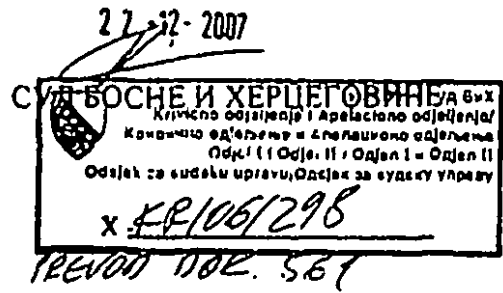


SUD BOSNE I HERCEGOVINE



Number: X-KR/06/298  
Sarajevo, 19 September 2007



## IN THE NAME OF BOSNIA AND HERZEGOVINA

Court of Bosnia and Herzegovina, on the Panel composed of Judge Davorin Jukić, as the president of the Panel, Judges Lars Folke Bjur Nystrom and Almiro Rodrigues as the Panel members, with the participation of legal adviser Melika Bušatlić as the minutes-taker, in the criminal case against the accused Krešo Lučić for the criminal offence of Crimes against Humanity under Article 172 paragraph 1 items e), f) and k) of the Criminal Code of Bosnia and Herzegovina (hereinafter the CC BiH) in conjunction with Article 180, paragraph 1, of the CC BiH and Article 29 of the CC BiH, upon the Indictment of the Prosecutor's Office of Bosnia and Herzegovina number KT-RZ 130/05 of 23 October 2006, confirmed on 1 November 2006, following the main trial in the presence of the accused Krešo Lučić and his Defence Counsel, Attorney Krešimir Zubak from Sarajevo, and the Prosecutor for the Prosecutor's Office of Bosnia and Herzegovina, Slavica Terzić, on 14 September 2007 reached and on 19 September 2007 publicly announced the verdict that follows.

## VERDICT

The accused Krešo Lučić, son of Ivo and Anđa, born on 19 March 1969 in the Kreševo Municipality, residing at Ulica Kralja Tomislava bb in Široki Brijeg, citizen of BiH and the Republic of Croatia, married, father of three underage children, unemployed, no prior convictions,

I

*Pursuant to the provision of Article 285, paragraph 1, of the Criminal Procedure Code of Bosnia and Herzegovina, the Accused is hereby*

## FOUND GUILTY

### OF WHAT FOLLOWS.

1. Count 1. In June and July 1993, in the Kreševo Municipality, with members of the Kreševo Military Police who were his subordinates, he unlawfully deprived of liberty the following Bosniak civilians: Aiša Agić from the village of Bukve, Našid Beganović, Halid Lušija, Adem Lušija from the village of Rakova Noga and Junuz Ahbabović and Edin Hasandić from Kreševo.

2. Count 2. On 20 June 1993, having unlawfully deprived Našid Beganović of liberty in the place of Rakova Noga, Kreševo Municipality, and taken him to the camp in the *Ivo Lola Ribar* primary school in Kreševo together with his subordinate Military Police Officer Denis Tadić and Mladen Tolo, then, together with a member of the Military Police, he kicked Našid Beganović with his feet all over his body in a classroom of the a

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school, after he had refused to tell him where his brother was, as a result of which he fell on the ground and he continued kicking him all over his body.

3. Count 3. In June and July 1993, in the Kreševo Military Police Main Staff in the Elektroprivreda building in Kreševo, he participated in the torture of the following Bosniak prisoners brought from the camp called Šunje: Galib Kustura, Fazil Fazlibašić, Nedžib Fazlibašić and Kasim Fazlibašić by punching them, kicking them and beating them all over their bodies.

Therefore, within a widespread or systematic attack directed against the Bosniak civilian population, knowing of such an attack, he committed the unlawful deprivation of liberty contrary to the rules of international law, and committed torture and other inhuman acts by beating the detained persons above named.

Whereby he committed the criminal offence of Crimes against Humanity in violation of Article 172, paragraph 1, items e) and k) (in relation to Section 1 of the Verdict) and f) (in relation to Sections 2 and 3 of the Verdict) of the Criminal Code of BiH, in conjunction with Article 180, paragraph 1 and Article 29 of the BiH CC.

*Therefore, pursuant to the aforementioned legal provisions and under Articles 42, 48, 49 and 50 of the BiH CC, the Court hereby sentences the accused Krešo Lučić*

#### **TO A TERM OF SIX (6) YEARS OF IMPRISONMENT.**

Pursuant to Article 56 of the CC BiH, the time the Accused spent in custody from 27 April 2006 to 19 January 2007, shall be credited towards the sentence of imprisonment.

Pursuant to Article 188, paragraph 4 of the CPC BiH, the accused shall be relieved of the duty to reimburse the costs of the criminal proceedings.

Pursuant to Article 198, paragraph 2 of the CPC BiH, the injured parties, if they wish to do so, are hereby referred to take civil action with their claims under property law.

#### **II**

*Pursuant to Article 284 c) of the CPC BiH, the accused Krešo Lučić is hereby*

#### **ACQUITTED OF THE CHARGES**

**That:**

Count 4. On 18 July 1993, in the same place as in the previous Count, he interrogated prisoner Meho Hodžić, brought from the Šunje camp, in the presence of about ten Military Police officers who were sitting at another desk listening to loud music, by placing a backless chair for Hodžić against his desk with his subordinates Military Police Anto Marić and Zdravko Mišanović to his left and right side and, after each blow by Meho Hodžić, he ordered them to beat him, which they did using wooden

him on his back and punching him, as a result of which Meho Hodžić fell on the ground several times, where they continued beating him and then they would lift him up and beat him again, due to which Meho Hodžić would lose consciousness, and they would pour water on him, lift him up on the chair and continue beating him again, and then he himself approached Meho Hodžić and hit him with a wooden baton twice on his back and he ordered Military Police officers to take him back to the Šunje camp.

**Whereby he would have committed:**

the criminal offense of Crimes against Humanity in violation of Article 172, paragraph 1, *item f)* of the BiH CC, in conjunction with Article 180, paragraph 1, and Article 29 of the BiH CC.

Pursuant to Article 189, paragraph 1 of the CPC BiH, the costs of the criminal proceedings related to the acquittal shall be paid from within budget appropriations.

## **R e a s o n i n g**

Krešo Lučić was charged by the Prosecutor's Office of Bosnia and Herzegovina, under the Indictment number KT- RZ 130/05 of 23 October 2006, confirmed by the Court on 26 October 2006, of having committed the criminal offense of Crimes against Humanity under Article 172, paragraph 1 of the CC BiH by the actions described under the four counts of the Indictment.

On 3 November 2006, the accused Krešo Lučić pleaded not guilty of the criminal offense charged under the four counts of the Indictment.

The main trial commenced on 14 February 2007 and was completed on 14 September 2007.

### **1. Established Facts**

#### **1.1. Motion of the Prosecutor's Office**

On 28 February 2007, pursuant to Article 4 of the Law on the Transfer of Cases from the ICTY to the Prosecutor's Office of BiH (Law on Transfer) and to Article 261 (1) and Article 15 CPC of BiH, the Prosecutor filed the motion no. KT-RZ-130/05, for acceptance as proven the facts established before the ICTY in the case IT-95-14/2-T, *Prosecutor versus Kordić Dario and Čerkez Mario*, Trial Chamber Judgment of 26 February 2001 and Appeals Chamber Judgment of 17 December 2004.

On 7 March 2007, the Court delivered the Decision X- KR/06/298, granting the Motion of the Prosecutor's Office and accepting as proven the below proposed facts, on the following grounds:

Pursuant to Article 4 of the Law on Transfer: "At the request of a party or parties, the Courts, after hearing the parties, may decide to accept as proven those

established by legally binding decisions in any other proceedings by the ICTY". Considering that the Law on Transfer does not foresee the criteria for a certain fact to be accepted as "adjudicated", by examining that fact, the Panel took under advisement the criteria which the ICTY set forth in its decision of 28 February 2003 in the case *Prosecutor versus Momčilo Krajišnik*. The Court also took into consideration the right of the Accused to a fair trial as guaranteed by the European Convention on Human Rights and Fundamental Freedoms (ECHR) and the BiH CPC.

According to the decision rendered in the case against Momčilo Krajišnik, the Trial Chamber, at the request of a party or *proprio motu*, after hearing the parties, may decide to take judicial notice of adjudicated facts, if the fact is: distinct, concrete and identifiable, restricted to factual findings and does not include legal characterizations, contested at trial and forms part of a judgement which has either not been appealed or has been finally settled on appeal, or it was contested at trial and now forms part of a judgement which is under appeal, but falls within issues which are not in dispute during the appeal. Furthermore, it does not attest to criminal responsibility of the Accused and is not based on plea agreements in previous cases; and it does not impact on the right of the Accused to a fair trial. This criteria supplement the Rule 94 (b) (judicial notice) of the Rules of Procedure and Evidence of the ICTY. Further, the same criteria have already been accepted by this Court's Panel of the Appellate Division (see the verdict in the Nedo Samardžić case, No. X-KRŽ-05/49 of 13 December 2006).

The Law on Transfer is a *lex specialis* and, as such, it is applicable to the proceedings before the BiH Courts, and the special nature of this Law has not been contested by the defence either. The basic purpose of Article 4 of the Law on Transfer is efficiency and judicial economy. However, the Court is satisfied that the application of this legal provision should be approached cautiously, by observing fairness in this particular proceeding and stating that the facts which could directly or indirectly incriminate the Accused are not accepted.

The Court finds that the following facts entirely meet the aforementioned criteria and are therefore accepted as proven.

**3.1.1. From the ICTY Judgment in the case against Đario Kordić and Mario Čerkez, No. IT-95-14/2-T of 26 February 2001:**

1. „... that the weight of the evidence points clearly to persecution of the Muslims in the Central Bosnian municipalities taken over by the HVO: Busovača, ...Kiseljak, Vitez... The persecution followed a pattern in each municipality and demonstrates that the HVO had launched a campaign against the Bosnian Muslims in these municipalities. The fact that there may have been persecution of Croats by Muslims in other municipalities does not detract from this finding and in no way justifies the HVO persecution" (para. 520 , page 158).
2. "The attack on Ahmići (...) The HVO did not restrict themselves of shooting the men of military age. They also shot women and children" (para. 633. page 207).
1. „... a total of 104 people were killed..." (para. 638, page 210).

2. „... the overwhelming evidence points to a well-organized and planned HVO attack upon Ahmići with the aim of killing or driving out the Muslim population, resulting in a massacre... “ (para. 642, page 211.).
3. „ On Sunday, 18 April 1993, it was the turn of the Muslim villages in the Kiseljak municipality to come under attack. The background to the attacks was an order by Colonel Blaškić to an HVO brigade to capture two of the villages where all enemy forces were to be placed under HVO command. On 18 April 1993 the villages of Gomionica, Svinjarevo and Behrići (which were all close to each other and connected by the main road) were attacked by the HVO, together with Rotilj, Gromiljak, Polje Višnjica and other Muslim villages in this part of the Kiseljak municipality. ...the Muslim population of these villages was either killed or expelled, houses and mosques were set on fire and, ... and Gomionica, houses were plundered. In the case of Rotilj the TO were asked to surrender their guns before the HVO shelled the village. As a result the lower part of the village was set on fire and 20 houses or barns were destroyed, and seven civilians were killed. Later there was graffiti on a wall to the effect: “This was done by the Maturice...” (para 665, page 222).
4. „... The attacks occurred two days after the attacks on the Muslim villages of the Lašva Valley and were part of the pattern of attacks on the Muslims of Central Bosnia...” (para. 669, page 223).
5. „... on 12 June 1993, Tulica was attacked by the HVO, resulting in the deaths of at least 12 villagers and the destruction of the village. ...” (para 721, page 241).
6. „ Han Ploča and Grahovci are associated villages which also lie to the south of Kiseljak on the way to Sarajevo, not far from Tulica. Shortly after the attack on Tulica they were also subject to attack by the HVO. ...the HVO issued an ultimatum to the Muslims to surrender their weapons. After the ultimatum expired, the village was shelled by the HVO and the VRS, and houses were set on fire. An HVO infantry attack followed. Having come into the village, HVO soldiers lined up three Muslim men against a wall and shot them. They also killed some other men and set fire to a garage with people in it. The women and children were then taken to the Kiseljak barracks. ...and that in all 64 people were killed during the attack or after their capture” (para. 722, page 242).
7. „... the attacks on Tulica and Han Ploča–Grahovci were part of a sustained HVO attack in which civilians were murdered and subjected to inhumane treatment...” (para. 723, page 242).
8. „... The Bosnian Muslims were systematically subjected to arbitrary imprisonment for which there was no justification. The assertion that they were detained for security reasons, or for their own safety, is ... without foundation. ...that while so detained the Muslims were subjected to conditions which varied from camp to camp, but which were generally inhuman. ...while detained the Muslims were, without any justification, used as hostages and human shields, and forced to dig trenches and that, as a result of the latter activity, a number were killed or wounded. ...” (para. 800, page 273).

**3.1.2. From the Appeals Chamber Judgment in the case against Dario  
Mario Čerkez, No IT-95-14/2-a of 17 December 2004.**

**Šantići, the Vitez municipality**

1. „... in Šantići, 28 people died; of them, one was a 15-year old male, one was a 68-year old male, and one was female. ...these three were civilians” (para. 474, page 125).
2. „... an unlawful attack against civilian objects since damage only to Muslim houses could not have been caused by military fighting, and soldiers carrying around petrol canisters shows that the damage was willful.” (para. 477, page 126).

**Nadioci, the Vitez municipality**

3. „... in Nadioci three persons were killed, among whom two were female...” (para. 487, page 128).

**Gačice, the Vitez municipality**

4. “... Muslim houses and the Mekteb were burnt down on 20 April 1993 by HVO soldiers during the attack.” (para. 504, page 132).

**Donja Večeriska, the Vitez municipality**

5. „... further destruction occurred between 18 and 21 April 1993, when Muslim forces had left the village for Grbavica – having run out of ammunition – and civilians and unarmed TO members took refuge at the BritBat Compound in Divjak. ...civilian objects were deliberately targeted during the second round of unlawful destruction.” (para. 520, page 136).
6. „... large scale destruction not justified by military necessity occurred in April 1993 in Večeriska/Donja Večeriska” (para. 526, page 138).

**Očehnići, the Vitez municipality,**

7. „... the willful destruction of all Muslim houses in Očehnići was of a large scale and was not justified by military necessity since the villagers were unarmed and did not put up any resistance. ...” (para. 534, page 139).

**Rotilj, the Kiseljak municipality**

8. „... HVO soldiers had taken up positions on the hills surrounding Rotilj and that every time “the inhabitants” tried to leave the valley, they were shot at. So the HVO controlled the area, and so they were not able to have any food or anything into the village” (para. 537, page 141).
9. „ The exact number of TO members and civilians present in Rotilj during the attack is unknown; it is, however, clear that the majority of the Muslim population in the village were civilians. Following the attack, women were still allowed to leave the village to go to Kiseljak for necessities, while all men were prevented from leaving the village. This was effected by the HVO blocking off the road by which the village could be entered and exited and stationing soldiers on the hilltops surrounding the village. The inhabitants were still kept in Rotilj in September 1993.” (para. 538, page 141).
10. „... during the offensive on Rotilj, on 18 - 19 April 1993, seven individuals were killed: Zibiza Skršo, a 31-year-old, was raped and then killed by 13 rounds of small arms fire; Miralem Topalović, 43 years old, and Esad Topalović, 28 years old, both killed by having their heads split open, were found lying on the side of the road; Bajro Puščulovic, 20 years old, and Zila Puščulovic, 61 years old, were killed by having their heads split open, were found lying on the side of the road.” (para. 540, page 141).

burnt alive in their houses. Dževad Hodžić, 22 years old, was murdered, and Zijad Kosovac, 16 years old, was murdered.” (para. 542, page 142).

11. „... Zibiza Skršo was assaulted and that it was a “serious attack on human dignity” constituting inhumane acts and inhuman treatment (para. 546, page 143).
12. „... Muslim houses were looted.” (para 548, page 143).
13. „... plunder had been committed in the village of Rotilj” (para. 549, page 143).

#### Svinjarevo, the Kiseljak municipality

14. „... two houses remained intact, in the sense of they were not burning, and there were Croats living there”. About 100 houses were destroyed and the mosque was burnt down.” (para 553, page 144).
15. „... the destruction of property occurred on a large scale and was targeted against Muslims while houses of Croats were not destroyed. ...this destruction was not justified by military necessity and that the perpetrators acted with the intent to destroy the property in question. ...” (para. 554, page 144).

#### Gomionica, the Kiseljak municipality,

16. „ ... Gomionica was shelled by the HVO and that HVO soldiers later set houses on fire, destroying 131 of its 159 houses along with the Mekteb and the Turbe. ... they set houses on fire and the aim was to “destroy any proof of it”. ...no damage was done to the Catholic Church or to Croat homes and buildings” (para. 557, page 145.).
17. „ ... the destruction of property occurred on a large scale and was targeted against Muslims’ houses, while houses of Croats were not destroyed; ...the destruction was not justified by military necessity and that the perpetrators acted with the intent to destroy the property in question.” (para. 558, page 145).
18. „ ... the HVO “came in big trucks, small trucks, on tractors, and they plundered the lower part of the village, taking away everything they could at the time”, later being aided by civilians “who carried, in their arms, on their backs and wheelbarrows, most probably valuable things.” (para. 559, page 145).

#### Višnjica, the Kiseljak municipality

19. „ ... Muslim property was destroyed during the attack on Visnjica on 18 April 1993. ...that houses were set on fire, leaving almost all the houses gutted.” (para. 561, page 146).
20. „... the destruction of property occurred on a large scale and was targeted against Muslims’ houses and that a reasonable trier of fact could have found that this destruction was not justified by military necessity and that the perpetrators acted with the intent to destroy the property in question.” (para. 562, page 146).

#### Polje Višnjica, the Kiseljak municipality

21. „... on 18 April 1993, Polje Visnjica was attacked and “some houses were burnt down,” noting that among the destroyed houses, Croat houses remained intact. ...103 structures burned.” (para. 563, page 146).

#### Behrići, the Kiseljak municipality

22. „... almost all the houses in Behrići were destroyed... almost all of [redacted] without roofs leading to almost total devastation.” (para. 565, page [redacted])

23. „... the destruction of property occurred on a large scale throughout the Kiseljak municipality in connection with the attacks and that a reasonable trier of fact could have found that this destruction was not justified by military necessity and that the perpetrators acted with the intent to destroy the property in question.” (para. 566, page 147).

**Gromiljak, the Kiseljak municipality**

24. „... that the HVO attacked Gromiljak, ejecting the inhabitants and setting fire to the houses...that destruction occurred as part of the HVO attack.” (para. 567, page 147),
25. „... that wanton destruction not justified by military necessity, was established in Gromiljak.” (para. 568, page 147).

**Tulica, the Kiseljak municipality**

26. „... the killing of twelve civilians, including Zijad Huseinović, Aziz Huseinović, Hašim Huseinović, Safet Haskić, Refik Huseinović, Ahmed Bajraktarević, and Mufid Tulić. ...regardless of whether these individuals were combatants at the time that they were killed, the evidence is clear on the fact that they were in the custody of the HVO, and were being detained at the Tulica village graveyard, and therefore *hors de combat*.” (para. 570, page 148).
27. „... these killings in Tulica in June 1993 constituted murder, ...and willful killings.” (para. 571, page 149).
28. „... the killed individuals were first subjected to ill-treatment: Kasim Huseinović, was beaten in his chest and head by soldiers with rifle butts, and kicked, before he was shot. Aziz Huseinović was shot in the leg before he was killed, Safet Katkić, Refik Huseinović, Aziz Huseinović, Mufid Tulić and Ahmed Bajraktarević were made to run down a steep slope and then fired at, causing them to fall down the slope.” (para. 572, page 149).
29. „... inhuman acts and inhuman treatment had been committed in the village of Tulica.” (para. 573, page 149).
30. „... on 12 June 1993 several houses in Tulica were set on fire by HVO soldiers, including one named Medić, who used a gas can to pour petrol on the houses; ...the houses belonged to Sifet Kačačić, Zijad Huseinović..., and that the houses may have been set on fire because arms were found inside.” (para. 574, page 149).
31. „... the fact that arms were found in the house did not constitute a militarily justifiable reason to destroy them. ... wanton destruction not justified by military necessity was established for Tulica in June 1993...” (para. 575, page 149).
32. soldiers looting valuables from the houses in Tulica and driving off with them; an HVO soldier pushing a wheelbarrow full of electronic equipment, including a television set, stereo and video-equipment; and HVO soldiers driving around in cars belonging to the villagers.” (para. 576, page 150).
33. „... the crime of plunder was established in Tulica in June 1993...” (para. 577, page 150).

**Han-Ploča – Grahovci, the Kiseljak municipality**

34. „... Even though the exact number of missing persons is unknown (varying from 60 to 100), ...many of them were killed after they were in the custody of the HVO soldiers in Han Ploča...” (para. 580, page 151).



35. „... the destruction was willful and not justified by military necessity since only Muslim houses were destroyed, and the destruction occurred when there was not much fighting. ...” (para. 586, page 152).
36. „... that... cars and buses being taken away or trucks, if somebody had them. ... looting...” (para. 587, page 152),
37. „... plunder had been committed in the villages of Han Ploča-Grahovci...” (para 588, page 152).
38. „... that the mosque was deliberately set on fire by HVO soldiers...” (para. 590, page 153).

#### Elementary school in Dubravica

39. „... unlawful confinement of civilians and imprisonment occurred in the Dubravica Elementary School...” (par. 594, page 154).

#### The SDK building

40. „... he arrived at the SDK building on 18 April 1993, there were male prisoners – “children 12 and up, and there was Nazif Arnaut, who was 64 years of age” ... the “children 12 and up” were civilians... (para. 608, page 157).

#### Kaonik

41. “... Muslim civilians and TO members were detained in the camp on two occasions: first, after the HVO attack on the municipality, in January 1993 and secondly, after the attacks in the Lašva Valley, in April 1993. For instance, in May 1993, 79 detainees were listed.” (para. 624, page 162).
42. „... Muslim civilians and TO members were detained in the camp on two occasions: first, after the HVO attack on the municipality in January 1993 and, secondly, after the attacks in the Lašva Valley in April 1993. For instance, in May 1993, 79 detainees were listed.” (para. 624, page 162).
43. „... there were civilians held at Kaonik...” (para. 625, page 162).

#### The Kiseljak barracks and the Kiseljak municipal building,

44. „... women and children were held in the Kiseljak barracks...” (para. 633, page 164).
45. „... that... when Han Ploča and Grahovci were attacked in June 1993 by the HVO, his mother was part of a group taken to the municipal building in Kiseljak...” (para. 636, page 165).

#### Rotilj village,

46. „... that ... cordoning off Rotilj, preventing civilians from leaving the village, when the civilians were not detained in the village for their own safety, constitute imprisonment and unlawful confinement of civilians, ...” (para. 640, page 166).

#### Central Bosnia

47. „... In January 1993 in the town of Busovača, numerous civilians were targeted and killed, ...” (para. 667, page 174).
48. „... The following crimes were committed in Central Bosnia, in April 1993, *inter alia*, in Ahmići... Šantići... Nadioci... Pirići... ”

Večeriska/Donja Večeriska... Očehnići... Kiseljak municipality... in Rotilj ...in Svinjarevo, Gomionica, Vinjica, Polje Višnjica, Behrići, and Gromiljak... in Tulica ... in Han-Ploča... -Grahovci... Kaonik, the Dubravica Elementary School, the SDK building, the Vitez Cinema, the village of Rotilj, the Kiseljak barracks; and the Kiseljak municipal building" (para. 668, page 175).

49. "... there were attacks carried out by Croats against the Bosnian Muslim civilian population in Central Bosnia from January to June 1993. They have to be characterized as widespread, systematic and directed against a civilian population" (para. 669, page 175).
50. "... indeed there was objectively such an organized effort to promote a cause or to secure some definite result with a group of persons in Central Bosnia, aimed at the Bosnian Muslims. ..." (para. 679, page 176).

## 1.2. Ex officio decision

On 13 July 2007, the Court delivered to the parties and the Defence Counsel a list of facts to be accepted as proven. These facts were established in the following ICTY cases: Prosecution versus *Aleksovski*, IT-95-14/1-T, Judgment of 25 June 1999; Prosecutor versus *Kupreškić*, IT-95-16-T, Judgment of 14 January 2000; Prosecutor versus *Blaškić*, IT-95-14, Judgment of 3 March 2000; Prosecutor versus *Kordić and Čerkez*, IT- 95-14/2, Judgment of 26 February 2001; Prosecutor versus *Naleilić and Martinović*, IT-98-34-T, Judgment of 31 March 2003 and Prosecutor versus *Rajić*, IT-95-12-5, Judgment of 8 May 2006.

On 23 July 2007, a status conference was held in order to hear both the parties and the Defence Counsel about the concerned list of facts.

On the same date of 23 July 2007, having heard the parties, pursuant to Article 4 of the Law on Transfer, the Court ex officio accepted as proven the facts which are listed in the Annex to its Decision number X- KR-06/298 and also referred below, mentioning the paragraph numbers of the respective decisions. In deciding on the issue, the Court applied the same criteria as applied in the Decision of 7 March 2007.

### 1.2.1. From the ICTY Prosecution versus Aleksovski, IT-95-14/1-T, of 25 June 1999

21. The Socialist Federal Republic of Yugoslavia ("the SFRY"), comprising six republics and two autonomous regions, disintegrated in the early 1990's and four of the republics declared their independence, which was challenged militarily by the federal government and the Yugoslav national army, the Yugoslav People's Army (hereafter "the JNA"). The Republic of Croatia declared its independence on 25 June 1991 and was subsequently recognized as an independent state by the European Community and the United States. On 6 March 1992, the Republic of Bosnia and Herzegovina declared its independence and soon thereafter the European Community and the United States recognized the statehood of the Socialist Republic of Bosnia and Herzegovina (hereafter "Bosnia and Herzegovina"). The two states were both admitted as members of the United Nations by a decision of the General Assembly on 22 May 1992.

