed a dependence on the Accused, who commanded authority and could prevent others from torturing them. This included elements of his idealization. These feelings were not emotions

of attraction or love, nor indicators of a mature emotional relationship in a normal environment, in which the parties are on an equal footing. These relationships cannot be viewed or understood in the context of normal emotional interactions. They were victims, who, in an attempt to forge the reality and the awareness that their lives depended on their torturer would often idealise them, perceiving them to be an almighty person. In this way, the victim struggled for their mental survival whilst in drastic conditions in which they could not even use their real names.

According to her statement, FWS-186 was captured by soldiers in camouflage uniform after the attack on her hometown, Ravne, on 26 June 1992. She was taken to a school in Kalinovik and from there, to the house in Trnovaca by the Accused, who she stated was the soldiers' superior. This witness' statement confirmed that there was nowhere to escape to because they were surrounded by Serb territory and so could not go anywhere. Although this comment was made specifically in relation to Trnovaca, the Court finds that this state of affairs also applied in and around the apartment in the Ribarska settlement in Foca, where she was taken in January 1993 and where she stayed until she was exchanged. There she also had sexual intercourse with the Accused. FWS-186 was only sixteen when she was first raped by the Accused, who was more than twice her age at that time. She even enquired of him how he could rape her given that she was young enough to be his daughter - one of the Accused's daughters was only a year younger than FWS-186. In response to this question, the Accused would get angry and even threatened her on another occasion. As such, she had every reason to fear violence.

The Court is satisfied beyond reasonable doubt that under the aforementioned circumstances, the relationship between the Accused, who was a married man and the father of three children, and the minor FWS-186, could never amount to *or transform into* a normal and consensual sexual relationship. Given the extreme conditions in which FWS-186 found herself, she was never in a position to give a true consent. She was *de facto* deprived of her sexual autonomy, as can be concluded from the testimony of Dr. Alem Bravo Mehmedbašić. This is not changed by the fact that FWS-186 told ICTY investigators that she was not abused by the Accused from February 1993, whilst in the apartment in Foca. The Court thus concludes that in the period after FWS-186 and FWS-191 left the Trnovaca house and before FWS-186 was exchanged, the Accused continued to rape FWS-186.

The Defense witnesses Kulić Sanja, Pavković Branka, Šušnjević Rade, Živanović Zorica and Todorović Mira, who socialized with FWS-191 and who, according to her, were kind and benevolent, stated FWS-191 never mentioned that she had been raped by the Accused. However, this does not cause the Court to doubt the truth and credibility of the testimonies and statements of, amongst others, FWS-191, FWS-186 and FWS-190.

Several Defense witnesses implied that the house in Trnovaca was occupied in the period relevant to this Count by one Sretko Džajić, a car mechanic. Previously it had belonged to Halid (son of Habib) Čedić, a Muslim, as appears from the testimony of Zada Čedić who told how she was expelled on 26 June 1992, several days after her son had been murdered.

In this regard, witness Zoran Pavlović stated that Sretko was in his unit, the Unit of the Accused. However, he did not know when Sretko moved into that house or when he was

killed. The witness never visited the house, but he knew Sretko was living in it, as it is the house by the main road. Witness Petar Aćimović, on the other hand, had a slightly better recollection of the relevant dates and testified that Sretko moved into that house after the owner had been killed and his mother expelled. That was on 26 June 1992. He would call on Sretko, a car-body repairman, who fixed cars at the house. Witness Mladen Lazarević, Deputy Commander to Gojko Janković, spoke about the house in Trnovača which was used by Sretko Džajić. The witness stated that Sretko lived in that house from late 1992 or early 1993. He confirmed that soldiers would stop by to have their cars repaired there. However, the witness did not know the fate of the house's original owner and at the very end of his testimony stated that he was never in the house since he did not have a car.

However, based on the accounts of FWS-191 and FWS-186, in addition to the testimony of witnesses FWS-175 and FWS-190, the Court finds it indisputable, beyond a reasonable doubt, that the house in Trnovaca was under the effective control of the Accused during the period relevant to this Court.

