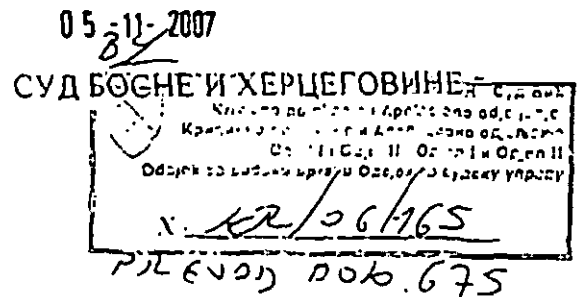


SUD BOSNE I HERCEGOVINE



Ref. number: X-KR/06/165
Sarajevo, 24 August 2007



IN THE NAME OF BOSNIA AND HERZEGOVINA!

The Court of Bosnia and Herzegovina, Section I for War Crimes, sitting in the Panel composed of Judge Hilmo Vučinić, as the Presiding Judge, Judge Shireen Avis Fisher and Judge Paul M. Brilman, as members of the Panel, including the Legal Associate Dženana Deljić Blagojević as the Record-taker, in the criminal case against the accused Nenad Tanasković, for the criminal offense of Crimes against Humanity in violation of Article 172 (1) (a), (d), (e), (f), (g), (h) and (k) in conjunction with Article 180 (1) of the Criminal Code of Bosnia and Herzegovina (BiH CC), upon the Indictment of the Prosecutor's Office of BiH Ref. number KT-RZ-146/05 dated 29 September 2006, after the public main trial, which was partly closed to the public, in the presence of the Prosecutor of the Prosecutor's Office of BiH, David Schwendiman, the accused Nenad Tanasković in person and his Defense Counsel Dragan Borovčanin, attorney-at-law from Sokolac, and Radmila Radosavljević, attorney-at-law from Višegrad, following the deliberation and voting, on 24 August 2007 rendered and publicly announced the following:

VERDICT

THE ACCUSED:

NENAD TANASKOVIĆ a/k/a "Nešo", son of Momir and Stanojka, born on 20 November 1961 in the village of Donja Lijeska, Višegrad Municipality, Personal Identification Number (JMBG): 2011961133652, Serb. citizen of BiH, residing in Donja Lijeska at No. 16, Višegrad Municipality, unmarried, literate, completed secondary school, qualified driver, employed, no prior convictions, military service completed in 1981 in Slavonska Požega, currently in pre-trial custody pursuant to the Court of BiH Decision,

Kraljice Jelene br. 88, 71 000 Sarajevo, Bosna i Hercegovina, Tel: 033 707 100, Faks: 033 707
Крљице Јелене бр. 88, 71 000 Сарајево, Босна и Херцеговина, Тел: 033 707 100, Факс: 03



HAS BEEN FOUND GUILTY

1. Of the Following:

In the period from April through late June of 1992, during an armed conflict in Bosnia and Herzegovina, as a reserve policeman of the Višegrad Public Security Station of the Trebinje Security Services Center, he participated in a widespread or systematic attack on Muslim civilian population in the territory of the Višegrad Municipality by the Army of the Serb Republic of Bosnia and Herzegovina ("the Army"), Police and paramilitary formations, which was carried out pursuant to policies of the Army, the police, paramilitary formations, the Serb Democratic Party ("SDS"), and other organizations, and with the purpose of removing Bosnian Muslim inhabitants from the territory of the Municipality of Višegrad, which was an attack during which hundreds of civilians were killed, tortured, beaten, illegally deprived of liberty, detained in inhumane conditions, and forcibly transferred out of the territory of Višegrad Municipality, women were raped and their property was illegally confiscated, destroyed or burnt down, all on religious, national or political grounds, which are attacks the Accused had knowledge of and participated in them, in as much as:

1. *In mid-May 1992, together with Nenad Mirković and an unknown soldier of the Užice Corps, he arrived by a red "Zastava 750" – "Fičo" automobile in a village in the territory of Višegrad Municipality, in front of the house of Witness A, a civilian; having fired a burst of automatic rifle fire above her head, he told her that she was the one he was looking for and then he forced her to get into the car, where he threatened her that she would be raped, cursing her; he also told her that she would have to "pray the Lord's prayer and make the sign of the cross", and that her family would never see her again; then, coming to a nearby village and the house of Vladimir Drašković, he and Witness A came out of the car and got into a "Lada" vehicle owned by Junuz Tufekčić, another civilian, whom he forced to drive them to the Cultural Center in Višegrad, where he forced the two of them out of the car and took them at gunpoint to the Police Station in Višegrad, after which Tufekčić was imprisoned in the Police Station with other detainees, where Witness A was interrogated by Drago Samardžić and was then placed in a room in the Police Station where she was later raped by two unknown soldiers.*

2. *On 23 May 1992, he and Novo Rajak, Miloš Pantelić, and Slavko Trifković deprived civilians Suvad Dolovac and his brother Kemal Dolovac of*

their liberty in the Osojnica neighborhood of Višegrad and took them to the local community office in the village of Donja Lijeska for interrogation; during the interrogation, the accused Tanasković repeatedly hit Kemal Dolovac with his fists and then gave him a severe blow in the back with a rifle barrel; several times he also hit Suvad Dolovac, who was also repeatedly hit by Novo Rajak; afterwards, the Accused and Novo Rajak took Suvad and Kemal Dolovac to the Police Station in Višegrad, where they were detained for four days. Suvad Dolovac was released, whereas his brother Kemal remained in the Uzamnica barracks in Višegrad.

3. On 25 May 1992, in the village of Kabernik in Višegrad Municipality, together with unidentified soldiers, the Accused grabbed M.M. as he was coming out of the woods, he tied his hands, threw him in a small truck, and drove off towards Donja Lijeska, after which the Accused and Novo Rajak brought the heavily beaten prisoners M.M. and his father H.M. into the Uzamnica barracks, where the two prisoners told the other prisoners that the Accused and Novo Rajak had beaten them up.

4. On or about 31 May 1992, the Accused and a group of army members attacked undefended villages populated by Muslims, that is, villages of Osojnica, Kabernik, Holijaci and Orahovci, and captured male civilian residents from those villages, and told them that they were doing it to protect the soldiers from mines and from attacks by Muslim forces, threatening to kill anyone who attempted to run away; then, they looted one shop and set houses on fire; the Accused personally set two of the houses on fire; during the night, on the premises of the Primary School in Orahovci, where they all were staying for the night, Salko Šabanović and another man were repeatedly called out of the room where the men were detained and taken to another room in the school where they were severely beaten by Nenad Tanasković, Miloš Pantelić, and five or six other soldiers; the next day, the prisoners were marched in the direction of a bridge and they were threatened that they would all be executed; then they were taken to the Uzamnica barracks in Višegrad, from where they were released a few hours later.

5. On 14 June 1992, the Accused was in one of the buses that was transporting Muslim civilians from Višegrad to the territory controlled by the Army of BiH; they were forced to leave their places of residence due to unbearable living conditions and threats of death if they did not leave Višegrad; when they arrived in a place called Išević Brdo near the border between Sokolac and Olovo municipalities, men under the age of 65 were ordered to stay in the vehicles, whereas the women, children, and men over the age of 65 were ordered to get out of the vehicles, which they did, and the

Accused yelled to the group of women, children and elderly people who were leaving the vehicles that they should go to "Alija's state" and that their men would be released when the Army of RBiH released some of the captured Serb soldiers.

7. On 16 June 1992, as Mula Kustura, her son Enver Kulovac, and Ćamil Kopić, and a group of other Bosniaks, were returning home because of an unsuccessful attempt to leave Višegrad, on their way from the Old Bridge on the Drina River to the apartment where Mula Kustura lived, the Accused and an unidentified soldier ordered Enver Kulovac and Ćamil Kopić to get into a Golf automobile, which they did; the two were then driven away by Tanasković; other people later told Mula Kustura that they had seen her son in prison.

Thus, as described above, as part of a widespread or systematic attack against the Muslim civilian population from the territory of Višegrad Municipality, with knowledge of such attack and participating in it, and knowing by his acts and omissions that he was participating in it by perpetrating or aiding or abetting with discriminatory intent based on political, racial, national, ethnic, cultural, or religious grounds; he is responsible for the imprisonment of Junuz Tufekčić and Witness A; the rape of Witness A; the torture and imprisonment of Suvad and Kemal Dolovac; the torture and imprisonment of M.M. and H. M.; and the torture of Salko Šabanović and another man, setting houses on fire, imprisonment of civilians, forcible transfer, imprisonment of men under the age of 65 and deprivation of freedom imprisonment of Enver Kulovac and Ćamil Kopić.

Whereby he committed the criminal offence of

Crimes against Humanity under Article 172 (1) (h) of the Criminal Code of Bosnia and Herzegovina in relation to the following:

1. per sub-clause e) (deprivation of liberty of Witness A and Junuz Tufekčić), g) (rape of Witness A), f) (torture of Witness A resulting from the rape) in respect of Count 1 of the Indictment;
2. per sub-clause e) (deprivation of liberty of Suvad and Kemal Dolovac), f) (torture of Suvad and Kemal Dolovac) in respect of Count 2 of the Indictment;



3. *per sub-clause e) (deprivation of liberty of M.M. and H.M.), f) (torture of M.M. and H.M.) in respect of Count 3 of the Indictment;*
4. *per sub-clauses e) (taking of civilian prisoners), f) (torture of Salko Šabanović and another man) and h) (persecution – destruction of property) in respect of Count 4 of the Indictment;*
5. *per sub-clause d) (forcible transfer), e) (imprisonment of men under the age of 65) in respect of Count 5 of the Indictment;*
7. *per sub-clause e) (deprivation of liberty of Enver Kulovac and Ćamil Kopic) in respect of Count 7 of the Indictment;*

all in conjunction with Article 29 (Accomplices) in respect of Count 1 (e), 2, 3, 4, 5, and 7 of the Indictment, and Article 31 (Accessory) in respect of Count 1 of the Indictment (f) and g), all as read with Article 180 (1) of the Criminal Code of Bosnia and Herzegovina.

Therefore, pursuant to the provision of Article 285 of the BiH CPC, with the application of Articles 39, 42, 48 of the BiH CC, the Court of BiH Panel

SENTENCES

THE ACCUSED TO THE SENTENCE OF IMPRISONMENT FOR A TERM OF 12 (TWELVE) YEARS

Pursuant to Article 56 of the BiH CC, the time the Accused spent in pre-trial custody ordered by this Court's Decision from 11 July 2006 until he is committed to serving his sentence, shall be credited toward the pronounced sentence of imprisonment.

Pursuant to Article 188 (4) of the BiH CPC, the Accused shall be relieved of the duty to reimburse the costs of the criminal proceedings and the cited costs shall be paid by the Court of BiH.



Whereas, pursuant to Article (284) (1)(3) of the BiH CPC, the Accused

HAS BEEN ACQUITTED

Of the following charge:

6. *On 16 June 1992, while soldiers were taking prisoners out of the truck and on the Old Bridge in Višegrad, killing them and throwing them into the Drina river, the Accused forced Witness C and another elderly Muslim man (both civilians) to clean blood, bodies, and body parts off the bridge in Višegrad and then the Accused took Witness C to the garden of the Hotel "Višegrad" where he beat him and forced him to lick blood off the ground; then he took him to the Višegrad High School Center, which was used as a detention center and, together with an unidentified soldier, he beat Witness C again, hitting him with a wooden baton which broke, and kept kicking him while the other soldier was hitting him with a rifle butt and his blows were much weaker; the Accused then hit the wife of Witness C, who was begging him to stop beating him, and in all of that he broke two of her teeth.*

Whereby he would have committed the criminal offence of Crimes against Humanity under Article 172 (1) (f), (h) and (k) of the BiH CC in respect of Count 6 of the Indictment.

Reasoning

A. *Prosecutor's Office Indictment Ref. number KT-RZ-146/05 dated 29 September 2006, confirmed on 6 October 2006, charged the Accused with the commission of the criminal offense of Crimes against Humanity in violation of Article 172 (1) (a), (e), (f), (g), (h) and (k) of the Criminal Code of Bosnia and Herzegovina.*

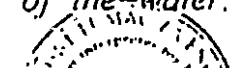
B. *At a hearing held before the Preliminary Hearing Judge, the Accused entered a plea of not guilty to the cited criminal offense.*

C. *On 13 March, 20 March, 27 March and 3 April 2007, the Panel was closed to the public for the portion of the main trial when the Prosecution*

Witness Protection Measures was discussed and during the taking of personal details of witnesses Suad Dolovac, Witness A, Witness B, Witness C and Witness D, who were direct eye-witnesses and victims of the commission of the acts with which the Accused has been charged, thus witness Dolovac, Witnesses B, C and D requested protection due to the fear for their personal safety and the safety of the members of their families. Except for witness A, these witnesses testified in the open-session hearings. The public was excluded during a portion of witness A's testimony for the reasons of protecting the witness's intimate life. Pursuant to Article 235 of the BiH CPC, the Panel may exclude the public during a part of the main trial if it is necessary to protect the personal and intimate life of the injured party. As this witness gave evidence in public about delicate and sensitive matters, which at all times constitutes a risk to the private and personal lives of witnesses-victims, the Panel has found justification in rendering this decision for the reason of protecting the personal and intimate life of the injured party, that is, the interest of the witness. The Panel also excluded the public from the part of the main trial held on 26 June 2007, at which the Defense's Motion for Protection Measures for Defense witness M was discussed and personal details of this witness were taken, for whom the protective measures were ordered for the reasons of his personal safety and for the job this Witness performs. Witness M testified in an open session.

D. Pursuant to Article 4 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 the ICTY in Proceedings before the Courts in BiH, the Court of BiH rendered the Decision Ref. number X-KR/06/165 dated 26 June 2007 granting in part the Prosecutor's Office of BiH Motion dated 21 December 2006 and accepting some of the facts established in the final Judgment in the Prosecutor vs. Mitar Vasiljević Case (IT-98-32). Those facts are as follows:

- 1. "From 4 April 1992, Serb politicians repeatedly requested that the police be divided along ethnic lines" (para 42)*
- 2. "Soon thereafter, both of the opposing groups raised barricades around Višegrad, which was followed by random acts of violence including shooting and shelling" (para 42)*
- 3. "In early April 1992, a Muslim citizen of Višegrad, Murat Šabanović, took control of the local dam and threatened to release water" (para 42)*
- 4. "On about 13 April 1992, Šabanović released some of the water, damaging properties downstream" (para 42)*



5. *"The following day, the Uđice Corps of the Yugoslav National Army ("JNA") intervened, took over the dam and entered Višegrad" (para 42)*
6. *"Even though many Muslims left Višegrad fearing the arrival of the Uđice Corps of the JNA, the actual arrival of the Corps had, at first, a calming effect" (para 43)*
7. *"After securing the town, JNA officers and Muslim leaders jointly led a media campaign to encourage people to return to their homes" (para 43)*
8. *"Many actually did so in the later part of April 1992" (para 43)*
9. *"The JNA also set up negotiations between the two sides to try to defuse ethnic tension" (para 43)*
10. *"The Uđice Corps was composed exclusively of Serbs" (para 43)*
11. *"Convoys were organized, emptying many villages of their non-Serb population. On one occasion, thousands of non-Serbs from villages on both sides of the Drina River from the area around the town of Višegrad were taken to the football stadium in Višegrad. There, they were searched for weapons" (para 44)*
12. *"Many people living on the right side of the Drina River either stayed in the town of Višegrad, went into hiding or fled" (para 44)*
13. *"On 19 May 1992, the JNA withdrew from Višegrad" (para 45)*
14. *"Paramilitary units stayed behind, and other paramilitaries arrived as soon as the army had left town" (para 45)*
15. *"Some local Serbs joined them" (para 45)*
16. *"Those non-Serbs who remained in the area of Višegrad, or those who returned to their homes, found themselves trapped [and] disarmed" (para 47)*
17. *"Many other incidents of ...killings of civilians took place in Višegrad during this period. From early April 1992 onwards, non-Serb citizens*



also began to disappear. For the next few months, hundreds of non-Serbs, mostly Muslim, men and women, children and elderly people, were killed" (para 51)

18. *"Many of those who were killed were simply thrown into the Drina River, where many bodies were found floating" (para 52)*
19. *"Hundreds of other Muslim civilians of all ages and of both sexes were exhumed from mass graves in and around Višegrad municipality" (para 52)*
20. *"The number of disappearances peaked in June and July, 1992... Most if not all of those who disappeared were civilians" (para 53)*
21. *"Non-Serb citizens were subjected to other forms of mistreatment and humiliation, such as rapes or beatings. Many were deprived of their valuables. Injured or sick non-Serb civilians were denied access to medical treatment" (para 54)*
22. *"The two mosques located in the town of Višegrad were destroyed" (para 55)*
23. *"By the end of 1992, there were very few non-Serbs left in Višegrad" (para 56)*
24. *"Today, most of the people living in Višegrad are of Serb ethnicity" (para 56)*
25. *"Proportionally the changes (in ethnic composition) in Višegrad were second only to those which occurred in Srebrenica" (para 56)*

In considering the Motion, the Panel heard the arguments put forward by the Prosecution, wherefrom it follows that Article 4 of the LOTC provides for a possibility to accept facts established in ICTY judgments. In terms of the effect of accepting a fact as proven, the Prosecutor argued that such acceptance of the proposed facts would relieve the Prosecution of the burden of proving that fact further, thereby creating a rebuttable presumption that the fact is true, and that the purpose of Article 4 of the LOTC was to achieve judicial economy.



The Defense was opposed to the acceptance of any of the proposed facts 'established' in ICTY proceedings, arguing that none of them incriminate the Accused as a perpetrator in the widespread and systematic attack against the population of Bosnian Muslims in Višegrad Municipality. The Defense further submitted that the acceptance of such facts would represent a violation of the Accused's ECHR right to a fair trial by undermining the presumption of innocence and the Court's impartiality.

Article 4 of the LOTC provides that, at the request of a party or proprio motu the Court, having heard the parties, may decide to accept as proven those relevant facts that are established by a legally binding decision in any proceedings before the ICTY.

Having held a hearing on this matter on 22 May 2007, at which the Defense Counsel and the parties were given opportunity to argue their positions, the Panel considered the arguments of the counsel and the parties and rendered their decision pursuant to the cited article.

Article 4 leaves to the Court the discretion of making a decision as to whether to accept the facts proposed. Neither the LOTC, nor the BiH CPC, provide for the criteria upon which the Court might exercise its discretion. In rendering the Decision, this Panel relied on the criteria it considered appropriate to apply in order to exercise its discretion under Article 4. Those specific criteria took into account the rights of the Accused under the law of BiH, incorporating as it does the fundamental rights protected by the ECHR. At the same time, the Panel was mindful of the ICTY jurisprudence that was developed in interpreting the Rule 94 of the ICTY Rules of Procedure and Evidence. The Panel emphasized that Rule 94 of the ICTY Rules of Procedure and Evidence and Article 4 of the LOTC are not identical and that this Court is not in any way bound by the decisions of the ICTY. However, it is self evident that some of the issues confronting the Tribunal and our own Panel are similar when considering established facts, and that, therefore, the considerations will likewise also be similar. Upon review of this criteria in light of the arguments in this case, the Panel continues to be of the opinion that the criteria fully protect the interests of the moving party, the rights of the Accused, the purpose of the LOTC, and the integrity of the trial process.

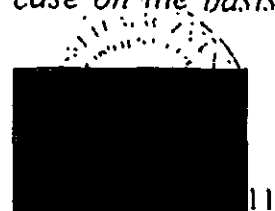
Based on the foregoing, in deciding on this matter the Court considered the following criteria:

- 1. A fact must truly be a "fact" that is:*



- a) *sufficiently distinct, concrete and identifiable;*
 - b) *not a conclusion, opinion or verbal testimony;*
 - c) *not a characterization of legal nature.*
2. *A fact must contain essential findings of the ICTY and must not be significantly changed.*
 3. *A fact must not attest, directly or indirectly, to the criminal responsibility of the accused.*
 4. *Nevertheless, a fact that has gained such a level of acceptance as true that it is common knowledge and not subject to reasonable contradiction can be accepted as an adjudicated fact even if it relates to an element of criminal responsibility.*
 5. *A fact must be 'established by a legally binding decision' of the ICTY, which means that the fact was either affirmed or established on appeal or not contested on appeal, and that no further opportunity to appeal is possible.*
 6. *A fact must be established in the proceedings before the ICTY in which the accused against whom the fact has been established and the accused before the Court of BiH have the same interests with reference to contesting a certain fact. Accordingly, the facts stated in the documents which are a subject of a plea agreement or voluntary admission in the proceedings before the ICTY shall not be accepted, given that the interests of the accused in such cases are different, often contrary to the interests of those accused who utilized their right to a trial.*
 7. *A fact must be established in the proceedings before the ICTY, in which the accused against whom the fact has been established had legal representation and the right and opportunity to defend himself. It is therefore clear that the acceptance of the fact deriving from the proceedings in which the accused has not tested it by his evidentiary instruments is unacceptable for this Panel. Even more so because the accuracy of that fact is questionable, since the accused did not have the opportunity (or had insufficient opportunity) to respond to it and try to contest it.*

All of the facts accepted as proven met the requirements of the criteria. In particular, all of these facts are relevant to the Accused's case on the basis

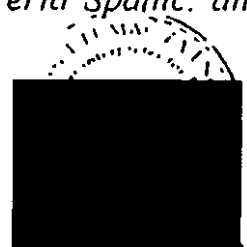


that the crimes established in the Vasiljević Case were committed at the same time and in the same geographical area as those with which the Accused is charged.