22. Meanwhile, in Bosnia and Herzegovina, which subsequent to elections held in November 1990 was governed by a coalition government consisting of the Muslim "Party of Democratic Action" (hereafter "the SDA"), the "Croatian Democratic Union" (hereafter "the HDZ") and the "Serbian Democratic Party" (hereafter "the SDS"), tension was rising. The co-operation between the three main parties was becoming exceedingly difficult with the SDA and the HDZ favoring an independent Bosnia and Herzegovina whereas the SDS was supporting the idea of maintaining within the Yugoslavian framework. At the same time, a separate Serb political structure was in the making by way of establishing a number of "Serbian Autonomous Regions" (hereafter "the SAOs") in areas predominantly inhabited by Bosnian Serbs. On 9 January 1992, the "Republic of the Serbian People of Bosnia and Herzegovina" was proclaimed (hereafter "the SRBH").- In May that same year, this self-proclaimed republic formed its own army under the command of General Ratko Mladić (hereafter "the VRS"), which coincided with the announcement of the Federal Republic of Yugoslavia (Serbia and Montenegro) (hereafter "the FRY") to withdraw all JNA personnel, who were not citizens of Bosnia and Herzegovina, from that territory. Similarly, "the Croat people in Bosnia and Herzegovina, faced with the oncoming danger and aware of its historical responsibility to defend the Croatian ethnic and historical areas and interests, through its legally elected government representatives" founded the "Croatian Community of Herceg-Bosna" (hereafter "the HZ-HB") in November 1991. The following year on 8 April, its military force the "Croatian Defense Council" (hereafter "the HVO") was formed.

23. During the ensuing armed hostilities, which erupted on the territory of the newly independent Bosnia and Herzegovina, the Bosnian Serbs were generally opposed in unison by the Bosnian Croats and the Bosnian Muslims, with the military units of the Bosnian Croats, the HVO, being formally under the direction of the army of Bosnia and Herzegovina (hereafter "the BH army") and the central government in Sarajevo. In reality, as far as the Lašva Valley region was concerned, it would appear that for the most part the BH army was responsible for holding the front lines in areas where the Bosnian Muslim population prevailed and the HVO was equally responsible for holding the front lines in areas with a predominantly Bosnian Croat population. However, the co-operation between the HVO and the BH army was gradually breaking down and clashes between the two forces were reported during the fall of 1992. Towards the end of January 1993, there was an outbreak of open hostilities between the HVO and BH army and Bosnian Muslim men were rounded up by the HVO in the town of Busovača, as well as in surrounding villages, around 24 January 1993. Approximately four hundred of these men were taken to be detained at the nearby detention facility at Kaonik (hereafter "Kaonik compound") for about two weeks. Around two and a half months later, in the beginning of April that same year, the HVO took over the local municipality building in Travnik and the flag of the HZ-HB was raised on that building. An upsurge of clashes between the HVO and the BH army followed. Soon thereafter, in the middle of April, another rounding up of Bosnian Muslim men by the Bosnian Croat forces took place, which resulted in the detention of at least one hundred men at Kaonik compound for about a month. "

#### 1.2.2. ICTY Prosecutor versus Kordić and Čerkez, IT- 95-14/2, of 26 February 2001

8. "Central Bosnia is a loosely defined area in the middle of Bosnia, about 30 km north-west of Sarajevo and to the east of Mostar and Herzegovina. At the heart of Bosnia is the Lašva Valley, consisting of the municipalities of Vitez, No

Busovača. The municipality of Zenica lies to the north and the municipalities of Kiseljak and Fojnica to the south. These municipalities, together with Travnik, made up the core of the area referred to as Central Bosnia. To these may be added the municipalities of Žepče to the north, Gornji Vakuf to the west, Kreševo to the south and Vareš and Kakanj to the east. The population of the area in 1991 was nearly 470,000, of whom about 48 per cent were Muslim, 32 per cent Croat and 10 per cent Serb. The significance of the area to the conflict lay in its position and the fact that it contained a number of armaments factories. It is a mountainous area with important roads running along the valleys, going from Herzegovina to Eastern Bosnia and from Sarajevo to the north.

9. "The year 1992 saw the take-over by the HVO of municipalities in the HZ H-B and the beginning of the conflict between Muslims and Croats. It began with the scramble for weapons between the Bosnian Croats and Muslims. "

10. "The events in the early part of that year were as follows: on 29 January 1992 the first meeting of the Presidency of the HZ H-B was held in Grude. Dario Kordić was named as part of the Working Presidency with Mate Boban, Ignac Kostroman and two others. As noted, a referendum on Bosnia and Herzegovina independence was held and the vote was for independence. On 6 March 1992 independence was declared by Bosnia and Herzegovina. "

497. "On 7 March 1992 an interview with Dario Kordić appeared in a publication called the *Lašvanski Krug* (the Lašva Circle). In the interview Kordić said that the main reason for forming the Croatian Community was the fact that Serb forces occupied Bosnia and Herzegovina:

"The Croatian people are bound to protect the minimum area that historically belongs to them with the *banovina* borders. The HZ represents 30 naturally connected municipalities ... on the territory where the Croatian population was and is in the majority. This entitles the Croatian people to organize relations to everybody's satisfaction, respecting the right of Muslims, Serbs and other peoples in the area".

491. "(...) the HZ H-B was founded with the intention that it should secede from Bosnia and Herzegovina and with a view to unification with Croatia."

501. "The HVO exerted control in the municipalities of Vareš, Kiseljak, Vitez, Kreševo and Žepče.

508. "Kreševo: This municipality is next to Kiseljak and 30 kilometers from Busovača. In 1991 the population was about 6,700, of whom 70 per cent were Croat, 23 per cent Muslim and 5 per cent Serb. In 1992 the Croats controlled the police in Kreševo. Public funds were diverted to the HVO and HZ H-B. At the same time the HVO assured the Muslims of Kreševo that there was no reason to be concerned. In April 1992 the municipal assembly was dissolved and a Crisis Committee established: although there were some Muslims on the Committee they did not wield genuine power (...). Dario Kordić, as Vice-President of the HDZ in Central Bosnia, sent a long fax stating that the HVO was the only force allowed and any other force would be treated as an occupying force."

520. "The Trial Chamber finds that the weight of the evidence points clearly to persecution of the Muslims in the Central Bosnian municipalities taken over by the HVO: Busovača, Novi Travnik, Vares, Kiseljak, Vitez, Kreševo and Žepče. The persecution followed a pattern in each municipality and demonstrates that the HVO had launched a campaign against the Bosnian Muslims in these municipalities. (...)"

704. "In June 1993 further fighting broke out in Central Bosnia, some of it caused by the newly revitalized ABiH. It may be noted that, by this time, although Dr. Karadzic had added his signature to those of Mr. Boban and President Izetbegovic to the Vance-Owen Peace Plan, the Bosnian Serb Assembly had rejected the plan and in May it had become clear that the international will was lacking for the 10-province solution proposed under the plan."

727. "The remaining offensives were as follows. On 16 June 1993, and the days following, the HVO Military Police and other units from Kiseljak attacked the ABiH positions in Kreševo, burning villages, setting mosques alight and detaining the Muslim population. On 24 June the HVO launched an assault on Žepče, far to the north of the other localities dealt with in the Indictment. The assault began with shelling and (according to one witness) the use of Serb tanks. There was some resistance but 90 per cent of Žepče (apart from the Croat area) was destroyed or set on fire by the shelling. All four mosques were completely demolished during the attack and a number of people were killed. Žepče fell at the end of June".

797. "There was evidence about other places which were used for the detention of Muslims. For instance, in Novi Travnik, Muslims were detained in Stojkovići camp from 18-30 June 1993 where the HVO forced them to dig trenches on the front line and to bury bodies. Doctors in Vitez received complaints and examined women who had been held (for the purposes of rape) by HVO soldiers in a house in Novaci. After the attack on Kreševo men were put in a hangar and the women and children in the elementary school and were there from July – September 1993: there were accounts (...), of beatings, torture and lack of food, together with accounts of trench-digging. "

800. The Bosnian Muslims were systematically subjected to arbitrary imprisonment for which there was no justification. (...) while so detained the Muslims were subjected to conditions which varied from camp to camp, but which were generally inhuman. (...) while detained the Muslims were, without any justification, used as hostages and human shields, and forced to dig trenches and that, as a result of the latter activity, a number were killed or wounded. (...) the detained Bosnian Muslims were unlawfully confined and subjected to inhuman treatment."

802. "(...) the unlawful confinement and detention of the Bosnian Muslims was part of the common design to subjugate them. As has been noted, the attacks on the towns and villages followed a pattern, beginning with the initial assault and culminating in the detention of the surviving Muslims. This happened with such regularity that it could have been the result of nothing except a common plan.

**1.2.3. From ICTY Prosecutor versus Kupreškić, IT-95-16-T, of 14 January 2000**

54. "Croat nationalism and discrimination against Muslims was on the increase in central Bosnia in 1992-1993 (...) and (...) this may have contributed to the commission of (...) crimes (...).

80. "There was a split between Croats and Muslims in 1992 (...).

125. "(...) starting in mid-1992, tensions and animosity between Croats and Muslims rapidly escalated.

126. "There were three principal governmental or quasi-governmental entities in Bosnia and Herzegovina in 1992-1993: the Government of the Republic of Bosnia and Herzegovina based in Sarajevo, the Croatian Community of Herceg-Bosna based in Mostar and the Republika Srpska based in Pale. Although the Sarajevo government was the legitimate government of Bosnia and Herzegovina, many Croats perceived it as Muslim-dominated. Corresponding to these governmental or quasi-governmental divisions, there were various armed forces, Military Police, civil police, paramilitary formations and village guards operating in central Bosnia in 1992-1993, which were at different times either joint or formed along ethnic lines. There was, first, the Army of the Republic of Bosnia and Herzegovina, or the BiH army, which was perceived by certain Croats and Serbs to be Muslim-dominated. On the Croat side was the HVO and its armed forces. The Serbs fought in Bosnia through the JNA and later through their own Bosnian Serb army. There was also the Territorial Defense of Bosnia and Herzegovina which was essentially a Muslim force and which was later incorporated, at least on paper, into the BiH army. The Muslims then had some irregular formations, such as the Mujahedin. There were also special units of the Croats such as the Vitezovi. There was also a Croat Military Police (which included special units such as the Jokers), the Muslim Military Police, the Croat civilian police and the Muslim civilian police. In addition to the various armies, there were the village guards or patrols, which were initially joint Muslim-Croat operations but which split shortly before the conflict of October 1992 into separate patrols."

146. "(...) In the Lašva River Valley, the HVO was, by and large, better armed and equipped, and was able to set up more checkpoints than the Bosnian Territorial Defense. The (...) contention that the BiH army was better equipped than the HVO is contradicted by all the UN observers (...)."

**1.2.4. From ICTY Prosecutor versus Blaškić Tibomir, IT-95-14, of 3 March 2000**

7. The crimes (...) were purportedly committed in the context of "serious violations of international humanitarian law against Bosnian Muslims" by members of the armed forces of the Croatian Defense Council (hereinafter "the HVO") between May 1992 and January 1994, in the municipalities of: Vitez, Busovača, Kiseljak, Vareš, Žepče, Zenica, Duvno, Stolac, Mostar, Jablanica, Prozor, Čapljina, Gornji Vakuf, Novi Travnik, Travnik, Kreševo and Fojnica, all in the territory of the Republic of Bosnia and Herzegovina. "

341. (...) the objectives of the Croatian nationalists in Croatia were clearly shared by many members of the HVO and the Croatian Community of Herceg-Bosna (HZHB): Mate Boban, president of that community, but also Anto Valenta (leader of the HDZ in Vitez and later President of the HDZ for the HZHB), whose nationalistic writings were revealing; Ignac Kostroman (Secretary-General of the HZHB) and Dario Kordić whose speeches inflamed the Bosnian Croats. The example (...) is from the minutes of a meeting held on 12 November 1991, signed by Mate Boban and Dario Kordić: "the Croatian people in Bosnia and Herzegovina must finally embrace a determined and active policy which will realize our eternal dream – a common Croatian state".

342. Those nationalists could not accept that the Muslims could want to have their own defense. On 10 April 1992, Mate Boban decreed that the Bosnian Territorial Defense (TO), which had been created the day before, was illegal on HZHB territory. The Croatian General Rošo confirmed the proscription by an Order of 8 May. On 11 May, Tihomir Blaškić implemented that Order declaring the TO illegal on the territory of the Kiseljak municipality. Tensions continued to increase between May 1992 and January 1993.

366. In sum, during 1992 discriminatory acts were regularly carried out against the Muslim authorities of Vitez, Busovača and Kiseljak and against the Muslim population of those municipalities. Those acts sought to exclude those Muslim authorities from civilian, political and military functions for the benefit of HVO representatives. They made life so onerous for Muslim civilians at that point that many of them decided to leave the area and to move to other municipalities where they were in the majority. Those who chose, despite everything, to remain in those municipalities had to accept that they would be subject to persecution by a political and military regime increasingly hostile to them.

367. In those three municipalities, tensions increased between Muslim and Croatian populations (...), with incidents breaking out especially when one party thought it could gain a tactical or strategic advantage: control of a village, a town, former military warehouses or a road. Provocation and incidents increased, such as raising a Croatian flag over public buildings or the abduction of officers of Croatian origin. The first acts of destruction of mosques and Muslim houses, the first murders of civilians and the first acts of pillage occurred. On a small territory, groups of refugees (...), some Croatian but most Muslims, forced to leave their homes by Serbian forces, were joined by internal movements of displaced Muslim populations forced from their dwellings by the Croats.

368. Those were the conditions, in which the Vance-Owen Plan was presented, on 2 January 1993, at the first plenary session of the Bosnian parties, summoned to Geneva by the International Conference for the former Yugoslavia. That peace plan proposed, *inter alia*, a decentralized Bosnia-Herzegovina, organized into ten provinces, each one substantially autonomous and administered by a democratically elected local government. According to the explanation given by one of the Trial Chamber's witnesses, the whole logic of the plan was one of power-sharing with predominance of one nationality in certain zones but not without denying the other nationalities. Power was to be exercised with respect for minorities. That witness also testified that the plan could only be implemented if the parties co-operated perfectly, since they would both have to make concessions as regards *not only* the territory over which they had nominal control, but also government of their and the setting up of their administration.

369. According to the Vance-Owen Plan, the Lašva valley would largely be in Province 10, and the rest (Southern part of the Kiseljak municipality) in Province 7 (Sarajevo). Province 8 (Mostar) extended from Bosnia-Herzegovina's Southern border with Croatia to Prozor and Konjic in the North. The Plan assigned the main responsibilities in Provinces 8 and 10 to the Croats and in Province 7 to the Muslims. In the minds of Croatian nationalists, and in particular of Mate Boban, this meant that Province 10 was Croatian. However, he believed that lands, which were historically Croatian, would end up in Province 7 and thus would be lost to them. He considered it necessary to ensure Croatian domination in the regions in question.

370. The Croats, and in particular the Bosnian-Croats, provoked an open conflict between Croats and Muslims in central Bosnia by anticipating the implementation of the Vance - Owen Plan then by wanting to implement it unilaterally.

371. The first violent clashes broke out in January 1993. On 15 January, Bruno Stojić, Head of the HZHB Defense Department, called for the ABiH forces to surrender to the authority of the HVO in Bosnian Provinces 3, 8 and 10 or to leave these territories before 19:00 hours on 20 January. Paragraph 3 of the ultimatum also provided that:

Unit members of the HVO Armed Forces and BH army [...] who refuse to leave the region and acknowledge the superior command shall be regarded as members of paramilitary units and shall be disarmed and arrested.

372. In the face of the Muslim forces' refusal to obey the ultimatum, Croatian forces embarked on a series of actions intended to implement the "Croatisation" of the territories by force. The Muslim community was subjected to of an increasing number of acts of aggression: ill treatment, plunder, confiscation, intrusion into private homes, beatings, thefts, arrests, torching of homes and murder of prominent Muslims. Hundreds of Muslims were arrested and many were imprisoned in Kaonik in the former JNA warehouses. Many were beaten. Most of them were forced to dig trenches, often in inhumane conditions, exposed to enemy fire, beaten or even killed, and sometimes serving as a human shield.

373. Tensions were high. The British Battalion military information summary of 16 January 1993 recorded the presence in the region of "extremists on [both the Muslim and Croat] sides, who do not appear to be under the control of their respective commanders", who made the situation worse.

374. Following the Muslim army commanders' refusal to obey the ultimatum, HVO forces launched an attack on the town of Busovača during the night of 20 to 21 January.

375. Indeed, by order of 16 January 1993, General Blaškić placed all troops on the highest state of alert, in particular those of the HVO, the Vitezovi Unit and the Military Police Fourth Battalion and called upon them to prepare for battle. Three days later, on 19 January, soldiers from the Vitezovi Unit were placed under his command by General Petković and with the help of the Ludvig Pavlović Brigade, they carried out reconnaissance operations on troop movements of the army of Bosnia-Herzegovina. The following evening, and further to the ABiH authorities' refusal to obey Bruno Stojić's ultimatum, on the orders of Božo Rajić, the HZHB Defense Minister, the HVO launched attacks against



the Busovača region, attacks which, (...) were at the root of torching of businesses and private homes. Croatian forces fired on eight businesses belonging to Muslims and damaged them using explosives, including grenades. These forces also looted private Muslim homes and killed a soldier of the Territorial Defense. Subsequently, according to the report drawn up by Major Vinac, Deputy Commander of the Vitezovi, a battalion of fifteen soldiers from that unit was sent to the Busovača zone on 26 January 1993. The report also stated that that battalion was still there on 9 February 1993.

376. According to the British Battalion's report of 21 January 1993, this was "a pre-planned, co-ordinated attack on the Muslim population". That report also stated that roadblocks had been set up at each end of the town, on 20 January between 20:00 hours and 21:00 hours. The telephone lines were also cut a few hours before the start of the offensives.

377. Other attacks followed. On 24 January 1993, the HVO set fire to around 19 Muslim houses in Busovača and forced out their inhabitants. It kept some of them in Kaonik prison. On 25 January 1993, Croatian forces shelled the Grablje and Merdani villages, which caused many civilians to flee. Those two villages were however defended by ABiH units from Visoko and Maglaj and Muslim artillery pounded Busovača from Grablje.

379. It should be noted that at the same time, similar incidents were occurring in the municipality of Gornji Vakuf. On 17 January 1993, Zivko Totic, local commander of the HVO, ordered the ABiH commander to place himself under the authority of the HVO. Following the refusal to carry out that order, the HVO launched attacks against the army of Bosnia-Herzegovina on 19 January 1993 at 00:30 hours and set fire to several Muslim villages in the area. (...) Despite Mate Boban's order to stop fighting on 19 January 1993, hostilities continued until 27 January 1993.

380. Throughout the period from January to April 1993, the Muslim population would continue to be subjected to increasing persecution from the Croatian political and military authorities. Many civilians left the area to go to Kačuni or Zenica. (...).

381. There were considerable efforts made by the ECMM and UNPROFOR first of all to try to get prisoners released and secondly to contain the conflict. A joint Committee was appointed in Busovača on 13 February.

382. On 27 January 1993, General Blaškić gave an order that firing should cease within 24 hours. The same day, he received a report from Franjo Nakić, Chief-of-Staff, summarizing the situation. That report announced however that there would be future conflicts in Vitez, in Busovača or in Kiseljak. It was noteworthy in that it used expressions like "to create feelings of insecurity and fear on the enemy side" and especially "the enemy regrouped their forces and entered *our* villages" or "our forces disarmed the villages of *Strane and Skradno where 100 rifles were captured*". A relatively calm situation prevailed until April 1993.

383. Still the report predicted that the conflict would explode in April 1993 and the following months.

**1.2.5. From ICTY Prosecutor versus Mladen Naletilić, IT-98-34-T, of 31 March 2003**

16. "On 10 April 1992, the President of the HZ H-B, Mate Boban, issued a decree creating the HVO. The HVO became the supreme executive and defense authority for the HZ H-B and the BH Croats. Mate Boban himself became the supreme commander of the HVO. This meant that in this part of Bosnia and Herzegovina, the HZ H-B had the actual authority. "

23. The position of the BH Croats was again made clear to the BH Muslims. The policy to make these areas Croatian was twofold: i) to establish a military frontline between the "BH Croat" provinces 8 and 10 and the "BH Muslim" province 9, and ii) to eliminate all Muslim resistance within these provinces in order for the BH Croats to have full military control of "their" provinces. The BH Muslims rejected wishes expressed in "Boban's Statement", however the BH Croats proceeded to assume their control over these areas.

24. The incidents between BH Croats and BH Muslims during the end of 1992 and the spring of 1993 had an impact on the formation and composition of the armed forces in Bosnia and Herzegovina. As the former army of Yugoslavia, the JNA, was dominated and mostly controlled by the Serbs. The defense organized by the BH Croats and the BH Muslims mostly consisted of local territorial defense (often referred to as TO) and other units, which the BH Croats and BH Muslims had managed to get control of. The BH Croat and BH Muslim defense was organized under the umbrella of the HVO. However, these units were BH Croat, BH Muslim and mixed units (...). A separation and a clearer division started to develop: BH Muslims were either leaving the HVO units taking their weapons with them to join the increasing BH Muslim units, or were dismissed and thrown out of their HVO units.

25. Tension increased further, and by mid-April 1993, it turned into a full-scale conflict between the HVO and the ABiH in central Bosnia (...). "

**1.2.6. From ICTY Prosecutor versus Ivica Rajić, IT-95-12-5, of 8 May 2006**

27. "Tihomir Blaškić was Commander of the HVO's Central Bosnia Operative Zone ("CBOZ"). The CBOZ and Tihomir Blaškić were under the command of, and subordinate to, the HVO Main Staff. From about April 1992 to approximately 24 July 1993, Milivoj Petković was head of the HVO Main Staff. From approximately 24 July 1993 to 9 November 1993, Slobodan Praljak was head of the HVO Main Staff. During the time that Slobodan Praljak was head of the HVO Main Staff, Milivoj Petković was deputy head of the HVO armed forces."

28. "On 1 November 1992, Tihomir Blaškić organized the CBOZ into three operational groups, including the Second Operational Group. The Second Operational Group's area of responsibility included the municipalities of Kiseljak, Kreševo, Vares and Kakanj. "

34. "In June 1993, following a military action, the Army of Bosnia and Herzegovina ("ABiH") took over part of Kakanj municipality. Following and because of this action, around 13,000 Bosnian Croats (including HVO soldiers from the 1st Brigade) left Kakanj municipality involuntarily and moved to the Vares municipality.

35. "In June 1993, the Vares HVO issued an ultimatum to Bosnian Muslims in the villages of Dastansko and Stupni Do to surrender their weapons. The Dastansko villagers surrendered their weapons. In Stupni Do, before the expiration of the ultimatum, most of the villagers, fearing an attack, took refuge in neighboring villages but returned home after several days. Knowing that the ABiH would retaliate if the HVO attacked Stupni Do to disarm the village, the HVO withdrew the ultimatum and the villagers were allowed to keep their weapons."

## 2. Dismissal of a witness

On 5 June 2007, the Defence summoned Josip Sakić as a witness in the referenced case. After the Defence Counsel began to examine this witness, it turned out that he was in charge of the Red Cross activities in Kreševo from spring 1993 up until the end of the conflicts at the latest. The Panel then intervened so as to clarify the status of this witness as a member of the Red Cross. Mr. Josip Sakić then explained that he was a member of the municipal Red Cross in Kreševo, initially as a volunteer and then as its President. The witness then explained that the municipal Red Cross is part of the BiH Red Cross Federation which is part of the International Committee of the Red Cross (ICRC). All these organisational levels constitute the Red Cross. Mr. Josip Sakić noted that during the period concerned, they operated in compliance with the ICRC norms, code of conduct and criteria. Mr. Josip Sakić also stated that, as a member of the Red Cross, he could not be partial in favour of any ethnic group or armed forces, and that his only task was to help the population.

The Panel raised an issue of restrictions concerning the testimonies of the Red Cross employees in the criminal cases.

The Defence Counsel believed that Mr. Sakić could testify considering that he was a volunteer in the national (that is, the State level) organisation of the Red Cross, which was not part of the ICRC, regardless of the fact that the Red Cross cooperated with the ICRC members during that period. The Defence Counsel further concludes that Mr. Sakić was therefore a volunteer who did not belong to the ICRC, but he actually acted in accordance with the norms and criteria set forth by the ICRC, in aiding the refugees and internally displaced persons in the Kreševo region. Pursuant to the presented arguments, the Defence Counsel believes that this witness should be allowed to give his testimony.

The Panel nevertheless requested the Defence Counsel to explain the type of the tasks performed by Mr. Sakić, given the neutrality, confidentiality and impartiality of the Red Cross bodies at all levels in performing the activities from the scope of responsibility of this organisation during the armed conflict (at local, state and international levels).

The Defence Counsel noted that Mr. Sakić performed the tasks together with the Red Cross, including the contacts with prisoners, refugees, internally displaced persons and others. The Defence Counsel also advised the Panel of the fact that he had contacted the ICRC in order to obtain information on the events in Kreševo, and that he was informed that he could not be provided with such information. Still, the Defence Counsel notes that he cannot see any particular reason for which Mr. Sakić, being a person who volunteered and worked on a humanitarian basis, could not give his further testimony.

The Prosecutor posed certain questions in regard to the circumstances of Mr. Sakić's appointment, but he did not go into detail about the disputable issue.

The Defence Counsel eventually noted that he stood by his proposal that Mr. Josip Sakić should be examined as a witness.

Upon deliberation, the Court finally decided not to grant the motion for the witness concerned to be examined, on the following grounds:

The Court finds that Mr. Josip Sakić, while performing the activities related to the scope of operations of the Red Cross, was obliged to comply with the principles of neutrality, impartiality and confidentiality being the most important principles governing the work of the Red Cross. Due to the stated principles indeed, and for the purpose of preserving this work strategy, the Red Cross enjoys the privilege of having its members exempt from the obligation to testify at the investigative stage and the main trial in criminal cases. The same position was also taken by the Trial Chamber of the Hague Tribunal, in its decision on the case IT-95-P, *Prosecutor versus Simić et al.*, of 27 July 1999. The Chamber established that, in accordance with the rules of customary international law, the ICTY enjoys an absolute privilege of non-disclosure of its confidential information.

In the conclusion of the referenced decision of the ICTY pertaining to the ICRC, the Trial Chamber concluded that the ICRC is an institution unique of its kind with international legal personality and which is exclusively alone in its status under international law; the mandate of the ICRC to protect victims of international armed conflicts entrusted to it under Geneva Conventions, Additional Protocols and the Statute constitutes a "strong public interest"; the capability of the ICRC to meet its obligations and duties stemming from its mandate depends on the willingness of the parties to the conflict to allow the ICRC access to the victims of the conflict; on the other hand, that willingness depends on the consistency of the ICRC in complying with the principles of impartiality and neutrality and the principle of confidentiality. The ratification of the Geneva Conventions by 191 States and the recognition of a special role of the ICRC in the international relationships by the United Nations General Assembly, including the historical practice and official opinion of the States on the principle of confidentiality by the ICRC led to the establishment of the rule that the ICRC has a right under customary international law to non-disclosure of the information on its work.