The Court is also satisfied beyond a reasonable doubt that the Accused acted as described in the operative part of the verdict. Consequently, as part of a systematic or widespread attack against the Bosniak civilians of which he was aware, he carried out torture and sexual slavery of the injured parties FWS-186 and FWS-191 when they were at the house in Trnovaca and the rape of FWS-186 when she was at the apartment in Ribarska, in violation of fundamental rules of international law, thereby committing the criminal offense of Crimes against Humanity in violation of Article 172 (1) items f) and g), in conjunction with Article 29 CC of BiH.

It has furthermore been established beyond a reasonable doubt that FWS-191 and FWS-186 were at the house in Trnovaca against their will. The fact that they preferred to stay under the Accused's "protection" in order to avoid ending up in brothels where they would have been "raped by an unknown number of soldiers" manifestly cannot amount to an exercise of their free will or choice. The Court is satisfied beyond a reasonable doubt that these girls had no realistic option whatsoever to flee the house or to escape from their protectors. The Defense's assertion that this Court is not proven since "*they begged him to let them stay*", and as such, it is suggested the Accused did not detain them, is therefore rejected.

On the first night each girl was assigned to one of their captors; thereafter, they had to obey all their orders, satisfy their sexual demands, and were also made to do chores in the house. Throughout their forced stay, the girls were compelled to answer to Serb names, they had no control over their lives and no freedom of choice. It is beyond any doubt that FWS-191 and FWS-186, while held at the Trnovača house until January 1993, were under conditions amounting to sexual enslavement. The above described conditions clearly amount to the intentional exercise by the Accused of any or all of the powers attaching to the right of ownership over a person.

As stated above, the Accused continued to rape FWS-186, after she left the house in Trnovaca and while she was at the apartment at the Ribarska settlement in Foca, until she was exchanged.

By this FWS-186 and FWS-191 were subjected to acts of a sexual nature and torture under article 172 paragraph 1 items f) and g) CC of BiH.

The Accused is guilty of holding FWS-186 and FWS-191 in sexual slavery as a co-perpetrator pursuant to Article 29 CC of BiH. He jointly and knowingly participated in the selection of the girls and the transportation to the Trnovača house. He took possession of FWS-186, while Kunarac took possession of FWS-191. The Accused provided the house which he had previously occupied, and from the first instance, he took part in establishing and enforcing the already-described living conditions at the house, in concert with Kunarac. In this period the Accused also once raped FWS-191. Furthermore, the Accused is guilty of raping FWS-186 in the period after she left the house in Trnovaca up until she was exchanged.

The acts of sexual slavery also amount to torture since the acts caused severe pain and suffering, were intentional and the prohibited purpose was present, namely discrimination on the basis Bosniak ethnicity.

7. **With regard to Item 7** of the convicting part of the Verdict (Count 8 of the amended Indictment), the Accused was found guilty in as much as he, in late October or early November 1992, together with Dragan Zelenović and Janko Janjić, removed female detainees FWS-75, FWS-87, AS and twelve-year old, AB, from the detention Center known as "Karaman's House" in Miljevina, and drove them by car to an apartment in Foča near a fish restaurant, where Janko Janjić ordered the female detainees FWS-75 and AB to give a bath to the Accused Gojko Jankovic, who raped underage female detainee AB in the bathroom, while Dragan Zelenović raped female detainee FWS-87 and Janko Janjić raped FWS-75.

In relation to this Count, the Prosecution presented witnesses FWS-87 and FWS-75. The Court also relied on parts of the testimony given by witness FWS-191.