The legislative purposes for providing the Court with the discretion to accept 'as proven' established facts include judicial economy, the promotion of the Accused's right to a speedy trial, and consideration for witnesses in order to minimize the number of tribunals before which they must repeat testimony that is often traumatizing. The LOTC's purpose of facilitating a speedy trial can be promoted in accordance with the Accused's right to a speedy trial as prescribed by Article 13 of the BiH CPC and guaranteed by Article 6(1) of the ECHR. The purposes of judicial economy and consideration for witnesses, however, can put at risk the Accused's right to a fair trial and the presumption of innocence. Therefore the Court may only promote those purposes in a way that respects those rights. The criteria are designed to do this. Otherwise, the evidentiary proceedings would in fact end to the detriment of the accused even before the imminent presentation of all of the evidence in the case. In this particular case, the Panel was mindful of Article 6 of the ECHR and Articles 3, 13 and 15 of the CPC when exercising its discretion under Article 4 of the LOTC.

The acceptance of established facts 'as proven', under the criteria we have outlined, does not relieve the Prosecutor of his burden of proof nor does it detract from the presumption of innocence under CPC Article 3. The acceptance 'as proven' of facts established in the final judgments of the ICTY only means that the Prosecutor has met the burden of production of evidence on that particular fact and does not have to prove it further in his case in chief. Admission of each fact does not in any way affect the right of the Accused to challenge any of the accepted facts in his defense, as he would do with any other factual proposition on which the Prosecutor had produced evidence. Nor does it preclude the Prosecution from presenting additional evidence in order to rebut the Defense challenge. Likewise, Article 15 of the CPC is respected because the Court is not bound to base its verdict on any fact admitted as proven. The adjudicated facts herein admitted were considered along with all of the evidence produced in the main trial.

E. The BiH Prosecutor's Office adduced the evidence by hearing the witnesses and presenting the material evidence. The following witnesses were heard during the main trial: Rahima Zukić, Islam Cero, Suad Dolovac, Salko Šabanović, Fazila Cero, Ramić Sabaheta, Mhula Kustura, Ferid Spahić, and witnesses using pseudonyms A, B, C and D.



The Panel reviewed the following material evidence of the BiH Prosecutor's Office: map of Višegrad Municipality; Changes in the Ethnic Structure of the Višegrad Municipality Population between 1991 and 1997 by Ewa Tabeau and Jakub Bijak; AD Višegradtrans Certificate number 9/07 dated 23 April 2007; DP Višegradtrans Decision Ref. number 155-31/98 dated 22 May 1998 on the assignment of Nenad Tanasković to a work post; DP Višegradtrans Decision Ref. number 255/32 dated 23 August 1996 on the assignment of Nenad Tanasković to a work post; Decision of the Višegrad Department of Republika Srpska Ministry of Defense Ref. number 01-208-9/95 dated 1 December 1995 on the assignment of Nenad Tanasković to compulsory work; DP Višegradtrans Decision Ref. number 140/91 dated 18 September 1991 on the reassignment of employee Nenad Tanasković; DP Višegradtrans Decision Ref. number 16/91 dated 17 May 1991 on the assignment of Nenad Tanasković to duties and tasks; SOUR Centrotrans RO (Work Unit) Višegradtrans Decision dated 10 October 1986 on the reassignment of employee Nenad Tanasković; SOUR Centrotrans RO Višegradtrans Decision Ref. number 99/82 dated 6 September 1982 on the assignment of Nenad Tanasković to duties and other tasks; Certificate of filed application/cancellation of the insuree Nenad Tanasković dated 6 March 2004; Certificate of filed application/cancellation of the insuree Nenad Tanasković dated March 2004; Photo of the Višegrad Culture Center; Photo of the old Police Station; Two photos of Višegrad; Photo of the Mehmed Paša Sokolović Bridge; Three photos of the Višegrad Hotel from different angles; Photo of the Square of Fallen Veterans (Trg palih boraca); Two photos of Enver Kulovac; Photo of the new bridge in Višegrad; Record of Exhumation by the Cantonal Court in Sarajevo number Kri-421/00 dated 9 October 2000; Sketch of the crime scene by the Criminal Forensics Department of the Sarajevo Canton Mol Crime Police Sector Ref. number 2493/00-2625/00; Photo documentation of the Criminal Forensics Department of the Sarajevo Canton Mol Crime Police Sector Ref. number 2589/00; Autopsy Report case number SP01/421B dated 3 November 2000; Record of Exhumation by the Cantonal Court in Sarajevo number Kri-414/00 dated 9 October 2000; Sketch of the crime scene by the Criminal Forensics Department of the Sarajevo Canton Mol Crime Police Sector Ref. number 2493/00-2625/00; Photo documentation of the Criminal Forensics Department of the Sarajevo Canton Mol Crime Police Sector Ref. number 2582/00; Autopsy Report case number SP01/414B dated 7 May 2001; Record of Exhumation by the Cantonal Court in Sarajevo number Kri-447/00 dated 9 October 2000; Excerpt from the Register of Deaths for M.M. number 202-16682/06 dated 2 October 2006; Excerpt from the Register of Deaths for M.H. number 202-16683/06 dated 2 October 2006; Republika Srpska Mol Cover Letter Ref. number 02-7652/06 dated 11 September 2006; List of the



reserve police members of the Višegrad Public Security Station dated 10 June 1992; Istočno Sarajevo Public Security Center Letter to the BiH Prosecutor's Office. Višegrad Police Station 13-1-11/02-235-152/06 dated 7 August 2006; Excerpt from the Criminal Record for Nenad Tanasković number 13-1-11/02-235-152/06 dated 7 August 2006; Admission Paper of the Visoko City Graveyard Ref. number 189/03 dated 29 April 2003.

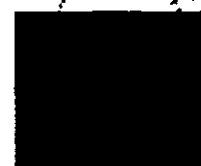
F. The Defense also adduced the evidence by hearing the witnesses Dragiša Trišković, Boško Asić, Suad Dolovac, Ahmet Sejdić, Solomon Janjić, Aco Nikitović and Witness M, and presented the material evidence, namely: Cadastre map of Višegrad Municipality indicating the movement of the Accused; Cadastre map of Višegrad Municipality; Photo of the Vlasinj Hill; Photo of Počivala; Photo of Počivala – Butrovo; Photo - road to Počivala; Photo – Počivala, Butrovo stijene, Kabernik; Photo – Butkove stijene – Austrian Barracks; Photo – Butkove stijene, Počivala, Volijaci; Photo – Pretiša, Kabernik, Photo – board; Photo of Česko Asib; Photo – Kabernik, Čančari; Photo – Donja Lijeska Culture Center; Photo – Donja Lijeska; Photo – Osojnica apartment blocks; Photo – Osojnica road; Photo of the accused Nenad Tanasković; Set of photos of the Višegrad area; AD Višegradtrans Certificate Ref. number 6/07 dated 28 March 2007; AD Višegradtrans Certificate Ref. number 9/07 dated 19 April 2007; Copy of the military booklet in the name of Nenad Tanasković number 129427; Excerpt from the Register of Deaths for Ljubomir Ninković Ref. number 03-202-198/07 dated 25 May 2007; Excerpt from the Register of Deaths for Vojin Gluhović Ref. number 03-202-197/07 dated 25 May 2007; Excerpt from the Register of Deaths for Josip Nešković Ref. number 03-202-199/07 dated 25 May 2007; Excerpt from the Register of Deaths for Novica Savić Ref. number 03-202-220/07 dated 19 June 2007; Excerpt from the Register of Deaths for Veljko Mirković Ref. number 03-202-221/07 dated 19 June 2007; Excerpt from the Register of Deaths for Vlatko Trišković Ref. number 03-202-46/07 dated 7 February 2007; Excerpt from the Register of Deaths for Tomislav Lugonja Ref. number 03-202-142/07 dated 10 April 2007; Certificate of the Police Directorate of the Republic of Serbia Ministry of Interior Ref. number 015.1-02/07 dated 12 February 2007; Certificate of the Srpsko Sarajevo Public Security Center, Višegrad Police Station Ref. number 13-1-11/05-222-40/07 dated 6 February 2007. Finally, the accused Nenad Tanasković himself gave evidence at the main trial in his own defense.

G. On 16 July 2007, the Panel visited the crime scenes where the criminal offense was committed in the territory of Višegrad Municipality, specifically the location of the Uzamnica barracks, the Culture Center in the village of

Donja Lijeska, Trg palih boraca (Square of Fallen Veterans), Višegrad Hotel, the Mehmed Paša Sokolović Bridge, the old Police Station, the Muslim cemetery and the building where Mula Kustura owned an apartment.

H. The BiH Prosecutor's Office stated in the Closing Arguments that the Prosecutor's Office adduced evidence which proved beyond any reasonable doubt that a widespread and systematic attack on the civilian population was carried out at the time when the events he is charged with in the Indictment occurred; that Nenad TANASKOVIĆ was aware of such attack; and that in the context of this attack, he directly participated in certain actions and activities which are prohibited by Article 172 of the BiH CC, that is, he unlawfully and forcefully removed parts of the population from the places where they were entitled to be; that he abducted, detained or in other manner participated in the actions which caused severe denial of peoples' freedom; that he persecuted people based on their national and religious membership; that he tortured people by beating them up and inflicting on them severe mental pain and thus causing strong pains and sufferings; and that he aided and supported others in the preparations for the commission or in the commission of the offenses prohibited under Article 172 of the BiH CC; that he aided and supported rape and murder; that he aided and supported persecution.

Prosecution witnesses Rahima Zukić, Ferid Spahić, Mula Kustura testified in detail about those "cleansings" and convoys, witnesses Islam Cero, Suvad Dolovac, Witness D spoke about how they were forced to leave their property and were used as human shields, witnesses Salko Šabanović, Islam Cero, Witness D spoke how their personal property was plundered and burnt down, Witness A about the rape, Witness C about murders, witnesses Mula Kustura, Sabaheta Ramić, Rahima Zukić, Ferid Spahić, Witness B and witnesses Fazila Cero, Suvad Dolovac, Mula Kustura, Sabaheta Ramić, Ferid Spahić, Rahima Zukić, Islam Cero about the abductions which ended in murders, witnesses Suvad Dolovac, Islam Cero, Salko Šabanović, Witness C about detention, tortures and death. All these results indicate that the main purpose of the attack on non-Serb citizens in Višegrad Municipality was to eliminate the non-Serb population, and to create circumstances in the Municipality which would not encourage the return of the non-Serb population. The Accused stated that he knew that the number of Muslim population in Višegrad Municipality was reduced to a minimum. He stated that, in May 1992, he was mobilized and assigned as a military policeman, which was the position hardly to be avoided, knowing the scale or the plan of what was happening around him, in spite of his denial that he frequently went to Višegrad. He admitted that he had heard that people had been killed and thrown into the Drina River. He knew that



people were rounded up and expelled from Višegrad, but he claims that he did not know that the goal was to get rid of Muslims; in spite of the very observable fact that all those persons expelled from Višegrad were Muslims. Based on the foregoing, the Prosecutor's Office moves the Panel to find the Accused guilty and sentence him to long term imprisonment for a period of 25 years.

1. In the Closing Arguments presented by the Defense, the application of the BiH CC is contested first, as the Code which is less lenient for the Accused and the Defense holds that it is necessary to apply, pursuant to the principle of legality and the principle of prohibited retroactive application of laws, the law which is more lenient to the perpetrator, which is certainly the criminal code which was applicable at the time of the alleged commission of the offense by the Accused. The Defense also points out the obligation to apply this principle pursuant to Article 7(1) of the European Convention on Human Rights and Freedoms (hereinafter: the European Convention). Also, the Defense states that it is aware of the Decision of the Constitutional Court of BiH in the case number 1785/06, but it holds that one decision in a single case does not represent a general and binding position. When each particular count of the Indictment the Accused is charged with, inter alia, the criminal offense of persecution, is in question, the Prosecutor's Office failed to offer evidence which would prove the essential element of the offense of persecution, that being the discriminatory intent.

When Count 1 of the Indictment is in question, the Accused did not have any control over the events in the Police Station, and the evidence does not show that he committed the offense of rape. This Count of the Indictment is based on the statement of only one witness, namely the protected witness, and a sentence cannot be established on such statement.

With regard to Count 2 of the Indictment, the Defense points out that it has not been proven by any piece of evidence that the Accused committed the murder of Kemal Dolovac. The evidence concerning the beating of the brothers is also not reliable. The Accused stated that he did in fact take away the brothers Dolovac for interrogation, but upon the order by Vlatko Trifković. Also, the charges against the Accused for keeping them detained in inhumane conditions are not founded because he did not have any possibility to control or to impose the conditions in the Uzamnica barracks nor is there any reliable evidence supporting that.



When Count 3 of the Indictment is in question, the Defense holds that there is no responsibility on the part of the Accused with regard to this Count of Indictment either. There are certain contradictions in the statements of Witness B and Fazila Cero regarding the apprehension of M.M., and the testimony of Suvad Dolovac with regard to the apprehension of H.M. Also, the Prosecutor's Office failed to prove any involvement of the Accused in the killings of M.M and H.M.

The circumstances referred to in Count 4 have also not been proven with regard to the accused Tanasković. First, the offense concerning the deportation and the forced removal cannot be clear from the presented evidence because the Prosecutor's Office did not prove the intention of the Accused to really forcefully remove the people. Also, it is clear that the people who moved in a group toward the school in Orahovci, returned to their homes after a certain period of time. When the participation of the Accused is in question, the Defense points out that the escort of the group to the school was ordered by the superiors and that it was justified from the military point of view. With regard to the allegations on setting the houses on fire, it was not clearly established from the witnesses for the Prosecution who and in which manner set on fire the houses concerned, no one saw the Accused doing that. Also, the Defense does not accept the qualification of the column as "a human shield". In relation to Count 4 of the Indictment, the Defense points out that primarily, within the context of the actions with which the Accused is charged, there is no attack on undefended villages, nor can the actions as described under the Indictment be considered deportation or forced removal. The men fit for military service were regularly escorted by the soldiers, among whom the Accused was also present, which reflects his participation, to the school in Orahovci and the military Uzannica barracks, after which they were released to go to their homes, which is confirmed by the statements of the witnesses for the Prosecution. The reason for the civilians' detention was quite legitimate, while the military escort was provided pursuant to the orders of the superior structures, and the escort itself was carried out pursuant to the provisions of the IV Geneva Convention. Furthermore, there cannot be any discussion about the destruction of private ownership, since it was an isolated case that was conditioned by military needs, while in the case of the alleged setting fire to the houses, it arises from the witnesses' testimonies that the Accused did not carry out the stated action. Finally, with regard to the offense concerning the existence of human shield, the fact itself that the civilians went first, in front of the soldiers, does not mean anything.



The Defense holds that with regard to Count 5 of the Indictment the criminal responsibility of the Accused is excluded in its entirety. Primarily, it is obvious that the Accused is not mentioned as the organizer of the alleged deportation, nor was his activity related to the disputable actions proved. It is not clear whether the Accused was on the site of the event, and if he was, until which moment, and also whether he had any contact with the present persons. Therefore the existence of a plan and discriminatory intention for the offense he is charged with, is questionable.

Furthermore, the Defense disputes the identification of the Accused as the perpetrator of the offense referred to in Count 6 of the Indictment, since the identification itself was not carried out in the statutorily prescribed manner. Witness C. who identified the Accused as the perpetrator of the actions referred to under the Count concerned, is the only witness for the Prosecution who testified with regard to the circumstances under this Count, except that he did not know the Accused from before, and in the opinion of the Defense, there are certain inconsistencies in his testimony, thus the identification of the Accused is questionable.

Finally, the Defense notes that, in the period between 15-17 June 1992 the Accused was in Mladenovac, Serbia, which is several hundred kilometers away from Višegrad, to pick up humanitarian aid, and therefore it is clear that he cannot be criminally liable for the actions referred to in the stated Count of the Indictment. Furthermore, there are certain differences among the statements of the witnesses for the Prosecution, both with regard to the appearance of the Accused at the time of the alleged commission of the offense, and the actions of the Accused, therefore the identification of the Accused by those witnesses is questionable. Accordingly, it is quite clear that it cannot be established beyond any reasonable doubt that the Accused is the person responsible for the apprehension of Enver Kulovac and Ćamil Kopic. Above all, the Defense points out that there is no connection between the alleged apprehension of the stated persons by the Accused and the fact that they were subsequently killed, therefore the Defense holds that the Accused cannot be held criminally liable either for the apprehension or for the killings of the stated persons.

J. The Panel adduced evidence by examining both Prosecution and Defense witnesses and reviewing the proposed material evidence. Having evaluated the evidence individually and in combination, the Panel has ruled as set forth in the operative part herein:



Pursuant to the Indictment of the Prosecutor's Office, the Accused is charged with the commission of the criminal offense of Crimes against Humanity in violation of Article 172 (1) of the BiH CC, which reads:

(1) "Whoever, as part of a widespread or systematic attack directed against any civilian population, with knowledge of such an attack perpetrates any of the following acts:

- Depriving another person of his life;*
- Forcible transfer of population;*
- Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;*
- Torture;*
- Rape;*
- Persecutions against any identifiable group on ethnic, religious or other grounds that are universally recognised as impermissible under international law, in connection with any offence listed in this paragraph of this Article;*
- Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to physical or mental health.*

shall be punished by imprisonment for a term not less than ten years or long-term imprisonment.

1. It was the obligation for the Prosecution to establish, first of all, general elements of this criminal offence, those being:

- 1.1 The existence of a widespread or systematic attack;*
- 1.2 Directed against a civilian population.*
- 1.3 A "nexus" between the acts of the Accused and this attack, namely, that the prohibited acts were committed as part of this attack; and that the Accused had knowledge of this attack;*

Having reviewed the Prosecution evidence, the Panel concludes that from April to June 1992, there was a widespread and systematic attack conducted by the Army of the Serb Republic of Bosnia and Herzegovina ('VRS'), police and paramilitary formations, in particular, by the 'Beli Orlovi' (White Eagles), against the Muslim population of the Višegrad municipality.

1.1 Based specifically on the statements of Prosecution witnesses, the Panel concludes that from April to June 1992, more precisely in time periods relevant to each count of the Indictment, there was a widespread attack



conducted by the Army of the Serb Republic of Bosnia and Herzegovina ('VRS'), police and paramilitary formations against the Muslim population of the Višegrad municipality. So, for example, the Prosecution witness Rahima Zukić described how her village of Dobrun was attacked on 6 April 1992 by Serbs from the surrounding villages of Dobrunska and Tasići. This was both an infantry and artillery attack. Similarly, Islam Cero described how he first fled Osojnica in mid-April 1992, as a result of shooting and shelling all around Kabernik. The Užice Corps of the Yugoslav National Army (JNA) entered Višegrad and then departed. After that, scores of unarmed Muslims, mostly male, were illegally apprehended. Witness Mula Kustura and Witness A both testified that many of these men disappeared. The apprehension of men was often followed by arbitrary detention during which the civilians were maltreated and subjected to ethnic abuse, for example, being forced to sing Serbian nationalist songs. There were unprovoked attacks on villages, in the course of which people were arbitrarily killed. Muslim houses were systematically set on fire and six witnesses testified that their properties were burnt down. These violent actions of the army and paramilitaries created an atmosphere of extreme fear and anxiety, leading many civilians to flee to the woods. The incidents detailed above were committed throughout the Višegrad municipality, including the villages and settlements of Kabernik, Osojnica, Okolišta, Crnča, Počivala, Smriječje, Zagre, Veletovo and Dobrun. Thus it is evident that the attack on the Muslim population was widespread.

The Panel further concludes that the attack was systematic. It is clear that from the moment the Užice Corps entered the Višegrad Municipality there was a concerted effort by local Serbs to disarm and regulate the activities of the Muslim population. On many occasions there was a clear pattern to the treatment of captives, for example, after their initial apprehension, they were taken to the Uzamnica barracks or the SUP Police Building for further interrogation and beatings. Further, the scale of later incidents, such as those detailed in respect with Count 4 and 5 of the Indictment, required planning and the concerted effort of VRS, acting in conjunction with paramilitary groups and the police.

While considering the nature of the attack on the Muslim population in the Višegrad Municipality, the Panel also took into account some of the established facts listed above under Section D, especially the facts No. 11, 17, 18, 21, and 22.



1.2 As regards the status of persons against whom it has been proven that the acts charged in the Indictment have been committed, the Panel first of all refers to the provision defining the status of a civilian.

Article 3 (1)(a) of the Geneva Convention Relative to the Protection of Civilian Persons defines civilians as: "Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause."

This Article prescribes that this category of the population shall, at all times, be treated humanely, without any adverse distinction founded on race, color, religion or faith, sex, birth or wealth, or any other similar criteria.

The evidence of Prosecution witnesses, in particular Witness A and Islam Cero, amongst others, establishes that the attack did not target Bosniak military formations but rather Muslim civilian population. Thus, if the statements of these witnesses are analyzed in the context of Article 3 (1) (a) of the Geneva Convention Relative to the Protection of Civilian Persons from 1949, defining civilians as persons taking no active part in the hostilities, it is clear that the actions of the Accused targeted civilians.