The Court agrees with the foregoing conclusions. The Court also finds that the Red Cross could not be able to gain confidence of the parties to the conflict if the ultimate control over its information would be somewhere else, other than in the hands of the ICRC. The Court believes that the violation of the principle of confidentiality of the ICRC information would mean the end of the long lasting capability of the ICRC to be allowed access to the victims of the armed conflict. The Court truly believes that the work of the Red Cross on the protection and assistance to the victims would be seriously jeopardised should the information gathered by the ICRC under the principle of their confidentiality be used in the criminal proceedings. If the introduction of the ICRC's confidential information in the Court proceedings were accepted, without prior consent of the ICRC, that would seriously threaten the role of the Red Cross and its capability of performing its mandate under international humanitarian law.

The Court also notes that such a position has been included in the Rules of Procedure and Evidence of the International Criminal Tribunal, that is, more precisely, the Rule 73 of these Rules foresees an absolute privilege of the ICRC to deny evidence.

The Court also took into advisement the Agreement on Headquarters signed between the ICRC and the BiH Council of Ministers on 26 March 1998. This is an international bilateral agreement regulating the legal status, privileges and immunity of the ICRC in Bosnia and Herzegovina, by which the ICRC's legal personality is recognised (Article 2), immunity from legal proceedings (Article 3), the non-violability of the premises and archive (Article 4 and Article 5), and the immunity of all members of the delegation, both international and local employees, from any legal proceedings, including their appearance as witnesses in relation to the actions they undertook while performing their duties (Article 10(2) and (11)).

Finally, pursuant to Article 82 (c) of the Criminal Procedure Code of Bosnia and Herzegovina, Mr. Sakić would violate his duty of keeping professional secrets of the organisation with which he worked.

Pursuant to the foregoing, the Court ex officio decided to refuse the motion suggesting that Mr. Josip Sakić be examined as a witness.

### **3. Amendment to the Indictment.**

On 23 July 2007, a status conference was held to discuss the Panel proposal on accepting as proven additional established facts by ICTY. The Prosecutor orally requested the Panel to amend the indictment in order to "specify the indictment by small corrections, which will not imply any legal change or any facts". Asked by the Panel to specify what the concerned intended amendments were, the Prosecutor answered illustrating those amendments with, for instance, removing words like "certain", the replacement of "visible" by "obvious" and so on. The Panel considered the intended and concerned amendments of the indictment as being only of a cosmetic nature and, as emphasized by the Prosecutor herself, they would not imply amending neither the facts nor the legal issues contained in the Indictment. Therefore, having in mind the obligation to ensure an efficient and effective trial, pursuant to Articles 13, 239, 261, 262 and 263 of the CPC of BiH, the Court made the oral procedural decision to refuse this motion as unfounded. Thus, all closing arguments being completed and in accordance with Article 278 of the CPC, the presiding judge declared the main trial closed.

## **II. Presented evidence**

### **1. By the Prosecution**

The Prosecution presented the following witnesses: Osman Bejtić, Enver Bejtić, Edin Hasandić, Admir Topalović, Refik Hodžić, Junuz Ahabović, Džemo Ramić, Aiša Agić, Halid Lušija, Adem Lušija, Ibrahim Lisovac, Meho Hodžić, Salih Skopljak, Avdulah Popara, Benjamin Kardaš, Galib Kustura, Almedin Mušanović, Našid Beganović, Nedžib Fazlibašić, Ivica Šunjić, Hajrudin Bejtić, Kasim Fazlibašić, Fazil Fazlibašić, Cigelj.

The Prosecutor also presented, as rebutting evidence, the following witnesses: Nermin Poturković and Šarić.

Furthermore, the Court inspected the following material evidence submitted by the Prosecutor's Office of BiH: Exhibits T-1-Record on Examination of Witness Osman Bejtić of 10 May 2006; T-2-Record on Examination of Witness Bejtić Enver of 5 June 2006; T-3-Record on Examination of Witness Edin Hasandić of 12 September 2006; T-4-Record on Examination of Witness Admir Topalović of 26 September 2006; T-5-Record on Examination of Witness Refik Hodžić of 5 June 2006; T-6-Record on Examination of Witness Junuz Ahabović of 21 September 2006; T-7-Record on Examination of Witness Demo Ramić of 13 September 2006; T-8-Record on Examination of Witness Aiša Agić of 13 September 2006; T-9-Record on Examination of Witness Halid Lušija of 17 August 2006; T-10-Record on Examination of Witness Adem Lušija of 18 September 2006; T-11-Record on Examination of Witness Ibrahim Lisovac of 23 January 2006; T-12-Medical findings for Meho Hodžić of 19 October 1993; T-13-Record on Examination of Witness Meho Hodžić of 9 August 2006; T-14-International Red Cross Certificate proving Salih Skopljak's detention in Kreševo of 20 October 2004; T-15-Certificate recognizing Salih Skopljak's status of Bosnia and Herzegovina camp detainee of 1 November 2004; T-16-Record on Examination of Witness Salih Skopljak of 17 August 2006; T-17-Certificate of the State Commission for Exchange of Prisoners of War proving that Avdo Popara was registered as a detainee in a camp in Kreševo, of 21 April 1995; T-18- Certificate of the State Commission for Exchange of Prisoners of War proving that Avdo Popara was detained as a civilian detainee in the HVO camp in Kreševo of 27 April 1994; T-19-International Red Cross Certificate proving that Avdo Popara was detained in Kreševo of 27 May 1994; T-20- Certificate recognizing Avdo Popara's status of Bosnia and Herzegovina camp detainee of 8 October 1998; T-21- Record on Examination of Witness Avdulah Popara of 7 March 2006; T-22- Record on Examination of Witness Benjamin Kardaš of 16 August 2006; T-23- Record on Examination of Witness Galib Kustura of 19 September 2006; T-24-Record on Examination of Witness Almedin Mušanović of 18 August 2006; T-24- Record on Examination of Witness Almedin Mušanović in the case Vlatko Buzuk of 21 November 2000 (photocopy and original); T-25-Record on Examination of Witness Našid Beganović of 17 August 2006; T-26-Record on Examination of Witness Nedžib Fazilbašić of 18 September 2006; T-27-Certificate of the seizure of hall of 5 March 1994; T-28-Record on Examination of Witness Ivica Šunjić of 7 August 2006; T-29-Record on Examination of Witness Bejtić Hajrudin of 18 May 2006; T-30-Record on Examination of Witness Kasim Fazilbašić of 4 October 2006; T-31-Record on Examination of Witness Fazil Fazilbašić of 6 March 2006; T-31a-Record on Examination of Witness Fazil Fazilbašić in the case against Vlatko Buzuk of 21 November 2000 (original and photocopy); T-32-Record on Examination of Witness Ljuban Cigelj of 30 May 2006; T-33-Certificate of membership of Krešo Lučić in the armed forces (the HVO (Croat Defence Council)-R BiH) of 22 November 2004; T-34-Personal file of Krešo Lučić; T-35-List of soldiers of 8 October 1993; T-36-Military Police Report of 12 February 1994; T-37-Official Note of 21 December 1993; T-38-Command of 9 December 1993; T-39- Kreševo Military Police Document of 21 October 1993; T-40-Military Police Report of 19 August 1993; T-41-Report on the work of Military Police of 18 August 1993; T-42-Command to transfer to house isolation of 15 August 1993; T-43-Command to put Enver Meredan in house arrest of 15 August 1993; T-44-Request for apprehension of 18 July 1993; T-45-Military Patrol Report 16 July 1993; T-46-Military Police Report of 16 July 1993; T-

the release of Husein Hrkić of 4 July 1993; T-48-Order for apprehension issued to the Military Police of 4 July 1993; T-49-Command of 30 June 1993; T-50-Work Order of 15 June 1993; T-51-Military Police Report of 8 June 1993; T-52-Military Police Report for 4 May 1993; T-53-Daily Report on the work of the Kreševo Military Police of 4 June 1993; T-54-Daily Report on the work of the Military Police of 2 June 1993; T-55-Daily Report to the III Company Command- IV Battalion of the Military Police with the seat in Kiseljak of 27 May 1993; T-56-Certificate of the Handover of Weapons of 26 May 1993; T-57-Military Police Daily Report of 25 May 1993; T-58-Report to the Command of the III Company of the IV Battalion- Kreševo Military Police of 19 May 1993; T-59-HVO Command of 6 May 1993; T-60-Military Police Report of 4 May 1993; T-61-Military Police Report of 26 April 1993; T-62-Military Police Order of 31 March 1993, T-63-HVO Report on the members of the MOS (Muslim Armed Forces) of 2 July 1993; T-64-Kreševo Military Police List of 18 December 1993; T-65-Kreševo Military Police List of 30 December 1993; T-66-Military Police List of 12 January 1994; T-67-Kreševo Military Police List of 15 February 1994; T-68-Command by Krešo Lučić of 18 October 1993; T-69-Daily Report on the work of the Military Police of 3 May 1993; T-70-Military Police Daily Report of 1 June 1993; T-71-Military Police Work Order of 30 May 1993; T-72-Daily Report on the work of the Military Police of 31 May 1993; T-73-Military Police Report of 10 January 1993; T-74-Kreševo Military Police Report of 5 July 1993; T-75-Kreševo Military Police Daily Report of 26 May 1993; T-76-Certificate of the Association of Camp Detainees for Emina Skopljak of 14 October 2004; T-77- Certificate of the Association of Camp Detainees for Džanan Skopljak of 14 April 2007; T-78-Certificate of the Association of Camp Detainees for Aida Skopljak of 14 October 2004; T-79-Request for disqualification of 5 July 1993; T-80-List of the Military Police Kreševo of 18 March 1993; T-81-Criminal Record Excerpt re. Krešo Lučić of 31 May 2006; T-82-Military Police Daily Report of 26 January 1993, T-83- Birth Certificate for Krešo Lučić; T-84-Act-Command of 22 June 1992 and T-85-Sarajevo MUP Official Note of 8 November 2000.

## 2. By the Defense

The Defense presented the following witnesses: Ivo Kuliš, Žarko Pavlović, Frano Marković, Pavo Vukoje, Ivica Nuić, Josip Sakić, Ivo Lasuro, Anto Marić, Mato Tadić, Vinko Kvesić, Željko Gracić, Čelan Tomo, Orhan Vila, Mile Jukić, Mladen Tolo, Marinko Marić, Ivica Marić, Denis Tadić, Simo Ivanković, Ahmed Beganović, Šefik Kardaš, Andrija Miličević, Vlado Komšić, Marjan Mišanović, Ivica Karatović and Željko Drljo.

The Court also examined Doctor Franko Zenetić as an expert witness, as well as the Accused himself, testifying as a witness at the main trial.

The Court also inspected the following material evidence adduced by the Defence: Exhibits O-1-Conclusion of the Presidency of the Kreševo Municipality Crisis Staff of 4 August 1992; O-2-Conclusions of the session of the Croat and Muslim People of 21 April 1993; O-3- Receipt on temporarily seized objects of 21 April 1993; O-4-Official Note – Kreševo Police Station of 22 May 1993; O-5-Assessment and decision as proposed by the Command of the 3<sup>rd</sup> Corps of 17 July 1993; O-6- Action taken regarding the violation of the agreement by the HVO 3<sup>rd</sup> Corps Command of 22 April 1993; O-7-Order by the Command of the 3<sup>rd</sup> Corps of 21 May 1993; O-8- Regular combat report of the Command 3 of 2 June 1993; O-9- Order by the Staff of the Supreme Command of the Armed Forces of the Republic of Bosnia and Herzegovina of 14 June 1993; O-10-Order to have security measures intensified, of 14 May 1993.

Special report on the situation in the Central Bosnia Operative Zone, of 17 June 1993; O-12- Information of the Franciscan Monastery Kreševo of 21 June 1993, addressed to the Archbishopric Ordinariate; O-13- Assessment of operations by the aggression forces made by the 6<sup>th</sup> Corps Command of the Army of BiH dated 2 August 1993; O-14- Order to march of 2 September 1993; O-15- Excerpt from the book *A Cunning Strategy*; O-16- Report by the Staff of the Supreme Command of the armed forces – Forward Command Post, of 25 June 1993; O-17- Photographs of the village of Pirin; O-18-List of defenders killed in Kreševo, of 15 May 2007; O-19- List of members of the III Battalion of the HVO – Kreševo; O-20- List of members of the construction platoon of 12 August 1993; O-21- Certificate of the seizure of the Šunja hall (MTS) of 5 March 1994; O-22-Command of the HVO Brigade *Ban Jelčić Josip* of 9 March 1993; O-23-Certificate of the Hunting Club *Terijeb* – Kreševo, of 21 May 2007; O-24-Criminal record excerpt re. Nedžib Fazlibašić of 3 July 2007 (photocopy); O-25-Criminal record excerpt re. Fazil Fazlibašić (photocopy and original)<sup>1</sup>; O-26-Verdict of the Cantonal Court in Novi Travnik against Mato Đerek of 21 June 2005; O-27-Verdict of the Cantonal Court in Novi Travnik against Mato Miletić of 29 March 2005; O-28-Agreement of 20 April 1993; O-29- Criminal charges against Beganović Našid of 23 April 2007; O-30- Witness examination schedule of 30 May 2007 (Defence document); O-31- Attachment to the agreement of the parties to end conflicts in BiH; O-32- Official Note-Police Administration Kiseljak, of 18 April 1996; O-33,-O-33a, O-33b; Receipt on temporarily seized objects of 21 April 1993; O-34- Official Note – Police Administration Kiseljak, of 20 June 1995; O-35- Official Note – Police Administration Kiseljak, of 17 April 1996; O-36-Death Certificate for Marko Mišanović of 9 February 1994; O-37- Death certificate for Kata Vukoja Petrušić of 11 September 1993; O-38- Discharge letter for Ivica Baresić of 20 May 1994; O-39- Hospital release form for Anto Gašić; O-40- Hospital release form for Rozalija Gašić; O-41- Sketch of the site KU/34/95 of 16 June 1995; O-42- Deževica Parish War Report; O-43-DVD-maps; O-44 through 53 Photographs of the killed; O-54- Report on the MOS (Muslim Armed Forces) attack on the HVO patrol at the Blinje checkpoint of 20 June 1993; O-55-Report on the MOS attack on the HVO patrol in Srijješće, of 20 June 1993; O-56-Report on the MOS attack on the HVO patrol in Mešćema, of 20 June 1993; O-57-Certificate of membership of Denis Tadić in the armed forces (HVO-A R BiH) of 22 November 2004; O-58-Information from the Criminal Operational Records of the Police Administration Kiseljak and Travnik re. Nedžib Fazlibašić and Fazil Fazlibašić of 19 July 2007 and O-59- Medical Card for Meho Hodžić.

### III. Closing arguments

Upon the completion of the evidentiary proceedings, the Prosecutor and the Defense Attorneys presented their closing arguments.

#### **1. The Prosecution**

On 13 September 2007, the Prosecutor presented her closing arguments.

The Prosecutor first concluded that the existence of the essential elements of the criminal offence of Crimes against Humanity under article 172 of the BiH CC, referring to the widespread or systematic attack directed against the civilian population, the knowledge of

<sup>1</sup> Exhibits No. O-24 and 25 constitute one document (criminal records for both persons on one sheet of paper),



the perpetrator of the existence of such an attack and the acts of the perpetrator related to the attack, have been proven beyond any reasonable doubt.

The Prosecutor stated that the Defence based its case on the statement that the apprehension and imprisonment of Bosniaks were justified under the regime of internment. The notion of internment and the conditions for internment are clearly provided in International Humanitarian Law and also in the ICTY jurisprudence. The Prosecutor states that the arrests and imprisoning of Muslim-Bosniak population of the municipality Kreševo were not made for the purpose of internment but rather this was a widespread and systematic attack against the civilian population of Muslim-Bosniak ethnicity and their imprisonment in the camps designed for physical torture and the humiliating treatment.

The Prosecutor then moved to the defence argument that the persons of Croat ethnicity were imprisoned in Šunje too, and specified that "The witnesses confirmed that it was true that some persons of Croat ethnicity were imprisoned in Šunje too, but their number was rather small. They also added that those persons would only stay overnight and they were released immediately the following morning.

Many defence witnesses also confirmed that the accused was the Military Police commander, the Military Police was located in the Elektrodistribucija building, the Military Police used to secure the Šunje and the Military Police used to escort detainees to forced labour.

The accused Krešo Lučić was examined in the capacity of a witness. The Prosecutor considers that his testimony is in his defence and he is not under obligation to speak the truth. The position of the Constitutional Court of BiH is along those lines<sup>2</sup>.

Having noted that the Defence also focused on proving the claims as to who started the war in Kreševo, the Prosecutor stated that "the Prosecutor's Office of BiH will not analyse those claims by the defence, since we believe that the subject of these criminal proceedings is not who started the war, but who committed the widespread and systematic attack against the civilian population, and who committed crimes in the course of that attack. We also believe that committing crimes by one of the warring parties does not justify the committing of crimes by the other warring party".

Finally, the Prosecutor stated that, bearing in mind the aforesaid, the Defence of the accused Krešo Lučić is ungrounded and calculated to avoid or diminish his criminal responsibility, and as such should be fully rejected by the Court. Indeed, the Prosecutor added that his strategy is supported primarily by both prosecution and defence witness testimonies, but also by numerous material evidence in the case file. "The defence did not offer one single firm evidence that would corroborate any of its claims that would be of importance for this criminal case".

The Prosecutor referred to the jurisprudence of the Court of BiH in respect to the application of substantive law, emphasizing that it was entirely correct, as was confirmed by

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<sup>2</sup> See Decision of the Constitutional Court of BiH of 20<sup>th</sup> September 2006, in the case *Seržević v. BiH*, *Suvod Duderija*, no. AP 2632/05, para. 25; published in the Official Gazette of BiH no. 9/07 of 2007.

the Decision of the Constitutional Court of Bosnia-Herzegovina in the case of the applicant Abduladhim Maktouf<sup>3</sup>, and concluded that all the dilemmas in that respect are clarified and the 2003 Criminal Code of Bosnia-Herzegovina should be applied in this criminal case.

The Prosecutor stated that, when deciding on the duration of the sentence, consideration should be given to the age of the victims and to the command position the accused held at the time of perpetration of the criminal offence.

Finally, the Prosecutor asked the accused Krešo Lučić be considered guilty of the committed criminal offence, but did not propose the length of the punishment that should be imposed on the accused.

## 2. The Defence

On 14 September 2007, the Defence also presented its closing arguments and pointed out that Krešo Lučić has been accused of the criminal offence of Crimes against Humanity referred to in Article 172(1) of the CC BiH in conjunction with Article 180(1) and Article 29 of the CC BiH, while he has been accused of committing the offence in the period of time from April to September 1993, meaning under the law which was enacted ten years after the offence was committed and which, moreover, is more severe to him. Therefore, only the criminal code in force at the time the offence was committed and that is the most lenient to the Accused should be applied to Krešo Lučić.

The Defence then contested the clarity and the formulation of the Indictment, also arguing that it does not contain all necessary elements which the indictment must contain.

The Defence claimed that Krešo Lučić has been charged with the perpetration of the same actions of which another person was accused and convicted by a final verdict, arguing that the Accused cannot pay the price for the lack of coordination between the Prosecutor's Office of BiH and the Cantonal Prosecutor's Office in Novi Travnik, which violates the *non bis in idem* principle.

The Defence contested the allegation that all the individuals of Muslim ethnicity, who were mentioned in the Indictment as being apprehended, imprisoned and tortured, were civilians.

The Defence then claimed that the Prosecutor did not present any evidence relating to the charge that the Accused ordered something to someone. The Defence further stated that the Prosecutor did not prove that the Accused issued orders, which is to say it did not do it using a single piece of written evidence. No witness was heard or confirmed in any way the allegations in the Indictment that the Accused ordered imprisonment or torture. The Defence also claimed that, during the evidentiary proceedings, it was established both by the defence evidence and the evidence of the Prosecutor that the accused Krešo Lučić had been at the lowest level in the chain of command, namely he was the commander of a platoon, a group of about twenty persons. Therefore, the accused Krešo Lučić cannot be treated as a person who had an important role in the planning or carrying out any widespread or systematic attack. According to the evidence presented, says the Defence, Krešo Lučić was detached from the chain of command of the HVO Military Police in the

<sup>3</sup> Decision of 30<sup>th</sup> March 2007 on Admissibility and Merits no AP1785/06, published in the Official Gazette of BiH no. 57/07 of 30<sup>th</sup> July 2007.

Central Bosnia and directly linked to the HVO Kreševo command. Hence, Krešo Lučić was not authorized to give any orders on imprisonment.

According to the Defence, in addition to the Indictment failing to provide evidence to corroborate that the Accused ordered imprisonment and torture and had played any role within the alleged widespread and systematic attack directed against the Bosniak population, the Indictment also failed to prove in any way that the accused Krešo Lučić had known about such an attack.

The Defence also pointed out that it was obvious that many of the Prosecution witnesses had been coached, but not quite successfully, because they contradicted themselves, the material evidence and the testimonies of the other witnesses.

The Defence then claimed that the Army of BiH unexpectedly attacked the territory of the Kreševo municipality on 17 June 1993. The Defence states that "in the total war chaos caused by the attack of the Army of BiH, the military and the civil command opted for defence, which encompassed the measure applied to a part of the Muslim-Bosniak population. Those measures were justified for military and security reasons". Mentioning the measure of internment, the Defence concluded that those actions were legitimate, justified and in accordance with international conventions.

The Defence accepted that the Accused did participate in the apprehension of certain persons, but those avoiding or breaching their military duty. Besides, he participated in the disarmament and apprehension of those persons of Muslim ethnicity who did not hand over their weapons or who were suspected of being in possession of communication means. These were lawful measures, not only referring to Muslims, but also to Croats. There is no doubt that force was applied during the questionings, but Mato Đerek has been convicted of that, while Krešo Lučić has nothing to do with that, except that his policemen were obliged to act upon the order for apprehension. The Defence further does not deny that a certain number of interned persons were taken to work on fortification of defence in Kreševo, and the military policemen participated in their taking and bringing back. However, that was not forced labour, nor did Krešo Lučić order or decide on that.

The Defence proposed that the accused Krešo Lučić be acquitted of the charges because of the "lack of evidence", emphasizing that the Accused voluntarily turned himself in order to prove his innocence.

The accused Krešo Lučić, after the closing arguments of his Defence Counsel, stated he entirely supported the closing arguments of the Defence Counsel.

#### **IV. Factual Findings established by the Court**

The Court, within its discretion, evaluated all the presented evidence and assessed as a whole some inconsistencies or discrepancies. Also, the overall credibility of the witnesses was assessed in a global and systematic manner. Within this approach, the Court also took into account the different recitals of the Prosecution and Defence witnesses which express the different perspectives of the parties. In fact, some witness's testimonies. However, they are consistent in respect to the actual and current time

concerned criminal offense seen in a wide context. In fact, the said differences are not decisive, as some variations in their statements entirely represent expected and normal differences in observations of persons of different perspectives coming out of an individual and group ability to perceive, memorize and retrieve information. This is particularly so because all of them survived very stressful and traumatic events, during which they could not observe precisely all the relevant and consistent details, nor could such a precision be reasonably expected from the witnesses.

By assessing all the presented items of evidence individually and in their correlation, the Court has established beyond reasonable doubt that in the incriminated period the accused Krešo Lučić committed some criminal offences he is charged with.

Krešo Lučić is accused because, within a widespread and systematic attack by the army and Military Police of the Croat Defence Council (HVO) directed against the civilian Bosniak population, namely in the territory of the Kreševo Municipality, knowing about the attack and in his capacity of the Kreševo HVO Military Police Commander, "he ordered and committed imprisonment contrary to the rules of international law and he ordered and committed the torture of the Bosniak civilian population and aided others in their inhuman acts by taking the detained persons to forced labor and their imprisonment in poor conditions", as described in Counts 1 through 4 of the Indictment.

#### **1. Evidence on Count 1 (the unlawful deprivation of liberty, imprisonment in poor conditions and forced labor)**

Count 1 charges Krešo Lučić because,

*"in June and July 1993 in Kreševo and the villages of Rakova Noga, Crnići, Bjelovići, Bukva, Ramići, Kreševo Municipality, with members of the Kreševo Military Police who were his subordinates, he unlawfully deprived of liberty and ordered Bosniak civilians from the above villages to be unlawfully deprived of liberty, and ordered the Bosniak civilian population to be taken away and imprisoned in the camps in the "Ivo Lola Ribar" Primary School in Kreševo and in the "Sunje" warehouse in Kreševo, where the prisoners did not have sufficient food, water or the necessary medical assistance, they were also taken to perform forced labor on a daily basis, where they performed hard labor, as was the case with Aiša Agić and a number of women and children from the village of Bukva; Galib Kustura, Omer Ramić, Halid Ramić and other villagers of Ramići, as well as civilian Bosniak population expelled from Jajce and Rogatica to that village; Našid Beganović, Ibrahim Beganović, Asim Beganović, Halid Lušija, Adem Lušija and other villagers of the village of Rakova Noga; Džemo Ramić, Refik Hodžić, Enver Bejić, Osman Bejić and other villagers of the villages of Crnići and Bjelovići; and Junuz Ahabović and Edin Hasandić from Kreševo".*

##### **1.1. Evidence on unlawful deprivation of liberty**

All the Prosecution's witnesses testified that they were apprehended as civilians.

Aiša Agić said that, on 24 June 1993, she was arrested in the village of Bukva together with other women, directly by Krešo Lučić and other men in military uniforms and carrying weapons. She also said she did not know Krešo Lučić from before, but she is sure about his identity, since one of the women arrested with her told her this man arresting them was Krešo Lučić, Commander of the HVO Military Police of the Kreševo Municipality. Aiša Agić added that no one ever told to any of them why they were arrested and they did not volunteer to follow them. Aiša Agić was brought to the Kreševo school, where she was interrogated by Josip Topić and stayed there until August 1993, when she was released.