Witness FWS-75 testified that on 30 October 1992, the Accused came to "Karaman's House" with Janko Janjic and Dragan Zelenovic. They were brought there by Pero Elez and Radovan Stankovic. Pero Elez said that four girls had to accompany them to Foca and four had to remain in the house. The following witnesses were forced to go with the Accused, Janko Janjic and Dragan Zelenovic: Witness FWS-75, twenty-four years old at that time. Witness AS, who was less than twenty, Witness AB, aged twelve and Witness FWS-87, aged fifteen. They were taken to an apartment located in a building near a fish restaurant. Witness FWS-75 identified the fish restaurant on a picture shown to her by the Prosecutor and subsequently gave a detailed description of their arrival, namely, how and where they entered the building. They arrived in the afternoon and she recalled that it was raining, stating that those were their tears. The Accused, Janko Janjic and Dragan Zelenovic were the only men in the apartment. Upon their arrival, FWS-75 noticed some clothes, indicating that other women had been there before them. AB and FWS-75 were forced by Janko Jajic, nicknamed "Tuta", to clean the bathroom. The Accused took the witness on his lap and said that if they said anything they would be slaughtered and thrown in the Drina River. These witnesses also cleaned the bathtub because "the Major", meaning the Accused, wanted a bath. The witness stated that the Accused was referred to as "Major" or "Duke". Once they had finished cleaning the bathroom, the Accused threw out witness FWS-75 and remained

in there with twelve-year old, AB. According to FWS-75, the Accused told witness AB that he had a daughter older than witness AB.

Witness FWS-75 was then taken into another room where she was raped by Janko Janjic. Meanwhile, Witness FWS-87 was raped by Dragan Zelenovic, who left the apartment thereafter.

Although Witness FWS-75 did not see the Accused rape witness AB, she testified that witness AB later confided in her about the rape. Whilst she is absolutely certain that the Accused raped witness AB in the bathroom, in relation to the rape of witness AS by the Accused, FWS-75 stated that she was 99% but not a 100% sure. She could not guarantee it. The following morning, two soldiers came to the apartment and took the girls to different apartments in Foca.

The Court accepts FWS- 75's testimony in its entirety, since it was given in a credible and reliable manner and is corroborated by her prior statements.

Witness FWS-87 testified before this Court, stating she was taken from Karaman's House to Foca and didn't return. She was taken together with FWS-75, AS and AB. The first night they spent in an apartment in Foca. She remembers also the Accused, Gojko Jankovic and Dragan Zelenovic and she thought there were others. Dragan Zelenovic raped her that night. When asked whether witness AB and witness AS were also raped that night, FWS-87 replied that she did not know, but that they did spend the night there. She described how she and AS were later taken away to another apartment by two soldiers, Kostic and Kovac, where they were raped again. Their ultimate fate was being sold to soldiers from Montenegro, who took them back to Montenegro, from where they managed to escape in April 1993.

The Court takes specific note of FWS-87's prior statement (19-20 January 1996) given to ICTY investigators 11 years ago, just after the war's conclusion. In this statement, FWS-87 stated the following that the four of them "*were removed from Karaman's House around the middle of October. I remember that Jankovic, Zelenovic and Tuta had some kind of talks going on with Pero Elez and others in the house. Then Pero Elez told us that the four of us should go with Jankovic, Zelenovic and Tuta. We four women were then taken back to Foca, not far from Brena. We were taken to an apartment. I do not know whose apartment this was. It was in a part of Foca which I think was called Ribarski. We spent one night there. We were all raped that night by these three. All three of them raped all four of us that night.*"

FWS-132, in her statements accepted pursuant to Article 273 (2) CPC of BiH that she saw the Accused taking away the 4 girls together with other soldiers.

Witness FWS-191 testified that before they moved to the Ribarska area (see Item 7 of this Verdict), they had taken food and clothes to an apartment in the Brena block in the Ribarska area. However, when they returned, everything had been taken. Janko Janjic took her to an apartment in Ribarska to retrieve these clothes. In this apartment, FWS-191 saw girls. She stated: she thought there were four of them but she remembers three. She thought she saw FWS-87 or her sister DB. There was a girl, 13 years old, and another girl.

This account is partly corroborated by the testimony of FWS-75, who stated that when they were brought to the Ribarksi settlement, they did not have anything to put on. In the apartment they found a lot of clothes and they picked something from these clothes. In the morning when Radomir Kovac and Jagoš Kostić came for them, they took the clothes with them. She stated that a couple of days later, the Accused Gojko Janković came again with FWS-191 who collected those clothes from them and took them back.

