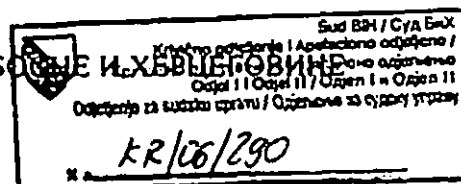


SUD BOSNE I HERCEGOVINE



СУД БОСНЕ И ХЕРЦЕГОВИНЕ



Ref. number: X-KR-06/290  
Sarajevo, 28 November 2007

PREVOD 357

## IN THE NAME OF BOSNIA AND HERZEGOVINA

The Court of Bosnia and Herzegovina, Section I for War Crimes, in the panel of judges presided by Judge Minka Kreho, and the panel members, judges Tore Lindseth and Roland Dekkers as the panel members, with the participation of Legal Officer Amela Skrobo as a record-keeper, in the criminal case against the accused Jadranko Palija for the criminal offense of Crimes against Humanity in violation of Article 172(1)(h) in conjunction with subparagraphs (a), (e), (g) and (k) of the Criminal Code of Bosnia and Herzegovina (hereinafter: the CC of BiH) and the criminal offense of War Crimes against Civilians in violation of Article 173(1)(a), (c) and (f) in conjunction with Article 180(1) of the cited CC, upon the indictment of the Prosecutor's Office of Bosnia and Herzegovina number: KT-RZ: 123/06 of 28 December 2006, modified on 27 November 2007, following the main trial, whereat the public was excluded during some parts, in the presence of the accused Jadranko Palija and his Defense Counsel, Attorney Ranko Dakić, and the Prosecutor of the Prosecutor's Office of BiH, Đemila Begović, on 28 November 2007, rendered and publicly announced the following

## VERDICT

### The accused

**JADRANKO PALIJA**, son of Nikola and Milka, née Majkić, born on 6 January 1961 in Hrvatska Kostajnica, the Republic of Croatia, Personal Identification Number 0601961370004, highly skilled machinist of steam boilers and steam turbines of all types by occupation, married, father of a minor child, permanent resident of the Brčko District, Ilička Street No. VII/17, Brčko Municipality, Serb, citizen of Bosnia and Herzegovina, no prior convictions, currently in custody pursuant to the Court of BiH Decision Ref. number: X-KR-06/290 dated 28 November 2007.

## IS GUILTY

### OF THE FOLLOWING:

From May 1992 through 31 December 1992, within a widespread and systematic attack by the Army of the Serb Republic of Bosnia and Herzegovina, Territorial Defense, members of the Police and paramilitary formations on Muslim and Croat civilian population in the wider territory of Bosanska Krajina, including the attack on the territory of the Municipality of Sanski Most, which began in mid-April 1992 with the takeover of the Public Security Station, the attack on the municipality building and the proclamation of the Serb Municipality of Sanski Most and continued on 25 May 1992 with the deprivation of liberty of intellectuals, police officers, politically active Croats and Muslims, their confinement and the armed attack on the neighborhoods of Muhići, Mahala, Otoke and the villages of Hrustovo, Vrhpolje, Kljevci and other areas of the municipality predominantly populated by Muslims and Croats. During the attack, civilian facilities were shelled, the population was expelled from their homes which were set on fire and pillaged, while the expelled civilians were taken to the places where they were rounded up and separated, and then confined in the established detention facilities in Sanski Most where the detained men were subjected

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physical and mental abuse; a large number of detained Croats and Muslims were transported to the *Manjača* camp on mountain Manjača or expelled to the territory under the control of the Army of BiH, while the remaining population was engaged in work obligation performing hard physical labor, taken to the front lines where they dug trenches and were used as human shields. As a member of the 6th Krajina Brigade, he was aware of such attacks and participated in them, in as much as he:

1. On 31 May 1992, together with other soldiers of the Army of Republika Srpska, he participated in the attack on the hamlet of Begići – the village of Kljevci, on which occasion they brought all civilians whom they found there in front of the house of Ismet Kurbegović, where they separated women and children and confined them in the house, while they took the men across the fields called *Vinogradine* and then, when they arrived to a slaughterhouse next to the bridge on the Sanica River, Jadranko Palija killed Miralem Cerić and Enver Cerić, when they arrived to an intersection in Vrhpolje, he killed Ismet Kurbegović, on the main road towards Sanski Most he killed Irfan Begić, when they arrived to the Vrhpolje bridge, he killed Enes Dizdarević, while together with other soldiers he took part in the killing of Safet Begić, Muharem Begić, Fuad Begić, Elmedin Begić, Munib Begić, Nedžad Begić, Hakija Begić, Hamid Begić, a/k/a Muhamed, Nail Begić, Šaćir Begić, Mirhet Cerić, Ismet Dizdarević, Muhamed Dizdarević and Mirsad Dizdarević, by ordering them to take off their clothes and jump off the bridge and, while the men were falling down into the water, they were shooting at them; however, on that occasion they did not succeed in killing Rajif Begić;
2. On an unknown date in the summer of 1992, in the Muhići Street, he came to a house where he found two women with two children, who had come to get food, and having asked for their identity documents, he intimidated them, telling them that their life in Sanski Most was worthless, and under the pretext that he wanted to search the other part of the house which was locked, he took female A to the entrance door to that part of the house; he broke down the door and having entered inside, he raped her threatening her with a pistol, and then threatened to kill them if they spoke about what had happened.

Furthermore,

3. During the armed conflict in Bosnia and Herzegovina in the period between 1993 and October 1995, as a military police officer he moved around the territory of Sanski Most, and at that time he stopped Muslim civilians, intimidated and beat them, including Faruk, Ljilja and Zlatko Maličević, Husein Aganović, Mehmed Zukanović and Vehid Zulić; he took part in illegal arrests of Mehmed Zukanović and Vehid Zulić and bringing them to the military police prison which was located in the Mahala settlement; at a checkpoint in Pobježje, he demanded that civilians who were passing through the checkpoint show their identity documents, insulted them in various ways, intimidated and beat them, including Velid Jakupović, Vehid Zulić, Eniz Cerić, a deaf and dumb person Idriz Alagić, a/k/a Iba, Agan Habibović, and very frequently he intimidated and beat Teufik Kamber, telling him to move out, until Teufik Kamber was killed in his house which was mined in December 1994,

Therefore, in relation to Sections 1 and 2 of the operative part herein,

within a widespread or systematic attack directed against the Muslim civilian population in the territory of the Municipality of Sanski Most, aware of such an attack and knowingly

participating in it with his actions, he committed the acts described under Sections 1 and 2 of the operative part herein,

**Whereby,**

**he committed the criminal offense of Crimes against Humanity in violation of Article 172(1) of the Criminal Code of Bosnia and Herzegovina, namely:**

**Under Section 1: by unlawful imprisonment, murders and other inhumane acts, he committed the persecution of civilian population referred to in Article 172(1)(h) in conjunction with subparagraphs (a), (e) and (k) of the CC of BiH.**

**Under Section 2: by rape and torture, he committed persecution referred to in Article 172(1)(h) in conjunction with subparagraphs (g) and (k) of the CC of BiH.**

**Whereas, in relation to Section 3 of the operative part herein,**

**acting contrary to Article 3 of the Fourth Geneva Convention, during the armed conflict in Bosnia and Herzegovina in the period between 1993 and October 1995, he committed the criminal offense of War Crimes against Civilians in violation of Article 173(1)(a), (e) and (c) of the Criminal Code of Bosnia and Herzegovina, in conjunction with Article 180(1) of the cited Code.**

**Therefore, pursuant to the mentioned legal provisions, in conjunction with Articles 39, 42 and 48 of the Criminal Code of Bosnia and Herzegovina, the Court,**

**imposes on him a sentence of 28 (twenty eight) years of long-term imprisonment**

**for the criminal offense of Crimes against Humanity referred to in Article 172(1)(h) in conjunction with subparagraphs (a), (e), (g) and (k) of the CC of BiH, committed in the manner as described under Sections 1 and 2 of the operative part herein,**

**and a sentence of 10 (ten) years of imprisonment**

**for the criminal offense of War Crimes against Civilians referred to in Article 173(1)(a), (c) and (e) of the CC of BiH, committed in the manner as described under Section 3 of the operative part herein,**

**and, based on the mentioned provisions with the application of Article 53(2)(a) of the CC of BiH, the Court of BiH hereby**

### **SENTENCES**

**HIM TO A COMPOUND SENTENCE OF LONG-TERM IMPRISONMENT FOR A TERM OF 28 (TWENTY EIGHT) YEARS**

**Pursuant to Article 56 of the CC of BiH, the period of time that the accused spent in custody from 26 October 2006 to 2 November 2006 shall be included in the pronounced sentence of long-term imprisonment.**

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## II

Pursuant to Article 188(4) of the CPC of BiH, the accused shall be relieved of the obligation to reimburse part of the costs of the criminal proceedings. The Court will issue a separate decision regarding that issue.