Galib Kustura said that he was a refugee when around October 1992 or 1993, he was arrested by Military Police officers in multicolored uniform, in the house of Omer Ramić, around five km away from Kreševo, where he was accommodated. He said that he had been picking up humanitarian aid and had stayed there for 5 or 6 months, until he was arrested there, when the attack against the village started. He testified that he believes it happened in October 1992 but it could be 1993. He also said that all the inhabitants were arrested. He was in hiding for 3 days, but a member of the Military Police found him as he was "about to surrender anyway because (he) didn't know where to go". He was first brought to the civil police station, where he had to give a statement to two men, which he signed. Thus one said "take him to the Military Police now". Galib Kustura emphasized he knew Krešo Lučić from before, since he saw him a few months before his arrest while hunting.

Witness Halid Lušija said that, on 23 June 1993, he was arrested with his cousin, in front of their house, by Krešo Lučić, Mato Miletić and a third younger man. Some few months before he had to return his HVO uniform and weapon like other Muslims. The rest of his family was arrested later on. He also said that Mato Miletić was in civilian clothes.

Našid Beganović said that, on 20 June 1993, he was arrested by the military policemen Krešo Lučić, Denis Tadić and another one called Mladen. The witness also said that Krešo Lučić, whom he knew from before, brought him to the Kreševo school, where he had been immediately separated from his wife.

Adem Lušija also stated that, on 23 June 1993, he was arrested with his brother and cousin close to his house by Krešo Lučić and Mato Miletić, after he had to leave the police reserve. The witness stated that later on, he had been a member of the territorial defence as the leader of a shift at the frontline against the Serbs until April 1993. He also said that he had no weapon since HVO conducted disarmament of all the village of Rakova Noga, where he lived in May-June 1993, before his arrest. He added that Krešo Lučić, who he was used to work with before the war, was in uniform, like the soldiers around his house, while Mato Miletić was in civilian clothes.

It ensues from the testimony of Witness Džemo Ramić that he was born in 1976 and thus was a minor when, on 29 June 1993, he was arrested with his family and other minors by Mato Miletić and others in camouflage uniforms. He stated they were looking for arms in houses and they arrested all the men they found, meaning six of them, including his father.

Refik Hodžić stated that, on 19 June 1993, he was arrested in front of his house by Mato Miletić and another man, both in camouflage uniform. During 11 years he had been a member of the reserve police in Kreševo Municipality and had been disarmed and dismissed in May 1993, "since they didn't want to work with Bosniaks any more". Refik Hodžić added he had to go with them, with his father and two others, "while elderly, children and other civilians were put on buses to the Kreševo school".

Enver Bejić stated he was arrested on 19 June 1993 in his house in Bjelavići by members of the Kreševo Military Police. He was a member of the inactive territorial defence, armed and without any uniform. He said that Mato Miletić with other members of the Military Police wearing an HVO insignia arrested him with his all family and neighbors.

Osman Bejtić stated he was arrested in his house around 15- 19 June 1993 by Mato Miletić and five unknown armed soldiers. He added that they were collecting all the men they found. They took him to the school, saying he would come back but should first come to give a statement. However, twenty days later, they also arrested his wife and daughter.

Junuz Ahabović stated that he was employed in a privately owned bakery that had to sell bread exclusively to HVO. He said that he was arrested with Edin Hasandić in this bakery by Krešo Lučić and two armed police officers in camouflage uniforms. Edin Hasandić confirmed that, on 25 or 26 June 1996, he was arrested together with Junuz Ahabović, in the bakery they were working in, by Krešo Lučić and two Military Police officers, armed and in uniform with a white belt. Krešo Lučić said to Admir Topalović that he was supposed to arrest Edin Hasandić and Junuz Ahabović. Then, they were both brought to the police administration by Krešo Lučić. Witness Admir Topalović, in all essential parts of his testimony, also confirmed the statements of the two aforementioned witnesses and said that he was the owner of the bakery when, on 20 June 1993, his two workers Junuz Ahabović and Edin Hasandić were apprehended by Krešo Lučić. Admir Topalović said that he knew Krešo Lučić and thus asked him why he was taking his two employees away, while Krešo Lučić replied he was supposed to do so and took them both away.

Many witnesses presented by the Defence testified that apprehending civilians was not the responsibility of the Military Police but the civil police. In that regard, Čelan Tomo stated that "those people in the hall were all civilians, "but only able bodied Bosniak men" who were apprehended after the conflict started on 17 June 1993, not in uniforms and without any weapon. Čelan Tomo stated that the main task was to bring in the HVO soldiers who failed to appear on or who escaped from the frontline. Also Orhan Vila confirmed that those people in Šunje were mainly civilians. Ivo Kuliš stated that the apprehension of civilians was the task of the civil police, and that the Military Police were on the frontline, and the witness stated that he used the Military Police to apprehend the Croats refusing to go to the frontline. Frano Marković testified: "I did interrogate some persons as the Head of SIS", and that the civil police also interrogated civilians, but not the Military Police, which dealt with conscripts.

Mladen Tolo testified that their task consisted in bringing back to the frontline the military conscripts who had run away. This witness stated that he had never apprehended anyone else than HVO soldiers. The witness added that he had also heard stories saying that Bosniaks called the Kreševo police themselves to protect them, and that "SIS was apprehending civilians". Also Marinko Marić said that Military Police did not apprehend civilians. This witness stated that he had never issued any order for their apprehension; that was the task of the civil police. Ivica Tomić stated that he had not taken part in any apprehension of civil Bosniaks, but he had apprehended some Croatian soldiers because they had abandoned their post.

Šefik Kardaš stated that he was arrested in the village of Rakova Noga sometimes around 17- 20 June 1993, by his neighbor Janko Drijo and a few soldiers from the civil police. Vlado Komšić said that the difference between the military and the civil police concerned their respective tasks: the Military Police was in charge of the military and the civil police was in charge of the civilians: the Military Police apprehended drunk soldiers or those who

The accused Krešo Lučić himself testified that as the Military Police Commander, he got orders to apprehend the Croat soldiers who had escaped from the frontline or caused any incident. The Accused stated that he had never attended any of the meetings on the apprehension of the able-bodied Muslim men in Kreševo, but he heard that written or oral orders were issued to put those men from the neighbouring villages in the isolation centres in schools. He added that he had not taken part in that and had not issued any such order, as it was not his duty and thus he would not have any authority to do so. The Accused stated that "he had never participated in apprehension and that he had neither apprehended Aiša Agić (...), nor Galib Kustura, nor Omer Ramić, nor Halid Ramić, nor Edin Hasandić nor anyone from Ramići or Rakova Noga.

At the same time, several Defence witnesses, including the Accused himself, admitted that upon SIS orders or those from the headquarters, the Military Police would apprehend civilian able-bodied Bosniaks.

Furthermore, many Defence witnesses testified that what was performed in Kreševo was not an unlawful deprivation of liberty, but isolation aiming to protect those people from revenge, as the fact that many Bosniak civilians volunteered shows. Indeed, several Defence witnesses stated that many Bosniak civilians were not apprehended but volunteered to come to be protected.

Vlado Komšić stated that he did not know about the apprehension of Bosniaks, but he knew that some had reported themselves from villages around the town. He also stated that some of those in Šunje volunteered to come. He added that those places were intended to accommodate the refugees. According to this witness, half the population that was there came from many hamlets and villages near the frontline. The witnesses concluded that those people thus needed protection and so they went to Šunje or the Kreševo school. The witness also stated that they had exchanged those who wanted, and that they would not have kept those who did not want that. According to this witness, all those kept in Šunje wanted to stay in Kreševo. This was a collective center, not a prison.

The accused Krešo Lučić also stated he was aware that some persons who were in the Šunje hall were volunteers.

Šefik Kardaš further stated that, when arrested, they told him to come with them to the collective center since it could be dangerous to stay there, so he accepted without any resistance. He further explained that that was not detention but protection. Many came voluntarily to be protected because they were afraid of some incidents.

Denis Tadić said that many Bosniaks in Šunje wanted to stay there. They semi-volunteered to come to Šunje because the municipality was under attack and they were afraid to live in their houses.

Finally, the Defence witnesses Mladen Tolo, Denis Tadić, Ante Marić and the Accused himself stated that they were all fulltime on the frontline eight to nine days, starting from the day Kreševo got attacked, meaning for a period from 17 June until 25 - [REDACTED]. Indeed, this period includes the alleged day of apprehension of sev

witnesses claiming under Count 1 of the Indictment that Krešo Lučić apprehended them: Aiša Agić, Halid Lušija, Adem Lušija, Edin Hasandić and also Junuz Ahabović.

In that regard, witness Mladen Tolo stated that the day Kreševo got attacked by the Army of BiH, his assignment consisted in trying to return his people back to Tomići and then he went to the frontline for eight or nine days. According to the witness, Denis Tadić, a Military Police officer, was with him and got wounded on 20 June in the neck. Denis Tadić stated that, while on the frontline with Krešo Lučić and Mladen Tolo, he was wounded in the neck by a bullet on 26 June 1993. The Accused himself stated that within the ten to fifteen days following the attack on Kreševo, 16 military policemen were on the frontline. Also Marinko Marić stated that that was an overall attack, total chaos, so half of the military policemen had to go to the frontline. The witness added that he was one of those, with Mladen Tolo and Denis Tadić, and that they stayed there for eight full days without any break. This witness confirmed that Denis Tadić got wounded.

### 1.2. Evidence on imprisonment in poor conditions in Šunje:

The Prosecution witnesses testified that the detention conditions in Šunje were very poor.

Enver Bejić stated that "the living conditions were horrible." Refik Hodžić qualified the living conditions as "truly terrible". He stated that there was no water supply in the hangar.

Several Prosecution witnesses complained about the lack of space and sleeping facilities in the Šunje hangar. Witnesses Enver Bejić, Edin Hasandić, Džemo Ramić, Junuz Ahabović, Halid Lušija, Adem Lušija, Ibrahim Lisovac, Avdulah Popara, Benjamin Kardaš, Galib Kustura, Kasim Fazlibašić and Fazil Fazlibašić stated that there were at least 200 detainees in the Šunje hangar and complained about the lack of space available, in particular to lie down, because of this overcrowding. In that regard, Edin Hasandić said they were too many to sleep on their back, and Enver Bejić specified they slept on plywood. Salih Skopljak stated that they were between 100 and 200, "the hangar was completely full. We were sleeping next to each other". Salih Skopljak said that around 60 of the men in the hangar were not able-bodied, since he observed many men with chronic diseases, while also very young minors were imprisoned there too. Ibrahim Lisovac also mentioned that all men, even minors and elderly, were imprisoned in the Šunje hangar. Avdulah Popara specified that the size of the hangar was around 16 by 32 meters, without any window and with only one large door. At the highest point, they counted themselves in the evening and they were 207 detainees in it, witness Salih Skopljak said.

Several witnesses also described the inadequacy of the toilet facilities available to the detainees. Enver Bejić stated that the detainees used two barrels to relieve themselves, because the two available toilets in the hangar were locked. Avdulah Popara said the toilets were available one hour per day, while Refik Hodžić stated there were no toilet facilities in the Šunje hangar.

The lack of facilities for personal hygiene was also part of several testimonies. Witnesses testified that there were no washing facilities and that the detainees were thus, as a general rule, not able to wash themselves or their clothes, or to change. But some detainees, if they could, on an exceptional basis, go home to take a bath.



Osman Bejtić said there were no visits from the families allowed, since wives and daughters were also imprisoned but in the Kreševno school. Junuz Ahbabović, who was minor while detained, said he could occasionally go to see his parents.

Inadequate food supply was also a recurrent matter for many witnesses. Osman Bejtić testified that they hardly got food. Edin Hasandić said that "in the hangar, food was very poor". Refik Hodžić stated that they hardly got food. Defence witness Mladen Tolo stated that "when digging, Bosniaks would get the same food as Croats without any difference at all". Some detainees were occasionally allowed to receive food from outside.

Regarding medical care, many witnesses said that except the assistance of Doctor Skopljak, who was a detainee himself and had no medical conditions, there was no access to medical care. Osman Bejtić stated: "Skopljak had no medical conditions". Enver Bejtić testified that he was beaten up in an office during 48 hours. He said that he did not receive any medical care at all. Edin Hasandić stated: "Doctor Skopljak would dress the wounds of those beaten up as much as he could". Refik Hodžić stated that even Doctor Skopljak could not really help since he himself was a detainee and also beaten up. Junuz Ahbabović also said that Doctor Skopljak would always check those seeking medical assistance like those returned obviously beaten up, having been taken out of the hangar to *Elektroprivreda*, but being a prisoner himself, he had neither medical tools nor medicines. Doctor Salih Skopljak said that, being a detainee among others, he would try to assist medically whom he could, but he was often helpless and was also having his own tragedy. Ibrahim Lisovac explained that when he arrived injured at the Šunje hangar, Doctor Skopljak had a look but could not help him since he had nothing to do so with.

Interrogations, including beatings causing injuries and even deaths, were mentioned by many prosecution witness testimonies as well. Osman Bejtić testified that "some persons were taken for beating". Refik Hodžić returned beaten up, completely blue, with a swallowed head and closed eyes (...), Ibrahim Lisovac, Omar Hadžić and Jusuf Ramić died as a result of the beatings". Refik Hodžić also said that he was taken out and beaten up and testified about others having been beaten up and even murdered. He also mentioned humiliation by being forced to kiss dogs. Salih Skopljak said that he saw several detainees returning to the hangar severely beaten up; he could remember that Ibrahim Lisovac, Avdo Popara and Jusuf Ramić were the most injured ones. Benjamin Kardaš also said that several detainees got badly beaten up during the interrogation, especially Avdo Popara, also Meho Hodžić and Beganović, while Jusuf Ramić died from his injuries; Enver Bejtić testified that he had been beaten up for 48 hours in an office because of someone's lie. Enver Bejtić said that after this he did not receive any sort of medical care. Džemo Ramić stated that his cousin Jusuf Ramić died from his injuries, having been taken out of the hangar for two hours and returned carried by two soldiers since he could not walk anymore. Džemo Ramić emphasized that Jusuf Ramić always had problems with his legs and that those who beat Jusuf Ramić knew him and beat him specifically on his legs. Džemo Ramić said he buried Jusuf Ramić in the local cemetery with three other prisoners. Džemo Ramić added he saw several prisoners coming back from *Elektroprivreda* obviously having been beaten up. Džemo Ramić finally added that "others have been beaten up in similar conditions like Refik Hodžić or Fazil from the Mratinići village, Avdo Popara...". Witnesses mentioned were Fazlibašić, Osman Bejtić, Benjamin Kardaš, Salih Skopljak and Kasim

confirmed that Jusuf Ramić was one of those who died as a result of the beatings. Witness Benjamin Kardaš stated that some detainees have been taken out and beaten up, among whom Avdulah Popara was very severely injured. Nedžib Fazlibašić confirmed that Kasim Fazlibašić had been beaten up several times.

The Defence witnesses emphasized that the Šunje hangar was not under the responsibility of the military but civil police, even though the Military Police secured Šunje very shortly. Witness Ivo Kuliš stated he never went to Šunje, which was not under his responsibility but under the civil police's responsibility. Žarko Pavlović said that he had nothing to do with the civilians in the Kreševo school and in the Šunje hangar. Žarko Pavlović stated that he did not know anything about their living conditions, as he had never been there. According to this witness, those people were most probably supervised by the civilian police. All this was the domain of the civil police authorities, while he was a military. Frano Marković stated that "the civil police secured Šunje." Ivica Nuić said that he thought that the civilian police had been securing the Šunje hangar. Čelan Tomo stated that the Military Police had to deal only with soldiers, but he as a Military Police officer also admitted: "after eight days on the frontline, I went to secure the Šunje hangar on several occasions. I was not alone; we were always two". The witness explained that their task consisted in securing the Bosniak able-bodied men from their own men, but they were deprived of the liberty of movement. The witness also stated that the majority of them came on their own will, while others had been apprehended by the civil and Military Police, and that, later, the civil police took over. The witness added that he "didn't enter that much". Ivica Tomić stated that, for a while, he secured Šunje, and that the civil police was already there. According to the witness, the civil police were in charge of Šunje first, and they took over from them later in July 1993 and thus, together, they secured the hangar. Later, only the civilian police were in charge, because they, the Military Police, had to go to the frontline. The Accused also stated that the Military Police secured the Šunje hangar at one point: "From 17 - 20 June 1993, only the civil police was providing security to Šunje; the following 15 days, because of the panic, the Military Police assisted them in guarding the hangar". The Accused stated that they got the order to protect Šunje during 15 days from SIS and the Third Battalion, while other military policemen remained at checkpoints or securing their facility. Apart from this temporary period of 15 days, the Military Police were not in charge of Šunje at all".

Furthermore, as mentioned before, several Defence witnesses contested the word "detention", arguing that the facility concerned is not detention but isolation, shelter, collective center, since the purpose was their protection and security. Ivo Kuliš stated: "Šunje was not a camp but a collective center. The intention was to shelter them". Frano Marković related his explanation to the speech he made to a female representative of the International Committee of the Red Cross: "As she said she came to pay a visit to the prisoners, I told her that they were people under isolation, not prisoners". He further added that the aim was "to protect the Bosniaks and to prevent any revenge against them after 15-20 people had been killed". Ivica Nuić illustrated the fact that Šunje was not a detention camp by stating that some of the Bosniaks from Šunje did not want to be exchanged, especially the conscripts. Ivo Lastro stated that the hall was guarded in order to secure those people. The idea that the civilian Bosniaks in the Šunje hangar were volunteers and thus not in detention, was also stated by the witnesses Čelan Tomo. He said that the "majority of them came on their own" and "they were apprehended by the civil police for their own security, while people got killed in the ongoing chaos". Ivica Tomić stated:

security to the detained". He described that they were outside; their assignment consisted in providing security of the facility for them. The witness further added that he "himself did that during 30-40 days around August 1993". Denis Tadić stated that the able-bodied men in Šunje were there for their own safety on a semi-voluntary base; that the Šunje hangar was a collective center where Bosniaks just as Croats had some obligations. The accused Krešo Lučić also stated that "the people living near the frontlines needed to be protected". Ahmed Beganović stated he voluntarily left his home, while his wife and children remained there, because he needed protection. "Nobody threatened me. I could have stayed in my house; they just came to pick me up". Also Šefik Kardaš stated that he felt no pressure when he was taken to be brought to the "collective center" and explained that it could have been dangerous to stay, so he went there without any resistance. Šefik Kardaš and Vlado Komšić testified also in that regard.

Finally, all the Defence witnesses emphasized that the "detention conditions" in Šunje were as good as it was possible. Ivo Kuliš stated that even if he never went there, he knew that "they had enough food and water" and that they all received the same food anyway. The witness added that the area was perhaps a bit narrow and that he did not know if they had medical care. Frano Marković said that the conditions were provided to the extent possible, and said that they had had pallets on the floor and blankets, and the ICRC Representative had actually thanked him because of the way he treated them. The witness pointed out that men were in Šunje while women were in the school, and that, also, some Bosniaks remained in their house because they did not have enough space for all of them. Pavo Vukoje stated: "we were all under the same conditions". The witness described that the first days, food was interrupted for all, soldiers and civilians; that later, the kitchen in Barit was established and provided food to all except those living in their own houses. This kitchen prepared around 3000 meals per day, using local products and what they received from Caritas and the ICRC, who were providing basic ingredients. Ivo Lastro remembered: "I saw around 80-100 men in Šunje. I saw bins, plywood planks, pallets, blankets and mattresses (...) there were toilets". The witness added that he knew that hangar because it was 100 meters from his house, and that he knew the owner, everything was installed in the hangar and generators were used for electricity. The witness describe that women and girls would prepare food in Barit and he would transport it to be distributed. According to the witness, they all had the same meals "as our guys on the frontline", all twice per day. Marinko Marić also estimated that there were between 80 and 100 men in Šunje and emphasized that there were not only Bosniaks, but also Croats and HVO soldiers as well. He added that they could communicate with their family members outside on a daily basis and were treated in a very fair way, they could get food and clothes from their home. They had two toilets, pallets and mattresses on the floor. The conditions were adequate and they could take a bath in the hall since there was a water tank there, which was used. They could go out and receive visits. Čelan Tomo stated that they were maximum 120 in the Šunje hangar. The witness added that they would allow them to get food and contact with outside, because they all knew each other. The witness stated that "their families would bring them food, clothes... (...), and they also had a doctor with them, Salih Skopljak treated them. They could go outside of the hangar, where they would sit during the day". Ivica Tomić evaluated the number of people in the hangar to around 100. He added that they had pallets, sleeping bags, toilets and everyday a water truck would come, while they would be taken every week to the school to take a shower. The witness stated that they talked together, would play cards together, women and girls of family would come and bring them clothes, coffee and food, and that it was

could move freely outside. Orhan Vila explained that his "colleague, Doctor Salih Skopljak was helping the captives in Šunje, as a coordinator from that place". He added that he would himself give the same treatment, as a medical doctor, to those brought from Šunje or Serbs brought from Ahdžići. He emphasized that he twice intervened in Šunje. Orhan Vila stated: "Those who came to me were usually brought in a van and they would go the same way back. As far as I know, except Avdo Popara, no one was injured in Šunje". Ahmed Beganović stated: "we all got enough food while I was protected in Šunje (...). We were all treated fairly in Šunje (...). We would receive visits from our family, I could also stop by and take some clothes and a bath once to twice per week...". Šefik Kardaš stated he got visit from his wife and mother and has never been mistreated. He also emphasized that Doctor Skopljak was in the hangar and "had medicines". Vlado Komšić stated: "enough was there: water, cantina, toilets (...). The conditions were good in Šunje; a hairdresser would also come; they could go back home for a bath, walk around freely, play cards, a doctor was there...". Karatović Ivica stated that "civilians were preparing the food at the Resnik kitchen", and added that it was for everyone, whoever needed food". Ivica Šunje, who was the previous owner of the Šunje hangar and who was apprehended by the military policemen he knew and who spent one night in his hall as a detainee, said that "the conditions were normal, good". Ljuban Cigelj, a military policeman who guarded Šunje; said that he was sanctioned because he let visitors bring forbidden stuff to the detainees, and confirmed that visits were allowed.

### 1.3. Evidence on forced labor

Many Prosecution witnesses testified about performing different labor in different settlements.

Osman Bejtić, Enver Bejtić, Edin Hasandić, Refik Hodžić, Junuz Ahabović, Adem Lušija, Halid Lušija, Avduh Popara, Benjamin Kardaš and Našid Beganović, stated that they had been forced to go digging trenches on a daily basis, taken and guarded by the Military Police on the frontline while performing the work. Edin Hasandić admitted that he did not volunteer, but "the food on the frontline was poor while it was very poor in the hangar". Ibrahim Lisovac added that although unable to move, he was sent to perform forced labor. Salih Skopljak said he had to go too, but not every day, and he could not make the difference between the civil and the Military Police, since they were all in uniforms. Džemo Ramić stated that he had never volunteered but had to go to dig trenches, since each morning a guard, always in uniform, would come and take almost always the same prisoners out to dig. Adem Lušija stated that "all able-bodied men in the hangar had the obligation to go to dig trenches". Salih Skopljak said that "all men were taken to work when needed, with different duties (from digging trenches to loading tries...), in different settlements. Galib Kustura stated that nine days after his arrival to the Šunje hangar, his name was called out and he had to dig trenches and unload relief material. Hajrudin Bejtić said he was taken to dig trenches but cannot say if those men in uniforms were military or civil police. Fazil Fazlibašić also said he had to go to dig trenches on a daily basis.

Many Prosecution witnesses testified about the participation of the Military Police in the forced labor. Enver Bejtić said that they were taken by groups, those labour units were set and organized by HVO members, members of the Military Police and SIS, and he added that, while working on the frontline, they were always guarded by Military Police, which he can state because of the Military Police insignia they had and

many of them. The cooperation between those guarding them while they worked and the warden of the hangar was obviously very good, as this witness said, and those guarding them while working were sent by the Military Police”.

Avdulah Popara mentioned the role of the Military Police and Mladen Tolo, Denis Tadić and Marinko Purić as being the military police officers who took detainees to forced labor. Benjamin Kardaš was also absolutely sure about the involvement of the Military Police. Našid Beganović, Hajrudin Bejić, Kasim Fazlibašić, Fazil Fazlibašić and Ljuban Cigelj stated that the Military Police were escorting them to the frontline to dig trenches.

Junuz Ahabović stated he was called out every morning by some men he did not know and who were wearing camouflage multicolor uniforms, HVO insignia, white belts and a patch on their arms.

Džemo Ramić stated that they were mostly guarded by the Military Police while performing forced labour. Džemo Ramić added: “The persons who took us to digging were wearing multicolored camouflage uniforms and insignia on the arm”.

Refik Hodžić said that the Military Policeman Marinko Purić took them most of the time to work and that they were all the time guarded by Military Police while working. He added that they had once been subjected to beatings and humiliation by being forced to kneel and kiss dogs.

Halid Lušija stated: “First the Military Police took us to forced labor, later the civil police did and again the Military Police. They would always stay with us all the time”. Adem Lušija stated that the Military Police took them away to dig; he emphasized that he was sure since he knew almost all of them.

Ibrahim Lisovac stated that he arrived in the Šunje hangar injured and almost unable to move; however, he was still sent to dig trenches and, only after he was sent for a medical check to an infirmary outside Kreševo, he had been exempted from work.

Meho Hodžić stated that, with a group of around 20 prisoners, he was escorted by the Military Police to the place where they had to perform digging trenches; he emphasized he was sure about this since he knew them, like Marinko Purić, whom he knew as a former working colleague. They were later taken back to the hangar by Military Policemen as well. Salih Skopljak said that while digging, they were always supervised by persons in uniform, but he could not make the difference between the civil and the Military Police.

Some Prosecutor witnesses also testified about other forms of forced labor they were obliged to perform.

Enver Bejić stated that also people under house arrest were subjected to forced labor, like his wife and two children, who had to pick up fruits and perform some garden work, while they were deprived of their freedom to move without authorization of a warden.

Admir Topalović confirmed that when Junuz Ahabović was released and came back to work at the bakery, he told him that while detained he had to perform digging work, like digging trenches and carrying wounded people.

Adem Lušija said he had to go to collect wood with some others, because it was too cold. He added that even under house arrest, they all were under a working obligation.

Salih Skopljak stated that "all men were taken to work when needed, with different duties, from digging trenches to loading tries..."

Some witnesses testified about detainees being injured during forced labor.