By their very nature, the experiences which these witnesses endured were traumatic at the time of their occurrence, and thus, they cannot reasonably be expected to recall the minutiae of the particular incidents charged, such as the precise sequence, or the exact dates and times. The fact that these witnesses were detained over a period of weeks, and in some cases, months, without any opportunity to record their experiences, only made it more difficult for them to recall such details at a later stage. The Court does not believe the minor discrepancies between the evidence of the various witnesses discredits such evidence. Further, minor discrepancies between the testimony and prior statement of the same witness do not undermine their evidence as a whole, where that witness has nevertheless recounted the essence of the incident in a credible manner. (*Prosecutor vs. Kunurac et al.* i.e. Judgement, Trial Chamber, paragraph 564). The Court finds this to be the case in relation to this Count of the Indictment.

In relation to this Count, the Accused purported to have an alibi beginning on the specific date of 30 October 1992. According to the Defense, the Accused came to Herceg Novi on this date to celebrate his birthday and subsequently stayed for a substantial period of time in Montenegro, a week at the minimum.

The Defense witnesses, Ljubinka and Milomir Popovic, friends of the Accused, stated that Gojko Jankovic was in Herceg Novi at the end of October, celebrating his birthday with them. Ljubinka Popovic testified that the Accused arrived a couple of days before the celebration and stayed for several days thereafter. According to Milomir Popovic, the Accused arrived on the eve of his birthday. He was driving a white Golf, which was later confiscated. The Accused stayed three or four days. However, the Popovic couple could not provide many other details of that period. The wife of the Accused, Milica Jankovic, who, according to the Defense attorney insisted on testifying despite being under no obligation to do so (pursuant to Article 83 CPC of BiH) stated that the Accused came on 30 October 1992 and remained for seven or eight days. She also confirmed that his, car was stopped and confiscated on 2 November 1992 by the Police of Herceg Novi. This was substantiated by the documentary evidence tendered by the Defense, namely the record of an interview taken at Herceg Novi Police Station, during which the Accused was questioned about the car confiscated on 6 November 1992 in Herceg Novi.

Having raised the issue of alibi, the Accused bore no onus of proving that alibi. It remained for the Prosecution to establish that, despite the evidence of alibi, the facts alleged in the Indictment were nevertheless true. On the basis of the credible, consistent and corroborating evidence provided by the testimonies of FWS-75 and FWS-87, the Court considers that the Prosecution has met this burden and established beyond a reasonable doubt that the Accused participated in the facts alleged in Count 8 of the Indictment. The Panel does not accept that there is any plausible possibility that the Accused was absent when FWS-75, FWS-87, AS

and AB were taken away from "Karaman's House" in Miljevina and taken to an apartment in Foča near a fish restaurant, where the crimes described above were committed.

Moreover, it is noted that whilst the Prosecution must prove the elements of the charged offense, the exact date of events is not a material element of a crime, providing there is no doubt that the event which is proven is the same as the one described in the Indictment. In this case, the testimonies of witnesses of FWS-75 and FWS-87 establish that the approximate period in which the offences occurred corresponds to the events alleged in the Indictment.

The Court also notes the following points specifically in relation to the alibi raised by the Defense. Firstly, the fact that the Accused was in Montenegro around the time the offences were committed, does not render it impossible that he was, nevertheless, in Foca around the end of October and beginning of November 1992. Even if he did celebrate his birthday in Herceg Novi and was there on 2 November and 6 November 1992, according to the testimony of witness Milenko Paprica, the distance between Herceg Novi/Igalo and the Foca area could have been crossed in less than a three hour's drive. Secondly, the assertion that the Accused, the leader of an important army unit from the Foca area, could have simply remained in Montenegro, where there was no fighting, for many days, is improbable during a time of war. Thirdly, the alibi is based on testimonies of the following witnesses: Ljubinka and Milomir Popovic and the wife of the Accused, Milica Jankovic. Apart from the Accused's alleged celebration, of which very little detail was given, none of these witnesses was able to give reliable testimony; rather they simply made vague assertions that accused stayed in the area for a while. The Court furthermore notes that whilst the Popovic couple were not able to give many details about the Accused's alleged alibi, what they did manage to recall was suspiciously similar, even to the extent that they used the same wording. Furthermore, the Court notes that the Popovic couple's testimony supporting an alibi in relation to Count 2 and 3 of the Indictment was irreconcilable with the facts that have been established beyond a reasonable doubt. When combined with this Court's finding that the testimonies of FWS-75 and FWS-87 were credible, honest, and consistent, both with their previous testimonies and corroborating each other, the Court does not to accept the alibi raised by the Defense.