1.3 In terms of establishing a nexus between the Accused's actions and the widespread and systematic attack, it is clear that his actions, which are described in the Counts of the Indictment of which he is found guilty, and which reflected in depriving the lives of persons, aiding in rape, acting as a co-perpetrator in torture, forcible transfer and destruction of Muslim property, were taking place during the period immediately after the widespread and systematic attack against the civilian population of Višegrad Municipality; his actions were part of that attack and were designed to further the progress of this larger attack. It has been established that the Accused was involved in taking the civilians for interrogations which would result in inhumane and degrading treatment either by the Accused himself or other individuals. In relation to Counts 1-3, this is evident from the fact that the Accused intentionally handed his civilian captives over to other authorities, either to the police or to the Army, who were participants in the attack. Thus, this interaction and cooperation with other participants in the attack serves to prove both that the Accused's actions were part of the larger attack, and moreover, that the Accused was aware that his actions formed part of such an attack. The Accused's attempts to force confessions from certain victims also reveal that the Accused's actions formed part of the attack and the Accused's knowledge of this fact. The immense scale of the incidents involved in Counts 4 and 5 of the Indictment demonstrates that such events were

nature, part of the larger attack. The Accused's involvement in these events is clearly established. Finally, in view of the events that preceded the apprehension of Enver Kulovac and Ćamil Kopic, their detention by the Accused was supposed to serve the malevolent purpose of the attack and contributed to the intention to remove Bosniak civilians from the Višegrad Municipality. The verbal attacks and characterisations used by the Accused when encountering Muslims, including his individual victims, such as Witness A, Suvad Dolovac and Rahima Zukić, demonstrate his clear intent to discriminate against individuals on the basis of their Bosniak ethnicity. It is notable that all his victims were indeed of Bosniak ethnicity, the same group that was the target of the widespread and systematic attack in the Višegrad Municipality. The Panel finds that this was not a coincidence, but rather, the result of the Accused's clear motivation to discriminate on ethnic and religious grounds. Considering the Accused's presence on the scenes of various incidents described in the Indictment and detailed below, especially his involvement in the taking of civilians on or about 31 May 1992 and the forcible transfer of them on 14 June 1992, it is beyond a doubt that he was aware of a larger attack targeting Muslim population. Furthermore, the rather visible and public nature of the persecution of this population, especially the consequences of the killings, had to be indicative of the scope and nature of such an attack. The Accused stated that he entered the town of Višegrad at this critical time and that he was in the vicinity of the bridge and the Police Station. Evidence shows that those were locations where the extremely brutal beatings by the Police and paramilitaries took place. The Accused also testified that he had spent a lot of time at the command post in Donja Lijeska, therefore he was most certainly aware of the ongoing military attack and the fact that it targeted Muslims. As such, it is indisputable that the Accused was aware that his actions furthered the attack on the Muslim civilian population of Višegrad.

The status of the accused at the time of commission of the criminal offense also supports the fact that it is evident that the accused carried out actions committing a criminal offense as part of an ongoing widespread and systematic attack of which he was aware. It follows from the evidence produced that the accused was a member of the reserve police force for the Višegrad Public Security Station, Trebinje Security Services Center. The Accused in his testimony, and the Defence witnesses Momčilo Trifković and Boško Arsić, state that, at the material time relevant to the Indictment, the Accused was a member of the Army of Republika Srpska. However, as indicated in the Republika Srpska Ministry of Internal Affairs records, the Banja Luka RS MUP Letter No. 02-7652/06, dated 11 September 2006,

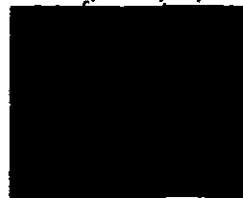
proposed as material evidence by the Prosecutor's Office of BiH, says that the Accused was listed as a member of the reserve police force of the then Višegrad Public Security Station as of 10 June 1992 and that, according to the Trebinje Public Security Center, was listed on Višegrad Public Security Station payroll for the month of June 1992. The assertion that the Accused was a member of the police force is also supported by testimony from Witness D, Sahabeta Ramić and Mula Kustura. They observed the Accused associating with reserve policeman, in a police car and wearing a police uniform. The Panel is satisfied that, at all the times covered by the Indictment, the Accused was a member of the police reserve force. In that capacity, the Accused participated in the attack against the Muslim population. On the other hand, the Accused testified that his role in VRS, in May and June, was limited to delivering food to the front lines and to driving the commander of his company at Donja Lijeska. Given the coherent and consistent testimonies of witnesses for the Prosecution, which indicated that the Accused really was involved in criminal activities, and bearing in mind the material evidence of the Prosecution, which again establishes beyond a doubt that the Accused was a member of the reserve police, the Panel finds this claim to be untenable.

Based on the foregoing, the Panel concludes beyond a doubt that the relevant actions occurred at the time of a widespread and systematic attack by the Army of Republika Srpska, police and paramilitary formations against the civilian population of Višegrad Municipality, and that the Accused, acting as part of such an attack, was aware that his actions represented part of such an attack.

2. As regards the act of the perpetration itself, the Prosecution witnesses, who testified about the circumstances surrounding the charges of the perpetration, are mainly direct eyewitnesses to the incidents, however some of them are also direct victims.

2.1 In respect of Count 1 of the Indictment, the accused is charged with the commission of the criminal offense under Article 172 (1) subparagraphs (e), (g), (f) and (h) of the BiH CPC, and the Panel finds that the accused is liable for the commission of this criminal offense as a co-perpetrator per sub-clause (e) (deprivation of liberty of Witness A and Junuz Tufekčić), and as an accessory per sub-clauses (g) rape of Witness A and (f) torture of Witness A resulting from the rape.

The Panel finds that these charges have been proven by the testimony of Witness A and, in part, the testimony of witness Dragiša Trifković. Witness A is



a victim of this criminal offence and her testimony focused on the circumstances surrounding these charges.

According to Witness A's testimony, on the relevant date, 14 May 1992, while she was standing on the border of her neighbour's estate, the Accused arrived in a red 'Fičo' vehicle and said: "You are the one we are looking for." The Accused then pointed at the witness, instructing her to approach him. He arrived with Nenad Mirković. The Accused was very aggressive and was shooting his weapon in the air and also kicked around the groceries she had bought earlier that day. The Accused then ordered her to enter the car, in which he had arrived, and she did so. The Witness stated that she did not utter a single word throughout the journey and that she was uncertain as to whether she would come out of this alive. She did not feel at liberty to leave the vehicle. Thereupon, they went with witness A to Vladimir Drašković's house where the Accused, in the company of Nenad Mirković, forced Junuz Tufekčić to enter a Lada vehicle. Witness A testified that Junuz Tufekčić did not enter the vehicle voluntarily. Thereupon, the accused ordered Tufekčić to drive him and Witness A, whereas Nenad Mirković left in his vehicle. Witness A again sat in the back seat of the Lada which took them towards the building of the police station in Višegrad where they were detained for the next 48 hours. When the Accused deprived them of their liberty and forced them to enter the vehicle, he did not explain to them the reasons for their deprivation of liberty or where he was taking them.

This Count of the Indictment charges the Accused with the criminal offense defined in Article 172(1)(e) of the BiH CC, which includes the following elements:

- Imprisonment or other severe deprivation of physical liberty;*
- In violation of the fundamental rules of international law;*
- With direct or indirect intent.*

Taking into account the facts established above, the apprehension of Witness A and Junuz Tufekčić was not voluntary and was carried out in such circumstances causing reasonable individuals to feel fear and uncertainty, and to fear for their lives and safety in general. It is evident that through this act, bearing in mind the aggressive nature of the Accused's, including firing his gun in the presence of Witness A, the Accused very easily established his control over Witness A and later Junuz Tufekčić's movements from the very moment he approached them. The desired purpose of these actions was to

frighten both victims, ensuring they were aware that they had no choice but to obey the Accused and accompany him to the police station. At which, they were not given any explanation as to why they were being apprehended and where they were going to be taken. Moreover, the fact that Witness A did not dare speak during this entire episode, because she feared for her life, is an indication of the extent of her subjugation and deprivation of liberty.

To this day, Witness A has received no explanation for her apprehension. Therefore, it is indisputable that Witness A's detention was arbitrary and without legal foundation.

Based on Witness A's account, the Panel concludes that, in that same manner and resulting in the same consequence for the victim (apprehension and taking to the police station), the Accused also arbitrarily and intentionally deprived Junuz Tufekčić of his liberty without giving him any explanation or information as to why he was apprehending him or where he was taking him.

Bearing in mind the obligations under Article 3 of the Fourth Geneva Convention cited above, the actions of the Accused related to apprehensions were contrary to the rules of the international law. In addition, it should also be noted that the caselaw of the ICTY speaks about "arbitrary detention, or deprivation of liberty in cases where it occurred without regard for elementary rules of procedure, as part of a widespread and systematic attack targeting civilian population."¹ When the actions of the Accused are seen in the context of everything mentioned above, it is clear that the apprehension and subsequent detention of these two persons was indeed arbitrary and without any legal basis, and also contrary to the rules of the international law.

The Accused is charged with committing the specific criminal offence as an accomplice. Article 29 of the BiH CC defines an accomplice as a person who, together with several persons, by participating in the perpetration of a criminal offence or by taking some other act by which a decisive contribution has been made to its perpetration, has jointly perpetrated a criminal offence.

As detailed in Witness A's testimony, the Accused was with Nenad Mirković when he apprehended Witness A, then he and Marković went to pick up Tufekčić; in the company of Marković, then the Accused forced Tufekčić to enter the Lada vehicle and drive them. The fact that the accused was an accomplice is reflected not only in the fact that he, by acting with Nenad Mirković, deprived these two persons of their liberty, but also in the fact that

¹ ICTY, Kordić and Čerkez (Trial Chamber), 26 February 2001, p. 302-303;



the Accused made a decisive contribution to the subsequent detention of those persons during the time they spent in the police station where other persons took control over them; to which the Accused made a decisive contribution as described above. In doing so, the Accused was aware that his actions constituted a criminal offense and yet still he wanted its commission, thus he acted with direct intent in the case of both victims. This is additionally corroborated by the fact that, when he arrived at the house of Witness A, he specifically said he was looking for her. Therefore, the Panel finds that he committed the criminal offense referred to in Article 172 (1) (e) of the CC BiH - deprivation of Witness A and Junuz Tufekčić of their liberty as an accomplice.

2.2) In addition to that, before they were both brought to the Police Station building, the Accused said to Witness A: "You will see now how Karadžić and his army fuck. Alija and his army could not fuck you well, so you will see it now". then he also told her that she would be "reading the prayer of Our Father and making the sign of the cross". After the Accused escorted them to the Ministry of Internal Affairs building, he took her to a room where a certain Drago Samardžić was. Samardžić questioned Witness A for approximately forty-five minutes, telling her that she would never return to her work or house and asserting that the house had been destroyed because it was full of weapons. The interrogation particularly focused on the whereabouts of Witness A's brother, who was suspected of having been involved in fighting. After that, Samardžić sent her to a room in the MUP building. The Witness stated in her testimony that she had been imprisoned in that room for forty-eight hours. That same evening when she was brought there, in the early evening, unidentified men began entering the room at fifteen minute intervals. Members of the Užice Corps would also visit the room and ask what the Witness was doing there. Some time on the following day, two masked soldiers entered the room and told the witness to take her clothes off. She attempted to resist them, so they punched her and tore off her stockings, whilst taking off their own clothes. One soldier then penetrated her vagina with his penis, before the other forced her to take her penis in his mouth and perform oral sex on him. The soldiers then switched and forced her to repeat these actions. Witness A stated that she had been released from the police station the following day at which time her sister was also released, having been imprisoned on an upper floor with Junuz Tufekčić.

In relation to this Count of the Indictment, the Accused is also charged with rape as a Crime against Humanity. According to the definition under Article 172(1)(g) of the BiH CC, there shall be an act of rape when another is coerced

by force, or by threat of immediate attack upon his life or limb (...) to sexual intercourse or an equivalent sexual act.

The account of the Witness clearly indicates that the actions of these two soldiers constituted a criminal offence defined under sub-clause (g) of Article 172 (1) of the BiH CC.

The Panel observed that, during her testimony in the main trial, the Witness was visibly shaken when she described those rapes. Thus, in the light of the fact that this act occurred whilst the witness was in a locked room with no means to escape, as well as the fact that the soldiers treated her aggressively and that she attempted to avoid their advances, it is clear that such actions were carried out in the knowledge that she did not consent to sexual intercourse.

The Accused is charged as committing this criminal offense in the capacity of an accomplice. However, the Panel does not accept such qualification of the nature of his actions, because the Accused himself did not directly participate in the action of commission. He acted in the capacity of accessory, because by using the available means – weapons as the means of coercion to make the witness enter the car which he drew away, knowing that he was taking her to be raped, and using the car as transportation means, he committed the actions which helped the subsequent act of rape on the part of unidentified soldiers.

Article 31 of the BiH CC defines accessory as a person who intentionally helps another to perpetrate a criminal offense.

When the nature of the actions of the Accused is analyzed, it is clear that the relevant incident would not have happened had the Accused not taken the actions of ordering the witness to come with him and her apprehension to the site where the offense was committed. The causative-consequential connection between the actions of the Accused and the consequence that resulted is clear, and, considering the event in the entirety, it is obvious that the Accused is indirectly responsible for the criminal offense of rape, as an accessory and not as an accomplice.

It is indisputable that in doing this the accused acted with direct intent. The Panel based their conclusion on the statement indicating that she would be raped, which the Accused made to her before taking her to the Police Station. This leads to the conclusion that the Accused was aware of the action he was committing, and he wanted the commission of the act, although he was not

directly involved in the forceful act itself. Therefore, taking into account the awareness of the act he committed, and having wanted that act, he proceeded to take actions which helped the commission of the criminal offense, the Accused committed the offense with direct intent, as an accessory, therefore, the Accused is guilty of the commission of the criminal offense referred to under Article 172 (1) (g) of the BiH CC.

2.3) The Accused is also charged with the criminal action of torture as a result of rape referred to under Article 172 (1) (f) of the BiH CC. According to the definition, the offence referred to under Article 172(1)(f) is as follows:

- Infliction of severe pain or suffering, mental or physical;*
- Upon a person in the custody or under control of the Accused*
- With intent ('intentional infliction')*

In addition to the aforementioned elements, the ICTY and the International Criminal Tribunal for Rwanda ('ICTR') have determined that customary international law requires that the infliction of this severe pain or suffering be "for the purpose of obtaining information or a confession, or to punish, intimidating or coercing the victim or a third person, or at discriminating, on any ground, against the victim or a third person"².

The rape of Witness A also amounts to her torture, because rape necessarily implies the infliction of severe pain or suffering³. Further, Witness A described the mental suffering and revulsion which this incident caused her and continues to, even fifteen years later. According to Witness A, she was taken to the police station and subsequently raped with the intention of obtaining further information about her brother or to punish her for failing to provide information of her brother's whereabouts during her interview with Samardžić. Again by reference to the fact that Witness A's sister was also apprehended, it is clear that part of the intended purpose of this apprehension and rape was to elicit information from the Witness A and/or to punish her for her association with her brother who was an alleged fighter. For the reasons already stated, this Witness was also targeted because of her Bosniak ethnicity. In view of the fact that it was the Accused who apprehended both Witness A and, according to her, her sister, it follows that the Accused was aware of all the prohibited reasons for which Witness A would be raped and

² *Prosecutor v Akayesu*, ICTR Trial Chamber 2 September 1998, para 594; *Prosecutor v Kunarac et al.*, ICTY, Trial Chamber, 22 February 2001, paras 485 and 497

³ *Kunarac Appeal*, paras. 149, 150:

desired such an outcome. The Panel 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 which requires the proof of a fact not required by the other. The distinct element for rape is sexual penetration, and for torture it is the prohibited purpose⁴.

As to this action, the Accused is charged as an accomplice, however, same as in the case of rape, the Panel concluded that the Accused acted as an accessory in the commission of this criminal offense of torture which is the result of the rape.

Therefore, based on the foregoing, the Panel concludes that the actions of the Accused contain elements of the criminal offense of Crimes against Humanity under Article 172(1)(f) of the BiH CC - torture, and that the Accused acted as an accessory with regard to this count as well.

Witness A is absolutely certain that it was the Accused himself who committed all the acts described above. She stated that she knew the Accused Tanasković from before the war and that they grew up together. Further, the witness knew the Accused was a bus conductor and that his father, Momir, ran a shop which she had visited countless times. The Witness was also acquainted with Rade Tanasković, identifying him as a bus driver, and stated that she could distinguish between the two men.

Witness A's testimony is also partly supported by Dragiša Trifković's testimony. This Witness testified as a Defense witness, but his testimony partly supports the testimony of Witness A, who stated that, after she and her sister were released from the Police Station building, on their way home, they passed witness Trifković's house, where Witness A's father was, who, having seen them, started calling after them.

Witness Dragiša Trifković corroborated the fact that this witness's father, a former work colleague, had come to visit him, to seek assistance in locating his daughters who had been captured by Serbs. As they were talking in Trifković's garden, the two daughters passed by and Witness A's father ran after them, calling Witness A's name. This account is consistent with the evidence given by Witness A.

The Panel took into consideration objections made by the Defense, relative to this Count of the Indictment. The Defense objected that the Accused had no

⁴ Court of BiH Verdict, Janković X-KR-05/161, Trial Panel, page 59.

control over the events in the police station. The Panel explained that the Accused was neither the perpetrator nor the accomplice in the action of rape and torture of Witness A, nor is he charged under the Indictment as an accomplice. As already explained, the actions of the Accused are limited only to the fact that he helped in the commission of the offense by using the available means, without which the commission of the offense would not be possible, knowing that his actions in arbitrarily apprehending and transporting her to the police station would result in the rape of the victim. Also, the Defense objected that this Count of the Indictment was based on the testimony of only one witness, that is, the protected witness, and that a conviction cannot be established on such testimony. The Panel notes that it is free to evaluate the evidence and, pursuant to Article 15 of the BiH CPC, the Court has the right to evaluate the existence or non-existence of facts and that right is not related to special formal evidentiary rules. In the opinion of the Panel, if certain evidence is lawful and valid, and if it is authentic and credible, such evidence can be sufficient to establish that a criminal offense has been committed, even if that evidence comes from only one witness. The crime of rape is rarely committed before witnesses. The Panel noted that Witness A gave a highly emotional and for her a painful testimony in a clear and coherent manner, and that there were no inconsistencies in her testimony with regard to what happened to her subsequently and the actions of the Accused himself. Furthermore, part of her testimony is supported by Defense witness Dragiša Trifković. It is also important to note that the rape occurred in Višegrad, which is indicated by the established fact that is adopted by this panel as number 21: 'Non-Serb citizens were subjected to other forms of mistreatment and humiliation, such as rapes or beatings.'

The Panel also notes that the Accused and the Defense knew the identity of this Witness, that this Witness testified directly at the main trial, and also that the Accused and the Defense had the opportunity to cross-examine this Witness, which they did. In considering this cross examination, the Panel was further convinced of the veracity of Witness A's testimony.

Furthermore, with regard to this Count of the Indictment, the Panel concluded that somewhat different state of facts than the state of facts described in the Indictment arises from the evidence adduced. It was first stated that the Accused came with a certain Nenad Marković. However, it was proven in the proceedings that this person was in fact Nenad Mirković.

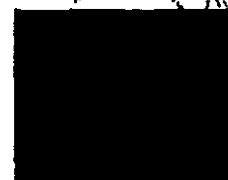
It is also indicated in the Indictment that the accused Tanasković shot three bursts of fire from an automatic rifle above the head of Witness A. However,

Witness A did not confirm that with certainty, but she stated that there was a shot fired above her head. Also, the Accused did not tell the Witness that she would be baptized, that she would be praying in a church and kissing the cross. The Witness stated the explicit words which were addressed to her in those terms, thus the state of the facts referred to in the Indictment was adjusted to all this in the Verdict.

Finally, the Panel could not establish with certainty whether Junuz Tufekčić was detained in the attic of the police station or on the third floor, however, it is clear from the testimony of witness A that it was the police station, therefore, the facts set out in the indictment have been accordingly adjusted in the Verdict.

3. In relation to Count 2 of the Indictment, charging the Accused with the criminal offense of Crimes against Humanity under Article 172(1) (a), (e), (f), (h) and (k) of the BiH CC, the Panel heard testimony from Prosecution witnesses Suvad Dolovac and Islam Cero.

Witness Suvad Dolovac testified that on 23 May 1992, at approximately 9.30 a.m., a Renault vehicle from the turpentine company passed by on the road below his father's house in Osojnica. Having heard rumours that the White Eagles were already rounding up people, this sight caused fear amongst Suvad Dolovac and his family members and they retreated inside. This group of civilians included Kemal Dolovac, Suvad's brother, who had been a member of the JNA up until the conflict broke out. Ten or fifteen minutes later, they heard loud and repeated shouting outside their house, calling the 'Dolovci' to get out of the house. In response to this noise, Suvad Dolovac and his family, including his young children, father, mother and pregnant sister-in-law left their house where they saw soldiers with guns pointed at them. The Accused and Novo Rajak were standing outside the front door. The Accused was armed with an automatic rifle and was wearing a camouflage uniform. Novo Rajak and the Accused ordered these civilians to raise their hands, using derogatory language, 'balija'. The house was surrounded by three other armed men: Goran Trifković was standing 2-3 metres above the property, Miloš Pantelić to the side and a certain Slavko, identified as Pantelić's younger brother, was standing next to the stable, 6-7 metres away from the house. These civilians were led to the road 30m away from the house. Meanwhile, the Accused returned to search the property with Suvad Dolovac's mother, forcing her to climb up and check in the attic. Nothing was found in the house. Novo Rajak then informed the witness that he would have to accompany them, so he returned to the house to get dressed. When he went outside, he met his brother,



Kemal, and the Accused. The Accused had informed his brother that he must also go with them, however, Kemal was not allowed enough time to get dressed before both men were forced down to the road. When they reached the road, Suvad and Kemal Dolovac were placed in the backseat of the car they had seen earlier. A soldier sat on either side of the brothers, with a third soldier in the open trunk of the vehicle.

Witness Islam Cero, an immediate neighbour from Osojnica, corroborated the fact that Kemal and Suvad Dolovac were taken away by the Accused, stating that he saw the Accused sitting in the passenger seat of this vehicle. He recalled that the brothers were in the rear and that at least two other armed soldiers were in the vehicle.

Witness Suvad Dolovac testified that he and Kemal were then taken to the local community building in Donja Lijeska. They were frequently insulted by Novo Rajak and, especially, by the Accused. These were religious insults against Muslims, cursing mosques, their balija's mothers and stating that "their time had arrived."

Novo Rajak and the Accused took the brothers inside the Culture Centre, where they were met by Vlatko Trifković. Witness Suvad Dolovac described how he and his brother were seated at desks and interrogated by Vlatko Trifković, who was also sitting at a desk. Novo Rajak sat in between the brothers, whilst the Accused was pacing around behind them. The questioning focused on who was attacking Bosnian Serb positions and burning flags. Initially, this was an oral interrogation, however, every answer their captors did not like, in particular the fact that Suvad Dolovac largely remained silent, was followed by physical blows from Novo Rajak and the Accused. Witness Dolovac stated that Novo Rajak hit him more frequently, but that the Accused also beat him. Eventually, the Accused grabbed Kemal Dolovac and gave him the paper on which to make a statement and pushed him towards another room. He then struck Kemal Dolovac's back with the barrel of his automatic rifle. Kemal stumbled towards the door. The witness described how he felt real anguish at this sight. The Accused then addressed Suvad Dolovac stating, "What are you looking at you mother fucker?" He then cursed the witness' mother and mosque again and hit him on the head.