## III

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

## Reasoning

### 1. Charges

The Indictment of the Prosecutor's Office of Bosnia and Herzegovina, the Special Department I for War Crimes, Ref. number: KT-RZ-123/06 dated 28 December 2006, charged Jadranko Palić with the criminal offense of Crimes against Humanity under Article 172 (1) (h) in conjunction with subparagraphs (a), (e), (g) and (k) of the CC of BiH and the criminal offense of War Crimes against Civilians under Article 173 (1) (a), (c) and (f) in conjunction with Article 180 (1) of the cited CC.

Following the confirmation of the Indictment on 5 January 2007, on 19 January 2007 the accused pleaded not guilty on all counts of the Indictment, whereupon the case file was forwarded to the Trial Panel.

### 2. Presentation of Evidence

a) The following Prosecution evidence was introduced:

The witnesses examined in the course of the main trial are as follows: Rajif Begić, Fikreta Kurbegović, Arif Begić, Sadika Begić, Mirzeta Cerić, Hikmet Zukić, Rasem Mehmedović, Abdulah Kenjar, Fatima Eminić, Mehmed Begić, Branko Dobrijević, Ismet Čehajić, Zemka Talić, Mugbo Zukić, Ismeta Kamber, Severin Jolić, Velid Jakupović, Suada Cerić, Sead Jakupović, Vehid Zulić, Mehmed Zukanović, Emina Habibović, Hajrudin Kamber, Senad Šabić, Šemsa Aganović, Senad Aganović, Dika Ališić and Witness A, whereas statement of witnesses Anda Krljić and Rufija Šabić were read out pursuant to Article 273 (2) of the BiH CPC, as elaborated upon *infra*.

The following documentary evidence was presented: Record on Examination of Witness Rajif Begić dated 16 August 2006; CD containing pictures that were presented to witness Rajif Begić; sketch drawn by witness Rajif Begić; Record on the Examination of Witness Fikreta Kurbegović; Record on the Examination of Witness Arif Begić; Record on the Examination of Witness Sadika Begić; Record on the Examination of Witness Hikmeta Zukić; topographic maps of the Sanski Most Municipality (1:25000, 1:50000); map of Sanski Most; Sanski Most town plan; electronic version of maps; Record on the Examination of Witness Abdulah Kenjar; Record on the Examination of Witness Fatima Eminić; Record on the Examination of Witness Branko Dobrijević; Sanski Most PSS Certificate on Detention and Interrogation on the Sanski Most PSS Premises issued in the name of Teufik Kamber; RS Ministry of Defense Call-up Paper No. 131/94 dated 8 April