The intention of the Accused to effect the sexual penetration and the knowledge that it was done without the consent of the victim clearly ensue from the presented evidence.

The Court finds established beyond a reasonable doubt that the Accused, Gojko Janković, together with Dragan Zelenović and Janko Janjić, removed female detainees FWS-75, FWS-87, AS and twelve-year old AB from the detention Center known as "Karaman's House" in Miljevina, and drove them by car to an apartment in Foča near a fish restaurant, where Janko Janjić ordered the female detainees FWS-75 and AB to give a bath to the Accused Gojko Janković. The Accused then raped underage female detainee AB in the bathroom, while Dragan Zelenović raped female detainee FWS-87 and Janko Janjić raped FWS-75.

The Court does not consider it established beyond a reasonable doubt that the Accused raped AS on this occasion.

The Accused thereby, within a widespread or systematic attack against the Bosniak civilians in the area of Foca Municipality and with knowledge of such attack and willingly participating in it by his actions, committed the criminal offense of rape of the injured party AB, under Article 172 (1) item g) CC of BiH. The act of rape of AB also fulfills the legal requirements for torture as described in Article 172 (1) item and f) CC of BiH, since the act of rape caused severe pain and suffering, was intentional and the prohibited purpose was present, namely discrimination on the basis Bosniak ethnicity. AB was taken from a detention facility where only Bosniaks were held. She was and could only be the victim of the above described humiliations, as for many other Bosniak women, because she was not Serb.

Furthermore, the Accused aided and abetted the torture and rape of the injured parties FWS 75 by Janko Janjic and FWS-87 by Dragan Zelenovic, as proscribed under Article 172 (1) items f) and g), in conjunction with Article 180 (1) CC of BiH. The Accused, together with Dragan Zelenovic and Janko Janjic, took away the victims from "Karaman's House", in the full knowledge that FWS-87 and FWS-75 were being taken for the purpose of rape. He thereby provided assistance to the perpetrators of the acts of rape of FWS-87 and FWS-75.

This also amounts to aiding and abetting the torture of FWS-75 and FWS-87, since the acts committed against these victims fulfils the legal requirements of torture, for the same reasons as stated above.

#### **d. Acquitting part**

With regard to the acquitting part of the Verdict, the Court establishes the following:

1. **Under Item 1** (Count 4 of the amended Indictment of 22 December 2006), the Accused was charged as follows: Between April 1992 and November 1993, within the territory of the Foča municipality, as the leader of an military unit acting within the Foča Brigade of the Army of the Serb Republic of Bosnia and Herzegovina (hereinafter referred as 'the Army'), he took part in a widespread or systematic attack by the Army, members of the Police and paramilitary formations against the non-Serb civilian population in the wider area of Foča municipality, whereby those civilians were methodically captured, being physically abused and killed in the attack, separated according to sex, and detained in several facilities including the Foča Correctional Institute, for the men, and Buk Bijela, the Foča High School, Partizan Sports Hall, a house at Ulica Osmana Đikića no.16, a house in Miljevina known as Karaman's house, a house in Trnovača and other places for the women and girls where they were detained under harsh conditions and subjected to physical, mental and sexual abuse by their captors, while Muslim houses and apartments in Foča and neighboring municipalities were looted, destroyed and burnt down, as more particularly set out below, in that:

1. On 3 July 1992, a number of soldiers under the command of the Accused Gojko Janković, brought a captured elderly man Redžo Pekaz from the village of Trošanj in front of huts at Buk Bijela where he was beaten and the other detainees and the Accused Gojko Janković himself could hear his screams; then they took him near the bank of Drina River and shot him dead.