Osman Bejić stated he got injured by a grenade with his son and a third person from Sarajevo while digging trenches on 2 October 1993; for that reason he got excused from work for two months.

Enver Bejić stated: "sometimes, some of us got injured under fire exchange and some even died of injuries".

Halid Lušija said that, while performing forced labor, it happened sometimes that some got injured and, even if he was not present, he knew that some even got killed, like the Bejić brothers, who were buried in the Rakova Noga cemetery in his presence.

Adem Lušija stated that four detainees got killed by individual shooting while digging trenches; he was around 100 meters from them when it happened; later they buried the bodies in the cemetery.

Aiša Agić testified that, as a woman, she also had to perform some agricultural work as forced labor. Even minors, like witness Junuz Ahabović, got forced labor tasks.

Several Defence witnesses recognized that the Military Police would bring Šunje detainees to the frontlines to dig trenches. Ivo Kuliš recognized it happened "but on rare occasions".

Žarko Pavlović emphasized that each capable person had to help. Pavo Vukoje stated: "Yes, detainees came to dig trenches and they were brought there by the Military Police."

Anto Marić stated that some Bosniaks detained in Šunje were also digging trenches. The witness explained that some of them were assigned to him on a daily basis and they were treated exactly the same way as his men, and that there were shelling and shootings during the day, which is why there were injured and even killed on both sides while forced labor was in progress. The witness stated that, regarding the food and the intensity of work, they were all under the same conditions, that he would get those persons in the morning, and this witness believes that the civil police would bring them to their Headquarters".

Mato Tadić stated that, for the purpose of digging trenches, they were given Bosniaks from the command, on which the military structure would decide. The witness stated that they received sufficient food, and explained that they would share their food from their homes and the pies baked by their wives with all of them. The witness added that "they were all on the same frontline and caring for their lives".

Mladen Tolo stated that they, as Military Police officers, escorted people from the frontline, but they did not select who. The witness described that they

vehicles for logistics, that a group was demanded which they would put in the van and hand over to the sector commander and then, in the evening, they brought them back before dark, using the same road.

Ivica Tomić testified he went twice with Bosniaks to the frontline but did not experience any incident. Ivica Tomić stated: "No wounded or ill person would be taken, since Doctor Skopljak was there. I would escort them to the van and accompany them on the van to the digging place, where our people were working. They would work until around 16.00 or 17.00. They would get the same food as our soldiers, which means extra and much better food than the one in Šunje".

Denis Tadić stated: "The able-bodied men in Šunje were there for their own safety on a semi-voluntary base (...). The Šunje hangar was a collective center and Bosniaks just as Croats had some obligations. They were taken to dig trenches. I took a group in late July for road construction. A van would come and around 10 of them would wait for us outside. The driver would call out the selected group. We would go there and Croats would already be there and they would all work together from 8.00 to 16-17.00".

Simo Ivanković also stated: "Once I took the detained Muslims from Šunje to dig trenches and to build fortification. We left in the morning between 7.00 and 8.00 and came back in the evening before the sunset".

Some of them stated that they escorted the detainees, but emphasized that it was on a voluntary basis.

Ivo Kuliš stated he knew that some volunteered to dig trenches.

Pavo Vukoje stated that they carried out farming activities like collecting wheat. Croat and Bosniak women worked together: those from the school collected harvest to be prepared for the winter. This was not forced labor but voluntary. They prepared marmalade...".

Marinko Marić confirmed that they would go to dig trenches, but the list was done among them. The witness confirmed that a bus would take them to the frontline, and that they were all volunteers because it was boring in the hangar since they had nothing to do.

Ahmed Beganović said that he went to work every day while in the Šunje hall, because he preferred that since they would do a lot of things at work.

## 2. Evidence on Count 2 (torture of Našid Beganović)

Count 2 charges Krešo Lučić with the following: "*On 20 June 1993, having unlawfully deprived of liberty Našid Beganović in the place of Rakova Noga, Kreševo Municipality, and taken him to the camp in the "Ivo Lola Ribar" Primary School in Kreševo together with his subordinate military police officers Denis Tadić and Mladen Tolo, he then, together with a member of the military police, kicked Našid Beganović with his feet all over his body in a classroom of the aforementioned school, after he had refused to tell him where his brother was, as a result of which he fell on the ground and he continued kicking him all over his body, and then he called military police officers Denis Tadić and Mladen Tolo and ordered them to take him to the gymnasium of the said School, where Bosniak civilian population from the villages of Crnići and Bjelovići, Kreševo Municipality, had already been imprisoned*".

Našid Beganović claimed that the military police arrested him with his wife at their place. Našid Beganović stated that Krešo Lučić, Denis Tadić and another one whose name was Mladen came while he was alone working in his field, near his house, where his wife and children were. He also clearly identified Krešo Lučić in the courtroom, mentioning that he knew him from before, because he did not live far away and he would also often see him on his way to work. Našid Beganović further stated that he also knew Denis Tadić, with whom he used to work in the same company before the war. He said he had no clue why they had to stay there and that no one explained anything to them. There were guards around the school, but they were all unknown to him.

Našid Beganović further described how the three of them brought him in a Golf car to the Kreševo Primary School. He stated that Krešo Lučić took him into a classroom, where he beat him up with his hands, asking where his brother was. An unknown young man, from somewhere else than Kreševo as he heard, was also inside the classroom and also hit him. Našid Beganović claimed that most of the time Krešo Lučić was kicking him on his head and chest. At one point, he fell down on the floor. Našid Beganović estimated that his kicking lasted for around twenty minutes, even if he thought it was an eternity. Krešo Lučić ordered him to go and catch his brother and ordered Denis Tadić, who was waiting outside, to accompany him, while he was covered with blood. Našid Beganović said that he left with several cuts on his head, without getting any medical assistance, and appeared covered with blood in front of his brother and children at home. Finally, Našid Beganović said that he was brought with his brother to the School, where all the other detainees were and spent three or four nights there. After those three or four nights, they were brought to Resnik, where a list was made.

Benjamin Kardaš stated he remembered one Beganović having been taken out for interrogation and returned beaten up.

Adem Lušija stated that Našid Beganović told him how he was tortured (Exhibit T-10).

The Defense stated that Krešo Lučić was on the frontline all the time when the arrest allegedly took place, during eight to nine days starting from the day when Kreševo got attacked, which means during the period from 17 June until 25-26 June 1993.

Mladen Tolo stated that, on the day when Kreševo got attacked by the Army of BiH, his assignment consisted of trying to return their people back to Tomići and then he went for eight or nine days to the frontline. Denis Tadić, a military police officer, was with him. The witness also stated that Denis Tadić got wounded in his neck on 20 June. The witness Denis Tadić stated that, while he was on the frontline with Krešo Lučić and Mladen Tolo, he was wounded in his neck by a bullet on 26 June 1993.

Krešo Lučić stated that, within ten to fifteen days following the attack on Kreševo, sixteen military policemen were on the frontline. The witness Marinko Marić confirmed that by stating that it was an overall attack, total chaos, so that half of the military policemen had to go to the frontline. This witness confirmed that he was one of them, together with Mladen Tolo and Denis Tadić, and that they were there for eight full days without any break. According to this witness, Denis Tadić got wounded then.



Mladen Tolo said he did not know Našid Beganović, that he never had any contact with him and that he never went to apprehend him with anyone. Mladen Tolo added that he did not apprehend Našid Beganović or beat him in the school, and Krešo Lučić did not do that either. The civil police from Travnik was in charge of the school in Kreševo, while they had neither contact nor access. The accused Krešo Lučić testified that he never took anyone out of the school to be beaten up. Krešo Lučić stated: "I claim we did not provide security at the school. I claim I never went into the school. I claim I neither arrested nor beat this person". Andrija Miličević said that he knew Našid Beganović very well as a neighbor to whom he had offered some work, and refuted that he had ever offered any money to him regarding his testimony in the case of Krešo Lučić.

### **3. Evidence on Count 3 (torture of several Šunje detainees in the Elektroprivreda building)**

Count 3 charges Krešo Lučić with the following: *"In June and July 1993, in the Kreševo military police Main Staff in the "Elektroprivreda" building in Kreševo, he tortured the following Bosniak prisoners brought from the camp called "Šunje": Galib Kustura, Fazil Fazlibašić, Ibrahim Beganović, Nedžib Fazlibašić, Almedin Mušanović, Kosim Fazlibašić and Hajrudin Bejtović punching them, kicking them and beating them with wooden batons all over their body and he ordered his subordinate military police officers to physically abuse the above named, which they did, punching them, kicking them and beating them with wooden batons all over their body, as a result of which the above-named detainees sustained visible bodily injuries and they were taken back to the "Šunje" camp in Kreševo" in such condition.*

#### **3.1. Ibrahim Beganović**

Adem Lušija stated that his cousin Ibrahim Beganović had told him that he had been tortured by the Accused Krešo Lučić.

The accused Krešo Lučić stated: "I did not take part in the torture of Ibrahim Beganović, either."

#### **3.2. Galib Kustura**

Galib Kustura stated that, having been arrested by members of the military police and having given a statement to the civil police, he was brought on foot to the military police, which was very close to the civil police station. According to this witness, someone slapped him immediately when he arrived on the premises of the military police, where all of them were in multicolored uniforms. Galib Kustura further stated that three of them beat him up with a sort of baton and that he had to take off his jacket while they searched him. They took his lighter and took him to the upper floor, where two of them followed him, while the third one punched him and broke his teeth. They took him to a room. Those two first came with him and the blond guy hit him twice with a baton. He stayed in that room with another person. They took him down to the corridor, and then into a Golf parked outside; they took him to the *Barit* camp, which is also known as *Šunje*. All of them were in multicolored uniforms. Galib Kustura said he had seen Krešo Lučić in the corridor. He knew him because

he went hunting with some friends (Ahmed, Muhamed and their father Ibrahim Ramić) a few months before the arrest, and they told him his name as he came, although they never got introduced to each other. Galib Kustura claimed that he was brought to Krešo Lučić and that he hit him in the corridor. Galib Kustura added that he also heard from all the others in the camp that Krešo Lučić was the Commander of the military police. They finally handed him over to a man at the gate and Kustura was pushed inside, where he found around 250 persons, including his son.

The Accused Krešo Lučić stated: "I did not take part in the torture of Galib Kustura either (...)"

### 3.3. Fazil Fazlibašić

Fazil Fazlibašić stated that he was arrested on 16 June 1993 above the village of Mratinići, on the frontline, with Osman Beganović, Tifan Haskić and Salem Fazlibašić by HVO soldiers and then he was taken to Kreševo: first to the police station and then to the school. When they arrived at the Police Administration, they were brought behind the building and locked there in a small room within the Kreševo Police Station. The witness stated that he had known almost everyone and that he had spent one night there and was transferred to the school only the following day. It follows from the witness's statement that he was detained there for more than two days, after which he was taken to several places, which he did not know, and he was also taken to Kiseljak on 4 occasions. The witness stated that he had been detained in military barracks and in the school too and was finally transferred to the Šunje hall. When testifying, Fazil Fazlibašić refused to talk about the interrogation, and justified his refusal by saying that he had already given his statement when he left the prison, and also to the investigative judge when testifying in the Vlatko Buzuk case in front of the Cantonal Court Sarajevo. He further added that his fellow detainees all spoke about beatings while in this prison, and when the time came to tell the truth, everyone forgot, and for that reason this witness did not want to give his statement regarding his being beaten up. Still, having heard the Prosecutor reading his statement from 21 November 2000, in the Vlatko Buzuk case, Fazil Fazlibašić confirmed that everything stated in that statement was true. According to this witness, during his interview, he was maltreated by Krešo Lučić, Vlatko Buzuk's brother and Tomo Čelan, and the witness recognized the Witness Examination Record dated 21 November 2000 and his own three signatures, before finally saying: "Yes, I was beaten up by Krešo Lučić".

Džemo Ramić on 7 March testified that "Fazil from Mratinići" was one of those who had been beaten up while taken from Šunje to the Elektrodistribucija building".

On 14 March 2007, Meho Hodžić testified that on 18 July 1993, when he returned from digging around 21.00 hours, he saw the detainee Fazil Fazlibašić brought back completely beaten up. He added that Zdravko Mišanović and Marinko Purić were waiting for him and drove him again to Krešo Lučić, to the Elektroprivreda building.

Two additional prosecution witnesses, Nermin Poturković and Zajim Šarić, explained that, on 8 November 2000, they wrote together the Official Note 01/2/3/519/00 from the Sarajevo police, based on which the investigative judge of the Sarajevo Cantonal Court, in the presence of the Prosecutor, heard Fazil Fazlibašić. They were both employed in the

Ministry of Interior of Sarajevo in 2000. They stated that this official note was written by them upon the request of the Prosecutor's Office of the Cantonal Court Sarajevo in the Vlatko Buzuk case. These witnesses described that their specific task consisted of finding people in the area of Kreševo, Kiseljak and the surrounding villages, who could give a statement about the actions of this person during the war, asking them to come to testify before the Court. In the Mratinići village, Fazil Fazlibašić was one of the persons whom the two policemen interviewed and his statement reads: "During my stay in the Kreševo prison, I was mostly beaten by Krešo Lučić and Tomo Čelan with a shovel and a spade in the course of interrogation in the office of Krešo Lučić (...). Krešo Lučić beat me with the wooden part of the shovel and after that, the interrogation would continue (...)". Nermin Poturković explained that they did not initiate that information, especially since they did not know at that time who Krešo Lučić was. "Fazil Fazlibašić mentioned those names, so we recorded them even if not linked with our case. We just recorded everything the witness said. Fazil Fazlibašić also told us when asked after the interview that he was ready to repeat his statement before the Court if summoned. Back to our office, we carefully recorded everything he told us into quotation marks since we used exactly his words". Zahin Sahić stated exactly the same as his colleague and subaltern at that time: "We had to look for the persons mentioned in the list upon an order from the Cantonal Prosecutor's Office Sarajevo to establish the attitude of Buzuk during the war time (...). Fazil Fazlibašić told us his story and we wrote this official note writing down everything he said to us. We asked him about the request of the Prosecutor's Office, but he started to talk about the suffering he went through, so we let him speak and mention some other names. We wrote them all in the official note and added quotation marks to make it clear that this was the course of the interview".

Željko Drijo stated, in his capacity of a policeman in Kreševo, that Fazil Fazlibašić had four or five minor offence reports against him for public order disturbances and was known to be under the influence of alcohol.

Tomo Čelan, mentioned by Fazil Fazlibašić as one of those who beat him up with Krešo Lučić, stated that he never apprehended anyone and was on the frontline all the time. He added that he knows Fazil Fazlibašić very well as a classmate and does meet him very often in Kreševo. Tomo Čelan added: "Before the war, we had very good relations. Today, we sometimes greet each other, but we never spoke about the issue of his apprehension. I do not know if he was taken for any interrogation. I never interrogated anyone and do not know anything about what happened there".

Ivo Kuliš, who was Krešo Lučić's superior, stated that he had never received any complaint that anyone behaved badly.

Franjo Marković, the SIS Commander, stated that nobody ever complained to him that Krešo Lučić beat anyone up; they could have done it when the ICRC was visiting them, since their representative also spoke to them without his presence.

Tomo Čelan also stated: "I never heard that Krešo Lučić did anything wrong".

Denis Tadić stated that he heard of Fazil Fazlibašić but he did not know him. The witness pointed out that it was not possible that the three of them (the witness together with Krešo

Lučić and Mladen Tolo) had apprehended him. The witness described that they would occasionally apprehend groups upon SIS orders, who would tell them which Bosniak civilians to apprehend, and they would bring them to SIS or the Šunje hall, and the witness claimed that he never brought anyone to Elektroprivreda, but only to the Šunje hall or SIS.

The accused Krešo Lučić stated that he never took part in any torture. He added: "I did not take part in the torture of Ibrahim Beganović, or Galib Kustura, or Fazil Fazlibašić, or Nedžib Fazlibašić, or Almedin Mušanović, or Kasim Fazlibašić, or Hajrudin Bejtić".

#### **3.4. Nedžib Fazlibašić, Almedin Mušanović and Kasim Fazlibašić**

Nedžib Fazlibašić, born in 1978, stated that when the war started he participated by distributing food for the Army of BiH on his own will, with Almedin Mušanović, his schoolmate, and his cousin Kasim Fazlibašić. The three of them were transporting food three times a day. Nedžib Fazlibašić said the three of them got captured on 24 June 1993, while trying to distribute food. HVO Soldiers in uniforms captured them. Nedžib Fazlibašić stated that they were taken to the Kreševo police station the same evening when they were arrested. Nedžib Fazlibašić added that, in front of the police station, HVO soldiers in uniform with insignia on their arms started to harass and beat them before entering the police station. Four soldiers and two or three police officers took them to the police administration; they spent the night in custody, on the local police premises, thirteen of them in an office in an upper floor in the police station, for thirteen days. According to the witness, the first three nights were the most difficult: they mistreated them, put their cigarettes out on their bodies and beat them. They did so to Almedin Mušanović on the police custody premises. The witness described that the three of them were taken not for interrogation, but for maltreatment. They made them punch each other, put their cigarettes out on their bodies; the witness added that they did so on his head and back throughout the night. The witness further described that they ordered them punch each other and they beat them with police rubber batons. Later, they brought them to the custody premises. Occasionally, they took them out to perform some work. The witness explained that, while they were still on the police custody premises, they were taken for interrogation by some high ranking commander in the military structure. The witness did not know who they were but he added that they were nice and took their statements. This took place across from the building of the police premises; it was something like a bank or a pensioners club. The witness stated that he entered there with Almedin Mušanović and gave a statement. The witness explained that they couldn't reply to any of the questions asked, but it was more like a statement and they even signed it. The witness pointed out that they were treated fairly. The witness explained that they both signed the statement even if it was wrong because, although they did not torture them, they had been subjected to torture before, so they just signed it. After that, the witness described his going for interrogation at the Elektroprivreda facility, where he went with Almedin Mušanović, and there they were brought to Krešo Lučić for interrogation which lasted two to three hours. "Krešo Lučić was conducting the interrogation", and the witness described how Krešo Lučić used coercion on several occasions. According to the witness, he left with bruises on his face caused by his punches. Krešo Lučić also hurt Almedin Mušanović against the closet on few occasions, which the witness saw as he was sitting next to him. The witness described that the two of them went together through all the interviews and that at one moment Krešo Lučić left and they were alone for 5-10 minutes in that room, but they couldn't leave. Furthermore, the witness

claimed that Krešo Lučić had punched him in his head and because of that blow he could not recall whether Almedin was bleeding. In the meantime, Mato Đerek entered; he was in uniform and had a huge knife. Mato Đerek grabbed him by his hair, pulled his head back and put the knife under his throat, saying he would slit it. Krešo Lučić was present and did not interrupt him, but laughed. Finally the witness pointed out that he did not understand why Mato Đerek did this, but that Almedin saw it all.

Almedin Mušanović, born in 1977, explained that he was fifteen when the war broke out. Almedin Mušanović was not a member of the Army, but he carried food to the frontline from an unfurnished house which was used as a military kitchen. Almedin Mušanović was arrested on 27 July 1993, with two other persons, Nedžib, who was also a minor, and Kasim. None of them was a member of any army; they carried food to the frontline. Almedin Mušanović stated he did not know those who arrested them, but they were in uniforms, had rifles and white stripes. They took the three of them to the police station, where Nedžib and he had to give a statement. Two or three men were on the police station premises; they were in the dark because it was night, without electricity, with the light of two candles. Almedin Mušanović stated that no one took any record; no one asked them about their age. According to the witness, slaps and fists were used during what lasted between one and two hours, while they were asked a lot of questions to which they could not reply. Almedin Mušanović admitted he could not say whether Krešo Lučić was one of them, because it was too dark. During the day, after the first night, they both had to go five or six times to be interrogated by the police. Almedin Mušanović added: "I sometimes went alone and sometimes with Nedžib." The witness stated that policemen would take them from the prison to the police station and that he could not recall what part of the day it was, but it was dark, and that he fainted as a result of the beating when they left the vehicle. Almedin Mušanović further stated they were both asked about information regarding the army, but they couldn't reply because they were only 15 and were not members of any army. Thus, they were not satisfied with their answers and they punched them. Almedin Mušanović said he did not know the men who had beat him. Together with Nedžib, he spent 18 days in the prison behind the police station, with 12 other persons who came later on. After this, they were transferred to the Šunje hall. Almedin Mušanović claimed that he had been taken for interrogation from the Šunje hall to Elektroprivreda, where he had been tortured in the presence of Krešo Lučić. Almedin Mušanović added that he had seen Krešo Lučić once during the interrogation at Elektrodistribucija in Kreševo, but that he was not interrogated by him, but by Mato Hercegovac. Krešo Lučić entered the room when the interrogation was already finished. The witness stated that he could recognize Krešo Lučić in the courtroom today. The witness added that he had not asked for help but Krešo Lučić had given him a bottle of water when he entered. The witness confirmed that Nedžib and Mato Hercegovac were with him in the room during the interrogation. The witness stated that that was the only time from his arrest until the exchange that he saw Krešo Lučić and on that occasion Krešo Lučić did not ask him anything, although he saw his condition, since he had blood on his face. The witness added that he gave him a bottle of water, but he could not drink any water because his mouth was badly hurt. The witness thought it was around 20.30 pm, and after that he was returned to the Šunje hall and was never interrogated again.

Kasim Fazlibašić stated that on 16 June 1993, when the war started, he went to Tarčin for 2 months; after that he became a refugee. The witness described how he went after that to his brother in the Vidasovići village. The witness stated that he was arrested together with

Nedžib Fazlibašić and Almedin Mušanović while they were carrying food. Nedžib Fazlibašić and Almedin Mušanović were children; they were around 15 or 16 years old, and the witness pointed out that they were not armed and did not wear a uniform during the arrest, although they were members of the brigade. The witness further stated that they were arrested by persons in uniforms with a white band as insignia. The witness described how the three of them got lost and, since it was night, they entered an HVO position in Konzelo, Kreševo municipality, and then they captured them. During the night they took them to Kreševo, to a prison at the HQ, where they were immediately detained. The witness stated that he spent there 17 days with 12 other persons, but that he did not see the two boys at all, since they separated them. The witness stated that he was brought alone to Mato Đerek, who beat him up badly and he was all black and blue after that, about which the witness previously testified in the Mato Đerek case. During his testimony, the witness pointed out that he was once brought to an unknown military police officer who interrogated him while beating him, and at one moment, when the police officer went out of the room, Krešo Lučić came in from the office next door, where the witness saw him sitting alone. The witness described how Krešo Lučić grabbed his head, closing his eyes so that he would not see him, and punched and slapped him several times, and then he came back to the same room where he had sat before, and the witness did not see him after that. This witness confirmed that he knew Krešo Lučić from before because they were neighbors.

The accused Krešo Lučić stated that he never took part in any torture. He stated: "I did not take part in the torture of (...) Nedžib Fazlibašić (...), or Almedin Mušanović, or Kasim Fazlibašić (...)."

### 3.5. Hajrudin Bejtić

Hajrudin Bejtić said that he had no wartime assignment and did not perform any war activity, and that he was arrested around 19 June 1993 by the police, that is, people in uniforms. Hajrudin Bejtić stated that they forced him and his entire family to leave their house and to go in front of the Kreševo Elementary School. As the witness remembered, he was arrested before the shelling which resulted in the death of his neighbor. The witness described the following in his statement. They took him to the gym. After six or seven days, all men were transferred to Ivica Šunje's hangar. Women were still in the school, with children. After the whole month of detention, he was taken for interrogation to the military police, located in the building of Elektrodistribucija. He had to give a statement to the Military Commander, Krešo Lučić. Before that, he did not know Krešo Lučić personally, but only by sight. Krešo Lučić was alone in the office and he gave him a statement. He didn't exert any pressure on him; however, he was beaten up after that, but he could not see who beat him. Krešo Lučić asked him questions for some time, then he was turned to look into a corner and someone beat him. One or two young men came in and also beat him up with something wooden, as it seemed to him. That stopped when Krešo Lučić said "take him away". Hajrudin Bejtić clearly recognized Krešo Lučić in the courtroom.

The accused Krešo Lučić stated that he never took part in any torture. He stated: "I did not take part in the torture of (...) Hajrudin Bejtić either."

Ivo Kuliš and Frano Marković stated that they never heard that Krešo Lučić mistreated anyone.

#### 4. Evidence on Count 4 (torture of Meho Hodžić)

Count 4 states that: *"On 18 July 1993, in the same place as in the previous count, he interrogated prisoner Meho Hodžić, brought from the "Šunje" camp, in the presence of about 10 military police officers who were sitting at another desk listening to loud music by placing a stool for Hodžić against his desk with his subordinate military police officers Anto Marić and Zdravko Mišanović to his left and right side and, after each answer given by Meho Hodžić, he ordered them to beat him, which they did by hitting him in his back with wooden batons and punching him, as a result of which Meho Hodžić fell on the ground several times, where they continued beating him, and then they would lift him up and beat him again, due to which Meho Hodžić would lose consciousness, and they would pour water on him, lift him up on the chair and continue beating him again, and then he himself approached Meho Hodžić and hit him with a wooden baton twice on his back and he ordered the military police officers to take him back to the "Šunje" camp".*

Meho Hodžić explained how he avoided a massive arrest on 19 June 1993. In fact, Meho Hodžić hid himself with some other persons for twenty days, until someone advised them to surrender because the civil police knew where they were. Meho Hodžić stated that the military police took him immediately to the Šunje hall and later during the same night to Elektroprivreda, where Mladen Tolo, Denis Tadić and Željko Okić interrogated and beat him. Then he was brought back to the hangar with several bruises, but the following day, 14 July 1993, when he was returning from the digging of trenches, Anto Marić of the military police took him again to the Elektroprivreda building, where he was interrogated and beaten up again by Jakov Čapelj, Denis Tadić, Mladen Tolo, Marinko Purić and other members of the military police. Meho Hodžić stated that on that occasion Čapelj beat him with a wooden baton over his arms and his back for one hour. Then, on 18 July, again, after he returned from the digging around 21.00 hours, he saw the detainee Fazil Fazlibašić who was brought back completely beaten up. Zdravko Mišanović and Marinko Purić waited for him and drove him again to Krešo Lučić, to the Elektroprivreda building. The witness Meho Hodžić stated that he knew Krešo Lučić for a very long time, since they used to work together, and he claimed that the third time he was interrogated by Krešo Lučić. Meho Hodžić added that in addition to Krešo Lučić, there were around ten other HVO members in the room, including Denis Tadić, Marinko Purić, Anto Marić, and Mladen Tolo, all in uniforms. The witness stated that he was interrogated again in the way that Krešo Lučić started asking him the same questions as the nights before, so that again he could not give any answer. The witness Meho Hodžić described the following in his statement. Krešo Lučić asked a question and the other two started beating him with batons from both of his sides. Lučić was behind the desk, while the witness was sitting on a chair near the wall, facing the wall. They beat him so severely that the wall was covered with blood. A cassette player was in the corner and they would turn the volume up and down and beat him between each two questions, until he lost consciousness, then they would pour water on him and hit his head against the wall; at one point, Anto Marić put a pistol against his throat, fired without a bullet and hit him with the pistol. Krešo Lučić, their Commander, kept asking questions. The witness stated that he asked them to kill him, rather than to continue. Then Anto Marić shot without a bullet. They continued and told him that he would end up in Dera, a garbage place in Kreševo. Krešo Lučić stood up, hit his back with a wooden baton and took him out of the room. The same policemen who had brought him also returned him to the hangar around midnight, completely beaten up. Doctor Skopljak, who was a detainee

gave him medicine, but could not give him any adequate treatment. Meho Hodžić stated he could not get up the following day, so four persons had to lift him. He said he could not go to dig trenches for one month, since he could not walk at all for ten days. Later he started to walk slowly around the hangar.