The Accused then took Kemal into a different room. The other two men remained with Witness Dolovac and attempted to coerce him into making a statement, however, he stated he could not write what they asked of him. At some point, the Accused returned with Kemal Dolovac, who had written a 2:3.

page statement, and witness Suvad agreed to sign such statement without reading it. Having signed the statement, Novo Rajak grabbed Suvad Dolovac by the shoulder and took him outside, where he placed a pistol on his chest. Suvad Dolovac testified that he thought this action was intended to scare him, in order to elicit further information. Witness Suvad Dolovac stated that, after that, he was reunited with his brother whom he described as all red and bruised, indicating he had been beaten further while he remained in the room with the Accused and Vlatko Trifković. This detention and beating lasted at least an hour.

The Witness also stated that some time in the afternoon, Novo Rajak and the Accused transported the brothers to the Police Station in Višegrad. During this journey there were further curses. Novo entered the building, while the accused Tanasković remained outside with the brothers. Once inside the Police Station, Novo Rajak and the Accused took the brothers to a cell which had steel bars on the door. There was one window. They slept on the floorboards. Initially there were five men in this room, but this number rose to fourteen or fifteen on the third or fourth day. Witness Dolovac stated they were kept at the police station for a minimum of three days and possibly remained for a third night. During this time, due to Milan Lukić's presence, they often had to sing Chetnik songs and were taunted. In particular, Suvad Dolovac described an incident where a severely beaten man named Salko was thrown into their cell having been kicked and beaten in the narrow corridor outside. He stated they could hear his screams and the insults. Blood was dripping from Salko's ears and mouth. Nevertheless, Suvad Dolovac described his anxiety as such that he was afraid to help this man sit up for the fear that he would also be beaten as a consequence.

On the evening of 25 or 26 May 1992, everyone in this cell was transferred by a police officer in a van to the Uzamnica barracks. These men were taken to a building approximately 50 m from the gate to the compound which had a metal, two-winged door. In the morning, Suvad Dolovac observed that they were in a hangar with a concrete floor and there were some mattresses and blankets in one corner. The hangar had small windows, approximately 80 x 140cm, which were higher up than regular windows. Every other day, more individuals were brought into the hangar. The witness described these men as severely beaten up.

On 6 June 1992, some ten or eleven days later, a member of the Užice Corps entered the hangar and read out the names of twelve men, including Kemal Dolovac. The following morning, Suvad Dolovac together with five other men

were singled out for a proposed exchange. Of the twenty who remained, some were later identified amongst corpses which had been recovered from the Drina River at Žepa. Witness Dolovac stated that he had never seen his brother since and does not to this day know what happened to him. It was apparent from his demeanor when testifying that this witness continues to suffer anguish as a result of the trauma of the events described above.

3.1 Count 2 of the Indictment charges the Accused with, *inter alia*, the criminal offense of Crimes against Humanity under Article 172(1) as read with subparagraph (e) - deprivation of liberty of Kemal and Suvad Dolovac.

It is clear from the facts established above, that when ordered to leave their house at gunpoint, Kemal and Suvad Dolovac did not voluntarily surrender to the Accused and Novo Rajak. Rather by surrounding the Dolovac family home with armed soldiers and intimidating their relatives with aggressive and controlling behavior, the Accused and Novo Rajak intentionally created a situation of fear and anxiety designed to highlight their position of power and control. In his treatment of the Suvad Dolovac's mother, in particular, the Accused further underlined his authority and ensured that Kemal and Suvad Dolovac understood they had no choice but to accompany him. When the brothers were forced to enter the vehicle, they were deprived of their liberty and their fate became entirely in the hands of the Accused and Novo Rajak, as borne out by subsequent events. By surrounding the brothers with armed soldiers once inside the vehicle, they did not have any freedom of movement or any means of escape. Further, the treatment which they were subjected to during the journey to Donja Lijeska, frequently being insulted and humiliated by the Accused, further indicates the severity and extent of the brothers' subjugation and deprivation of liberty. The brothers were offered no explanation for their apprehension and detention. Further, it can be deduced from the clear distress of their family, that no explanation was forthcoming and it was unclear what would happen to Kemal and Suvad Dolovac thereafter.

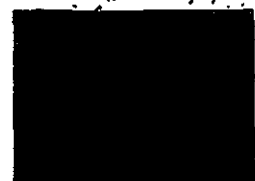
Through the application of the legal definition under Article 172(1) as read with subparagraph (e) of the BiH CC - deprivation of liberty, it is clear from the described situation that the actions of the Accused constitute the elements of the criminal action of deprivation of liberty of Suvad and Kemal Dolovac. The Dolovac brothers were deprived of liberty without being explained why they were deprived of liberty and where they would be taken. Witness Suvad Dolovac is the direct eye-witness and the victim of the events on that critical

day, and there are no inconsistencies in his testimony with regard to the concrete activities of the Accused.

3.2 Under this Count of the Indictment, the accused is charged with committing the criminal offense of Crimes against Humanity under Article 172(1) as read with subparagraph (f)-torture of Suvad and Kemal Dolovac. With regard to the treatment of the brothers during their interrogation at the Culture Centre, the Panel concludes that Suvad and Kemal Dolovac were in the custody of the Accused and Novo Rajak. By violently grabbing Kemal Dolovac from a sitting position and then hitting him in the back with the barrel of his automatic rifle with sufficient force so that he stumbled forward, and the Accused caused Kemal Dolovac severe physical pain. Moreover, by the time he left the Culture Centre, Kemal Dolovac was bruised and bleeding. Thus, it is clear that at some point whilst he was in the room alone with Vlatko Trifković and the Accused, Kemal Dolovac received further beating, enduring further pain and suffering. The Accused's behavior prior to that point, leads the Panel to conclude that these further beatings were at his hands, particularly in light of the passive role played by Vlatko Trifkovic throughout the interrogation of both brothers. In any event, it is clear that these three soldiers were acting in consort to extort statements from the brothers. Thus, the Accused intended to inflict severe physical pain and suffering on Kemal and Suvad Dolovac, and by his actions made a significant contribution thereto.

With regard to Suvad Dolovac, it is clear that watching his brother being maltreated by the Accused and being beaten and treated aggressively himself by both Novo Rajak and the Accused caused him great mental trauma, to the point that he was extremely concerned for his own fate. Despite the fact that during his testimony Suvad Dolovac minimized the gravity of his injuries, the Panel concludes that it is inconceivable that Suvad Dolovac did not suffer severe pain or suffering from being beaten twice, over a period of up to an hour. As stated above, the Accused was participating in a common plan to intentionally abuse these brothers, and thus his beatings, combined with his presence and his encouraging while Novo Rajak repeatedly hit Suvad Dolovac, constitutes a significant contribution to the physical torture of Suvad Dolovac.

It is indisputable from the Accused's actions that he intended to cause Kemal Dolovac and Suvad Dolovac the resultant severe pain and suffering, which included the mental suffering inflicted on Suvad Dolovac by forcing him to witness physical suffering inflicted upon his brother. The brothers were beaten



to achieve prohibited purposes, namely to obtain information and to punish them for not being sufficiently forthcoming. The religious insults made by the Accused, also indicate that the brothers were mistreated as a result of being Muslim. Thus, for the aforementioned reasons, the Accused's actions fulfilled legal requirements necessary for the existence of the criminal offense of torture.

Therefore, if the elements of the criminal offense of torture, indicated above with regard to Count 1 of the Indictment are taken into account, it is clear that the actions of the Accused constitute the elements of the criminal offense of Crimes against Humanity in violation of Article 172 (1) per sub-clause (f) torture with regard to Suvad and Kemal Dolovac.

In terms of identifying the Accused, Suvad Dolovac stated that he knew him well, both in his capacity as a bus conductor and from occasions when they socialized together. He stated he had never had a single problem with the Accused. He was also aware of the profession of the Accused's father, Momir. On the basis of the clear identification, the Panel concludes beyond doubt that it was the Accused who apprehended Suvad and Kemal Dolovac and was thereafter present at the events described above. This fact is corroborated by witness Islam Cero's identification.

Both these actions are included in the direct intent of the Accused, considering that pursuant to the testimony of the witness Dolovac, who was consistent and credible in his description of the events, the Accused knew what he was doing, that is, he was fully aware of the commission of both acts that he committed (the action of deprivation of liberty and torture of the brothers Dolovac) and he wanted the commission of those acts to occur.

Also, the Accused did not act as the sole and exclusive perpetrator in the commission of both actions, but by arresting the Dolovac brothers and by beating them subsequently with an intention to force out their statements, he contributed by his actions in the decisive manner to the commission of the criminal offense and he committed it together with Novo Rajak, due to which the Accused is responsible as an accomplice for the commission of this criminal offense pursuant to Article 29 of the CC BiH.

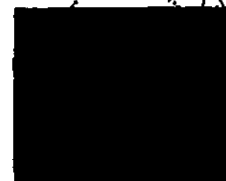
3.3 The Indictment charges the Accused with the criminal offense under Article 172 (1) per sub-clauses (a) - killing of Kemal Dolovac and (k) other inhumane acts - inhumane treatment of Kemal and Suvad, that is, their beating and detention in inhumane conditions, and (h) persecution.



When it comes to the charge relative to the act of killing of Kemal Dolovac, indeed, from the testimony of his brother Suvad, who never saw Kemal again after they had been separated in the barracks, it arises that his brother Kemal stayed in the barracks. However, the Prosecutors' Office has failed to prove that the Accused was either involved or aware of what was going to happen to Kemal Dolovac later on. The Dolovac brothers were deprived of liberty on the same day, they were together at the Police Station after which they were transferred to the Uzamnica barracks in Višegrad. The Accused did not even participate in the transfer of the brothers to the Uzamnica barracks. Witness Suvad Dolovac was released from the Police Station and was subsequently released from the Uzamnica barracks. Since the Dolovac brothers were deprived of their liberty on the same day, the Panel concludes that the intent on the part of the Accused was identical in relation to both Dolovac brothers because they still shared the same fate while under the control of the Accused. The Prosecution has failed to prove that the Accused intended that Kemal Dolovac be killed, which is supported by the fact that the Panel has no information on when, how and where the killing of Kemal Dolovac occurred. All these circumstances are relevant for determining the criminal responsibility of the Accused and his contribution as a possible accomplice or accessory in the killing of Kemal Dolovac. Failing to determine these relevant circumstances, the Panel could not conclude beyond reasonable doubt that the Accused is responsible for this killing.

In addition to the stated, the Accused is also charged with other inhumane acts, specifically with the inhumane treatment of the Dolovac brothers, that is, their detention in inhumane conditions. However, the Prosecutors' Office has failed to prove that the Accused was aware of the conditions to which the brothers would be subjected in the barracks, especially because the Accused had not brought them there. The Panel could not conclude with certainty what the contribution was and whether it existed at all on the part of the Accused for the inappropriate conditions of the detention of the brothers in the barrack Uzamnica. With regard to these charges, as described above, in the opinion of the Panel, the responsibility of the Accused is limited only to the actions of deprivation of liberty and torture of the Dolovac brothers, and ends at the point of their being brought into the Police Station.

With regard to this Count of the Indictment, the Panel concluded that a somewhat different state of facts other than the state of facts described in the Indictment arises from the evidence presented. In those terms, the Panel did



not establish that the Accused hit Kemal Dolovac with the rifle butt, but rather with the rifle barrel, as explained by witness Suvad Dolovac.

With regard to Count 2 of the Indictment, the Defense objected that the evidence concerning the beating up of the brothers was not reliable. The Accused stated that he had taken away the Dolovac brothers for interrogation, but only upon the order of Vlatko Trifković. With regard to this, the Panel points out that the conviction on the basis of this Count, is based on the testimony of witness Suvad Dolovac, who is himself the victim of this action of the Accused. The testimony of this Witness is substantiated in its key part with the testimony of witness Islam Cero who is the direct eye-witness of the Dolovac brothers' apprehension. There are minor inconsistencies between the accounts of these two witnesses: Islam Cero recalled the vehicle in which the Dolovac brothers were taken away to be a Red Passat, whereas Suvad Dolovac identified it as a Renault 21, a shade between blue and green. Further, Islam Cero recalled two soldiers in the trunk of this vehicle. However, the Panel finds that these discrepancies are irrelevant to the substance of the Count and that it is inevitable that accounts will differ between witnesses in minor respects, particularly given the passage of time. As such, these inconsistencies do not undermine the credibility of witness Suvad Dolovac who gave a detailed, consistent and credible testimony.

The Defense called Suvad Dolovac as a defense witness. However, the Panel concludes that the evidence elicited was of no relevance to the specific incidents alleged in this Count.

4. In relation to Count 3 of the Indictment, charging the Accused with the criminal offense of Crimes against Humanity under sub-clauses (a), (e), (f), (h) and (k) of the BiH CC, the Panel heard testimony from Prosecution witnesses Witness B, Fazila Cero and Suvad Dolovac.

First, the Panel notes that Witness B was granted protection measures pursuant to the Law on Protection of Witnesses Under Threat and Vulnerable Witnesses, and that the measure of identity protection is one of the measures granted to the witness. Since the victims of this criminal action are close relatives of this Witness, the Panel decided, in order to protect her identity, to use the pseudonyms of victims rather than their full names. The Panel, the parties and the defense counsels for the Accused know the name of Witness B and of the victims.

Both Witness B and Fazila Cero testified that on a certain day in [REDACTED] truck approached from the monument in Kabernik and stopped a [REDACTED]

below Fazila Cero's home. Witness B stated the date was 25 May 1992, a day formerly celebrated as the Day of Youth. Upon seeing the TAM truck, Fazila Cero described how she went to warn her elderly relatives not to say anything should anyone approach the house, before hiding in the pit latrine. This witness then observed the Accused and three other men approaching her house. Both witnesses stated that all the men who approached Fazila Cero's house, including the Accused, were armed. Her aunt was then twice asked the location of Medo Cero's house, an empty property in which Witness B and her family spent their days, after their own property had been burnt down. They slept at Fazila Cero's house. At this point, Fazila Cero stated that the Accused personally said, "Speak up grandma, where [...] house, where H.M. lives, so I don't make troubles." The Witness was afraid that the stable, full of hay, might be set on fire, so she emerged from her hiding place and showed herself to the Accused. When cross-examined, Fazila Cero was uncertain as to which man spoke first, however, she was emphatic that it was the accused Tanasković who uttered the quoted comment. The Panel concludes that in view of the sinister nature of the comment and the fact that this Witness knew the Accused prior to this incident, her recollection of who spoke these words is credible and accurate.

Soon after the Accused arrived, Witness B approached the scene. She testified that the Accused instructed her to search for her son and husband or, as he threatened, "I will set all of you on fire." Witness B responded that her son and husband were not there, but the Accused told her to look for them nonetheless. He then informed Witness B they had arrested her husband who had told them their son was at the property. Fazila Cero confirmed that the Accused approached Witness B and questioned her as to her identity and the whereabouts of her son and husband, specifying their names. Further, she recalled that when Witness B replied that her husband was at work, the Accused smiled and laughed at her, asking if she was certain of this fact.

It is apparent from both Witness B's and Fazila Cero's testimony that Witness B was then forced to accompany the Accused and at least one other man towards the woods and the stream at the bottom of the meadow. According to Fazila Cero, Witness B raised her arms up in front of her to prevent them from taking her, but to no avail. Witness B described how, at some point during this incident, the Accused hit her with a rifle butt, before pushing her down towards the stream, instructing her to look for her son. When Witness B refused and told them to kill her instead, the Accused stated: "I will not kill you. I will kill your son instead." Witness B testified how she was confused.



frightened and afraid for her son while being moved down to the meadow and simultaneously beaten.

After approximately twenty-five minutes, Witness B arrived in the woods by the stream, one kilometer below Fazila Cero's house. The Accused forced her to call her son's name, telling him to come out. At some point her son, who had fled there previously that day, emerged from the woods. The Accused tied his hands. In a final attempt to prevent her son from being captured, Witness B said: "Nešo, don't do it. This is my only son, as you are your mother's only son." The Accused replied: "No harm will come to him, maybe he will just lose his head." At this point, Witness B collapsed, unaware of what was going on around her. Witness B's son was then placed in the TAM truck, which had been driven down the stream in the meanwhile, and he was taken away. Fazila Cero stated that the TAM truck left on the road towards Donja Lijeska before passing by the monument and out of view. Fazila Cero described Witness B's state of distress when she eventually returned to her home. Witness B stated that she saw the Accused pass through Kabernik on a later occasion, "until they arrested all the people." Two or three days later she and many of her Muslim neighbors left Kabernik permanently.

Witness Suvad Dolovac indirectly confirmed Witness B's account of what occurred in the woods. When imprisoned in Uzamnica, he spoke with Witness B's husband, who stated that, having captured him, Novo Rajak and the Accused went to pick up his son. Witness B's son also stated that he was called by his name and surrendered from his hiding place in the woods.

Witness B's husband, H.M., was also taken away that day from the premises where he worked. The Panel concludes this from the following evidence: Witness B testified that her husband had fled to the woods, but he had been called to go to work. He was taken away that day, after which she never saw him again. Witness Suvad Dolovac testified that Witness B's husband told him that he was taken by Novo Rajak and the Accused from the factory where he worked. The fact that Witness B's husband was at work was corroborated by the testimony of Fazila Cero, who confirmed that her husband and Witness B's husband had left for work together on the morning of the day in question. Two or three days later, Witness B went to see Novo Rajak to enquire as to her son's and husband's whereabouts and he then told her that they had first been taken to the Police Station. Suvad Dolovac confirmed that between 26 and 28 May 1992, H.M., Witness B's husband, and M.M., her son, were brought to the hangar in Uzamnica, where he and at least fifteen other men were imprisoned. Suvad Dolovac knew Witness B's son and husband as they came from neighboring settlements. Suvad Dolovac described how Nešo Tanasković, and

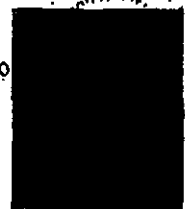
Novo Rajak accompanied these two men into the hangar and that both men were in poor physical shape. He described Witness B's son as strongly built, but his nose and face was swollen and bloody from the beatings. In addition to that, Suvad Dolovac testified that Witness B's son and husband told him that they were beaten by the Accused and Novo Rajak, stating: "Nešo beat [H] more severely, but also the other one, but more severely [H], while Novo was hitting [M]." Suvad Dolovac was separated from Witness B's son and husband on 7 June 1992, when he and five other prisoners were exchanged. Witness B's son and husband remained in the barracks and were later killed. Their dead bodies were later identified by Witness B, and a DNA analysis of their exhumed remains has been carried out, on the basis of which death certificates were issued confirming the deaths of Witness B's son and husband.

In terms of identifying the Accused, Witness B stated she knew the Accused throughout the twenty-five years she lived in the Višegrad Municipality, referring to him by his nickname 'Nešo'. They lived close to one another and she confirmed that he was a bus conductor whom she would see whenever she would go to town. Further, she recalled his father to be Momir Tanasković who worked in a shop which was located in a building near the school in Donja Lijeska. This identification was corroborated by Fazila Cero, who also identified the Accused on the basis of her encounters with him before the war. She would occasionally see him in his capacity as a bus conductor when she went into town, and she regularly frequented his father's shop. Further, she knew his father's name and was also able to offer the Panel a description of how Rade Tanasković differed in physical appearance from the Accused. Suvad Dolovac's identification is also credible for the reasons already discussed under Count 2. Thus, the Panel finds it indisputable that the accused Nenad Tanasković was present both at the arrest of Witness B's son and at the Uzamnica barracks when he and his father were imprisoned.

Under Count 3 of the Indictment, the Accused is charged with (i) the murder of M.M. and H.M.⁵, (ii) deprivation of liberty of M.M. and H.M. (iii) beating of M.M. and H.M. (iv) beating of M.M. and H.M., and the imprisonment of M.M. and H.M. in inhumane conditions and (v) persecution.

4.1 From the facts established above it is evident that whilst hiding in the woods and listening to his mother's distressed screams and cries, Witness B's son M.M. was placed in an invidious position, which left him with no choice but to emerge from his hiding place. As such, in responding to his mother's calls, Witness B's son did not voluntarily surrender himself to the Accused.

⁵ Note, the identities of Witness B's son and husband are known to the Court and all parties to



since the Accused was armed at that point. In forcing Witness B's son out of hiding and tying his hands, before placing him in the TAM truck, the Accused deprived Witness B's son, a civilian, of his liberty. The fact that this was a severe deprivation of liberty is borne out by the events which later befell Witness B's son, in particular his imprisonment at the Uzamnica barracks. The testimony of Witness B and Fazila Cero establishes that no explanation was offered to Witness B's son for his apprehension, nor were any basic legal procedures followed. Thus, his detention was arbitrary. Further, the evidence clearly demonstrates that the Accused intentionally deprived Witness B's son of his liberty. Also, when he approached Fazila Cero's house, the Accused stated on numerous occasions that he was specifically looking for the place where H.M., M.M.'s father, lived, demonstrating that he was interested in him exclusively. Moreover, the Accused's brutal treatment of Witness B, beating her, taunting her as to her husband's whereabouts, deliberately ignoring her screams and pleas to leave her son alone during the walk to the meadow, conclusively demonstrates that the Accused acted in a calculated manner, with the intent of depriving Witness B's son of his liberty.

While the evidence regarding the Accused's apprehension of Witness B's Husband, H.M. at work is only indirect, Suvad Dolovac was an eyewitness to the Accused's later bringing him to the Uzamnica barracks. Witness B's husband was in a very poor physical condition when he entered the hangar, barely able to walk. He was then imprisoned in squalid conditions. From these facts, the Panel concludes beyond a doubt that this imprisonment was arbitrary. In addition to that, the deliberate act of bringing Witness B's husband to the hangar was clearly intentional on the part of the Accused.