It is indisputable that the killing of Redžo Pekaz took place at the time, in the place and in the manner as described in the Indictment. This is established from the testimonies of witnesses FWS- 75, FWS-96, FWS-88, FWS-74 and DB and the material documentation, namely, a letter from the Federal Commission on Missing Persons providing information about the victim. The aforementioned witnesses all saw several soldiers taking Redžo Pekaz, who had already been beaten up and was covered with blood, towards the Drina River. Furthermore, after seeing that taking away, those witnesses all testified to hearing a shot from the direction in which the soldiers had taken Pekaz.

Although the fact and manner of the victim's killing has been established, none of the witnesses were able to identify the specific soldiers who took Redžo Pekaz away. As such, the Court cannot presume that the Accused, Gojko Janković, had effective command over those soldiers.

The fact that the Accused was in *de facto* command on Kremenik Hill, the event which preceded the bringing of children, women, and later, Redžo Pekaz to Buk Bijela, (which the Court reasoned as irrefutable in section 2 of the sentencing part of the Verdict), does not of itself mean that he commanded every soldiers in Buk Bijela, including those who beat and then killed Redžo Pekaz. It has not been proven who those soldiers were, to which unit they belonged and whether or not they had participated in the operation earlier that day. Although the Court has found it proven that the Accused was at Buk Bijela when Redžo Pekaz was beaten and killed, it does not follow that those soldiers who killed him were at least under his *de facto* command. In this respect, the Court notes that during the evidentiary procedure it became clear that many units, not only the Accused's, participated in the actions which took place on 3 July 1992.

Thus, the soldiers who beat and killed Redžo Pekaz could have been under the command of any of the leader-commanders who were involved in the actions. The proven facts mentioned above, do not constitute the necessary cause-and-effect relationship between the Accused, as a leader of a platoon-size military group, and the acts of those soldiers which culminated in the killing of Redžo Pekaz. For this reason, on the basis of aforementioned evidence, the Court cannot conclude beyond reasonable doubt that those soldiers were under the command of the Accused, Gojko Janković. Therefore, pursuant to Article 284 (3) CPC of BiH, it acquitted the Accused of charges for the acts referred to in Article 172 (1) item a) CC of BiH.

**2. Under item 2 (the Indictment of 27 June 2006) – in this Verdict also referred to as the “second Indictment”- the Accused was charged as follows:**

Between April 1992 and November 1993, within the territory of the Foča municipality, as the leader of an military unit acting within the Foča Brigade of the Army of the Serb Republic of Bosnia and Herzegovina (hereinafter referred as ‘the Army’), he took part in a widespread or systematic attack by the Army, members of the Police and paramilitary formations against the non-Serb civilian population in the wider area of Foča municipality, whereby those civilians were methodically captured, being physically abused and killed in the attack, separated according to sex, and detained in several facilities including the Foča Correctional Institute, for the men, and Buk Bijela, the Foča High School, Partizan Sports Hall, a house at Ulica Osmana Đikića no.16, a house in Miljevinina known as Karaman's house, a house in Trnovača and other places for the women and girls where they were

detained under harsh conditions and subjected to physical, mental and sexual abuse by their captors, while Muslim houses and apartments in Foča and neighboring municipalities were looted, destroyed and burnt down, as more particularly set out below:

2. In the period from 7 April to early May 1992, together with Janko Janjić, Ljuban Kalajdžić and an unidentified soldier, Gojko Janković came to a Muslim house in Foča occupied by the protected witness E, where she was forced to sexual intercourse in that she was being held by the suspect and the unidentified soldier while Janko Janjić raped her; and then on 10 to 15 closely succeeding but unknown dates between late April 1992 and late May 1992 Gojko Janković, Janko Janjić and the unidentified soldier came to her house and on each occasion Gojko Janković raped protected witness E who was also raped on many of those occasions by Janko Janjić or the unidentified soldier, or by both of them; and in late May 1992 Gojko Janković, Janko Janjić and the unidentified soldier deprived protected witness E of her liberty by forcefully taking her to Partizan Sports Hall in Foča where she remained in detention for several weeks together with other women including Witness J, and where she saw Gojko Janković on further occasions, and was also raped once by a soldier she did not know.