Salih Skopljak stated he knew Meho Hodžić from before and confirmed that he had been severely beaten up while he was in the hangar, and he could remember him asking for medical assistance many times. Salih Skopljak said he was not sure since he himself suffered a great tragedy and he was not always able to take care of all the detainees; Salih Skopljak said he believed that Meho Hodžić had been beaten up over his back at one point.

The exhibits T-49, T-50, T-51 and T-52 also show that Meho Hodžić suffered severe injuries, such as a broken shoulder.

Benjamin Kardaš also stated that Meho Hodžić was brought back from the Elektroprivreda building with hematomas inflicted by some objects and that he had very bad bruises, while Meho Hodžić did not want to speak about it. Benjamin Kardaš remembered that Doctor Skopljak helped him.

Anto Marić stated he had never apprehended Meho Hodžić and did not understand why he pretended that it was not so, since they knew each other as they worked in the same company before the war and were on good terms. Anto Marić said he could not even remember that he ever saw him during the war. Anto Marić claimed: "I didn't beat him". Anto Marić was a radio operator together with Meho Hodžić's son and he learned about these allegations from him, and he does not even greet him any more.

Mladen Tolo stated he was on the frontline on 20 June 1993, together with Denis Tadić and Krešo Lučić. Mladen Tolo said that he did not know Meho Hodžić and that he did not apprehend or interrogate anyone from Crnići on the premises of the military police HQ, as they arrived in Elektroprivreda only in August.

Marinko Marić confirmed that he was one of the military policemen who were with Mladen Tolo and Denis Tadić at the frontline for eight full days without any break, starting from the attack on Kreševo; Marinko Marić also confirmed that Denis Tadić got wounded there.

Denis Tadić said he was on the frontline just after the attack, with Krešo Lučić and Mladen Tolo. Denis Tadić stated that he was wounded by a bullet in his neck on 26 June on the frontline. Denis Tadić stated that all that was fabricated because Meho Hodžić knew his name since they worked together and he is the father of one of his schoolmates. The witness pointed out that he had not been physically able to apprehend or interrogate anyone. Denis Tadić added that he never brought anyone to Elektroprivreda; but, in fact, he did bring people from the Šunje hall to SIS upon a request of SIS; he further stated that he could not say whom he brought because he was young while those who were brought were middle aged.

Ivica Tomić, also a military policeman who secured the Šunje hall, said that he never took anyone for interrogation or saw anyone from the Šunje hall being taken for interrogation, but he recalled that Meho Hodžić was one of the Šunje detainees.



Doctor Franko Ženetić, as an expert witness, analyzed the Exhibits number 49, 50, 51, 52 and presented his conclusion in the courtroom. According to him, these documents do not show any element of any serious injury on the skeleton of Meho Hodžić or any damage on the bones. Doctor Franko Ženetić emphasized that the doctor who examined Meho Hodžić was not a specialist. The patient complained about pain in the right shoulder, but Doctor Franko Ženetić could not see that any examination was done by a neurologist, who would be the right expert. He added that the same goes for the examination of Meho Hodžić in the Fojnica hospital, the finding of which is very brief. Doctor Franko Ženetić noted that the specialist from the Zenica hospital mentioned that the patient had been beaten up two months before and complained about pain in the lower part of his back. However, Doctor Franko Ženetić immediately pointed out that there was no clearly written name of the doctor, while a previous fracture of his right shoulder was also mentioned. Doctor Franko Ženetić concluded on the basis of these documents that the patient did not suffer any fracture of his shoulder, because in that case injuries of the soft tissue around the shoulder should be mentioned, but they were not mentioned at all, and also because he should have been operated had he had the fracture. It requires a surgery. The expert witness stated that not even new different documents would anyhow change his analysis and conclusion, since from what he could see, Meho Hodžić did not sustain any injuries. Doctor Franko Ženetić emphasized that even if three different doctors wrote their opinions, they were not specialists. In his opinion, this surgery should have been done and was feasible even in war time. A surgeon or an orthopedic is the most competent for a shoulder blade fracture, whereas none of these three doctors were either a surgeon or orthopedic. Based on those documents, Meho Hodžić sustained shoulder blade injuries, but Doctor Ženetić believes it was more like a hematoma. It can be caused by fists or a wooden stick, or beating; in any case this injury could never cause a loss of consciousness, as it requires a brain injury or something causing an internal hemorrhage.

The Accused Krešo Lučić testified that he knew Meho Hodžić from before, since he worked with his father in the same company. Krešo Lučić claimed he never arrested Meho Hodžić, or interrogated him, or beat him up, or ordered anyone to beat him! He added he knew both of his sons and was aware that he lost one of them during the war and that he was killed by the Army of Republika Srpska, while the other one now works with SIPA. The Accused claimed that he never issued such an order and that he would have been sanctioned if he did. The Accused also confirmed that he knew Mato Đerek and that he heard that he had been convicted; but Krešo Lučić claimed he had no contact with Mato Đerek during the war time. Krešo Lučić said that he saw Mato Đerek at the HQ of the military police or on SIS premises. Krešo Lučić also stated that within first 10-15 days after the attack on Kreševo, he was one of the sixteen military policemen who were on the frontlines, which constituted more than a half of the military police personnel, since there were twenty two of them in total at that time. Krešo Lučić added that, as the Military Police Commander, he was mainly on the frontline and went three or four days to the Military Police premises, then reorganized their frontlines and went back. The task of the military police as a platoon on the frontline consisted of defending it from the Army of BiH, which was attacking them. He said that he, as the Commander, had to be with his men there, as a support; they would have run away if he was not there.

## V. The applicable legal provisions

Krešo Lučić is charged with committing "the criminal offence of Crimes against Humanity in violation of Article 172 (1) of the Criminal Code of Bosnia and Herzegovina, in conjunction with Article 180 (1) and Article 29 of the BiH CC as follows: item (e) in relation to Count 1 of the Indictment, item (f) in relation to Counts 2, 3, and 4 of the Indictment and item (k) in relation to Count 1 of the Indictment. Thus, Article 172 (1), Article 180 (1) and Article 29 of the BiH CC are the first to be discussed.

### 1. Article 172 (Crimes against Humanity) of the CC of BiH

Article 172 (Crimes against Humanity) of the CC of BiH establishes:

- (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: (...)
- E) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law; (...)
  - F) Torture; (...)
  - K) 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.*

#### 1.1. Crimes against Humanity

For the existence of the criminal offence of Crimes against Humanity it is necessary that the general requirements of the legal definition have been met, namely a widespread or systematic attack directed against any civilian population, the knowledge of the perpetrator of such an attack, and that the act of the perpetrator is part of the attack, in other words that there exists the *nexus* between the act of the perpetrator and the attack on the civilian population. The Accused has been charged with the criminal offence of Crimes against Humanity under Article 172 of the CC of BiH. For a criminal act to qualify as a Crime against Humanity, it is required, besides the specific elements of the underlying criminal offence, that the general or chapeau elements of Crimes against Humanity be proven, that is, the existence of a widespread or systematic attack directed against any civilian population, knowledge of such an attack by the perpetrator and that the action of the perpetrator was part of the attack, and a nexus between the act of the accused and the attack against the civilian population.

The Prosecution must prove all these elements beyond a reasonable doubt<sup>4</sup>.

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<sup>4</sup> Regarding the list of sub-elements necessary to establish Crimes against Humanity, see ICTY *Prosecutor versus Kordić and Čerkez, Trial Chamber Judgment*, of 26 February 2001, para. 410 and note that neither the BiH CC nor International Customary Law requires a connection between Crimes against Humanity and any conflict at all; see para. 23 of the above mentioned Judgment.

## 1.2. Underlying criminal offenses

In addition to the general elements of the definition of crimes against humanity, it is necessary to determine the existence of some acts the perpetrator did as part of such an attack, which constitute the underlying criminal offences of imprisonment, torture and other inhumane acts as, in this case, is defined under items e), f) and k) of Article 172 (1) of the CC of BiH.

Let us look at the commission of the criminal offense of Crimes against Humanity by imprisonment (Article 172(1)(e)), torture (Article 172(1)(f)) and other inhumane acts (Article 172(1)(k)).

### 1.2.1. Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law

The elements of "imprisonment" as a crime against humanity are as follows: "an individual is deprived of his or her liberty; the deprivation of liberty is imposed arbitrarily, that is, no legal basis can be invoked to justify the deprivation of liberty; the act or omission by which the individual is deprived of his or her physical liberty is performed by the accused or a person or persons for whom the accused bears criminal responsibility with the intent to deprive the individual arbitrarily of his or her physical liberty or in the reasonable knowledge that his act or omission is likely to cause arbitrary deprivation of physical liberty."<sup>5</sup>

The Court notes that imprisonment of civilians is unlawful where: "civilians have been detained in contravention of Article 42 of the IV Geneva Convention, *i.e.* that they are detained without reasonable grounds to believe that the security of the Detaining Power makes it absolutely necessary; the procedural safeguards required by Article 43 of the IV Geneva Convention are not complied with in respect of detained civilians, even where initial detention may have been justified; and the imprisonment occurs as part of a widespread or systematic attack directed against a civilian population."<sup>6</sup>

The Court also considers that "(...) deprivation of an individual's liberty is arbitrary if imposed without due process of law. The Trial Chamber outlined the following elements to establish a crime of imprisonment (or unlawful confinement) as a crime against humanity (...): an individual is deprived of his or her liberty; the deprivation of liberty is imposed arbitrarily, that is, no legal basis can be invoked to justify the deprivation of liberty; the act or omission by which the individual is deprived of his or her physical liberty is performed by the accused or a person or persons for whom the accused bears criminal responsibility with the intent to deprive the individual arbitrarily of his or her physical liberty or in the reasonable knowledge that his act or omission is likely to cause arbitrary deprivation of physical liberty."<sup>7</sup>

<sup>5</sup> *Krnjelac case*, Trial Chamber judgment, para. 115.

<sup>6</sup> See ICTY *Kordić and Čerkez*, Appeals Chamber Judgment, 17 December 2004, paras. 114-115.

<sup>7</sup> See ICTY *Šimić, Tadić and Zarić*, Trial Chamber Judgment, 17 October 2003, para. 64 or *Krnjelac*, Trial Chamber, 15 March 2002, para. 115; same elements.

The Court considers that the deprivation of liberty of the individual without due process of law is a distinctive element of the definition of imprisonment. Indeed, the ICTY Appeals Chamber<sup>8</sup> noted that it “agrees with the Trial Chamber’s finding that the term imprisonment in Article 5(e) of the statute should be understood as arbitrary imprisonment, that is to say, the deprivation of liberty of the individual without due process of law, as part of a widespread and systematic attack directed against the civilian population”.

### 1.2.2. Torture

Article 172 (2) e) establishes that “torture means the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under control of the accused; except that torture shall not include pain or suffering arising only from, or being inherent in or incidental to, lawful sanctions”.

The essential elements for the definition of torture stated in Article 172 (1) (f) of the CC BiH are as follows: the infliction, by act or omission, of severe pain or suffering, whether physical or mental; the act or omission must be intentional; the act was perpetrated against a person under the supervision of the perpetrator; the heavy bodily or mental pain or suffering was inflicted upon the victim by the offence; the offence is not the consequence of the enforcement of legal sanctions<sup>9</sup>.

The Court is of the opinion that the expression “severe pain or suffering” requires that only acts of substantial gravity may be considered to be torture; therefore neither interrogation by itself, nor minor contempt for the physical integrity of the victim, satisfies this requirement<sup>10</sup>.

The Court considers that in assessing the seriousness of this mistreatment, the objective severity of the harm inflicted must be considered, including the nature, purpose and consistency of the acts committed. Subjective criteria such as the physical or mental condition of the victim, the effect of the treatment and, in some cases, factors such as the victim’s age, sex, state of health and position of inferiority will also be relevant in assessing the gravity of the harm<sup>11</sup>.

The Court notes that the definition of torture remains the same regardless of the legal provision under which the Accused has been charged<sup>12</sup>.

### 1.2.3. Other inhumane acts

The elements for the commission of “other inhumane acts (...) intentionally causing great suffering, or serious injury to body or to physical or mental health” as foreseen in Article

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<sup>8</sup> See ICTY *Kordić and Čerkez*, 17 December 2004, paragraph 116.

<sup>9</sup> See ICTY *Krnjelac*, Trial Chamber, 15 March 2002, para. 179 (similar); *Kunarac, Kovač and Vuković*, Appeals Chamber, 12 June 2002, para. 142; *Brđanin*, Trial Chamber, 1 September 2004, para. 481 (similar); *Simić, Tadić and Zarić*, Trial Chamber, 17 October 2003, para. 79 (similar); *Stakić*, Trial Chamber, 31 July 2003, para. 750 (same elements).

<sup>10</sup> See ICTY *Simić, Tadić and Zarić*, Trial Chamber, October 17, para. 80.

<sup>11</sup> See ICTY *Brđanin*, Trial Chamber, September 1, 2004, para. 484.

<sup>12</sup> See ICTY *Brđanin*, Trial Chamber, 1 September 2004, para. 482: “The definition of torture remains the same regardless of the Article of the statute under which the Accused has been charged”. See also *Simić, Tadić and Zarić*, Trial chamber, 17 October 2003, para. 79 (similar).

172 (1) (k) of the CC BiH are as follows: there exists an inhumane act; the offence has not been stated differently in Article 172; the offence is of nature similar to other offences defined under Article 172; the offence was committed with the intention to inflict heavy suffering or serious physical or mental injuries or deterioration of health; and by the commission of this offence, the victims sustained heavy suffering or serious physical or mental injuries or deterioration of health.

Article 172 of the CC BiH is identical to the provision of Article 5 of the ICTY Statute. Thus, the ICTY jurisprudence on Article 5 of the Statute might be followed in this case when interpreting Article 172 of the CC BiH. On other inhumane acts, the ICTY established<sup>13</sup> that: "The phrase "other inhumane acts" was deliberately designed as a residual category, as it was felt to be undesirable for this category to be exhaustively enumerated. An exhaustive categorization would merely create opportunities for evasion of the letter of the prohibition". The ICTY believes that this residual category includes, for example, also degrading treatment, forcible transfer and forced prostitution<sup>14</sup>, and use of persons as "human shields"<sup>15</sup>. The suffering inflicted by the act upon the victim does not need to be lasting so long as it is real and serious<sup>16</sup>. The required *mens rea* is met where the principal offender, at the time of the act or omission, had the intention to inflict serious physical or mental suffering or to commit a serious attack on the human dignity of the victim, or where he knew that his act or omission was likely to cause serious physical or mental suffering or a serious attack upon human dignity and was reckless as to whether such suffering or attack would result from his act or omission<sup>17</sup>.

### 1.3. Article 180 (Individual Criminal Responsibility) of the CC of BiH

Article 180 (Individual Criminal Responsibility) of the CC of BiH provides that:

1. A person who planned, instigated, ordered, perpetrated or otherwise aided and abetted in the planning, preparation or execution of a criminal offence referred to in Article 171 (Genocide), 172 (Crimes against Humanity), 173 (War Crimes against Civilians), 174 (War Crimes against the Wounded and Sick), 175 (War Crimes against Prisoners of War), 177 (Unlawful Killing or Wounding of the Enemy), 178 (Marauding the Killed and Wounded at the Battlefield) and 179 (Violating the Laws and Practices of Warfare) of this Code, shall be personally responsible for the criminal offence. The official position of any accused person, whether as Head of State or Government or as a responsible Government official person, shall not relieve such person of criminal responsibility nor mitigate punishment.
2. The fact that any of the criminal offences referred to in Article 171 through 175 and Article 177 through 179 of this Code was perpetrated by a subordinate does not relieve his superior of criminal responsibility if he knew or had reason to know that the subordinate was about to commit such acts or had done so and the superior

<sup>13</sup> Trial Chamber, Judgment dated 14 October 2000, para 563.

<sup>14</sup> See ICTY *Kvočka* case, Trial Chamber judgment, para. 208.

<sup>15</sup> See ICTY *Kordić and Čerkez*, 25 February 2001, para. 256.

<sup>16</sup> See *Krnjelac* case, Trial Chamber judgment, paragraph 131.

<sup>17</sup> *Ibid.*, para. 132.

failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.

### 1.3.1. Personal responsibility

Article 180 (1) establishes that a person who planned, instigated, ordered, perpetrated or otherwise aided and abetted in the planning, preparation or execution of a criminal offence of Crimes against Humanity shall be personally responsible for the criminal offence.

For the purpose of that legal provision, "planning means that one or more persons design the commission of a crime at both the preparatory and execution phases."

Instigation means that the person intended to induce the commission of the crime by the other person, or to have the instigated person form a decision to perpetrate the crime. "The *actus reus* required for 'instigating' a crime is any conduct by the accused prompting another person to act in a particular way. This element is satisfied if it is shown that the conduct of the accused was a clear contributing factor to the conduct of the other person(s). It is not necessary to demonstrate that the crime would not have occurred without the accused's involvement."<sup>18</sup>

Ordering, as a rule, means the existence of certain relationship of superiority, so this concerns a direct action of superiors. "Ordering entails a person in a position of authority using that position to convince another to commit an offence."<sup>19</sup> "It is not necessary that an order be given in writing or in any particular form. It can be explicit or implicit. The fact that an order was given can be proved through circumstantial evidence."<sup>20</sup> "An order does not need to be given by the superior directly to the person(s) who perform(s) the *actus reus* of the offence. What is important is the commander's *mens rea*, not that of the subordinate executing the order."<sup>21</sup>

Perpetrating a crime covers physically committing a crime or engendering a culpable omission in violation of criminal law<sup>22</sup>.

"Aiding and abetting means rendering a substantial contribution to the commission of a crime".<sup>23</sup> "Aiding and abetting, which may appear to be synonymous, are indeed different. Aiding means giving assistance to someone. Abetting, on the other hand, would involve facilitating the commission of an act by being sympathetic thereto."<sup>24</sup>

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<sup>18</sup> See ICTY *Kvočka*, Trial Chamber judgment, 2 November 2001, paragraph 252.

<sup>19</sup> See ICTY *Krstić*, Trial Chamber, 2 August 2001, para 601.

<sup>20</sup> See ICTY *Blaškić*, Trial Chamber, 3 March 2000, para 281.

<sup>21</sup> *Ibid*, para. 282.

<sup>22</sup> See ICTY *Limaj et al.*, Trial Chamber, 30 November 2005, para. 509; ICTY *Krstić*, Trial Chamber, 2 August 2001, para. 601 or ICTR *Semanza*, Trial Chamber, 15 May 2003, para. 383 (same elements).

<sup>23</sup> See ICTY *Krstić*, Trial Chamber, 2 August 2001, para 601.

<sup>24</sup> See ICTY *Kvočka*, Trial Chamber, 2 November 2001, para 254.

### 1.3.2. Command responsibility

Article 180 (2) says that the fact that the criminal offence of crimes against humanity was perpetrated by a subordinate does not relieve his superior of criminal responsibility if he knew or had reason to know that the subordinate was about to commit such acts or had done so, and the superior failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.

Command responsibility comprises criminal responsibility for the failure to act when there was a legal obligation to act. It means that the commander will be held responsible if he fails to do something he is legally obliged to do. The ICTY jurisprudence established that, in order to hold a superior responsible, the following three elements must be fulfilled: the existence of the superior - subordinate relationship; the superior knew or had reasons to know that a crime was about to be committed or had been committed; and the superior failed to take all the necessary and reasonable measures to prevent the crime or to punish the perpetrator thereof.<sup>25</sup>

### 1.3.3. Joint criminal enterprise

Joint criminal enterprise is also contained in Article 180 (1) of the Criminal Code as part of individual criminal responsibility.

It is also worth mentioning that the Court did not consider potential participation of the Accused in the joint criminal enterprise, because the charges were not composed for that purpose, and the indictment does not contain elements of that form of individual responsibility. In fact, in the factual description of the Indictment, neither the role of the Accused or other members of military, police and civilian authorities, nor their participation in the whole matter was necessarily and sufficiently described, as to that the accused would have possibly been involved in joint criminal enterprise.

### 1.3.4. Accomplices

Finally, Article 29 (Accomplices) reads:

"If several persons who, 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, have jointly perpetrated a criminal offence, shall each be punished as prescribed for the criminal offence".

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<sup>25</sup> ICTY *Halilović*, Trial Chamber judgment, paragraph 56; ICTY *Čelebići*, Trial Chamber judgment, paragraph 346; ICTY *Blaskić*, Appeals Chamber judgment, 29 July 2004, ICTY *Aleksavski*, Appeals Chamber judgment, 24 March 2000, paragraph 72; ICTY *Kordić and Čerkez*, Appeals Chamber judgment, 17 December 2004, paragraph 827.

#### 1.4. Application of substantive criminal law

The Court accepted the legal qualification of the Prosecution and convicted the accused Krešo Lučić of the criminal offence of Crimes against Humanity referred to in Article 172 (l) e), f) and k) of the Criminal Code of Bosnia and Herzegovina.

However, the Defense pointed out that Krešo Lučić has been accused of the criminal offence of Crimes against Humanity referred to in Article 172(1) of the CC BiH in conjunction with Article 180(1) and Article 29 of the CC BiH. Meanwhile, the Defense argued that Krešo Lučić has also been accused of committing the offence in the period of time from April to September 1993. It means for the Defense that he is accused under a law which was enacted ten years after the alleged offence had been committed and which, moreover, is more severe to him. Therefore, only the criminal code in force at the time the offence was committed and that is the most lenient to the Accused should be applied to Krešo Lučić.

The Court finds the principles of legality and of time constraints regarding applicability relevant to determine the substantive law applicable at the time the criminal offences of crimes against humanity were committed, while taking into account the then existent international law provisions.

##### 1.4.1. The legal provisions

The CC SFRY was in force at the time the criminal offence was committed. In fact, the SFRY Assembly previously adopted the law at the session of the Federal Council, held on 28 September 1976, and published it in the Official Gazette of SFRY No. 44 of 8 October 1976. Following the declaration of independence, the Criminal Code of SFRY was adopted as the law of the Republic of BiH, based on Decree Law of 22 May 1992 (with slight changes), and entered into force on the day of its publishing. In the territory of the Federation of BiH, the CC SFRY was in force until 20 November 1998, in the territory of the Republika Srpska until 31 July 2000, and in the territory of the Brčko District until 2001. A new Criminal Code for BiH entered into force on 1 March 2003, for the Federation of BiH on 1 August 2003, and for Republika Srpska on 1 July 2001.

War crimes against civilians were foreseen in Article 142 of the CC SFRY and were punishable with at least 5 years imprisonment or death penalty. The CC of BiH foresees war crimes against civilians in Article 173 and they are punishable with at least 10 years or a long-term imprisonment. On the other side, the CC of BiH foresees crimes against humanity in Article 172 and they are punishable with at least 10 years or a long-term imprisonment. Meanwhile, crimes against humanity were not foreseen in the CC SFRY.

Comparing the different legal provisions, it must be concluded that war crimes against civilians are established by both the CC SFRY and the CC BiH, but the penalty foreseen by the CC SFRY is more lenient; crime against humanity was not foreseen by the CC SFRY.

Given the time of the alleged perpetration of the criminal offences (April to September 1993) and the substantive law in force at the time, the Court considers that it is important to



pay attention to the principle of legality (on both sides: *nullum crimen sine lege* and *nulla poena sine lege*) and the principle of time constraints regarding applicability.

#### 1.4.2. The rule of the principle of legality

Article 3 of the Criminal Code of BiH prescribes the principle of legality according to which no punishment or other criminal sanction may be imposed on any person for an act which, prior to being perpetrated, has not been defined as a criminal offence by law or international law, and for which a punishment has not been prescribed by law.

On the other side, Article 4 of the Criminal Code of BiH (Time Constraints regarding Applicability) prescribes that the law that was in effect at the time the criminal offence was perpetrated shall apply to the perpetrator of the criminal offence and, if the law has been amended on one or more occasions after the criminal offence was perpetrated, the law that is more lenient to the perpetrator shall be applied.

Provisions similar to those foreseen under Article 3 and Article 4 of the CC of BiH can be found in the CCs of Brčko District, Federation of BiH and Republika Srpska.

The principle of legality is also prescribed under Article 7 (1) of the European Convention on Human Rights and Fundamental Freedoms (hereinafter: the ECHR), which has the priority over all other laws in BiH<sup>26</sup>. According to the mentioned Article of the ECHR “No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed”.

Article 15 (1) of the International Covenant on Civil and Political Rights (hereinafter: the ICCPR) prescribes: “No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of the lighter penalty, the offender shall benefit thereby”.

Therefore, it is forbidden to impose a heavier penalty than the one applicable at the time when the criminal offence was perpetrated. Hence, these provisions prescribe a ban on imposing a heavier penalty, failing to determine obligatory application of a more lenient law to the perpetrator, in comparison to the penalty applied at the time of the commission of the criminal offence. This is the rule of the principle of legality, but there is an exception to the principle of legality.

#### 1.4.3. The exception to the principle of legality

In fact, Article 4a) of the CC BiH prescribes that Articles 3 and 4 of the CC BiH shall not prejudice the trial and punishment of any person for any act or omission which, at the time

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<sup>26</sup> Article 2 (2) of the Constitution of BiH

when it was committed, was criminal according to the general principles of international law.