By applying the definition of "deprivation of liberty" pursuant to Article 172 (1) (e) of the BiH CC, the Panel concludes that the Accused deprived the husband and the son of Witnesses B, M.M and H.M, of their liberty contrary to the cited Article, and that the elements of this criminal offense have been met in all the actions of the Accused and all circumstances surrounding the commission of offence. When carrying out this action, the Accused was in the company of other soldiers with whom he deprived M.M. and H.M. of liberty. In doing so, he was aware of his action and wanted to perpetrate it, which can be inferred from the fact that the accused said that he was looking for M.M. and H.M. when he arrived in front of Fazila Cero's house.

4.2 Witness Suvad Dolovac described the severe physical injuries which had been inflicted upon M.M. and H.M., in particular the pain which Witness B's husband, H.M., suffered and how terrified he appeared. The evidence to

support the assertion that these injuries were sustained at the hands of the Accused and Novo Rajak is indirect, and has been derived from the testimony of witness Suvad Dolovac, who was not an eye-witness to the beatings. However, the Panel finds no reason to doubt its veracity. The statements made by Witness B's son and husband were both specific, in terms of alleging that the Accused beat Witness B's husband more severely, but also hit her son, who was primarily beaten by Novo Rajak, and were made contemporaneously to the beating. The fact that witness Suvad Dolovac said the same to Witness B when he was released from prison supports the accuracy of this testimony. Although witness Suvad was not an eye-witness to the beating, the Panel finds that his information, originating from what Witness B's son told him, is reliable and credible. The Panel believes that witness Suvad is a credible witness whose consistent testimony about what the victim told him remains unaltered with regard to what he learned immediately after the event. The testimony per se suggests sufficient reliable indicia for the Panel to rely on because he precisely recalls such facts as: there is direct evidence that the Accused captured the son of witness B: M.M.; there is sufficient direct evidence that the Accused brought both victims to the hangar; there is sufficient direct evidence that both M.M. and H.M. were severely injured at the time when the Accused brought them to the hangar; there is sufficient direct evidence that the injuries may be consistent with injuries resulting from beating; moreover, while in such a condition, they managed to confide in witness Suvad and the time, place and the person in which they confided do not give rise to motives for fabricating facts.

The fact that it was the Accused and other soldiers who imprisoned Witness B's son and husband also supports this assertion that these persons were in a position to gain power and control over captives. Based on the Accused's behavior over the previous two weeks, as established in Counts 1 and 2, the Panel concludes that these men were apprehended and beaten for no reason other than their ethnicity as Bosniaks. This conclusion is supported by the fact that while in captivity, they were interrogated about their involvement in fighting against Serb positions.

Thus, the Accused intentionally inflicted severe suffering and pain on M.M., Witness B's son, and H.M., her husband, thereby fulfilling the legal requirements of the offence of torture under Article 172(1)(f) of the BiH CC.

Also, the direct intent of the Accused Tanasković in the commission of those criminal actions was undoubtedly proven with regard to this Count of the Indictment also. He is not the only direct perpetrator of this offense; however,



with his actions, he made a decisive contribution to the commission of this criminal action, and in concert with Novo Rajak he participated in the commission of the offense, therefore he is liable as an accomplice.

4.3 Furthermore, the Indictment charges the Accused with the imprisonment of Witness B's husband and son in poor conditions in the Uzamnica barrack in terms of the commission of other acts of inhumane treatment under Article 172 (1) (k) of the BiH CC. Witness Suvad Dolovac testified that the Accused brought Witness B's husband and son. However, the Panel could not arrive at a reliable conclusion as to the contribution of the Accused, if any, to the existence of inappropriate conditions in the Uzamnica barracks to which both M.M. and H.M were subjected. Furthermore, there is no evidence that the Accused was aware of the conditions in the Uzamnica barracks to which M.M. and H.M would be subjected or that he had control over the facility.

With regard to the murder of Witness B's husband and son, the Indictment charges the Accused as a co-perpetrator in the commission of this offense as well. Clear evidence exist which proves that M.M. and H.M. are not alive. Evidence clearly shows that Witness B's son was imprisoned in accordance with a preconceived plan involving a multiplicity of persons, including the Accused. However, there is no evidence that the Accused was personally involved in the deprivation of lives of these individuals. The information concerning their fate was known during the time Suvad Dolovac spent in the barracks, but there was no news about them thereafter. A certain period of time elapsed between the bringing of M.M. and H.M. to the Uzamnica barracks by the Accused and Suvad Dolovac's leaving the barracks. Witness Dolovac did not testify that the Accused came to the barracks during that time period or that the Accused had any contact with M.M. and H.M. It is evident that the Accused brought these persons in, but the Prosecution has failed to produce evidence to the Panel showing what happened to them after Suvad Dolovac left the barracks. It is evident that these persons are no longer alive but there is no evidence by the Prosecution indicating either direct or indirect involvement of the Accused in the killing of these persons.

Finally, the Accused is charged under the Indictment for apprehending M.M, the son of Witness B, with two other unknown soldiers. However, the Panel could not establish with certainty the final number of soldiers who were there at the time with the Accused, but this fact in itself bears no specific relevance to the establishment of the Accused's criminal liability.



When Count 3 of the Indictment is in question, the Defense objects that there is no evidence of the responsibility on the part of the Accused with regard to this Count either, and that there are certain contradictions in the testimonies of Witness B and Fazila Cero with regard to the apprehension of M.M. and the testimony of Suvad Dolovac with regard to the apprehension of H.M.

The Panel considered this objection of the defense, and concluded that although their memory of the main events is the same, the testimonies of Witness B and Fazila Cero are not consistent with regard to certain issues, for example, with regard to the time when the Witness's son escaped to the woods, or when the TAM truck arrived. Thirdly, Witness B recognized the man who was with the Accused as Nenad Mirković, while Fazila Cero claims that it is Predrag Mirković, his brother. Finally, Witness B stated that her daughter and daughter-in-law had stayed in the house, while Fazila Cero says that his wife (that is, Witness B's daughter-in-law) was there on the meadow. However, Witness B herself stated that at those moments she was heavily shocked and unaware of the things that were happening around her. Of course, taking into account the panic and unrest which both women felt at the time, the time elapse from 1992 until the day of their testimony, as well as the war and terrifying circumstances in which these events occurred, it is inevitable that their testimonies differ with regard to certain less important facts. These irrelevant contradictions do not influence the credibility and reliability of these witnesses, and they surely are not relevant for the observation of the action itself of the Accused.

5. In relation to Count 4 of the Indictment, charging the Accused with the criminal offense of Crimes against Humanity under Article 172 (1) (d), (e), (f), (h) and (k) of the BiH CC, the Panel heard testimony from the following Prosecution witnesses: Witness D, Islam Cero, Salko Šabanović and Suvad Dolovac.

The testimonies of Witness D, Islam Cero and Salko Šabanović confirm that they were part of a column of approximately forty Muslim civilians forced to march from their houses to the school in Orahovci on or around 31 May 1992. These witnesses described how that day at around 8.30 – 9.00 a.m., armed men approached their houses and ordered them to surrender.

Witness Islam Cero stated that he heard the command to leave his house over a megaphone. A certain Jovo Zečević and the accused Nenad Tanasković, the latter being immediately recognized by the Witness, took turns in issuing orders over the megaphone. Witness Cero knew the Accused since the time



when, according to him, he would go to dancing parties in Donja Lijeska where he would see the Accused. He also knew that the Accused was a bus conductor. When he left his property, he was met by armed soldiers and the sight of a large number of his neighbours-Muslims from surrounding villages already standing on the road, a fact corroborated by Witness D and Salko Šabanović. Whilst no soldiers explicitly informed them as to the purpose of this, Islam Cero stated he assumed this formation was designed to protect the soldiers from injury in the event of an attack by the Muslim army, while Witness Salko Šabanović stated his perception was also that their presence was designed to prevent an attack on the Serb soldiers. These witnesses testified that throughout the time they were with this column, the soldiers were shooting above their heads and in the directions of the surrounding woods and that along the entirety of their journey, these witnesses observed Muslim-owned houses ablaze. After a short distance, a few of the elderly men were permitted to leave the column and return to their homes, however, additional Muslim civilians, all male, were also forced to join the column as it progressed through settlements towards Orahovci. These witnesses also described how their column converged with other groups of soldiers en route, for example at Butkova Stijene and Bukovica. When the column arrived in Orahovci, Witness D, Salko Šabanović and Islam Cero described how the soldiers broke into a shop near the mosque and looted it for supplies, including food and alcohol. The column was then marched to the school in Orahovci. These witnesses agreed that they had been marching for at least four hours and arrived at the school at some point in the afternoon, before nightfall. All three witnesses stated that a significant number of additional soldiers were present at the school. According to all three witnesses, there were armed soldiers all around the school, and Witness D and Islam Cero further stated that there was a guard stationed at the door to their classroom, and as a result they had no means of escaping.

Both Witness D and Salko Šabanović testified that they first saw the Accused at Butkova Stijena, he was sitting there with a group of soldiers. Witness Salko Šabanović stated that the Accused at that point was armed with an automatic rifle and that he had no doubt about his identity because he had known him from before the conflict.

Witness D stated that he had known the accused since the time when they used to socialize and play football together. Thus, the Panel indisputably concludes that it is a proven fact that the Accused was one of the soldiers, among other soldiers, who accompanied this forced march to the school in Orahovci.

Witness D further stated that he saw the Accused personally approach the door of Šaban Ajanović and that, having cocked his rifle he began swearing, ordering Šaban Ajanović to join the group. Witness D and Islam Cero also testified to seeing the Accused personally involved in the burning of houses. Witness Islam Cero stated that at Počivala he saw the Accused and a soldier he identified as Miloš Pantelić set a barn and a house belonging to Muslims on fire. Pantelić was carrying a jerry can of fuel. Further along the road, in Vlasin, Witness D described how the Accused and another soldier approached some civilians and inquired about the ownership of a particular house. The majority of houses had already been set on fire by an advanced party of soldiers, however this house was not on fire, only the nearby barn. When the Accused learned that it was a Muslim house, he and another soldier headed towards this property, approximately 30 metres away. Witness D saw the Accused enter the property, while the accompanying soldier remained at the door. Within a few minutes, the house was on fire. The witness did not see the Accused return from the house, as the civilians were relocated in the meantime. He later saw him again in the school in Orahovci, when he had brought cigarettes and bread for the soldiers' dinner by his TAM truck.

Witness Salko Šabanović also confirms that he too was taken to the school in Orahovci together with the group of men. At that point, no one told them where they were being taken. The Witness further stated that, that day, he first saw the Accused at the Butkove stijene on the way to the school. That evening, when they were brought to the school, the Accused and Miloš Pantelić came upstairs to the room where Salko Šabanović was detained and took him to a classroom on the ground floor. There were several soldiers in the classroom on the ground floor and they started questioning witness Šabanović, in an attempt to force him to confess that he had smuggled weapons. Witness Šabanović stated that they started beating him, kicked him in the back. This lasted 7-8 minutes. The witness stated that he was beaten by Miloš Pantelić and others but not the accused Tanasković. On the following morning at around 7.30 a.m. Salko Šabanović was taken for questioning again. Pantelić and Tanasković came for him and took him to the same room where he had been beaten the previous evening. Witness Šabanović stated that Pantelić beat him on this second occasion while the Accused was only present at that time. The witness stated that a certain Esad Džananović from Rogatica was brought to the school together with him, but although his left jaw was bruised he had not been beaten that evening. The witness also stated that a group of detained civilians were released from the school on the following day but this did not include him and Džananović. After the two of them were singled out from the group, they were detained in a prefabricated container for construction



workers in Lijeska pending further investigation into their activities during the previous weeks. While inside the prefabricated container, unknown soldiers would enter the container in groups and beat them, after which they were soon released.

Witness D stated that from his position outside the building, he observed the Accused and Pantelić in this classroom on the ground floor of the school in Orahovci where civilians were brought in and then beaten. He also confirmed the presence of Salko Šabanović and Esad Džananović in this room, whom he personally knew and who according to him was from Rogatica. The witness also stated that he saw when a certain Esad Džananović was brought to the school, who was brought there together with Remzija Ajanović by Aco Dragičević, their family friend. Witness D stated that he saw the accused in the school that evening when they arrived there. He again saw the Accused in front of the school with other soldiers while, following the orders of the other soldiers, the witness was turning the roasting spit where the lambs were roasting. Shortly thereafter, Tanasković went to a classroom on the ground floor of the building and the Witness then saw when after that Esad Džananović and Ramo Mlinarević were brought out of that classroom. The witness was certain that Tanasković was in the classroom during the beating of Šabanović, Džananović and Mlinarević because when he left the room Esad Džananović was covered with bruises as a result of hits, and his eyes were shut, and he was certain that at the time Džananović was brought in he showed no signs of injury. The witness also stated that he had heard the voices of Šabanović and Džananović coming from that classroom, while Esad Džananović told him that he had been beaten by Tanasković and Pantelić. According to the witness, the others were released on the following day with the exception of Salko Šabanović, Ramo Mlinarević and Esad Džananović who were taken to Lijeska for further questioning.

Witness Islam Cero testified that he saw the Accused in the school on one occasion when the Accused entered a room. Thereupon, the witness stated that persons started being taken out of that room. They first took this man from Rogatica and then they came back for Šabanović. After that, screams were heard coming from that other room. First they would take one person, during which time a soldier was waiting in front of the room. When they were finished with that first person, they would call another one. The Accused was in that office the whole time during the beatings. The witness stated that the prisoners were taken out on several occasions and beaten. People had bruises below their eyes after the first beating already.

Witness Suvad Dolovac also gave evidence in relation to this Count of the Indictment and stated that, one day while he was at the Uzamnica barracks, the Accused and Novo Rajak visited the hangar and brought in a man from Rogatica, who was identified by the witness as the son-in-law of Abdulah Kešmer. This man relayed to Suvad Dolovac how he was interrogated and beaten by Novo Rajak and the Accused, who then brought him to Uzamnica in the same small truck used to transport Witness B's son and husband. According to this witness, the man from Rogatica had visible signs of having been beaten. The fact that the person who was brought to Uzamnica really was Esad Džananović and was the son-in-law of a certain Kešmer is corroborated by the testimony of witness D. The Panel will not elaborate on this part because of the protected identity of witness D. The evidence to this effect is contained in the case file and the parties are aware of this.

In relation to this Count of the Indictment, the Accused testified that upon the orders of his commander, Vlatko Trifković, he delivered food to the soldiers at the school in Oraševci, remaining there for a brief period only. The Accused stated that he drove to the school via Butkova Stijena and Holijaci. En route he only noticed one burning house.

In relation to Count 4, the Indictment charges the Accused with (i) forcible taking of civilian captives, (ii) imprisonment of civilians, (iii) beating of Salko Šabanović and another man (iv) persecution and (v) using the civilians as a human shield.

5.1 After the application of the previously stated definition of deprivation of liberty referred to in Article 172 (1) (e) of the BiH CC, it is clear that the actions of the Accused have met the elements of this criminal offense with regard to this act of perpetration. Having acted together with other soldiers, the Accused participated in the gathering of civilians while passing through villages in order to finally escort them to the elementary school in Oraševci, whereby he personally forced at least one civilian to join the line (Šaban Ajanović). Undoubtedly, he was part of the group which took the civilians; witnesses recognized him and at the time they saw him he was armed. While doing this the Accused failed to offer any of the captives any explanation as to why they were being apprehended and where they were going to be taken. This is corroborated by the testimonies of the above mentioned witnesses who were direct eye-witnesses and who themselves were in the line, which was taken to the school.



The action of the Accused is connected with his direct intention because he was aware of the act of commission of the offense and he wanted the commission, which is additionally suggested by the fact that he, by taking turns with a certain Jovo Zečević, called on civilians to abandon their houses. By performing these actions, he acted in the capacity of an accomplice as defined under Article 29 of the BiH CC because he contributed in the decisive manner to the commission of the offence, having acted in concert with the other accomplices.

5.2. Furthermore, the Accused is charged with torturing Salko Šabanović and another man who was also detained in the school in Orahovci. Witness Šabanović's statement does not incriminate the accused with regard to the beating. Witness Šabanović merely stated that while he was at the school, the accused Tanasković and Pantelić took him on two occasions from the room where he was detained to the classroom on the ground floor where he was beaten, and that on both of those occasions when he was beaten (once in the evening and once in the morning), the Accused was present in the room where the beatings took place. The veracity of the averments made by witness Šabanović with regard to the beating is corroborated by witness Islam Cero who described how Salko Šabanović was taken to the room where the beatings took place and that he had bruises around his eyes when he returned already after having been taken for the first time.

In addition to that, the Accused is charged with beating another man. According to the evidence produced, it follows that this man was a certain Esad Džananović, a son-in-law of a certain Abdulah Kešmer. Although the Panel was offered indirect evidence concerning the beating of another man apart from Salko Šabanović in the form of testimonies of three witnesses, who are actually not eye-witnesses, the Panel nonetheless finds that the respective testimonies of Witness D, witness Islam Cero and witness Suvad Dolovac with regard to this circumstance are reliable and accurate. Furthermore, there is sufficient indirect evidence that another person, in addition to Salko Šabanović, was beaten and taken out of that room and that the Accused and this other person were in the room along with Pantelić and that when this person returned from the room where the beatings were taking place, he showed signs of a severe bodily injury of such nature as to be brought into connection with beating. In addition to the statement based on which the Accused is identified as one of the perpetrators, this is also proved by the statement of Džananović himself that he gave shortly after he had been beaten, still experiencing the consequences of such treatment. Džananović told Witness D that he had been beaten by Pantelić and Tanasković without

Witness D asking him, and this was said under circumstances when a person has no reasons to lie. There is sufficient indicia and corroborating evidence related to circumstances of secondary importance, for which reason the Panel finds that the testimonies of Witnesses D, Islam Cero and Suvad Dolovac are reliable and the Panel may rely on them. In contrast to this, witness Šabanović claims that Esad Džananović was not beaten that evening. However, if one takes into consideration the testimony of witness Cero who stated that the persons who were beaten took turns in the room where all that was taking place (hence, two persons could not be in the same room at the same time) and that witness Šabanović himself was a direct victim of the beating and cannot be expected to be able to remember details other than the ones posing a direct threat to him, the Panel finds that the testimonies of the other three witnesses, although not eye-witnesses, are more reliable and have a greater degree of consistency than the testimony of witness Šabanović who claimed otherwise.

Therefore, bearing in mind the definition of torture in BiH CC (Section 2.3 supra), it follows that the actions directed towards Salko Šabanović and the other man include the elements of the criminal offence of torture.

Namely, as a result of Salko Šabanović and this other man being beaten they suffered severe physical pain, given that he was beaten repeatedly in two days. Witness D stated that he saw him after one of those beatings and that Salko Šabanović was in a very bad physical condition, and so was this other man Esad Džananović.

According to the testimony of witness Cero, the Accused was present when the beating took place. Both victims were civilians under full control of the persons who had detained them in the school in Orahovci. Witness Šabanović himself stated that immediately prior to the first time he was beaten, the accused brought him to one of the classrooms in the school and that he was questioned regarding an alleged arms trade. Attempts were made to extort a confession from him during the questioning, and the same happened to Esad Džananović with the same goal. Esad Džananović and Šabanović were subsequently taken to Lijeska for additional questioning.

Hence, the acts of beating were perpetrated with a double intent: to attempt to extort a confession from the victim and to punish the victim because of "lack of cooperation". This encompassed the intent and the goal for which these persons were beaten.



It is also important to note that Witness Šabanović himself did not state that he had been beaten by the accused Tanasković, but rather Miloš Pantelić. However, if one takes into consideration the continuity of all acts of the Accused perpetrated during that day – that he was one of many soldiers who passed through the villages and arbitrarily deprived male civilians of their liberty, that he acted willingly, that he set Muslim houses on fire as he went along and, finally, that he was seen in the school where the captured male civilians were placed after their capture – coupled with the fact that witness Šabanović confirmed that the accused was present on two occasions when the former was beaten, the Panel unequivocally concludes that the Accused is responsible as a co-perpetrator in the torture of Šabanović. One should not disregard the fact what the presence of the Accused meant for the persons who were beating Šabanović and the other man. His presence must be interpreted as his approval of such an act, and as for the other persons who carried out the beating, his presence was encouraging to them as the direct perpetrators. In any event, the accused Tanasković had a choice, at least one choice, to refuse to be present during the mistreatment, but he did not do that. What is more, according to witness Šabanović, not only was he present on one occasion but he did the same when Šabanović was beaten on the morning after.

With respect to the beating of another person, taking into consideration the aforesaid, as well as the fact that three witnesses confirmed that Džananović personally told them that he was beaten by Pantelić and Tanasković, the Panel finds that the elements of the criminal offense with which the Accused is charged under this Count of the Indictment are also contained in relation to one more person in addition to Salko Šabanović, and that Tanasković is responsible for the torture of that person too as a co-perpetrator. Based on the foregoing, the Panel finds that the Accused is responsible for the criminal act of torture in connection with the criminal offence of Crimes against Humanity in violation of Article 172 (1) of the BiH CPC as an accomplice.

5.3 Furthermore, the Accused is charged under the Indictment for setting on fire several Muslim houses, however, it arises from the testimonies of two witnesses who testified with regard to this matter that while they were moving in the line toward the school in Orahovci, the Accused set on fire two Muslim houses.

First, it was the house in Počivala whose setting on fire was eye-witnessed by Witness Islam Cero. The Accused was then accompanied with one of the soldiers, Miloš Pantelić, when they set on fire the house and the stable. The



next house which the Accused set on fire was also a Muslim house in Vlasino. This was eye-witnessed by Witness D, who stated that the Accused was not alone on that occasion either, but that he was with one soldier. Thus, on the basis of the testimonies of those witnesses who gave reliable statements, the Panel concludes that the Accused committed both offences.