As evidence in support of this Count, the Prosecution called the injured party, witness E, witness J and Jusuf Čolpa. All testified in Court in relation to this charge. The Defense relied on witness Ljubomir Miletić who disputed their accounts.

In particular, witness E stated that her husband left Foča alone some time before the war began. Her children left Foča with the help of her neighbour, Jusuf Čolpa, who drove them away in his car, despite it already being full. Witness Jusuf Čolpa corroborated those statements.

On the other hand, witness Ljubomir Miletić, who grew up with the injured party, has known her for at least thirty five years and is married to her sister, was convincing and consistent in his testimony, to the effect that at the beginning of war, witness E and her family were hiding in a boiler-room where her husband used to work in Foča. Within seven to eight days she had already left Foča, going through Grebak towards Ustikolina. Miletić next saw the injured party again immediately after the end of the war in Sarajevo, where her mother and his wife live.

This witness contested every suggestion that the injured party had remained in Foča and been captured and taken to the Partizan Sports Hall. In particular, he disputed that he had been the one who saved her from "Partizan". The witness asked for a confrontation face-to-face with the injured party. He spoke about unrest which this alleged event had caused in his family. Although they did not all reside together in Foča any more, they are still in constant contact and have good relations. He restated that he had been in contact with the injured party throughout the post-war period and that she had mentioned nothing to him similar to her account before the Court.

Furthermore, it is notable that the injured party could not say which of her fellow female townspeople, acquaintances and perhaps even friends were detained in the Partizan Sports Hall. Witness J clearly remembered being detained with many women from Foča, but also some from the surrounding villages and explained: *"there were many women in Partizan*

*and almost all of us knew each other, but there were some unknown from surrounding villages". This witness confirmed that the injured party was also detained with her, but that they never talked to each other, because in Partizan "it was not possible to talk, only to give a few mysterious glances, we only kept silent".*

It is an established fact that the Partizan Sports Hall was a detention centre where many women were detained. Amongst these detainees, there must certainly have been many whom the injured party must have known, if for no other reason than because they lived in a small community where most people knew each other, at least by sight. For this reason, there is good cause to doubt witness E's testimony. With the exception of witness J, the injured party did not even describe any of the other female detainees in Partizan.

In any event, even if the aforementioned events in Foča did take place, the testimony of this witness, as the sole 'eyewitness', could not lead to the conclusion that the Accused participate in the alleged rape. Although the injured party based her identification of the Accused on the fact that he was the person who owned a bar in Trnovača, she was unable to provide responses to all further questions requiring a description of the Accused. She stated that she did not know the answers and could not remember when she first saw the Accused.

When this lack of detail about the Accused is combined with the fact that the rapes all occurred during the night, with no lights on, that the attackers had torches glaring in her eyes and that, by her own admission, she did not dare to look at them because she was afraid, the participation of the Accused in those alleged actions is disputable.

In the final outcome, even the alleged participation of witness Miletić Ljubomir and Ljuban Kalajdžić in the taking out and release of the injured party from "Partizan" is also questionable. The Prosecutor informed the Court that he did not want to call the injured party E as a rebuttal witness, because she had informed him that she might have made a mistake in the identification of witness Ljubomir Miletić.

For all the foregoing reasons, the Court cannot conclude beyond reasonable doubt that the alleged acts took place in the manner and at the time described, and in particular, it cannot conclude that the Accused, Gojko Janković, participated in their perpetration. Therefore, pursuant to Article 284 (3) CPC of BiH, this Court acquitted the Accused of charges for the acts referred to in Article 172 (1) item g) CC of BiH.

## **7. Sentencing**

As regards the convicting part of the Verdict, the Court found the Accused guilty of the mentioned criminal acts, i.e. the offence perpetrated and, with the application of the legal provisions cited, it established a punishment of 34 years imprisonment.