Also Article 7 (2) of the ECHR prescribes that "This article (Article 7 (1)) 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 law recognized by civilized nations".

Furthermore, Article 15 (2) of the ICCPR prescribes that "Nothing in this article shall 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 law recognized by the community of nations".

In sum, Article 4a) of the CC BiH adopted, in fact, the provisions of Article 7 (2) of the ECHR and Article 15 (2) of the ICCPR thus explicitly enabling exceptional departure from the principle referred to in Article 4 of the CC BiH, as well as departure from the obligatory application of a more lenient law in the proceedings concerning criminal offences according to international law, concerning the charges including the violation of the rules of international law. Such a position was taken in the hitherto jurisprudence of the Court of BiH, following international jurisprudence<sup>27</sup>.

The State of Bosnia and Herzegovina, as a successor state of the former Yugoslavia, ratified the ECHR and the ICCPR and they cover the incriminating time of the criminal offenses.

Therefore, these treaties are binding on the State of Bosnia and Herzegovina and the governmental bodies of Bosnia and Herzegovina must apply them. Hence, Article 4a) of the CC BiH constitutes a mere national legal reminder because it would not be necessary for the application of the treaties. That is why these treaties are binding on all courts in BiH, and Article 4a) of the CC BiH is not a necessary condition for their application.

At the relevant time, the criminal offence of War Crimes against Civilians was prescribed under Article 142 of the Criminal Code of SFRY which was then in force in Bosnia and Herzegovina. Article 173 of the CC BiH also prescribes war crimes against civilians. Therefore, the criminal offence of War Crimes against Civilians was prescribed under the law and the principle *nullum crimen sine lege* is met.

However, war crimes against civilians were punishable with at least 5 years imprisonment or the death penalty under Article 142 of the CC SFRY, while Article 173 of the CC of BiH punishes war crimes against civilians with at least 10 years or a long-term imprisonment. Nevertheless, as the provisions show, the prescribed punishment referred to in Article 173 of the CC BiH is surely more lenient than the death penalty prescribed under Article 142 of the CC SFRY and which was in force at the time the criminal offence was committed.

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<sup>27</sup> See the *Abduladhim Maklouf Decision on Admissibility and Merits of the Constitutional Court of Bosnia and Herzegovina*, 30 March 2007, No. AP1785/06, as already referred to in the Court of BiH case law; See for example the Verdict against *Radmilo Vuković*, No. X- KR/06/217, from 16 April 2007, the ECtHR Judgment in the case *Karmo v. Bulgaria*, decision on admissibility, 9 February 2006.

#### 1.4.4. The European Court Jurisprudence

Article 7 (1) of the ECHR and Article 4 of the CC BiH prescribe that the law that was in effect at the time when the criminal offence was perpetrated shall apply if it is more lenient to the perpetrator. In practice, the European Court finds the violation of Article 7 when, by retroactively applying the new law which has direct or indirect effect (e.g. the provisions of recidivism) on sentencing, the convicted person is punished with a heavier penalty than the one the person would face at the time of the perpetration of the criminal offence.<sup>28</sup>

In fact, the abolishment of the death penalty in BiH<sup>29</sup> initiated new issues in this regard, or more precisely where the national law replaced the death penalty (Article 142 of the CC SFRY) with the penalty of a long-term imprisonment (Article 173 of the CC BiH). The European Court took the rule and the exception to the principle of legality as equally well recognized and making part of the same principle. The European Court considered this issue in, at least, two cases.<sup>30</sup>

In the *Karmo* case, the applicant has been convicted of aggravated murder he committed in 1993. The types of criminal sanctions prescribed under the Criminal Code of Bulgaria, which was then in force, amounted to fifteen to twenty years of imprisonment (maximum) or death penalty. Amendments to the law in 1995 introduced the sentence of life, while the death penalty was abolished in 1998. In 1996 the applicant was found guilty and sentenced to the death penalty. Upon the appeal, the Supreme Court of Bulgaria delivered a Judgment on 17 April 1998, revoking the first-instance Judgment and modifying the sentence to life imprisonment.

The applicant filed an appeal pursuant to Article 7 of the Convention because he was sentenced to life, which was not prescribed under the national law at the time when the criminal offence was committed. He believed that he was supposed to be sentenced to imprisonment of a maximum of twenty years. The European Court refused the appeal as "obviously unfounded".<sup>31</sup>

According to the jurisprudence of the European Court, one cannot refer to a violation of Article 7 of the Convention in the event when the applicant has been imposed a life imprisonment or the penalty of long-term imprisonment for a criminal offence for which death penalty was prescribed at the time of the commission, although a life imprisonment,

<sup>28</sup> See ECtHR, *Jamil v. France*, Judgment of 8 June 1995; ECtHR, *Achour v. France*, Judgment of 10 November 2004; ECtHR, *Achour v. France*, Grand Chamber, Judgment of 29 March 2006.

<sup>29</sup> In compliance with Protocols No. 6 and No. 13 of the ECHR.

<sup>30</sup> See ECtHR, *Karmo v. Bulgaria*, Decision on Admissibility of 9 February 2006. See also ECtHR, *Ivanov v. Bulgaria*, Decision on Admissibility of 5 January 2006.

<sup>31</sup> On the following grounds: "The Court recalls that according to the Court's case-law, Article 7 § 1 of the Convention embodies generally the principle that only the law can define a crime and prescribe a penalty and prohibits in particular the retrospective application of the criminal law where it is to an accused's disadvantage. The Court notes that in the present case the domestic courts, arguing that the applicant should have been sentenced to death, imposed a joint sentence of "life imprisonment", which they found to be more lenient than the death penalty. Accordingly, the amendment of the forms of penalties envisaged in the Criminal Code for the most severe offence for which the applicant was found guilty operated in the applicant's favor and he received a more lenient penalty than was envisaged for that offence at the time it was committed" (ECtHR, *Karmo v. Bulgaria*, decision of 9 February 2006).

or a long-term imprisonment were not prescribed under the law that was in force at the time, because a life imprisonment is obviously more lenient than the death penalty.

Therefore, as already said, the application of Article 173 (1) (c) and (e) of the CC BiH does not either constitute a violation of the principle *nulla poena sine lege* or the rights of the accused to receive a more lenient penalty upon him. Rather the contrary, it is also completely in compliance with "the law and international law", or "general principles of international law", or Articles 3 and 4a) of the CC BiH.

#### 1.4.5. International Law

As seen above, the CC of BiH foresees crimes against humanity in Article 172 that are punishable with at least 10 years or long-term imprisonment. However, crimes against humanity were not foreseen in the CC SFRY. Following the aforementioned, it must be noted that, at the time the criminal offences were allegedly committed, Bosnia and Herzegovina, as a successor state of SFRY, was a signatory party to all relevant international conventions on human rights and international humanitarian and/or criminal law.<sup>32</sup>

Also, customary status of criminal responsibility for war crimes (against civilians or against humanity), and individual criminal responsibility for these criminal offenses committed in 1992, was recognized by the UN Secretary-General<sup>33</sup>, the International Law Commission<sup>34</sup>, as well as jurisprudence of the ICTY and the International Criminal Tribunal for Rwanda (ICTR)<sup>35</sup>. These institutions have established that criminal responsibility for war crimes constitutes a peremptory norm of international law or *jus cogens*.<sup>36</sup> That is why it appears undisputable that the criminal offenses committed in 1992 constituted part of customary international law.

This conclusion was confirmed by the Study on Customary International Humanitarian Law<sup>37</sup> conducted by the International Committee of the Red Cross. The Study concluded that "serious violations of international humanitarian law constitute war crimes" (Rule 156), "individuals are criminally responsible for war crimes they commit" (Rule 151) and "States must investigate war crimes allegedly committed by their nationals or armed forces, or in

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<sup>32</sup> This particularly includes: The Convention on Genocide (1948); The Geneva Conventions (1949) and their additional Protocols (1977); The Convention on Slavery amended in 1956; The International Convention on the Elimination of All Forms of Racial Discrimination (1966); The International Covenant on Civil and Political Rights (1966); The Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity (1968); The International Convention on the Suppression and Punishment of Apartheid (1973); The Convention on the Elimination of All Forms of Discrimination against Women (1979); The UN Convention against Torture (1984)

<sup>33</sup> Report of the UN Secretary-General pursuant to Paragraph 2 of Security Council Resolution 808 of 3 May 1993, paragraphs 34-35 and 47-48

<sup>34</sup> International Law Commission, Commentary to the Draft Code of Crimes against the Peace and Security of Mankind (1996), Article 8.

<sup>35</sup> ICTY *Tadić*, Appeals Chamber, Decision on the Defense Motion for Interlocutory Appeal on Jurisdiction, 2 October 1995, para. 151; ICTY *Tadić*, Trial Chamber Judgment, 7 May 1997, paras 618-623;

<sup>36</sup> International Law Commission, Commentary to the Draft Articles on Responsibility of States for Internationally Wrongful Acts (2001), Article 26.

<sup>37</sup> Jean-Marie Henchaerts and Louise Doswald-Beck, Customary International Humanitarian Law, ICRC, Cambridge University Press, 2005, pages 568 *et seq.*

their territory, and, if appropriate, prosecute the suspects. They must also investigate other war crimes over which they have jurisdiction and, if appropriate, prosecute the suspects" (Rule 158).

According to the universal jurisdiction principle, customary international humanitarian law is obligatory for each state throughout the world, regardless of whether it has ratified the appropriate international legal instruments. Therefore, each state is bound to prosecute or extradite (*aut dedere aut judicare*) all persons suspected of having violated customary international humanitarian law. Any restriction imposed by a State in relation to the extradition, without prosecution, of the persons suspected of having violated international humanitarian law constitutes a violation of the international obligations of that State.

Principles of international law recognized in the UN General Assembly Resolution 95 (I) (1946) as well as in the International Law Commission (1950) refer to "the Charter of the Nuremberg Tribunal and the Judgment of the Tribunal", hence to war crimes in general. "Principles of International Law Recognized in the Charter of the Nuremberg Tribunal and in the Judgment of the Tribunal" were adopted by the International Law Commission in 1950 and submitted to the General Assembly.

Principle I prescribes that "Any person who commits an act which constitutes a crime under international law is responsible therefore and liable to punishment". Principle II also prescribes: "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".

As said above, crimes against humanity were not foreseen in the CC SFRY, but they are included in Article 172 of the CC BiH. However, the criminal offence of Crimes against Humanity should in any case be placed under "general principles of international law" referred to in Article 3 and Article 4 (a) of the CC BiH. That is why regardless of whether viewed from the aspect of customary international law, international treaty law or "the principles of international law", it is indisputable that war crimes, including crimes against humanity, constituted a criminal offense at the critical time. In other words the principle of legality is complied with, in the sense of both *nullum crimen sine lege* and *nulla poena sine lege*.

Article 4a) of the CC BiH refers to "general principles of international law". Article 7 (2) of the ECHR refers to "the general principles of law recognized by civilized nations" and Article 15 (2) of the ICCPR refers to "the general principles of law recognized by the community of nations". Neither the ECHR nor the ICCPR recognized the identical term to the one used in Article 4a) of the CC BiH. In fact the term "general principles of international law" constitutes a combination of "the principles of international law" as recognized by the UN General Assembly and the International Law Commission, on the one hand, and "general principles of law recognized by the community of nations" recognized by the Statute of the International Court of Justice, Article 7 (2) of the ECHR and Article 15 (2) of the ICCPR, on the other hand.

Furthermore, the jurisprudence of the European Court on Human Rights stresses the application of Article 7 (2) in comparison to the application of Article 7 (1) of the ECHR in

several similar cases<sup>38</sup> in which the subject matter was the existence and punishment of Crimes against Humanity as a crime. Moreover, in *Kolk and Kislyiy v. Estonia*, the European Court “recalls that the interpretation and application of domestic law falls in principle within the jurisdiction of the national courts.”<sup>39</sup> This also applies when the domestic law pertains to the rules of general international law or international treaties.

Therefore, the criminal offence of Crimes against Humanity in any case is subsumed under “the general principles of international law” referred to in Article 4a) of the CC BiH, and the principle *nullum crimen sine lege* is met.

In sum, for the foregoing reasons, the Court concludes that applying the Criminal Code of Bosnia and Herzegovina, namely its legal provisions of Article 172 and 180, is not a violation of the principle of legality.

## **2. The findings of the Court**

### **2.1. Crimes Against Humanity**

On 7 March 2007 and 23 July 2007, the Court rendered two decisions accepting as proven the facts established in ICTY Judgments concerning the place and time of this case. These Judgments established not only the existence of a widespread and systematic attack against the Bosniak civilian population in the area of Central Bosnia during the period relevant to this case but also the role the HVO played in that attack.

Bearing in mind the facts listed in these two procedural decisions, the Court considers that, at the time of incriminating events in the Kreševo area, there was a widespread and systematic attack by the HVO Kreševo directed against the Bosniak civilian population.

The Defense regularly claimed that the situation in Kreševo regarding this particular point was different from the rest of Central Bosnia and should not be assimilated to the whole area, since, on 17 June 1993, after many provocations against the Croat population of this municipality, the Army of BiH attacked Kreševo.

The Court must emphasize that, when establishing whether there was an attack against a particular civilian population, it is irrelevant that the other side also committed atrocities against its opponent’s civilian population. The existence of an attack from one side against the other side should neither justify the attack by that other side against the civilian population of its opponent nor displace the conclusion that the other side’s forces were in fact targeting a civilian population as such. Each attack against the other’s civilian population would be equally illegitimate, and crimes committed as part of this attack should, all other conditions being met, amount to crimes against humanity. As established by the ICTY<sup>40</sup>, “evidence of an attack by the other party on the accused’s civilian population may not be introduced unless it tends to prove or disprove any of the allegations made in the indictment, notably to refute the Prosecutor’s contention that there was a

<sup>38</sup> See ECtHR *Nalatić v. Croatia*, 51891/99, Admissibility Decision, 4 May 2000.

<sup>39</sup> See ECtHR *Papon v. France* No. 54210/00, 25 July 2002 and *Touvier v. France*, No. 29420/95, Decision of the Commission of 13 January 1997.

<sup>40</sup> See ICTY *Kunarac, Kovač and Vuković*, Appeals Chamber, 12 June 2002, para 88.

widespread and systematic attack against the civilian population. A submission that the other side is responsible for starting the hostilities would not disprove that there was an attack against a particular civilian population”.

It follows from the facts established by the ICTY, which were accepted as proven, that Croat nationalism and discrimination against Muslims was on the increase in central Bosnia in 1992-1993, due to a variety of factors, and that this may have contributed to the commission of the crimes forming the subject of this indictment. Whether there was equally a species of Muslim nationalism being preached does not affect this finding. The Court considers that there is compelling evidence to the effect that starting in mid-1992, tensions and animosity between Croats and Muslims rapidly escalated and this mutual animosity just worsened the relations between the two groups, resulting in each group increasingly being engaged in a policy of discrimination against the other. Whether the Croats pursued this policy in a more fierce and ruthless way and on a larger scale is a question that may be left unresolved for the purpose of this case.

Common Article 1 of the Geneva Conventions establishes that “the High Contracting Parties undertake to respect and to ensure respect for the present Convention in all circumstances”.

The Court emphasizes that, according to this provision, the fact that the adversary engages in unlawful behavior and persecutes or kills civilians cannot be a justification for similar and reciprocal conduct. Moreover, common Article 1 establishes an obligation to respect and to ensure respect “in all circumstances”, making the obligation unconditional and, in particular, not subject to the constraint of reciprocity. In truth, no circumstance can be invoked in support of any given breach of the obligations concerned. None of the legally recognized means apt to “remedy” the illegality of violations of international law, be it self-defense, recourse to counter-measures, consent of the victim or state of necessity, are of consequence or can be claimed as circumstances precluding wrongfulness in this particular field. This is because international humanitarian law escapes the general logic of reciprocity that normally prevails in the international legal system<sup>41</sup>. On the issue, the ICTY has itself taken a clear stance by rejecting what it termed the “*tu quoque* principle”, namely the argument based on the allegedly reciprocal nature of obligations created by the humanitarian law of armed conflict. Rebutting this argument, the Tribunal stressed that “the bulk of this body of law lays down absolute obligations, namely obligations that are unconditional or in other words not based on reciprocity”<sup>42</sup>. An ICTY Trial Chamber held that evidence that another party to a conflict may have committed atrocities “is, as such, irrelevant because it does not tend to prove or disprove any of the allegations made in the indictment against the accused”.<sup>43</sup> As such fundamental rules may not be infringed in any circumstance, it follows that the Security Council cannot request States to implement sanctions in violation of humanitarian law. In other words, although Article 103 of the Charter asserts that the obligations of UN members under the Charter, thus including the duty under Article 25 to accept and carry out the decisions of the Security Council, prevail

<sup>41</sup> See L. Condorelli and L. Boisson de Chazourmes, “Quelques remarques à propos de l’obligation des États de ‘respecter et faire respecter’ le droit international humanitaire ‘en toutes circonstances’”, C. Swinarski (ed.), *Studies and Essays on International Humanitarian Law and Red Cross Principles in Honour of Jean Pictet*, ICRC/Martinus Nijhoff, Geneva/The Hague, 1984, p. 18.

<sup>42</sup> See ICTY *Kupreškić and others*, Trial Chamber Judgment, 14 January 2000, para. 517; See also ICTY *Limaj, et al.*, Trial Chamber Judgment, 30 November 2005, para. 193.

<sup>43</sup> See ICTY *Kupreškić et al.*, Decision on Evidence of the Good Character of the Accused and the Defence of “*Tu Quoque*”, 17 February 1999, p. 3-4.

over their obligations under any other international agreement, this provision cannot apply to "Geneva law" obligations binding States as well as the UN itself, as these obligations stem from "intransgressible" norms that may never be justifiably contravened, either by the former or by the latter.

The ICTY, in the abovementioned *Kupreškić* case<sup>44</sup>, stressed that "[as] a consequence of their absolute character, these norms of international humanitarian law do not pose synallagmatic obligations, i.e. obligations of a State vis-à-vis another State. Rather (...) they lay down obligations towards the international community as a whole, with the consequence that each and every member of the international community has a 'legal interest' in their observance and consequently a legal entitlement to demand respect for such obligations". In this case, Krešo Lučić was a member of the Kreševo HVO Military Police accused of having committed a violation of international humanitarian law against Muslim population. However, the issue of the extent to which the Muslims would also have committed such violations against Croats is neither material nor relevant when evaluating the criminal responsibility of the accused Krešo Lučić. Furthermore, the involvement of a person in a "defensive operation" does not in itself constitute a ground for excluding criminal responsibility<sup>45</sup>.

The Prosecution established beyond reasonable doubt that, during the period in which the accused Krešo Lučić committed the acts he is charged with, there was a widespread and systematic attack of the army and military police of the HVO directed against civilian Bosniak population in the territory of the Kreševo Municipality, among others. This fact was established in the main trial against the accused Krešo Lučić and was also established by ICTY Judgments<sup>46</sup>. The Trial Panel by its decisions dated 27 March 2007 and 23 July 2007 accepted these facts established by the ICTY as proven.

In relation to the other necessary key elements of Crimes against Humanity, it is indisputable that, in the incriminating period relevant to the Indictment, the accused was the Commander of the Kreševo HVO Military Police. This fact is not contested by the accused himself or his defense. Therefore, the Court found that the accused had knowledge of the widespread and systematic attack directed against non-Serb civilian population and his acts were part of that attack.

As to the other necessary key elements of crimes against humanity, by evaluating individually and holistically the presented evidence, the Court establishes beyond any reasonable doubt that during the incriminating period, Krešo Lučić, as the Commander of the Kreševo Military Police and staying in the area of Kreševo municipality, could know of the existence of such an attack and that he was aware that his acts in the capacity of the military police Commander were part of the attack. Furthermore, he stated that the military police would execute the orders of SIS each time SIS would request the apprehension of Bosniak able-bodied men.

Thus, it can be concluded that he was fully aware of the existence of the widespread and *systematic* attack directed against the Bosniak civilian population. The Court also finds that

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<sup>44</sup> *Ibid*, para. 519.

<sup>45</sup> ICTY *Kordić and Čerkez*, Trial Chamber, 26 February 2001, paras. 448- 452.

<sup>46</sup> From the following ICTY cases: *Aleksovski*, *Dario Kordić and Mario Čerkez*, *Tihomir Blaškić* and *Ivica Rajić*



there is sufficient evidence to determine beyond reasonable doubt that the acts of Krešo Lučić included participation in the unlawful deprivation of liberty, imprisonment in poor conditions, forced labor and other inhumane treatment of the Bosniak civilian population, as stated in detail in the next Section of this Verdict. These acts of violence were plainly part of the widespread and systematic attack directed against the Bosniak civilian population of Kreševo. Krešo Lučić was the Commander of the military police and, in the commission of the criminal acts, he was either obeying direct orders which he himself gave to his subordinates or, at least, acting consistently with the policies of his command, HVO 3<sup>rd</sup> Battalion and SIS. Consequently, his criminal acts were part of the widespread and systematic attack.

The Court further concludes that the general requirements of the legal definition of crimes against humanity are fully met in this case.

## 2.2. Underlying criminal offenses

As said, in addition to the general elements of the definition of crimes against humanity, it is necessary to consider the existence of some acts Krešo Lučić perpetrated as part of such an attack. Krešo Lučić is charged with the underlying criminal offences of imprisonment, torture and other inhumane acts as, in this case, defined under items e), f) and k) of Article 172 (1) of the CC of BiH.

### 2.2.1. Unlawful deprivation of liberty, imprisonment in poor conditions and forced labor and other inhumane acts (Charges under Count 1)

Applying the criteria of these legal provisions to the facts described under Count 1, the Court, bearing in mind the presented evidence (under IV.1.1.) finds that at least a large majority of the apprehended people, not to say all of them, were civilians.

Indeed, Aiša Agić, a housewife whose sons and husband were hiding in the forest for several weeks, was arrested in a private house while she was not involved in any military activity. Našid Beganović was arrested while working in his field in Mratinići. Galib Kustura, who was accommodated in Kreševo as a refugee, was apprehended while collecting humanitarian aid. The same goes for Osman Bejtić, Enver Bejtić, Refik Hodžić, Adem Lušija and Halid Lušija, who were arrested in their respective houses. Edin Hasandić and Junuz Ahabović were apprehended in the bakery they used to work and live in, as confirmed by Admir Topalović.

The Court notes that the abovementioned persons, among others, were arrested in their place of residence or work, in hors de combat situation, and thus are legally qualified as civilians.

Contrary to the argument made by the Defense, the Court emphasizes that "civilian" means predominantly civilian, as established by the ICTY<sup>47</sup>: "A population may be considered as civilian even if certain non-civilians are present; it must simply be predominantly civilian."<sup>48</sup> Indeed, even the presence of those involved in the conflict does not deprive

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<sup>47</sup> See ICTY *Kunarac, Kovač and Vuković*, Appeals Chamber Judgment, 12 June 2002, para. 180.

<sup>48</sup> Same as in ICTY *Jelisić*, Trial Chamber, 14 December 1999, para. 54: "The presence within the civilian population of individuals who do not come within the definition of civilians does not deprive the population of its civilian character."

population of civilian nature<sup>49</sup>. Civilian includes those who were members of a resistance movement and former combatants but who are no longer taking part in hostilities<sup>50</sup>. The use of the word "population" does not mean that the entire population of the geographical entity in which the attack is taking place must have been subjected to that attack. It is sufficient to show that enough individuals were targeted in the course of the attack or that they were targeted in such a way as to satisfy (...) that the attack was in fact directed against a civilian population, rather than against a limited and randomly selected number of individuals".

The Court also notes that the apprehended civilians neither followed nor enjoyed any procedural safeguard, nor was any justification of their apprehension given, as almost all the witnesses apprehended pointed expressively in their testimonies. Neither a legal basis nor any justification was given to them.

Therefore, the Court concludes that the apprehension the accused is charged with under Count 1 of the Indictment regarding the aforementioned persons consisted in unlawful and intentional deprivation of liberty and was part of the widespread and systematic attack.

However, as the Accused is not charged under Article 180 (2) of the CC BiH, meaning that Krešo Lučić is not charged with command responsibility, the Court considers that Krešo Lučić can be criminally responsible only for the unlawful apprehension he personally and directly committed and where he ordered other apprehensions.

In accordance with this and the evidence presented, the Court concludes that Krešo Lučić unlawfully deprived of liberty Našid Beganović, Edin Hasandić, Junuz Ahabović, Adem Lušija, Halid Lušija and Aiša Agić when he directly arrested them in their homes and in an *hors de combat* situation. Indeed, Našid Beganović, who knew the Accused from before, clearly stated that he had been apprehended by Krešo Lučić on 20 June 1993. Halid Lušija said he was arrested by Krešo Lučić, Mato Miletić and a third unknown young man. Halid Lušija said he was arrested by Krešo Lučić with his cousin near his house on 23 June 1993, a few months after he had to return his HVO uniform and weapon "like all other Muslims". This testimony was corroborated by Adem Lušija, who stated that he was arrested near his house on 23 June 1993, with his brother and cousin, after he had to leave the reserve composition of the police. Witness Aiša Agić, although she did not know Krešo Lučić from before, stated that she was sure Krešo Lučić was one of those who arrested her with other women in a house were all of them were together. Finally, the witness Junuz Ahabović said that Krešo Lučić and two other police officers apprehended him with his colleague Edin Hasandić while they were working in a bakery. Edin Hasandić also confirmed that he was arrested with Junuz Ahabović by Krešo Lučić and two other military police officers while working in the bakery. Admir Topalović, the owner of that bakery, knew the accused

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<sup>49</sup> See ICTY *Kupreškić*, Trial Chamber, 14 January 2000, para. 549: "The presence of those actively involved in the conflict should not prevent the characterization of a population as civilian and those actively involved in a resistance movement can qualify as victims of crimes against humanity".

<sup>50</sup> See ICTY *Tihomir Blaškić*, Trial Chamber, 3 March 2000, para. 214: "Crimes against humanity (...) do not mean only acts committed against civilians in the strict sense of the term but include also crimes against two categories of people: those who were members of a resistance movement and former combatants - regardless of whether they wore uniform or not - but who were no longer taking part in hostilities when the crimes were perpetrated because they had either left the army or were no longer bearing arms or, ultimately, had been placed hors de combat, in particular, due to their wounds or their being detained. The specific situation of the victim at the moment the crimes were committed, rather than his status, must be taken into account in determining his standing as a civilian."