The fact that this was not an isolated incident of destruction of Muslim property is corroborated by the respective testimonies of Witnesses D and Islam Cero who stated that they passed by burning Muslim houses on their way to Orahovci. The outcome of all events in the area of Višegrad in terms of destruction of property and cultural monuments included the demolition of two mosques in Višegrad, which follows from the established fact no. 22 accepted under the mentioned Decision of the Panel.

By their nature, the acts of the Accused related to the burning of two houses fall under the acts of persecution – destruction of property. According to the definition referred to in Article 172 (2), persecution is defined as: intentional and severe deprivation of fundamental rights, contrary to international law, by reason of the identity of a group or collectivity.

For example, the ICTY qualified such similar offenses as persecution: “The criminal offense of persecution includes both violations of bodily and mental integrity and deprivation of liberty, and the offenses which seems to be less severe, for example, the offenses against property, if the persons who were the victims of such actions were particularly chosen because they belonged to a certain community.” (Blaškić (ICTY Trial Chamber), 3 March 2000, p.233).

Consequently, the Accused first obtained the information about the owner of the house which he intended to set on fire, only to do so when it was determined that the house in question was a Muslim house. It is clear that the actions of the Accused contain the elements of this criminal offense. Considering that the right to property constitutes one of the fundamental rights, the intentional and severe destruction of that property is contrary to international law. Both actions of setting fire to the houses in Vlasin and Počivala are included in the direct intent of the Accused who was aware of the offense he committed and who wanted to commit that offense. In both instances, the Accused did not act on his own, but with Miloš Pantelić and one more soldier. Thus, he contributed in the decisive manner to the commission of the offense by joint action in that regard.



For all the foregoing, the Panel finds that the above described actions of the Accused have met the elements of the criminal offense set forth in Article 172 (1) (e), (f) and (h) of the BiH CC.

In relation to the charges that he committed the criminal offense of forcible transfer, the Panel was unable to accept these qualifications simply because the Panel does not find that the requisite elements of that offence of forcible transfer, as prescribed by the law, have been established. Deportation or forcible transfer occurs in the event of a prohibited consequence reflected in the forced displacement of the persons concerned from the area in which they are lawfully present. It follows from the presented evidence that at least two male civilians were released in Višegrad prior to going to the elementary school in Orahovci. Moreover, the remaining male civilians who were deprived of liberty and were in Orahovci were also released and returned to the same area where they were living prior to being taken to Orahovica. Moreover, there is insufficient evidence of a deferred displacement, whereby the civilians returned to their homes or to the area where they previously lived, but left the territory of Višegrad immediately thereafter as a result of this incident in Orahovci.

Likewise, the Panel finds that the Prosecution has failed to prove that the activities in which the civilian men were forced to take part in on or about 31 May 1992 constituted their "use" by their Serb captors as human shields, and so the Panel concludes that the charge of 'other inhumane acts' has not been established by the evidence. Although it is clear that the civilians were forced to march to Orahovci, and that in doing so they were deprived of liberty by the Accused and his accomplices, the evidence shows that they were not taken into areas where landmines were thought to be buried, they were not threatened or shot at by any troops or persons opposing their captors, and they were not in fear for their lives or safety from any force other than their captors

According to the allegations of the Indictment, on 31 May 1992, together with the group of members of paramilitary forces, the Accused attacked Muslim villages. However, based on the evidence adduced, it arises that the criminal action occurred either on 31 May or around that date. Also, it is obvious that the Accused was with soldiers who attacked the villages, but it could not be established with certainty whether the soldiers were members of paramilitary forces. This fact in itself bears no specific relevance to the establishment of the Accused's criminal liability.



Having considered the Defense's objections with regard to this Count of the Indictment, which state that the circumstances referred to in Count 4 regarding the accused Tanasković had not been proven either, and that the escort of the group was carried out upon the superiors' order and that it was militarily justified, the Panel observes that the apprehended persons were civilians, that they were unarmed and were wearing civilian clothes. Furthermore, the evidence showed that those people were beaten up in the school by soldiers. Since Article 3 of the Geneva Convention strictly prescribes which actions are prohibited against this category, the objection on military justification of those actions is entirely unfounded.

The Defense also objected to the allegations concerning the setting of the houses on fire by the Accused, since it considers that it has not been clearly established from the Prosecution witnesses who and in which manner had set the houses in question on fire, since no one saw the Accused doing that. With regard to that, the Panel notes that two witnesses testified about the setting of the two houses on fire by the Accused. It firstly happened in the village of Počivala, and thereafter in Vlasin. When it is taken into account that two different witnesses stated that they had seen the Accused in both instances personally setting the houses on fire, and their testimony already points to the already established modus operandi of the Accused (he firstly finds out who are the owners of the houses, then goes to the houses and sets them on fire), the Panel does not find any reason whatsoever to have doubts in their credibility. Witness D indeed did not state that he had personally seen the Accused setting a house on fire, but he heard the Accused inquire about the owner of the house, he saw him entering the house after which he saw smoke from the house.

Finally, the Panel finds that the allegations of the Accused himself who stated that upon the orders of his Commander, Vlatko Trifković, he had taken food to the soldiers at the school in Orahovci and that he stayed there a short time, do not represent sufficient grounds for rejecting reliable statements by Witness D, Salko Šabanović and Islam Cero, especially bearing in mind that the route along which the Accused was travelling confirms his presence at locations where he was seen that day when the civilians were marched to Orahovci. Furthermore, the statement of the Accused according to which he arrived at the school at 7:30 a.m. only confirms the fact that Witness D, Salko Šabanović and Islam Cero saw him that morning.

6. In relation to Count 5 of the Indictment, charging the Accused with the criminal offense of Crimes against Humanity under Article 172 (1), (d), (e) and



(h) of the BiH CC, the Panel heard testimony from Prosecution witnesses, Rahima Zukić and Ferid Spahić.

Rahima Zukić described how on 14 June 1992, five or six local Serb soldiers, including Ljubko Tasić and his son, Željko, brought buses to the road below Dubovik and ordered them to go to Olovo. This order applied to the Muslim population of Dubovik. Soldiers entered these buses too, which were then driven to the square in front of the Hotel Višegrad. Witness Ferid Spahić's bus arrived in the same square. Both witnesses state that many buses from the various villages belonging to the Višegrad Municipality converged in the square. These buses were joined by other buses containing people from Višegrad town. Rahima Zukić recalled there were 8 buses and 4 trucks. Ferid Spahić could not state a number with certainty, however, he recalled his driver stating there were 700-800 Muslims being taken to 'their territory'. Both witnesses describe how the square was full of soldiers. Ljubko Tasić ordered each individual bus to make a list of those on board which was taken to the Hotel Višegrad, where Rahima Zukić stated the command of the White Eagles was located. In general, the civilians remained on the buses during this process which lasted from one to two hours. This convoy then left the square and took the road towards Sijemić, not Macedonia, the destination chosen by Ferid Spahić and others on his bus. This witness testified that the convoy took the mountain road through Serb settlements, rather than the main road to Sarajevo. Rahima Zukić recalled that there was a police vehicle at the head of the column, which was covered by the flag of the Red Cross and that a TAM truck with a heavy machine gun installed on it followed the convoy. Witness Ferid Spahić confirmed that he saw a similar vehicle when the convoy later reached Išević Brdo. Both witnesses state how the convoy was escorted by armed soldiers.

Witness Rahima Zukić stated that she first saw the Accused at Donja Lijeska, soon after the start of the journey. She saw him walk past by her bus, carrying a rifle. He was heading in the direction of the school where the soldiers and drivers were reportedly collecting sandwiches. The witness stated she knew the Accused for some ten years before the war, in particular, during the four years when she regularly commuted to work at the Varda furniture factory. Back then she would see the Accused at least once a week in his capacity as a bus conductor.

Having passed through Rogatica and Sokolac, amongst other places, the convoy reached Išević Brdo. At one point before the convoy arrived at Išević Brdo, witness Ferid Spahić saw the Accused. The witness knew him because

the two would come to each other's workplace and occasionally go for a drink. According to both witnesses, all the buses which had left Višegrad still formed part of the convoy. Some negotiations took place between the drivers and the escorts, before someone came to the door of Ferid Spahić's bus and stated that women, children and elderly could leave the bus. Others would be taken back for exchange. Witness Rahima Zukić stated that Željko Tasić came to the door of her bus and ordered that women, children and elderly leave the bus and men between the ages of fifteen and sixty-five were to remain on the buses.

Witness Rahima Zukić described how she was crying and begging the armed guard to let her husband out, but he ignored her. This armed guard remained on the bus in order to ensure that the remaining men did not escape. According to Ferid Spahić, originally the women on his bus complained that they did not want to be separated from their husbands and sons. However, one woman was forcibly removed from the bus, after which the rest followed. Rahima Zukić confirmed that women were crying for them to return their sons. As the buses were turning around to leave, the Accused ran from somewhere. He still had an automatic rifle on him and was wearing a uniform. He grabbed the door of one of the departing buses and as he was doing so, said "Go back to Alija's state. When you return our people to us, we will return your people to you." He jumped on the bus and then the convoy departed slowly.

The Witness stated that this was clearly a response to the women's pleas for the return of their male relatives. Those that had left the buses, including Rahima Zukić and her two children, were left to make their way from Išević Brdo on foot.

Witness Ferid Spahić described subsequent events as follows: using the same road they had travelled earlier that day, the buses drove to back to Sokolac. The fifty men were then boarded onto one bus where they slept overnight. On 15 June 1992, the convoy of the same buses and trucks departed for Rogatica at around 9 or 10 a.m. Before reaching Rogatica, Ferid Spahić saw the Accused driving one of the buses behind his own. The witness believed this bus was empty, but he could not state this conclusively. They approached a junction called Rasadnik where the witness saw a manned self-propelled gun. At this junction, Ferid Spahić watched as a blindfolded man was thrown out of a Citroen vehicle which had approached the scene from Rogatica. He had his hands tied behind his back and was kicked in the abdominal area by a man who had exited the Citroen. The beaten man was pushed onto the smaller Centrotrans bus used to transport Turpentine factory workers. The driver of the Citroen then instructed the Serb guard to "push the cattle off the bus." The



fifty men were forced to run the short distance to the Turpentine factory bus. From there, they exited the bus one by one to have their hands bound by wire. The witness stated that this occurred approximately one hour before the execution which followed. Ferid Spahić testified that he did not see the Accused at this point, nor during subsequent events. Somewhere near the village of Kalimići, the bus stopped in a forest and the men were lined up next to the bus in a typical military column, two by two. They were led along a trail away from the road. Ten men were taken from the front of the column, supposedly for exchange with Serb soldiers. When the first two reached the edge of a pit, behind some shrubs, the witness heard two short bursts of fire before these men disappeared behind the undergrowth. The witness was able to escape. Among the murdered men was the husband of Rahima Zukić, whom she identified in November 2000.

The Defence challenged his alleged participation in the events related to this Count of the Indictment on the basis that the Accused was engaged in other activities at the relevant times. First, the Accused testified that on 14 June 1992, he attended the funeral of his former commander, Vlatko Trifković, who had been killed on 13 June 1992, as confirmed by his death certificate (Defence Exhibit 11-2). He stated that the funeral took place at 2 p.m. in the Crnča town cemetery, lasting 1.5 hours, and that he and Boško Arsić were there to assist the deceased's family. In relation to this alibi, the Accused called Defence witnesses Dragiša Trifković, Boško Arsić and Witness M, none of whom could corroborate these specific details. Boško Arsić and Witness M both stated that the funeral was two days later, although they could not be certain as to a specific date. Although Dragiša Trifković states the funeral was on 14 June, he did not attend himself. Witness M did not attend the funeral either. Although Boško Arsić confirms that he saw the Accused at the funeral, his and the Accused's account differ in fundamental respects, which causes the Panel to doubt the accuracy and truth of the respective accounts. Boško Arsić stated that two other men were buried at the same time as Vlatko Trifković. Further, he did not mention any details about helping at the funeral, but rather indicated that he knew the Accused only as a very distant acquaintance. He saw him occasionally after their mobilisation but did not have any conversations with him.

Secondly, the Accused stated that he was in Serbia from the early hours of 15 June, collecting a convoy of humanitarian aid and returning on 18 June 1992. In this regard, the Defence tendered Defence Exhibit 11-16. This is a Certificate of the Ministry of Internal Affairs of the Republic of Serbia – Police Directorate Mladenovac Police Station No. 015.1-02/07 dated 12 Feb. 2007.

certifying that the accused Nenad Tanasković was registered as a temporary resident in Mladenovac between 15 June 1992 and 17 June 1992 and that his stay was registered in the Mladenovac Police Station under number KB 147/92. The document presented to the Panel is a photocopy and thus, pursuant to Article 274(2) of the BiH CPC, the Panel cannot treat it as a valid material evidence. The Certificate was produced by the Defense Counsel and submitted it to the Panel during the trial. The Panel observes that the Certificate was not delivered to the Court via regular procedure of rendering international legal assistance. If the Defense Counsel had wanted to present a piece of evidence by producing a certificate from another state, she should have addressed the Court and the Court would conduct the procedure laid down in Article 408 of the BiH CPC. In this manner, the Panel was presented with the photocopy of the certificate bearing no proof of validity of the seal and signature (no certification of the copy). In addition to that, the official document from another state was produced without respecting a proper procedure for obtaining such a certificate. Such certificate is a document, and the assumption is that it is accurate unless determined otherwise. In the particular case, the document is not valid from the formal and legal point of view and its accuracy was refuted by the testimonies of witnesses Rahima Zukić and Ferid Spahić, who stated that they saw the Accused at relevant locations during the time period covered by the Certificate in question. These witnesses have known the accused very well since before the war and there is no reason for the Panel not to give credence to their respective testimonies, especially because of the fact that their testimonies are additionally corroborated by the respective testimonies of witnesses Sabaheta Ramić and Mula Kustura who, also, have known the Accused very well since before the war and who confirmed that the Accused was present in Višegrad in the period 14-16 June 1992. Based on the foregoing, the Panel finds that the alibi of the Accused is not credible.

Further, the Accused's account of this trip is illogical and inconsistent. The Accused testified that he reported to the Mladenovac Police Station in Serbia upon the orders of his superior, stating that he was present there to collect a convoy of humanitarian aid, but not stating that he was present on military orders. The Accused registered with the police while wearing civilian clothes, despite testifying that one of the reasons for reporting to the police was because there were cases of desertion from the army. It took him three days to collect this aid, even though it only comprised cigarettes and other parcels. Further, he made this journey to collect aid in a passenger vehicle which would not have had capacity to carry great amounts. The Accused stated that he reported to the Police Station when he was leaving for Višegrad, yet he did

not return till 18 June, further undermining the validity of the purported registration certificate. Finally, he never registered his presence on any of the subsequent numerous occasions when he later visited Belgrade for operations, on average 2-3 times a year, instead relying on military referral papers. Thus, the Panel has no hesitation in doubting the veracity of these assertions, when set against the credible identifications of the Accused offered by witnesses Ferid Spahić and Rahima Zukić.

The Accused further asserts that his cousin, Rade Tanasković, was involved in the convoy on 14 June 1992. The Panel, however, finds this claim to be unfounded. Witness Ferid Spahić stated that he knew the Accused, whom he referred to as Nešo, very well and much better than Rade. The Accused himself confirmed that he had socialised with this witness, further strengthening this identification of the Accused. The Accused's testimony that his cousin informed him about his involvement in transferring a large number of people without mentioning the fact that they were Muslim civilians is implausible and causes the Panel to doubt the Accused's honesty.

In relation to Count 5, the Indictment charges the Accused with (i) forcible transfer, (ii) imprisonment of men under the age of 65 and (iii) persecution.

6.1 On the basis of the facts established above, the Panel finds it that on 14 June 1992, VRS soldiers and local Serb paramilitaries coerced several hundred Muslim civilians, including the witness Rahima Zukić, to leave Višegrad and villages in the surrounding municipality, who were then transferred by convoy towards Olovo and territory under the control of the Army of BiH. It is evident from the intolerable environment of violence and fear in Višegrad and the surrounding area, whereby Muslim civilians were targeted by virtue of their ethnicity alone, that in reality, these civilians had no choice but to leave their homes or risk serious danger to their personal security, including serious maltreatment and even death. In such circumstances, the Panel finds that any expressions of consent to joining the convoy which was leaving from the square in Višegrad do not represent evidence of a voluntary transfer. Rather, such sentiments corroborate the conditions in which those civilians were living. The presence and behaviour of the armed guards, drivers and the soldiers which the convoy passed along the way, also confirms that these civilians did not consent to the transfer, in particular the separation of women, children and elderly from the men which later ensued. The evidence establishes that these individuals were forced to leave their homes where they had resided for many years. The Defence sought to prove that this transfer was in the interests of the safety of these civilians and thus was not without

grounds, and that the presence of an armed escort was to protect the convoy from fighting taking place nearby in Sijemić. Whilst the partial or total evacuation might be permitted⁶ under international law, the Panel finds it indisputable that such was not the case on 14 June 1992.

International law elaborates on this definition, determining that the concept of 'expulsion or coercive acts' is not restricted to physical force, but rather includes the full range of coercive pressures placed on people to leave their homes, including fear of violence, duress, detention, psychological oppression, death threats and destruction of homes⁷. The key question is the involuntariness of the transfer.

It would be tautological to hold a transfer of a population to be in the interests of its own safety where the danger to that population was created by the transfer. Moreover, the evidence clearly establishes that the only purpose for this convoy was forcible transfer of the Muslim population from the area of Višegrad. No plans were made for the return of these civilians after the cessation of hostilities, which would have afforded some evidence of benign intent. The intimidating behaviour of various guards further demonstrates that the convoy was not designed to protect the safety of the civilians.

The evidence clearly establishes that this operation was carried into effect according to a pre-ordained operation of the local paramilitaries and VRS soldiers. Further, it is indisputable that the Accused played a role in this involuntary transfer. It is apparent from the Accused's behaviour and actions, as established in Counts 1-4, that the Accused contributed to the atmosphere of fear and violence directed against the Muslim population in Višegrad. Witness Rahima Zukić testified about one specific incident of the menacing behaviour of the Accused, a few days before the convoy. At some point prior to this incident, between 5 and 9 June 1992, Witness Zukić stated that she was sitting at the Višegrad bus station with a friend, Kada Šehić, and her teenage son. Kada Šehić was distressed and crying as her other son had been taken away towards the Višegrad spa. The Accused, dressed in civilian clothes, arrived at the station by a TAM truck. He was carrying an automatic rifle. Initially, Kada greeted this sight with relief as her husband also worked as a conductor at Centrotrans. She approached him and said: "Nenad, my son, can you help me. They took Rasim and my son." He replied: "What can I help

⁶ *Prosecutor v Krstić*, ICTY Trial Chamber, 2 August 2001, para 528

⁷ *Prosecutor v Krstić*, ICTY Trial Chamber, 2 August 2001, para 529; *Prosecutor v Krnojelac*, ICTY Trial Chamber, 15 March 2002, para 475.

you? Fuck you and your god, I will start slaughtering you today, everyone, including the old and the young, women and children."

In relation to the charges against the Accused under this Count, criminal offence in relation to the act of 'Forcible transfer' is defined in Article 172(1)(d) as:

- Forced displacement of persons;*
- By expulsion or other coercive acts;*
- From an area in which the population are lawfully present;*
- Without grounds permitted under international law*
- With direct intent⁹ to displace on a permanent basis.*

On the basis of witness testimonies the Panel concludes that the Accused accompanied the convoy soon after it left Višegrad, joining at Donje Lijeska. He remained with the convoy for some considerable distance, until it reached Išević Brdo, where the women were forced to separate from their male relatives aged between fifteen and sixty-five. The Accused assisted in the progress of the convoy by his presence as a uniformed, armed guard. Further, it is apparent that the Accused assisted in maintaining order on the convoy, as evidenced by the aggressive instructions he issued to Ferid Spahić during their encounter and his comments directed to the women at Išević Brdo. Although neither Ferid Spahić nor Rahima Zukić observed the Accused involved in the negotiations conducted throughout the course of the convoy, when the Accused instructed the women, children and elderly to "Go to Alija's state", he revealed his awareness of this common plan. On the basis that it would have been impossible to effect such a large convoy without the assistance of armed guards and escorts to maintain authority, the Accused, by his actions, made a decisive and significant contribution to the perpetration of this forcible transfer. Additionally, the comment he made at Išević Brdo demonstrates that the Accused shared the common intention that these civilians be displaced on a permanent basis, and not to have them return.

Therefore, if the action of the Accused in this sense is taken into account, it is clear that his actions have met the elements of the criminal offense of Crimes

⁹ Article 35 CC BiH; *Blagojević and Jokić*, ICTY Trial Chamber, January 17, 2005, para. 601: "As for the *mens rea*, the perpetrator must intent [sic] to remove the victims, which implies the intention that they should not return... The fact that no step is taken by the perpetrator to secure the return of those displaced, when the circumstances that necessitated the evacuation have ceased, is among the factors that may prove an intent to permanently displace the victims rather than the intent to secure the population through a lawful and therefore temporary – evacuation." See also *Naleitić and Martinović*, ICTY Trial Chamber, 31 March 2005, paragraph 520, 1362.

against Humanity with regard to the action of commission of the forcible transfer of population set forth under Article 172 (1) (d) of the BiH CC.

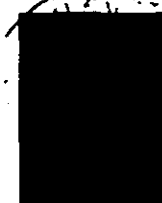
6.2 When the criminal action of imprisonment of male civilians who remained on the bus referred to in Article 172 (1) (e) is in question, the Panel finds that the charges for detention of men under age 65 have been also established. The order for women, children and the elderly to come out from the bus, and for men aged between 15 and 65 to remain on the bus clearly indicated to those who remained that they could not get out. Armed guards remained in the buses to prevent any men from escaping, while the convoy was encircled by many soldiers. The fact that these men were forced to watch the chaos which was taking place with the upset women being separated from the group only emphasized to the detainees the hopelessness of their situation, particularly when one woman was forcibly removed from the bus. When the convoy was leaving, the Accused, who was armed with an automatic gun, entered one of the buses which were leaving and in which were the detained men.