According to the closing argument of the Prosecutor the Accused was not charged with and the Court has not convicted him of command responsibility under Article 180 (2) CC of BiH. Nonetheless, the evidence clearly shows that Jankovic de facto acted as the leader of his Platoon during the military operations on the 14 April 1992 at Brezine and on the 3 July 1992 on the Kremenik hills and at Buk Bijela and that he had substantial influence over some of the other perpetrators.

This fact is considered in aggravation – the criminal culpability of those leading others is higher than those who follow. As aggravating circumstances, the Court also took into account that several of the captive civilian male on Kremenik hills were brutally beaten and severely wounded in front of children and women amongst whom were their closest family and shortly after the children and women had been taken away, subsequently killed the men.

Furthermore, the offenses of the Accused committed against particularly vulnerable and Defenseless women and girls is considered as an aggravating factor. He raped victims FWS-191, FWS-105, FWS-95, FWS-186 and „AB“ and he co-perpetrated in the rape of FWS-87 and FWS-75. When the rapes were committed the women and girls were respectively of age 17 years, 32 years, 17 years, 16 years, 12 years, 15 years and 25 years. FWS-191 and FWS 186 were held in sexual slavery in the house in Tmovaca. Raping a juvenile who was only 12 years old is a factor which increases the gravity of the crime as well as the fact that underaged girls were held in sexual slavery. Furthermore the victims FWS-191 and FWS 186 were subject of slavery over a period of at least 5 months and a period of such lengths is clearly enough to aggravate the sentence for the offense. This in the regard to the fact that crimes were committed in wartime, in which young and elderly women need special protection in order to prevent them from becoming easy targets.

None of the hereformentioned criminal acts occurred within the midst of a battlefield. On the contrary; all the crimes the Accused is convicted for are committed against vulnerable and Defenseless civilians, which is also considered in aggravation, as well as the fact that the Accused's conduct repeatedly showed that he had a complete disregard for this victim's welfare and that he showed no remorse.

The Court is satisfied that there are no relevant mitigating circumstances, except for his family status as father of three children.

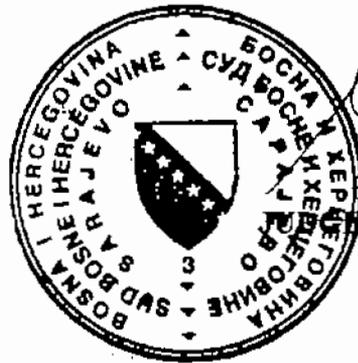
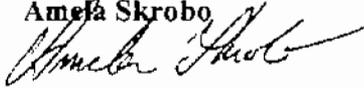
The Court holds that the imposed punishment is proportionate to the severity of the committed criminal offense, the degree of criminal liability of the Accused, the circumstances under which the crime was perpetrated and the motives of the Accused for perpetrating the criminal acts concerned and the sentence imposed will meet the purpose of punishment under Article 39 CC of BiH, both in terms of special and general prevention.

Pursuant to Article 56 CC of BiH, the time the Accused spent in custody from 14 March 2005 onwards shall be counted as part of the punishment of imprisonment.

Given that the Accused was pronounced guilty, the decision on costs was issued pursuant to Article 188 (1) CPC of BiH. The Accused is under the obligation to pay the costs of the criminal proceedings given that, in the view of the Court, it was not proven that the Accused is indigent. The Court was, therefore, unable to apply the provision of Article 188 (4) CPC of BiH based on which he would have been relieved of the duty to reimburse the costs of the criminal proceedings in whole or in part. The amount of the costs, in particularly in view of the acquitting part of the Verdict, will be determined by the Court in a separate decision, pursuant to Article 186 (2) CPC of BiH.

When deciding to advise the injured parties to take civil action to settle their property claim, the Court was guided by the fact that there are quite a few injured parties in these proceedings and that the determination of the amount of the property claim would take extensive time and thus delay the proceedings. Therefore, it has been decided in accordance with the provision of Article 198 (2) CPC of BiH.

RECORD-TAKER  
Legal Officer  
Amela Skrobo



  
Roland Dekkers

**REMEDY: An Appeal against this Verdict may be filed with the Appellate Division of the Court within 15 days from the date of receipt of the copy of the Verdict in writing.**