Krešo Lučić from before and was an eyewitness to the apprehension of Junuz Ahabović and Edin Hasandić by Krešo Lučić.

According to the presented evidence, Galib Kustura, Džemo Ramić, Refik Hodžić, Enver Bejić and Osman Bejić were unlawfully deprived of liberty by military police officers subordinated to Krešo Lučić, who was the Commander of the Military Police. The Court finds that no evidence was presented which indisputably established that Krešo Lučić ordered any apprehension. The Accused is charged under Article 180 (1) of the CC BiH, and not under Article 180 (2) of the CC BiH, which means that he has been charged only with personal criminal responsibility, and not with command responsibility. Therefore, the Court concludes that the accused Krešo Lučić cannot be responsible for the criminal offences committed by his subordinates, which in the case means for the apprehension of civilians made by his subordinates.

Furthermore, the Court finds that the Prosecutor did not prove beyond reasonable doubt who the author of the alleged apprehension of Omer Ramić, Halid Ramić, Ibrahim Beganović and Asim Beganović was. The Court concludes that they indeed were apprehended. However, there is no evidence about who apprehended them.

The Defense argued that the apprehension and imprisonment at issue were justified since the "internment" was justified for military and security reasons and was in accordance with international humanitarian law.

The Court does not accept this argument. It is true that the Geneva Conventions and its additional protocols, in case of an armed conflict, both international and non-international, provide for internment and assigned residence as possible measures to be taken. But this exceptional measure is subject to many guarantees<sup>31</sup> that must be met. The allegation was made; however, no evidence was presented showing that the criteria have been met in this specific case.

Indeed, the Court emphasizes that these measures must be "absolutely necessary for the State security". This is implied under the general principle that personal liberty is a rule and that the criminal justice system is able to deal with persons suspected of representing a danger to State security<sup>32</sup>. Another guarantee provided by Article 78 of the Fourth Geneva Convention and Article 4 (2) (b) of the Additional Protocol II, consists in the prohibition of internment as a collective punishment, meaning that this internment can only be ordered on a case-by-case basis, and not as a collective measure. Also, the principle of legality implies that where a State decides to derogate the right to liberty, such a decision must, *inter alia*, be officially proclaimed so as to enable the affected population to know the exact material, territorial and temporal scope of application of that emergency measure. Furthermore, "internment" implies the right to be informed about the reasons for such a measure and to be registered and held in a recognized place of internment, with a right to challenge the lawfulness of the detention. The Court notes that medical care is also one of the internee's rights according to Article 81 of the Fourth Geneva Convention and Article 5 (1) (b) of the Additional Protocol II.

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<sup>31</sup> See Jelena Pejić, "Procedural principles and safeguards for internment / administrative detention in armed conflict and other situations of violence", in *International Review of the Red Cross*, Volume 87, Number 858, June 2005, pages 375-391.

<sup>32</sup> See Articles 43 and 78 of the Fourth Geneva Convention of 12 August 1949 and Article 75 (3) of the Protocol I.

The Court concludes that it is obvious from the presented evidence that none of the required guarantees for internment have been respected. The Court further concludes that the detention at issue was not "internment" but proper unlawful imprisonment.

Finally, the Court notes that at least the majority of the detained persons did not actually volunteered to be either "accommodated" or "protected" in the Kreševo Primary School or in the Šunje hall. The Court is well aware that the testimonies should be taken as they were seen actually and not currently. All the witnesses, when testifying, used the word "arrested" or "apprehended/deprived of liberty" by armed and uniformed men. Also, the Court considers that the Defense argument for "accommodated" or "protected" is completely illogical, since it was also established that those places were guarded by armed men in uniform, while many other Bosniaks, namely children, women and elderly were under house arrest. The Court considers that, if the purpose of this arbitrary and imposed "isolation" was protection, the most vulnerable ones, meaning women, children and elderly, should have been in these places for protection and not at home, even if under house arrest. Furthermore, the Court notes that the detainees from these detention places were sent to perform forced labor and that some detained women were also forced to perform some field work. Finally, the Court also considers that the fact that HVO soldiers who ran away from the frontline were also detained in the Šunje hall clearly confirms that the Šunje hall was a detention place.

#### 2.2.2. Imprisonment in poor conditions

Further in relation to Count 1 (detention conditions), the Accused has been charged with "ordering that the Bosniak civilian population be taken away and imprisoned in the camps in the *Ivo Lola Ribar* Primary School in Kreševo and in the Šunje warehouse in Kreševo. The prisoners did not have sufficient food, water or necessary medical assistance there."

Again, being mindful of the evidence presented (under IV.1.2), the Court concludes that many witnesses testified clearly and consistently about the poor conditions in the Šunje hangar. In fact, without giving details, the conditions of accommodation, food and hygiene were not appropriate to the human dignity of the detained persons.

However, the Court also concludes that the Prosecutor failed to establish beyond reasonable doubt that the accused Krešo Lučić had any authority or influence on the functioning of the camps. The Prosecutor argued that the Accused's signature was requested to release one detainee from the Šunje hall, and that the military police, at one point, were in charge of the security of the Šunje hangar, which was also confirmed by the defense. Nevertheless, the Court considers that only these facts, without any other evidence, are not sufficient to prove the involvement and liability of Krešo Lučić in relation to the detention conditions. In particular, the Court notes that neither the Prosecution witnesses nor the Defense witnesses saw the accused Krešo Lučić in the Šunje hangar. Witnesses of both parties clearly stated and confirmed that one or two military policemen secured the outside of the Šunje hangar and that this lasted only for a short period of time. Therefore, the Court concludes that the accused Krešo Lučić has no responsibility for the imprisonment in poor conditions.

### 2.2.3. Forced labor

Finally, in relation to Count 1 (forced labor), the accused Krešo Lučić has also been charged with ordering that the detainees from the Šunje hall "be taken to perform forced labor on a daily basis, where they performed hard labor".

Having analyzed the presented evidence (under IV.1.3), the Court concludes that all the Prosecution witnesses testified about having been sent on a daily basis to dig trenches on the frontline and perform other works. Many of them corroborated that by stating that they were always escorted to the frontline by the military police. The role of the military police consisted in taking the detainees from the Šunje hall to the frontline to perform forced labor. This fact was also confirmed by the Defense witnesses Ljuban Cigelj, Ivo Kuliš, Krešo Lučić, Žarko Pavlović, Pavo Vukoje, Anto Marić, Mato Tadić and Tomo Čelan.

The Court notes that international humanitarian law allows for some labor to be performed by protected persons in armed conflicts. For example, Article 51 of the Fourth Geneva Convention establishes that

"The Occupying Power may not compel protected persons to serve in its armed or auxiliary forces. No pressure or propaganda which aims at securing voluntary enlistment is permitted. The Occupying Power may not compel protected persons to work unless they are over eighteen years of age, and then only on work which is necessary either for the needs of the army of occupation, or for the public utility services, or for the feeding, sheltering, clothing, transportation or health of the population of the occupied country. Protected persons may not be compelled to undertake any work which would involve them in the obligation of taking part in military operations. (...)

Every such person shall, so far as possible, be kept in his usual place of employment. Workers shall be paid a fair wage and the work shall be proportionate to their physical and intellectual capacities. The legislation in force in the occupied country concerning working conditions, and safeguards as regards, in particular, such matters as wages, hours of work, equipment, preliminary training and compensation for occupational accidents and diseases, shall be applicable to the protected persons assigned to the work referred to in this Article. (...)"

Also Article 5 of the Additional Protocol II contemplates forms of labor.

The Court considers that it is not necessary to analyze the possible presence of those factors in the case of Krešo Lučić. Indeed, the labor performed is clearly in violation of international humanitarian law. However, the link between the labor performed and the Accused is not proven beyond reasonable doubt. The Court notes that only one witness said he saw Krešo Lučić on one occasion passing by the frontline. In fact, it is not proved that the Accused Krešo Lučić issued such an order to his subordinates or that he himself escorted the detainees when they went to perform labor.

Therefore, the Court finds that the accused Krešo Lučić is not personally responsible for other inhumane treatment and cannot be responsible for the criminal acts of his subordinates, as he was not charged with command responsibility, as already mentioned above.

### **3. Torture of Našid Beganović, several Šunje detainees in the Elektroprivreda building and Meho Hodžić (charges under Count 2, 3 and 4)**

#### **3.1. Našid Beganović (Count 2)**

Taking into account the presented evidence (under IV.2), the Court considers that the kicking of Našid Beganović all over his body, as a result of which he fell on the ground, while the Accused continued kicking him all over his body, is objectively a severe physical injury, as its purpose was to get information about where the brother of the victim was. The Court considers that this also qualifies as mental suffering<sup>53</sup>.

The Court further considers that the described acts were intentional. The acts of the Accused clearly aimed at obtaining information about the whereabouts of the victim's brother, while the intent of discrimination is also obvious from the widespread and systematic attack already established.

Thus, the Court considers that there was a deliberate infliction of severe physical and mental pain and suffering in the described beatings of Našid Beganović in order to get his confession regarding his brother and in order to discriminate him. Therefore, the described beatings constitute torture.

The Defense strongly questioned the credibility of the testimony of Našid Beganović.

The Court notes that the victim himself described in a detailed and coherent way the torture he suffered. He also clearly identified in the courtroom the accused Krešo Lučić as the direct perpetrator of the described beatings. Našid Beganović knew well Krešo Lučić from before the war. The Court further notes that the statement of Našid Beganović was his first testimony in criminal proceedings. His testimony was corroborated by Benjamin Kardaš, who remembered that Našid Beganović had been taken out for interrogation and returned beaten up, and by Adem Lušija's statement (exhibit T-10).

Finally, the Court finds inconsistent the argument presented by the Defense witnesses Denis Tadić, Mladen Tolo, Ante Marić and the Accused himself that they were together on the frontline all the time for eight days, starting from 17 June 1993, which means during the period of time when Našid Beganović was apprehended and tortured. The Defense claimed that this fact was confirmed by Exhibit O-57, which states that Denis Tadić was wounded on the frontline on 26 June 1993. The Court finds that the testimonies of Denis Tadić, Mladen Tolo and Ante Marić were inconsistent regarding the date of wounding of Denis Tadić on the frontline, since 20 June and 26 June were both unclearly mentioned. Exhibit O-57 clearly establishes that Denis Tadić was wounded on 26 June 1993, thus six days after the torture of Našid Beganović, which does not bring any element of proof regarding where the Accused, Denis Tadić and Mladen Tolo were six days before.

Therefore, the Court does not accept the argument of the Defense and concludes that it is proven that the accused Krešo Lučić tortured Našid Beganović in the described circumstances.

Therefore, the Court considers that the accused Krešo Lučić is personally responsible for having tortured Našid Beganović.

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<sup>53</sup> See ICTY *Brđanin*, Trial Chamber, 1 September 2004, paras. 483-484.

## **3.2. Torture of several Šunje detainees in the Elektroprivreda building (Count 3)**

### **3.2.1. Ibrahim Beganović**

Taking into account the presented evidence (under IV.3.1), the Court notes that the only evidence presented in relation to the alleged torture of Ibrahim Beganović is the testimony of Adem Lušija, who stated in Exhibit T-10 that his cousin, Ibrahim Beganović, had told him that Krešo Lučić had tortured him. On the other side, the accused Krešo Lučić completely denied the allegation. The victim was not heard, nor was any evidence presented. Hence, the Court concludes that it is not proven beyond reasonable doubt that Ibrahim Beganović was tortured by the accused Krešo Lučić.

### **3.2.2. Nedžib Fazlibašić**

Having reviewed the presented evidence (under IV.3.4), the Court notes, in sum, that Nedžib Fazlibašić clearly described: how he was captured with Kasim Fazlibašić and Almedin Mušanović; how he and Almedin Mušanović were taken by the Accused to the Power Company Elektrodistribucija; how the Accused used coercion against him during two or three hours long interrogation by Krešo Lučić; how he left with bruises on his face caused by punches the Accused gave him; how the Accused stood by and laughed as another military policeman, who, according to the witness, should be Mato Derek, placed a knife under his throat.

The Court relied on his testimony, which is detailed and consistent. The Court also relied on the testimony of Kasim Fazlibašić, who corroborated Nedžib Fazlibašić's testimony.

The Court notes that Nedžib Fazlibašić was born in June 1978, and thus, in June 1993, he was a fifteen-year-old minor. As said above, factors such as the victim's age, sex, state of health and position of inferiority are relevant in assessing the gravity of the harm. Therefore, the Court considers that the severe pain and suffering requirement from the definition of torture is met here.

The Court further considers that the described acts were intentional, that the torture clearly aimed at obtaining information about the weapons in the possession of the Army of BiH, while the intent of discrimination is also obvious from the widespread and systematic attack already established.

Thus, the deliberate infliction of severe physical and mental pain and suffering on Nedžib Fazlibašić, by beatings in order to get his confession regarding the weapons in possession of the Army of BiH and in order to discriminate him, constitutes torture.

Therefore, the Court considers that the Accused Krešo Lučić is personally responsible for the torture of Nedžib Fazlibašić.

### **3.2.3. Fazil Fazlibašić (Count 3)**

Taking into account the reviewed evidence (under IV.3.3), the Court considers that, even if Fazil Fazlibašić first refused to speak in the courtroom about his interrogation by the Accused, a clear and consistent image and description of his beating by Krešo Lučić still remains. Indeed, he finally admitted that he had been beaten up by the accused Krešo Lučić in the circumstances described in the Indictment. The Court also notes that his beating by the Accused is consistently corroborated by the Official Note No. 01/2.3-5/9/00, dated 8 November 2000, drafted by the two officials, Nermin Turković and Zajim Šahić, who also

confirmed that Fazil Fazlibašić contacted them in 2000. Furthermore, his beating by the Accused is confirmed by the Record of the examination of Fazil Fazlibašić by the Investigative Judge of the Cantonal Court Sarajevo, dated 21 November 2000 (Exhibit T-31). The Court also notes that the torture of Fazil Fazlibašić by the Accused was consistently confirmed by the witnesses Džemo Ramić and Meho Hodžić.

The Defense questioned the credibility of the testimony of Fazil Fazlibašić because of his alleged criminal record. The Court considers that the fact that a person committed one or even more criminal offenses does not in itself constitute a ground to discredit the testimony. The Court found the examination-in-chief and the cross examination consistent and coherent with respect to the facts given in the testimony, and therefore the veracity of the beating of Fazil Fazlibašić by the accused Krešo Lučić is not questionable and is here established.

The Court notes that the description of the beating reads: "During my stay in the Kreševo prison, in the course of the examination, I was beaten most by Krešo Lučić and Tomo Čelan. They would beat me with clipped pick and shovel handles. During one interrogation in the office of Krešo Lučić, Krešo was drinking *Skenderbeg* and eating chocolate, I remember well - hazelnut chocolate. On that occasion too, Krešo beat me with wooden shovel handles, after which he continued with his interrogation, while drinking and eating chocolate".

As stated in the *Krnojelac* Trial Chamber Judgment, the Court, when assessing the seriousness of the acts charged as torture, must consider all the circumstances of the case, including the nature and context of the infliction of pain, the premeditation and institutionalization of the ill-treatment, the physical condition of the victim, the manner and method used, the position of inferiority of the victim, the extent that he has been mistreated over a prolonged period of time, or he has been subjected to repeated or various forms of mistreatment. The severity of the acts should be assessed as a whole to the extent that it can be shown that this lasting period or the repetition of acts are inter-related, follow a pattern or are directed towards the same prohibited goal<sup>54</sup>. The use of clipped pick and shovel handles as well as a wooden baton clearly points to the severe pain and suffering that were inflicted on the victim.

The Court, having considered all the circumstances of this case, concludes that the described acts were also intentional and that their aim was to discriminate on the ethnic basis, which is obvious from the widespread and systematic character of the attack.

Thus, the Court considers that the described beatings constitute a deliberate infliction of severe physical and mental pain and suffering on Fazil Fazlibašić in order to discriminate him on the basis of his ethnicity, and constitute torture imputable to Krešo Lučić as a direct perpetrator.

Therefore, the Court considers that the Accused Krešo Lučić is personally responsible for the torture of Fazil Fazlibašić.

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<sup>54</sup> See ICTY *Simić, Tadić and Zarić*, Trial Chamber, 17 October 2003, para. 80.



#### **3.2.4. Galib Kustura (Count 3)**

In relation to the evidence on the beatings of Galib Kustura (under IV.3.2.), the Court notes the following:

Galib Kustura clearly stated how he had been personally hit by Krešo Lučić in the corridor of the military police premises, while he had been beaten up before with a wooden baton by three other military policemen, but not in the presence of Krešo Lučić. The Court also notes that Galib Kustura described in detail how he met the Accused in the corridor and how he hit him.

The Court relied on his testimony, which it considered credible, and established that the accused Krešo Lučić beat Galib Kustura.

According to the criteria mentioned above, the Court considers that the mistreatment by the Accused was intentional, serious, painful and severe and that it aimed at the discrimination of the Bosniak victim, which is also obvious from the widespread and systematic attack already established.

Thus, the described beatings constitute torture which was directly perpetrated by the Accused. Therefore, the Court considers that the Accused Krešo Lučić is personally responsible for the torture of Galib Kustura.

#### **3.2.5. Kasim Fazlibašić (Count 3)**

In relation to the evidence on beatings of Kasim Fazlibašić (under IV.3.4), the Court notes that he precisely described how the accused Krešo Lučić grabbed his hair, punched him, beat him and slapped him. He emphasized that he was already covered with blood as he had been previously beaten with a wooden baton by Mato Đerek, but Krešo Lučić still beat him when he entered the office.

Having considered the criteria established in the *Krnjelac* Judgment, the Court concludes that the severe pain and suffering requirement has been met.

The Court further considers that the described beatings were intentional, severe and painful and that they clearly aimed at discriminating the Bosniak victim and that, finally, they constitute torture which was directly perpetrated by the Accused.

Therefore, the Court considers that the accused Krešo Lučić is personally responsible for the torture of Kasim Fazlibašić.

#### **3.2.6. Almedin Mušanović (Count 3)**

Having reviewed the evidence (under IV.3.4), the Court points out that Almedin Mušanović stated that "Krešo Lučić came after the beatings" he sustained after his apprehension with Nedžib Fazlibašić. Almedin Mušanović states today that he was beaten up, but not by Krešo Lučić, who arrived after the beatings. In 2000, Almedin Mušanović gave a statement to the investigative judge of the Cantonal Court in the case of Vlatko Buzuk (Exhibit P-24a). The statement reads: "I was ill-treated by Krešo Lučić, who punched me in the head, placed a gun on my forehead and a knife under my throat". Almedin Mušanović explained that he signed this statement but did not read it. The above mentioned statement of this witness is consistent with the testimony of Nedžib Fazlibašić.

Nevertheless, the Court concludes that it is not proven beyond reasonable doubt that the accused Krešo Lučić beat Almedin Mušanović.

Therefore, the Court considers that the accused Krešo Lučić is not responsible for the beating of Almedin Mušanović.

### 3.2.7. Hajrudin Bejić (Count 3)

Finally, taking into account the reviewed evidence (under IV.3.5), the Court points out that Hajrudin Bejić stated that he was interrogated by Krešo Lučić in the Elektrodistribucija building, where he was beaten up. However, Hajrudin Bejić was "not able to see who beat him up because it was dark". Hajrudin Bejić identified Krešo Lučić as the military Commander he had to give a statement to, but when asked if Krešo Lučić beat him up, he repeated that he could not see who was mistreating him since it was dark. However, he said he was sure that the beatings stopped when Krešo Lučić said "take him away".

The Court finds that the testimony is unclear and inconsistent, and not corroborated by any other evidence.

Therefore, the Court concludes that it is not proved beyond reasonable doubt that the accused Krešo Lučić beat up Hajrudin Bejić.

Therefore, the Court considers that the accused Krešo Lučić is not responsible for the beating of Hajrudin Bejić.

### 4. Meho Hodžić (Count 4)

In relation to the reviewed evidence about beatings of Meho Hodžić (under IV.4), the Court notes that he testified about his own beating in the circumstances mentioned in the Indictment. In fact, Meho Hodžić claimed that, on 18 July 1993, just after he came back from the frontline, he was taken from the Šunje hall to the Elektroprivreda building, where he was tortured by Krešo Lučić. He further stated that the same men who took him out had just brought Fazil Fazlibašić back, completely beaten up.

The Defense strongly questioned the credibility of his testimony, claiming that the military police premises were located in the Elektroprivreda building only in late July, early August 1993.

The Court notes that many witnesses confirmed that the military police premises were already located in the Elektroprivreda premises before August as the Defense claims. Ibrahim Lisovac stated he was brought there after his apprehension on 25 June 1993, while he clearly identified the building and its address in the Valtera Perića Street. Nedžib Fazlibašić, who was captured on 24 June 1993, stated he was brought to Elektroprivreda after a few days. Hajrudin Bejić claimed he was tortured at Elektroprivreda around one month after his apprehension, which took place around 19 June 1993. Kasim Fazlibašić could not give any date of his arrest, but confirmed he had been apprehended with Nedžib Fazlibašić and Almedin Mušanović before he was tortured at Elektroprivreda, while Almedin Mušanović claimed he was arrested on 27 July 1993 with Nedžib Fazlibašić and Kasim Fazlibašić.

Still, the Court notes that many elements in the testimony of Meho Hodžić regarding the beatings he suffered allegedly by Krešo Lučić are unclear and contradictory. The Court also acknowledges that Meho Hodžić was beaten up several times while detained in the Šunje hangar. This was confirmed by Salih Skopljak, who was a practicing medical doctor also

detained in the Šunje hall. However, the Court notes that Meho Hodžić testified in several court proceedings concerning his detention in Kreševo and never before mentioned the name of Krešo Lučić as one of the persons who beat him, but he mentioned other names. In fact, he had not only the chance but also the obligation to speak all the truth about all circumstances of such an event, for which he said was horrible for him, including the acts of Krešo Lučić.

The witnesses Salih Skopljak and Benjamin Kardaš, who mentioned the beating of Meho Hodžić, testified that they had seen Meho Hodžić beaten; however, they do not know who beat him.

Furthermore, the Court finds that Meho Hodžić gave his first statement about what he suffered in the Šunje hangar to his own son, who was not the only policeman in the police station. The Court considers that completely inappropriate.

Fazil Fazlibašić could not confirm Meho Hodžić's statement regarding his taking away from the hangar to Elektroprivreda. Also, even if Salih Skopljak remembered that Meho Hodžić had been beaten up several times, he did not confirm the injuries described by Hodžić or that it was committed by Krešo Lučić.

The Court also notes that the description of the alleged beating by Krešo Lučić, given by Meho Hodžić in his testimony, shows very severe ill-treatment that should have caused serious injuries, while at the same time the witness stated that he had been covered with bruises hidden under his shirt, so that the other detainees could not notice his bruises in the dark.

For all those reasons, the Court is not convinced beyond reasonable doubt that this beating of Meho Hodžić was committed by Krešo Lučić. The Court concludes that the Prosecutor failed to prove the imputability of the injuries suffered by Meho Hodžić to Krešo Lučić, while the testimony of Meho Hodžić on that point is inconsistent.

Therefore, no conclusion on the personal criminal responsibility of the Accused in relation to Meho Hodžić can be drawn here.

## VII. Sentencing of the Accused

### **1. Sentence imposed on Krešo Lučić**

Given that the acts charged against Krešo Lučić were proven beyond reasonable doubt and that all legal elements of the definition of the criminal offense of Crimes against Humanity in violation of Article 172 (1) (e), (f) and (k) of the CC of BiH were fulfilled, the Court pronounced him guilty of Crimes against Humanity as stated in the operative part of the Verdict, and sentenced him to imprisonment for a term of six (6) years.

*Deciding on the criminal sanction against the accused Krešo Lučić, and taking as the starting point the general purpose of criminal sanctions, the purpose of punishment and the limits of punishment prescribed by the law for the criminal offense of which the Accused was found guilty, the Court takes into account all the circumstances referred to in Article 48 of CC BiH that influence the duration of a sentence in a particular case. To wit, the Court takes as extenuating circumstances for the Accused the facts that the Accused behaved appropriately before the Court even under other measures during the considerable period of the main trial, and always appeared in the courtroom. The Court also takes into*

consideration that Krešo Lučić has no prior convictions, that he is a family man and a father of three underage children.

The Court particularly considers the fact that, although he holds the Croatian citizenship and resides in the Republic of Croatia, the accused Krešo Lučić reported himself voluntarily to the BiH authorities to face justice. If Krešo Lučić did not appear before the Court of BiH himself, the Court would not be in a position to try him. Therefore, the Court, in accordance with Article 49 of the CC BiH, considers that as a highly extenuating circumstance, which indicates that the purpose of punishment can be attained by a lesser punishment.

The Court takes the capacity of the Accused as the Commander of the Kreševo Military Police as an aggravating circumstance, but at the same time, considers the fact that he was very young for such responsibility as an extenuating one. Indeed, the Court finds that his age was inadequate for the responsibilities he took as a Commander.

Therefore, the Court is of the opinion that the prison sentence of six (6) years is appropriate to achieve the purpose of punishment stipulated under Article 39 of the CC BiH.

#### **2. The time the accused spent in custody**

The time the accused spent in custody from 27 April 2006 to 19 January 2007 shall be credited towards the prison sentence, pursuant to Article 56 of the CC BiH.

#### **3. The costs of the criminal proceedings**

Pursuant to Article 188(4) of the CPC BiH, the accused Krešo Lučić shall be relieved of the duty to reimburse the costs of the criminal proceedings, given that he is unemployed, that he has no property and that he provides for three underage children.

#### **4. The injured parties who filed claims under property law**

Pursuant to Article 198 (2) and (3) of the CPC BiH, all potential injured parties are hereby referred to take civil action with their claims under property law.

**Record keeper**  
**Melika Bužatlić**

**PRESIDENT OF THE PANEL**  
**JUDGE**  
**Davorin Jukić**  
*/Signature and seal affixed/*

**LEGAL REMEDY:** An appeal from this Verdict may be filed with the Appellate Division Panel of the Court of BiH within 15 (fifteen) days after receiving the Verdict in writing.

*We hereby confirm that this document is a true and correct copy of the original as written in Bosnian/Serbian/Croatian.*

**Sarajevo, 18.12.2007**

**Certified Court Interpreters for**

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