By the described actions, the Accused committed the criminal offense referred to under 172 (1) (e) of the BiH CC.

The Panel also concludes that on the day concerned, the Accused was one of the members of an armed group which led and escorted the convoy with civilian men in the buses. He is not the only perpetrator, but he acted as a co-perpetrator who by his actions contributed in a decisive manner to the commission of the offense.

The actions of the Accused were included in his direct intention, because he was conscious of the actions he committed and he wanted their commission. This is also indicated by his comment that he would return the captives who had stayed in the buses only after they "get their men back". In that way, he undoubtedly showed his agreement with the plan to imprison the men.

The Defense objected that the criminal responsibility of the Accused was not established with regard to Count 5 of the Indictment, because the Accused is not mentioned as an organizer of the alleged deportation, nor was his activity with regard to the disputed actions proven by any evidentiary means. With regard to this objection, the Panel did not find that the Accused was the organizer of the deportation. However, he was undoubtedly present during the entire movement of the convoy. If it is taken into account that he was armed and, as previously established, a member of military formations, as an accomplice he was undoubtedly a part of the organization and implementation



of the relocation plan, with whose participation the action was carried out. Even more so, he verbally expressed his agreement with the taking away of the men when they were separated from women and children.

The Accused is charged with driving one of the buses by which the civilians were transported from Višegrad to the territory controlled by the BiH Army. However, contrary to the foregoing, only one witness stated that he had seen the Accused driving an empty bus. The Panel has no evidence that the Accused ever drove a bus in which there were any passengers, civilian according to this Count of the Indictment, or any other for that matter. What is important is that the Accused was undoubtedly present in the convoy and that he participated in the forced transfer in the manner described above.

7. In relation to Count 7 of the Indictment, charging the Accused with the criminal offense under Article 172 (1) (a), (e) and (h) of the BiH CC, the Panel heard testimony from Prosecution witnesses, Mula Kustura and Sabaheta Ramić.

Both witnesses described how, together with six other Muslim civilians, they were returning from the left bank of the Drina River (Hotel Višegrad side) following an unsuccessful attempt to leave Višegrad on a convoy. Sabaheta Ramić testified that originally men were not permitted on this convoy. However, as the women were being assigned to particular buses, it was announced that men too were allowed on the convoy and thus Enver Kulovac, Mula Kustura's son, had joined this group of civilians. Mula Kustura described how her son was not healthy and had been retired from work, having had a serious accident. Ćamil Kojić was also amongst this group of civilians. The Panel based this conclusion on the fact that both witnesses identified a certain Zilka as being there with her husband: Mula Kustura stated Zilka's husband had the surname Kojić and Sabaheta Ramić recalled that the name of Zilka's husband was Ćamil. This identification is confirmed by the fact that both witnesses lived in the same building as Ćamil Kojić, albeit that Sabaheta Ramić was only residing there temporarily. Both witnesses confirm that the convoy was postponed due to the fighting. Sabaheta Ramić could not recall the exact date when this happened, she was able to narrow it down to 14 or 15 June, or on or around 16 June, which is the date alleged in the Indictment.

Mula Kustura stated the following then occurred: having passed by the group, the Accused then double-backed in the vehicle he was driving, returning to their location. He stopped the car next to the group and said: 'Kula... get in. He

was armed with a weapon which the witness described as a 'machine gun'. Mula Kustura stated that Kula was her son's nickname. Enver Kulovac entered the vehicle, sitting on the back seat next to an unidentified soldier who was accompanying the Accused. The soldier placed his arm around Enver Kulovac. The Accused also ordered Ćamil Kopic to enter the car, however, Kopic was deaf and could not hear him. The Accused called him a second time to get in. Ćamil Kopic's wife Zilka tried to explain that he was deaf, but in response to this apparent act of defiance, the Accused shouted at him, cursing his Balija's mother. He then pointed his weapon through the window of the car at Ćamil and Zilka. Zilka cried out and he replied: "Shut up, I'll kill you now." Ćamil Kopic then entered the vehicle and the Accused drove away in the direction of the Old Bridge and the town. During the night, Mula Kustura explained what had happened to Veljko Planićić, a Serbian neighbour and friend of Enver Kulovac. This Veljko took upon himself to check Enver Kulovac's whereabouts. On the following day, when Mula Kustura was on the convoy bus which would eventually take her to Olovo, Veljko found her and explained that Enver was in prison.

Witness Sabaheta Ramić corroborated Witness Mula Kustura's account, stating that as the group was returning to the Pavilion, the Accused stopped his car by the group. He was accompanied by a soldier wearing camouflage uniform. The Accused ordered Enver Kulovac and Ćamil Kopic to approach the vehicle, whereupon they entered the vehicle and the Accused drove them away. According to this witness, Enver Kulovac and Ćamil Kopic "did not have any other option or a way out of it." The witness stated the process of apprehension was over very quickly. Moreover, the Accused did not offer any explanation for why he was apprehending these men. Witness Sabaheta Ramić confirmed Mula Kustura's state of extreme distress after this incident had occurred. Witness Mula Kustura testified that she never saw her son alive again and that she made an identification of her son in Visoko on the basis of the remains. An autopsy report confirmed that cause of death was a gun shot to the head. The corpse of Ćamil Kopic was also subsequently recovered. The autopsy report also concluded that the cause of death was a gun shot wound to the chest.

Witness Mula Kustura knew the Accused from before the war. She was from Lijeska, the same village as the Accused, and recalled that he was a conductor whom she would see if she travelled somewhere by bus. Additionally, she stated that his father worked in a shop. She testified that Tanasković and her son knew one another. This fact is confirmed by the manner in which the Accused addressed Enver Kulovac, by his nickname. Witness Sabaheta Ramić

also knew the Accused before the war. She worked as a cook in a restaurant at Sloboda, where the Accused would take a break during his duties as a bus conductor at Višegrad Trans. On the basis of these identifications, the Panel concludes it is beyond doubt that it was the Accused who apprehended Enver Kulovac and Čamil Kopic.

7.1 Count 7 of the Indictment charges the Accused with (i) the deprivation of liberty of Enver Kulovac and Čamil Kopic.

As detailed above and evidenced, in part, by the testimony related to this Count, in June 1992 there was a widespread and systematic attack against Muslim civilians in Višegrad. According to the testimony of witnesses Mula Kustura and Sabaheta Ramić, Enver Kulovac did not resist the Accused's order to enter his vehicle. The Panel concludes that in reality Enver Kulovac had no choice but to obey this order, if one takes into consideration the fact that the Accused was armed and accompanied by a soldier. Moreover, the Accused's aggressive and threatening treatment of Čamil Kopic and his wife moments later, made it evident to Enver Kulovac that he had no choice but to remain in the vehicle. Thus, the Panel concludes that neither man voluntarily accompanied the Accused, but rather they were coerced to enter the vehicle and thereby deprived of their liberty. There is no doubt that from this moment on, Enver Kulovac and Čamil Kopic no longer had control of their destinies and their fates lay in the hands of the Accused and others. Accordingly, their detention was contrary to Article 172(1)(e) of the BiH CC. The Defence have called no evidence to show that the Accused at any point mitigated the severity of this detention by releasing these men. No explanation was offered either to Enver Kulovac and Čamil Kopic or their relatives. Further, in light of the Accused's behaviour towards Čamil Kopic, it is obvious that this apprehension was not attended by any of the necessary procedural safeguards. Thus, their detention was arbitrary.

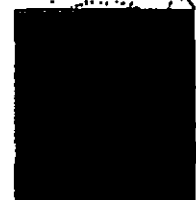
The Accused undoubtedly committed this action with a direct intent, being aware of the act he committed and which he wanted to commit. Also, the Accused was not alone when he took away those two persons, thus he acted as an accomplice and contributed in the decisive manner to the commission of the act in the joint action with the other soldier unknown to the Panel.

With regard to this Count of the Indictment, the Defense objects that in the period indicated in Count 7 of the Indictment, the Accused was in the Republic of Serbia, thereby it is clear that he cannot be criminally liable for the actions referred to under the Count of the Indictment concerned. Also, the Defense claimed that Enver Kulovac had been killed in a battle. With regard to this

objection, the Panel concluded that the Accused's alibi is not credible for the reasons already explained above (see Section 6 above). In relation to the allegations made by the Defense, the Panel also heard from Defence witnesses Boško Arsić and Ahmed Sedić. Boško Arsić testified that on 17 May 1992 he was mobilised into the army, from which time he was rarely at the Pavilion building during the day, returning only every second or third night to sleep in his apartment. He stated that he was not in the apartment on 16 June 1992. Thus, he was unable to observe or contradict any of the events described above. He stated he did not know anything about what happened to Enver Kulovac. With regard to the Defence's averments that Enver Kulovac was involved in hostilities, Ahmed Sedić testified that the reference in his book ('To Be a Witness of the Truth') to a fellow combatant Enver Kulovac was actually a printing mistake. The name of the fighter to which he was referring was Enver Kulović from Rodić Hill, near Višegrad, with whom the witness was acquainted before the war. This individual was killed by a shell during a military operation and the witness described how his body was recovered in no-man's land near Međeđa. According to Ahmed Sedić, this name, amongst many others, was spelled incorrectly in the first publication, as a result of human error or a printing mistake. When shown a photograph of Enver Kulovac (Prosecutor's exhibit 7.1), Ahmed Sedić confirmed that this person was not the person he knew and to whom he was referring in his book. Thus, the Panel concludes the Defence's assertion that Enver Kulovac was a fighter who was killed in combat is groundless.

Furthermore, the Defense holds that there are certain differences among the witnesses' testimonies, with regard to both the appearance of the Accused at the time of the alleged commission of the offense and the actions of the Accused, therefore the identification of the Accused by those witnesses is questionable. Accordingly, the Defense holds that it cannot be established beyond any reasonable doubt that the person responsible for the apprehension of Enver Kulovac and Čamil Ković is the Accused Tanasković.

There are minor inconsistencies between the accounts of these two witnesses. Witness Mula Kustura stated that neither the Accused nor the soldier left the vehicle during this incident, whereas Witness Sabaheta Ramić recalled that Nešo did exit the car, although he did not approach the group, but simply called over to Enver and Čamil. The Panel concludes that this discrepancy is an irrelevant error of memory, in which regard Sabaheta Ramić testified that she was in poor physical health and exhausted at the time. Secondly, Witness Sabaheta Ramić stated that the Accused addressed Enver by his surname, 'Kulovac'. To the extent that this sounds similar to his nickname 'Kula', the



Panel concludes that this corroborates Mula Kusutra's account of how the Accused addressed her son: when hearing the Accused's comments, Sabaheta Ramić simply assumed the Accused was using Enver's full surname. Thus, in the crucial aspects, the testimony of these witnesses is consistent and serves to corroborate the facts which the Panel finds to establish the criminal liability of the Accused.

With regard to the murder of Enver Kulovac and Ćamil Kopic, the Indictment charges the Accused as a co-perpetrator in conjunction with Article 29 BiH CC. In the absence of further evidence as to what happened to these men after their arrest by the Accused, the Panel cannot conclude beyond doubt that the Accused made a decisive contribution to their murders, nor that he specifically intended their deaths. The evidence suggests the sole fact that he and another soldier forced him to enter the car. It follows from the presented evidence that his action is limited to that alone. If one considers the evidence presented on the Counts of the Indictment for which the Panel has found the Accused responsible, a simple conclusion to follow is that the deprivation of liberty and taking civilians to the premises where they were rounded up for the purpose of obtaining certain information and beaten thereafter are specific actions by the Accused on several occasions and constituting some sort of pattern in his behavior. Although the Accused is charged with the killing of persons who were taken away in several Counts, his involvement in any of the killings was not proven in any of the Counts. Therefore, as the Panel did not receive evidence with respect to this Count determining the Accused's additional activity apart from the one related to the taking away of these two persons, the Panel was unable to arrive at a reliable conclusion that he is liable as a co-perpetrator for their deaths.

The Panel did not accept the proposal by the Defense for presentation of evidence through exhumation and DNA analysis of mortal remains of Enver Kulovac that were recovered in the Žepa area. The Panel believes that this is a redundant proposal bearing in mind the fact that Enver Kulovac disappeared since 16 June 1992 when he was deprived of liberty by the Accused. Moreover, the Panel did not find the Accused to be responsible for the killing of Enver Kulovac, rendering this piece of evidence irrelevant to determine the criminal responsibility of the Accused relative to other actions with which he is charged.

As regards the remaining presented evidence in relation to all counts of the Indictment, the Panel has evaluated it, but finds that it had no decisive influence on the ruling.



8. The Indictment charges the accused with the criminal offense of Crimes against Humanity defined under Article 172(1)(h)-persecution, under each Count of the Indictment. However, after consideration of all the actions of the accused, it became obvious that they all constitute a single criminal offense of persecution consisting of several criminal actions or modes of perpetration. The Panel arrived at such a conclusion because:

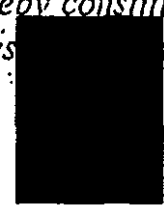
- 1. All actions of which the accused has been found criminally responsible by the Panel constitute the criminal offense defined under Article 172 CC;*
- 2. The accused committed all those actions with the intention to discriminate against the victims on political, ethnic and/or religious grounds; and*
- 3. Contrary to international law, the accused intended and seriously deprived the victims of their fundamental rights.*

Where the definition of the act of persecution includes:

- Severe deprivation of fundamental rights;*
- Of any identifiable group or collectivity (including representative attacks on individuals targeted specifically because of their membership of such a group);*
- With intent to commit the underlying offense; and*
- A specific intent to discriminate on the grounds of the group's political, national, ethnic, cultural or religious identity;*
- In connection with any offense listed in Article 172(1), any other offense listed in the CC or any offense falling under the competence of the Court of BiH.*

For each Count of the Indictment for which the responsibility of the accused was determined, it was found that his actions included his direct intent. The accused was aware of each particular action he committed, and with his both verbal and non-verbal expressions he showed that he had wished to commit the actions concerned.

By their nature, the actions of the accused by which the offense was committed are as follows: deprivation of liberty, torture, rape, forcible transfer and destruction of property. They are all in contravention of the prohibitions prescribed under Article 3 of the Geneva Convention and thereby constitute a severe deprivation of the rights of individuals and, in certain cas



It arises from each Count of the Indictment for which the accused is responsible that the offense was committed with the necessary element of discrimination by the accused against an individual/group on the grounds of their ethnicity and religion.

Thus in relation to Count 1 of the Indictment, the Panel has determined that the accused intentionally and unlawfully deprived witness A of her liberty, aided in her rape and thus aided in her torture in violation of subparagraph (f) of the same article of the CC of BiH resulting from the criminal offense of rape. Witness A is a Bosnian Muslim, the first of many to be arrested and/or detained by the accused and the Panel concludes that it is clear from the circumstances of her arrest and detention that she was being singled out for mistreatment as a representative of a large Bosniak population residing in Višegrad. It is indisputable from the insults and degrading comments made by the accused, which referred to the political leaders of the Serbs and Bosniaks respectively and to the Christian religion, that he deprived witness A of her liberty because of her affiliation with a specific religious and ethnic group, namely, Bosnian Muslims. This is also true for Junuz Tufekčić who was taken with her on the same day to the police station for interrogation, where they were detained.

It is evident from the nature of the acts established in respect of Count 2 that the accused was responsible for intentionally and severely depriving Kemal and Suvad Dolovac of their fundamental rights by depriving them of their liberty and taking part in their beating. Further, in light of both the questions asked of the brothers while at Donja Lijeska and the degrading insults used towards them throughout their captivity, it is indisputable that they were in fact targeted because of their Bosniak ethnicity. The accused's behavior, while he was in their presence, included cursing and insulting the brothers and their family, which if seen as part of a whole, demonstrates that he was aware that his captives were Muslims and was discriminating against them as such and that this was exactly the reason why they were treated as described in the statements of witness Dolovac.

In addition to that, in respect to Count 3 of the Indictment, the evidence suggests a larger operation to round up all the Muslims in Kabernik in which the accused participated. The criminal offenses established in respect to this Count must be viewed in this context. In this light, it is clear that witness B's son and husband, M.M and H.M., were deprived of their liberty and mistreated because they were representatives of a large Bosniak population residing in

Višegrad. In light of the accused's discriminatory behavior towards other Bosniaks, detailed in Counts 1 and 2, and the fact that witness B's son and husband were of Bosniak ethnicity, the Panel finds it beyond doubt that the underlying offences were committed with discriminatory intent on the part of the Accused.

In view of the facts established above in respect of Count 4, the Panel finds it indisputable that the group of male civilians that were forced to march from their homes to the school in Orahovci consisted exclusively of Muslims. The circumstances of their apprehension demonstrate that they neither joined nor remained with the group of their own free will. The constant shooting and burning of houses en route created an intimidating and hostile environment which underscored to the civilians that they were not free to leave the column. The facts established above clearly demonstrate that the accused made a decisive contribution to the severe deprivation of liberty of these civilians. He was present at various stages throughout the lengthy march, personally forced Šaban Ajanović to join the group, and further, carried out acts which contributed to the threatening atmosphere (burning houses having checked and learned that they belonged to Muslims). It is obvious that these civilians were discriminated against on the basis of their ethnicity and that the accused burned two houses only because they belonged to the Muslims. Moreover, it is clear from the Serb ethnicity of those escorting or participating in the convoy and the behavior of those individuals as detailed above, that this forcible transfer was committed with discriminatory intent. In addition to that, the Accused was present during the beating which followed in Orahovci when Suvad Dolovac and another man were beaten. As it has been already established, all his actions show that on that relevant day he was one of the executors of the plan who took the group of Muslims to the school. His overall conduct gave an impression and meant that he agreed with the entire incident and that he shared the intent of other Serb soldiers – to place Muslim Bosniak civilians in an unequal and subjugated position solely on the grounds of their ethnicity and religion, because the relevant column of men who were taken to the school did not include a single member of other ethnicity or religion except men – Bosniak Muslims.

In relation to Count 5 of the Indictment, it is clear that the actions of forcible transfer of the population from Višegrad were also committed with discriminatory intent. The persons who were transported on the convoy were Bosniak Muslims. Forcible transfer of this group of civilians was part of a plan to "forcibly transfer" Muslim population from Višegrad. In particular, the accused's comment referring to Alija's state demonstrates his personal



discriminatory intent and his agreement with the plan of forcible transfer. Also, the same applies to the imprisonment of men, who had been separated from the women and children and taken further. The complicity of the Accused in this part, also, included a clear intent to discriminate against men – they were all Bosniak Muslims and the accused's comment given to women as an answer to their pleas to free the men, when he said something like they would be returned when they get "their men" back, shows the nature of the accused's action and his making a distinction between "our" and "their" people without referring to soldiers, because all the captured Muslims Bosniaks on the bus were civilians.

Finally, it is also clear from the actions referred to under Count 7 of the Indictment that there are elements of discrimination on the part of the accused on ethnic grounds against the persons whom he deprived of liberty. On the basis of the accused's insults and the fact that he knew Enver Kulovac, it is clear that he was aware that his captives were Bosniak Muslims and was targeting them as such. The Panel concludes that the accused intentionally sought to discriminate against these men on the basis of their ethnicity and religion, and thus this severe deprivation of their fundamental right to liberty amounted to a criminal act of persecution.

Therefore, although the Indictment qualifies the act of persecution in respect of each individual count of the Indictment, taking into account that the actions of the accused referred to in Counts 1-5 and Count 7 of the Indictment were directed exclusively against the Muslim civilians, the Panel finds that it is necessary to qualify the overall actions of the accused as a single act – persecution, because this is effectively one act regardless of the number of perpetrated actions during one time period. Each individual action of the accused constitutes a flagrant violation of individuals' fundamental rights and such actions cannot be viewed as an isolated incident, but exclusively as a whole which, through the described actions, has only one goal – discrimination. In regard of all actions mentioned above, where his criminal responsibility has been established, the accused acted with direct intent, aware that by the cited actions he was violating the rules of international law, but nonetheless wanted the commission of those acts. The Panel finds that all of the cited actions, regardless of the number of actions in this particular case, constitute a single criminal offense – Crime against Humanity – Persecution.

There are numerous examples in the jurisprudence of the ICTY where several actions were characterized as a single offense - Crime against Humanity -



Persecution⁹, and this Court itself decided similarly in several cases where final verdicts have been handed down¹⁰.

9. In contrast to the foregoing, the Panel did not find sufficient evidence to convict the Accused of the charge under Count 6 of the Indictment, whereby he was charged with the criminal offense of Crimes against Humanity under Article 172 (1)(f)-torture, (h)-persecution and (k)-other inhumane acts. This Count of the Indictment is solely based on the testimony of witness C. However, witness C's identification of the accused as a perpetrator is insufficient. Witness C pointed out that he was tortured by an unknown person identified by two women from Višegrad as the accused. Because he was afraid to look directly at the perpetrator, the witness's physical description of him is vague. He does remember that the perpetrator was wearing a red beret, but that is also problematic since no other witness who testified about any of the accused's offenses ever mentioned that he wore such a hat. Furthermore, witness C was unable to identify the accused as the perpetrator in the courtroom due to poor eyesight. Finally, there was no indirect evidence from which the Panel could conclude that the perpetrator was in fact the accused, such as the presence of other identified co-perpetrators whose connection with the Accused is known based on descriptions from other counts of the indictment, for instance, the presence of Miloš Pantelić or Novo Rajak. Therefore, since the Prosecution has failed to present any additional evidence indicating that it is the Accused who is responsible for the commission of the offense under Count 6 of the Indictment, the Panel has ruled as set forth in the operative part herewith.

10. Application of the Substantive Law

In terms of application of the substantive law to be applied in the case of this criminal offense, in the context of the time of the perpetration of the criminal offense, and bearing in mind all the objections by the Defense to that effect, the Panel has ruled as set forth in the operative part herein with the application of the following provisions:

Article 3(2) of the CC of BiH – principle of legality – defining the principle of legality, reads: „No punishment or other criminal sanction may be imposed on

⁹ Prosecutor vs. Radovan Krstić, Appellate Chamber Judgment, paragraphs 231 – 232; Prosecutor vs. Vasiljević (2002), paragraph 247: “When considering whether an act or omission satisfies this threshold (...) acts should not be considered in isolation but should be examined in their context and with consideration of their cumulative effect.”;

¹⁰ Court of BiH, criminal case No. X-KR/05/16 Paunović, Verdict of 26 May 2006, and C. [REDACTED] KRZ/05/49 Samardžić Verdict of 13 December 2006;

any person for an act which, prior to being perpetrated, has not been defined as a criminal offense by law or international law, and for which a punishment has not been prescribed by law”.

The acts of perpetration of this particular offense were committed in 1992, at the time when the law in effect was the CC of SFRY, which did not recognize the criminal offense with a separate name – Crimes against Humanity – as a separate offense. The new CC of BiH defines that offense as a separate criminal offense. According to the theory of law, the law which is in effect at the time of the commission of an offense which does not qualify that offense as a criminal offense should be considered a more lenient law. In that case there would be an obligation to apply a more lenient law because in case the law is amended in relation to the time of the perpetration of the offense, following the principle of legality, it would be necessary to apply the previous criminal code in effect, while retroactive application of the criminal code to the detriment of the perpetrator would be prohibited.

However, in terms of the criminal offenses of Crimes against Humanity, which was not defined by the laws which were in effect in Bosnia and Herzegovina during the conflict between 1992 and 1995, the Panel finds that this criminal offense is covered by the international customary law which was in effect at the time of perpetration, and in addition to that, it was also defined by the then CC of SFRY through individual criminal offenses under Articles 134 (Inciting National, Racial or Religious Hatred, Discord or Hostility), 142 (War Crime against the Civilian Population), 143 (War Crime against the Wounded and the Sick), 144 (War Crimes against Prisoners of War), 145 (Organizing and Instigating the Commission of Genocide and War Crimes), 146 (Unlawful Killing or Wounding of the Enemy), 147 (Marauding), 154 (Racial and other Discrimination), 155 (Establishing Slavery Relations and Transporting People in Slavery Relation) and 186 (Infringement of the Equality of Citizens). Thus, although Article 172 of the CC of BiH now prescribes this offense as a separate criminal offense, it did exist even at the time of perpetration of the offense in the sense that it was prohibited by international standards and, indirectly, through the cited offenses in existence at the time.

The customary status of punishability of crimes against humanity and the imputation of individual criminal responsibility for its commission in 1992 has been confirmed by the UN Secretary General¹¹, International Law

¹¹ UN Secretary General Report on paragraph 2 of the Security Council Resolution 808, 3 May 1993, paragraphs 33-34 and 47-48.

Commission¹², as well as the case law of the ICTY and the International Criminal Tribunal for Rwanda (ICTR)¹³. These institutions established that the punishability of crimes against humanity represents an imperative standard of international law or *ius cogens*¹⁴, therefore there appears indisputable that in 1992 crimes against humanity were part of international customary law.

Article 4a) of CC of BiH refers to „general principles of international law“. Since neither the international law nor the European Convention recognize such an identical concept, this term actually represents a combination of, on one hand, „principles of international law“ as recognized by the UN General Assembly and the International Law Commission and on the other hand „general principles of law recognized by the community of nations“ as recognized by the Statute of the International Court of Justice and Article 7(2) of the European Convention.

Principles of International Law as recognized by the General Assembly Resolution 95 (I) (1946) and the International Law Commission (1950) apply to the „Charter of the Nuremberg Tribunal and Judgment of the Tribunal“ and thus also to crimes against humanity.

„Principles of the International Law recognized in the Charter of the Nuremberg Tribunal“ and „in the Judgment of the Tribunal“ adopted by the International Law Commission in 1950 and submitted to the General Assembly. Principle VI.c. stipulate Crimes against Humanity as a crime punishable under international law. Principle I stipulates that: „Any person who commits an act which constitutes a crime under international law is responsible therefor and liable to punishment“. Principle II stipulates that: „The fact that internal law does not impose a penalty for an act which constitutes a crime under international law does not relieve the person who committed the act from responsibility under international law“. Therefore, regardless of whether it is viewed from the position of the customary international law or the position of „the principles of international law“, it is indisputable that Crimes against Humanity constituted a criminal offense in the relevant time period or more precisely, that the principle of legality has been satisfied.

¹² International Law Commission. Commentary on the Draft Code of Crimes against the Peace and Security of Mankind (1996), Article 18.

¹³ ICTR, Trial Chamber Akayesu, 2 September 1998, paragraphs 563-577.

¹⁴ International Law Commission. Commentary to Draft Articles on Responsibility of States for Internationally Wrongful Acts (2001), Article 26.

The legal ground for prosecution or punishment of criminal offenses pursuant to the general principles of international law is provided under Article 4a of the Law on Amendments to the Criminal Code of BiH (Official Gazette BiH, No. 61/04) which prescribes that Articles 3 and 4 of the Criminal Code 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. By this Article, the provision of Article 7(2) of the European Convention has been adopted in its entirety and thereby ensured an exceptional derogation from the principle referred to in Article 4 of the Criminal Code of BiH, as well as derogation from mandatory application of a more lenient law in proceedings which constitute criminal offenses pursuant to international law, such as the proceedings against the accused, because it concerns charges which include a violation of the rules of international law. In fact, Article 4a of the Law on Amendments to the Criminal Code of BiH is applicable to all criminal offenses falling under the scope of war crimes, since these particular criminal offenses are contained in Chapter XVII of the Criminal Code of BiH, the title of which is "Crimes Against Humanity and Values Protected by International Law". Crimes against humanity are accepted as part of international customary law and they constitute a non-derogative provision of international law.

When these provisions are correlated with Article 7 of the European Convention on Human Rights (hereinafter: the European Convention) which has priority over all other law in BiH (Article 11(2) of the Constitution of BiH), it can be concluded that that the principle of legality referred to in Article 3 of the Criminal Code is contained in the first sentence of Article 7(1) of the European Convention, while the second sentence of paragraph 1 of Article 7 of the European Convention prohibits imposition of a heavier penalty than the one that was applicable at the time the criminal offense was committed. Thus, this provision prescribes a prohibition of imposing a more severe punishment, and it does not prescribe mandatory application of a more lenient law for the perpetrator in relation to the punishment that was applicable at the time of the commission of the criminal offense.

However, paragraph 2 of Article 7 of the European Convention contains an exception from paragraph 1, for it allows a trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by civilized nations. The same principle is contained in Article 15 of the International Covenant on Civil and Political Rights. This exception is incorporated with a specific goal

of ensuring the application of national and international legislation which came into force during and after World War II with regard to war crimes.

Accordingly, the case law of the European Court of Human Rights (Naletilić v. Croatia no. 51891/99, Kolk and Kislyiy v. Estonia, no. 23052/04 and 4018/04) stresses the applicability of the provision of paragraph 2 rather than of paragraph 1 of Article 7 of the European Convention, when such offenses are in question, which also justifies the application of Article 4a of the Law on Amendments to the Criminal Code of BiH in these cases.

Also, this issue was considered by the Constitutional Court of BiH in the appeal by A. Maktouf (AP 1785/06), which held in its decision dated 30 March 2007: „68. In the legislature of any country of the former Yugoslavia there was no possibility for imposing the sentence to life imprisonment or long term imprisonment, which the International Criminal Tribunal for the Crimes Committed in the Territory of the Former Yugoslavia did very often (cases Krstić, Galić, etc.). At the same time, the concept of the CC of SFRY was such that it did not prescribe long term imprisonment or life imprisonment, but it prescribed the death penalty for the most severe criminal offenses, and for less severe offenses a maximum sentence of up to 15 years imprisonment. Therefore, it is clear that one sanction cannot be separated from the overall goal which was intended to be achieved by the penal policy at the time of applicability of that law. „69. With regard to that, the Constitutional Court is of the opinion that it is not possible to simply “remove” one sanction and apply other more lenient sanctions and thereby practically leave the most severe criminal offenses inadequately punished. “

The principle of mandatory application of a more lenient law, in the opinion of the Panel, is excluded in the prosecution of those criminal offenses which at the time of their commission were fully foreseeable and generally known as contrary to the general rules of international law.

In analyzing the provision of Article 172 (1) of the Criminal Code of BiH, it is obvious that this offense is a part of one group of criminal offenses against humanity and the values protected under international law (Chapter XVII of the CC BiH). This group of offenses is specific because it is not sufficient to commit a criminal offense with certain physical activity, but instead it is required that the perpetrator be aware that by the commission of the offense he is violating international laws, and that it is assumed that the perpetrator must be aware that the period of war, or conflicts, or atrocities, is particularly sensitive and particularly protected by the generally accepted principles of international law and, as such, that offense obtains even greater importance



and its commission bears more severe consequences than the offense committed in some other period or circumstances. Thus, in the opinion of the Panel, the application of the CC BiH is justified and it is in accordance with the norms which establish standards for respecting human rights.

The meting out of a sentence is related to that, since Article 7 of the European Convention on Human Rights also encompasses a regime of criminal sanctions. Article 172(1), in addition to the listed subparagraphs of the CC, BiH prescribes a punishment of imprisonment for not less than 10 years or long-term imprisonment.

11. Sentencing

The purposes of punishment are provided for both in general and special sections of the CC of BiH. Article 2, as a general principle, provides that punishment must be "necessary" and "proportionate" to the "nature" and "degree" of threat to protected values within the "type" and "range" permitted under the law. In war crimes cases, the nature of risk is always a serious one; however, the degree of such threat depends on circumstances specific to each case. The type of sanction to be imposed by the Court in a war crime case, pursuant to the law, is a punishment of imprisonment for a term between 10 and 20 years, or a long-term imprisonment between 20 and 45 years.

In addition to the general principle set out in Article 2, the CC of BiH provides for additional purposes and considerations that the Panel must take into account in the course of ordering and pronouncing punishments. They include: those relating to the objective criminal offense and its impact on the community, victims included; and those relating in particular to the convicted persons. The former calls for the punishment to be necessary and proportionate to the gravity of the committed offense. The latter calls for the punishment to be necessary and proportionate to the individual offender.

1. Punishment that is necessary and proportionate to the gravity of the crime

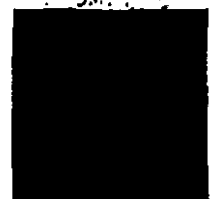
In regard to the criminal offense itself, the Panel considered the punishment that was necessary and proportionate to the following statutory purposes and circumstances.

(A) The sentence must be necessary and proportionate to the risk and threat to the protected persons and values (Article 2 of the CC). In connection with this purpose prescribed by the law, the Panel will also keep in mind relevant circumstances prescribed by law, that is, the suffering of the direct and indirect victims (Article 48 of the CC). The direct victims of this offence were: witness A, Junuz Tufekčić, Suvad and Kemal Dolovac, witness B's husband and son, Islam Cero, Salko Šabanović, witness D, Rahima Zukić, Ferid Spahić, Enver Kulovac and Čamil Kapić.

The suffering of the direct victims included: the imprisonment of Junuz Tufekčić and the rape of witness A; the imprisonment and torture of Kemal and Suvad Dolovac and Esad Dženanović; the imprisonment of witness B's husband and son; the forced marching of men from the villages of Osojnica, Kabernik, Holijaci and Orahovci, including Islam Cero, witness D and Salko Šabanović, their imprisonment and severe deprivation of liberty and the physical abuse of some of them; the forcible transfer of hundreds of Muslims from Višegrad, including Rahima Zukić and Ferid Spahić; and the severe deprivation of liberty of Enver Kulovac and Čamil Kapić.

The suffering directly inflicted on these victims caused suffering to their families and their communities as well. A large number of family members of direct victims endured mental anguish from observing their male relatives illegally apprehended and forced from their homes, never to return to them. Moreover, witness B continues to suffer from her memories of having been forced to participate in her son's apprehension because of the accused's threats to burn alive other family members, including her son's pregnant wife. The mental suffering of these families is continuous and incalculable. In addition, the accused's actions against the direct victims also had a negative impact on the communities in which they lived because they contributed to attempts of forcible transfer of the Muslim population from the Višegrad area, and confirmed to the families and neighbors of these victims that they could not continue to live in their homes and communities. As a result, the culture of the villages, hamlets and a wider area of Višegrad was significantly changed and these families and neighbors lost their homes, community and way of life.

The sentence must be proportionate to this degree of suffering and, in addition, it must be sufficient to (B) deter others from committing similar crimes (Articles 6 and 39 of the CC). The purpose of criminalizing the acts of this type committed by the accused as crimes against humanity under international law is to prevent those engaged in widespread or systematic attacks to engage in this prohibited form of conduct. That purpose will not be met if those who



commit such acts are not punished sufficiently to put others involved in future conflicts on notice that there is a serious price to pay for using the cover of violent conflict, or the emotions generated by it, to violate the law. The sentence must also reflect that, in times of conflict, the persons involved continue to have the legal responsibility to obey the law, even if they are ordered by superiors to commit crimes. The accused's conduct aptly demonstrates that without the willing involvement of subordinates, it would be impossible for those superiors who conceive a widespread and systematic attack to successfully persecute and terrorize an entire people.

In addition, this sentence must reflect (C) the community condemnation of the accused's conduct (Article 39 of the CC). The community in this case is the people of Bosnia and Herzegovina and the international community who have, by domestic and international law, made the conduct of this nature a crime against humanity. These communities have made it clear that these crimes, regardless of the side which committed them or the place in which they were committed, are equally reprehensible and cannot be condoned with impunity.

The sentence must also be necessary and proportionate to the (D) the educational purpose set out in the law, which is to educate on the danger of crime and the fairness of punishing perpetrators (Article 39 of the CC). Trial and sentencing for this activity must demonstrate not only that crimes perpetrated in time of war will not be tolerated, but that the legal solution is the appropriate way to recognize the crime and break the cycle of private retribution. Reconciliation cannot be ordered by a court, nor can a sentence mandate it. However, a sentence that fully reflects the seriousness of the act can contribute to reconciliation by providing a legal, rather than violent, response; and thus promote the goal of replacing the desire for private or communal vengeance with the recognition that justice is achieved. The crime of persecution creates a danger not only to the immediate victims, but to society as a whole in that it contributes to an atmosphere of lawlessness, where the rule of law is undermined and those people who identify with the aggressor are encouraged to act with impunity.

All of these considerations relevant to the criminal acts committed by the Accused lead the Panel to conclude that a necessary and proportionate sentence reflecting the gravity of the crime itself should be 15 years.



II. Sentencing that is necessary and proportionate to the individual offender

However, sentencing considerations must also take into account the statutory requirement of fairness (Article 39 of the CC) and the individual circumstances not only of the criminal act but also the criminal perpetrator. There are two statutory purposes relevant to the individual convicted of the crime: (1) specific deterrence to keep the convicted person from offending again (Articles 6 and 39 of the CC); and (2) rehabilitation (Article 6 of the CC). Rehabilitation is not only a purpose that the Criminal Code imposes on the Court, but it is the only purpose related to sentencing, recognized and expressly required under international human rights law to which the Panel is constitutionally bound: Article 10.3. of the ICCPR: 'The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation.'

There are a number of statutory considerations relevant to these purposes as they affect the sentencing of the individual convicted person (Article 48 of the CC). These include: degree of liability; the conduct of the perpetrator prior to the offense, at or around the time of the offense and since the offense; motive; and the personality of the perpetrator. These considerations can be used in terms of aggravating or mitigating circumstances of the sentence, as the facts warrant. The point of these considerations is to assist the Panel in determining the sentence that is not only necessary and proportionate for the purposes and considerations already calculated in connection with the act itself and the effect on the community, but to tailor that sentence to the deterrent and rehabilitative requirements necessary for the particular offender.

(A) The degree of liability in this case is a mitigating factor. The evidence establishes that the Accused was not a decision-maker, but rather a soldier of a low rank, carrying out orders given to him, and who did not devise any of the crimes in which he willingly participated. That having been said, it is clear that the Accused was permitted some degree of autonomy regarding the manner in which he executed his orders, choosing to be violent and aggressive in his actions. However, as the Prosecutor pointed out in his closing argument, given the sentencing limitations within which we are constrained by law, our sentence must recognize that there are others whose responsibility was greater and for whom greater sentences should be reserved.

(B) The conduct and personal circumstances of the Accused prior to, during and after the commission of the offense, present facts both in terms of



aggravating and mitigating circumstances, and are relevant to considerations of deterrence and rehabilitation.

(1) Before the offense

Various Prosecution witnesses, in particular witness D and Suvad Dolovac, attest to the fact that the Accused drank excessively before the war. The accused stated that upon his return from JNA service in 1982, and in particular during April – June 1992, he would drink almost every day. Witness D stated that the accused used offensive language when drunk and used to get into fights at local fairs. On the other hand, there was evidence that he was nonetheless conscientious in carrying out his employment duties. In fact he had positive social interactions with some of his Muslim neighbors, including attending dances and community activities with them and drinking with them in social situations.

(2) Circumstances surrounding the offense

The evidence establishes a certain persistence and sadism to the accused's acts. The suffering caused by his discriminatory attitude has already been calculated in considering the gravity of the offence and will not be calculated twice. However, in addition, he engaged in gratuitous cruelty toward both his direct victims and their families that went beyond what was necessary in carrying out the unlawful orders. This is demonstrated by comments and insults made, which were unnecessary to the task at hand. For example, at Išević Brdo (see Count 5), the accused saw fit to taunt the distressed wives and mothers, despite the fact that the act of separating the men had already been completed, the buses were about to depart and there was no longer a need to maintain order through such verbal instructions. Similarly, the accused's mistreatment of his colleague's wife, Kada Šehić, who went to him for assistance and information, leads the Panel to conclude that the accused took pleasure in demonstrating his authority through cruel behavior. This is particularly reprehensible since as a reserve police officer his duty was to protect civilians, and as a 31 year old man at the time, his actions cannot be excused by either youth or inexperience.

(3) Circumstances since that time

The accused ceased his participation in the war only because of serious injuries. These injuries have left him completely disabled, and have resulted in his hospitalization for a series of surgeries to his face over the period between June 1992 and the present. He continues to suffer from his disability and will likely need additional medical care intermittently for the rest of his life. He is without a lower jaw and teeth, which results in physical deformity as well as



serious difficulty in maintaining nutrition, which in turn has led to a deterioration of his general health. It is unlikely that he will ever be able to maintain any employment in the future. He is unmarried.

(4) Conduct during this case

The accused behaved with decorum during the course of the trial and did nothing personally to aggravate witnesses, nor did he show disrespect to any witness or the Panel. However, he did not display any remorse for his actions and was persistent in denying his involvement.

(C) Motive in this case is synonymous with the intent to discriminate on ethnic and religious grounds, and has already been considered as an element of the offense, and therefore will not be considered again as an additional factor of aggravation.

(D) The Panel has no evidence regarding the personality of the accused other than that revealed by his actions in committing the crime and that which could be observed from his behavior in the courtroom, both of which have been discussed above.

Therefore in evaluating the relevant circumstances, bearing in mind the magnitude of punishment set out on Article 48(1), for the reasons explained above the Panel concludes that both extenuating and aggravating circumstances exist. The degree of injury to the protected object was already calculated in Part One of this sentencing analysis when considering the gravity of the offense itself and will not be 'counted' twice. The aggravating circumstance having to do with the accused himself is the cruelty in his manner of committing the offense. Extenuating circumstances considered by the Panel include his low position in the command structure, his lack of any criminal involvement before or after the war, and the extent of his injuries and their long-term nature. On balance, the Panel concludes that the extenuating circumstances should be reflected in the sentence and that they do, to some extent, require a reduction of the sentence in relation to the one calculated solely on the basis of gravity of the crime itself.

Deterrence and Rehabilitation

The length of a sentence and the time spent in jail as punishment for the crime are legitimate deterrents in most cases. They provide the offender with an opportunity to consider the effects of his actions on victims, to reflect on his past mistakes, to make amends for his criminal actions, and consider the ways



to improve his life when released so as not to have to ever return to jail in the future.

The experience of the years since the offense, when the accused lived in an ethnically cleansed community without criminal incident, are evidence that under similar living condition he would probably not commit further crimes. However, it cannot be guaranteed that the community in which he lived would not in the future present him with challenges to his expressed ethnic prejudices. Therefore, a risk of repetition of criminal activity toward the same people he victimized during the war cannot be ruled out. For that reason, rehabilitation, a statutory purpose for sentencing, is also a very real necessity in this case.

Therefore, having in mind the particular rehabilitative needs of the Accused, and the need to deter him from future criminal activity, as well as the calculation of the gravity of the offence reasoned in Part I, and the extenuating circumstances reasoned above, the Panel concludes that the sentence which is necessary and proportionate to meet all of the statutory purposes is 12 years.

Pursuant to Article 56 of the CC of BiH, the time the accused spent in pre-trial custody based on this Court's Decision from 11 July 2006 until he is committed to serving his sentence, shall be credited toward the pronounced sentence of imprisonment.

Pursuant to Article 188(4) of the CPC of BiH, the accused shall be relieved of the duty to reimburse the costs of the criminal proceedings and the cited costs shall be paid by the Court of BiH, which the Panel decided bearing in mind the fact that the Accused does not have good income and that he is not able to pay the costs of proceedings.

Based on the foregoing, the Panel reached the verdict as quoted in the operative part pursuant to Article 285(1) of CPC of BiH and Article 284(1)(3) of the CPC of BiH.

PRESIDENT OF THE PANEL

Judge Hilmo Vučinić



Record-taker:

Dženana Deljković Blagojević

LEGAL REMEDY: *An appeal from this Verdict shall be permissible with the Appellate Panel of the Court of BiH within 15 (fifteen) days from the day of the receipt of a written copy of the Verdict.*

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

Sarajevo, 23 October 2007

Certified Court Interpreter for English Language