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1994 issued in the name of Teufik Kamber; RS Ministry of Defense Call-up Paper No. 208/94 dated 8 June 1994 issued in the name of Teufik Kamber; RS Ministry of Defense Call-up Paper No. 297/94 dated 14 May 1994 issued in the name of Teufik Kamber; Record on the Examination of Witness Hajrudin Kamber; Court of BiH Order Ref. number: X-KRN-06/290 dated 25 October 2006; Record on the Search of Apartment, Other Premises and Movables Ref. number: 17-04/2-04-2-12/06 dated 26 October 2006; Receipt on Temporary Seizure of Items Ref. number: 17-04/2-04-2-32/06 dated 26 October 2006; photo documentation No. 17-02/8-04-1-25/06 dated 26 October 2006 detailing the search of the apartment owned by Jadranko Palija; photographs of the suspect Jadranko Palija scanned from his refugee ID card and the CIPS database excerpt; photographs of the accused from the wartime period; CIPS database excerpt; refugee file in the name of Jadranko Palija No. 520 dated 30 June 1993; refugee ID card in the name of Jadranko Palija No. 1705/93 dated 30 June 1993; RS Ministry of Defense Certificate in the name of Jadranko Palija, Ref. number: 02-831-1/1545 dated 25 July 1997; Decision on Acquiring BiH and RS Citizenship in the name of Jadranko Palija, Ref. number: 05/1-II-204-495/03 dated 11 November 2003; Military Booklet in the name of Jadranko Palija, No. 109436 dated 1 February 1978; Decision on Allocating a State-owned Apartment Located in Narodni front Neighborhood for Temporary Use to Jadranko Palija dated 15 November 1992; Certificate issued by the War Presidency of Sanski Most Municipality, No. 7755/95 dated 3 November 1995; Military Police Certificate issued in the name of Jadranko Palija, No. 157-14/112- dated 23 February 1994; Army of Republika Srpska freedom of movement permit, Military Police No. 0129; Certificate to Carry Weapon No. 125 in the name of Jadranko Palija dated 7 March 1994; Ethnic composition of population – R BiH National Statistics Institute, 1991; Notice of Death of Teufik Kamber No. 3/1994 dated 8 December 1994; pistol CZ-7,62 No. 22230, including a white leather pistol holster containing a magazine with 8 pistol bullets; telex – Sarajevo SDS Order dated 29 October 1991; Instruction on Establishment and Functioning of the Authorities of Serb People in Bosnia and Herzegovina in Special Circumstances dated 19 December 1991; Decision on the Establishment of the Assembly of Serb People in Bosnia and Herzegovina, Official Gazette of the Serb People in BiH 1/92; Declaration of the Assembly of Serb People in BiH, Official Gazette of the Serb People in BiH 1/92; Decision on the Territories of Municipalities and Settlements in BiH Considered the Territory of the federal Yugoslav state, Official Gazette of the Serb People in BiH 1/92; Decision on the verification of the Proclaimed Serb Autonomous Regions in Bosnia and Herzegovina, Official Gazette of the Serb People in BiH, No. 1/92; Recommendation on the Establishment of Municipal Assemblies of the Serb People in BiH, Official Gazette of the Serb People in BiH 1/92; Decision to Initiate the Establishment of Republika Srpska BiH, Official Gazette of the Serb People in BiH 1/92; Decision on Proclamation of the Imminent Threat of War, R BiH Official Gazette No. 1/92 dated 9 April 1992; Act of the Crisis Staff of the Serb Municipality of Sanski Most No. 5/92 dated 21 April 1992; Act of the Crisis Staff of the Serb Municipality of Sanski Most No. 7/92 dated 22 April 1992; Order of the Crisis Staff of the Serb Municipality of Sanski Most No. KŠ-17-2/92 dated 7 May 1992; Conclusions from the Session of War Staff of the Autonomous Region of Krajina No. 03-297/92 dated 8 May 1992; Conclusions of the War Staff of the Autonomous Region of Krajina from the session held on 9 May 1992 No. 03-299/92; Conclusion of the Crisis Staff of the Serb Municipality of Sanski Most No. KŠ 23/92 dated 22 May 1992; Order operational number: 1/92: "Combat Assignment"; Decision on the Return of the Displaced Persons to the Territory of the Serb Republic of Bosnia and Herzegovina No. 03-507 dated 2 June 1992; Order of the Crisis Staff of the Municipality of Sanski Most No. KŠ-28/92 dated 2 June 1992; Order of the Civilian Defense Staff No. 80-13/92 dated 2 June 1992; Minutes of the 6<sup>th</sup> Ses

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Executive Board of the Serb Municipality of Sanski Most held on 18 June 1992; Decision on the Proclamation of the State of War, RBiH Official Gazette No. 7 dated 20 June 1992; Report on the Work of Sanski Most PSS dated 20 July 1992 No. 11-14-54/92; Minutes of the 9<sup>th</sup> session of the Executive Board of the Serb Municipality of Sanski Most dated 27 July 1992; Conclusion from the 9<sup>th</sup> session of the Executive Board of the Serb Municipality of Sanski Most dated 27 July 1992; Banja Luka Security Services Center Dispatch No. 11-1/01-54 dated 12 June 1992; Sanski Most PSS Dispatch No. 11-14/01-1286/92 dated 14 August 1992; Sanski Most PSS Dispatch No. 11-14-1288/92 dated 17 August 1992; Sanski Most PSS Receipt on the handover of the list to the military investigating authorities on mountain Manjača No. 11-14-sl. dated 23 August 1992; Minutes of Extraordinary Session of the Executive Board of the Serb Municipality of Sanski Most dated 2 September 1992; Official Gazette of the Serb Republic No. 14 dated 7 September 1992 – Declaration on the System of Government and the Political System of the State; Report on the Work of the Municipal Civilian Defense Staff for the period between 15 July and 15 October 1992; Conclusion No. 01-012-40 dated 21 October 1992; Conclusion No. 01-012-46 dated 26 November 1992; Conclusions from the session held on 9 December 1992 on dislocation and displacement of non-Serb population, security of premises and compulsory work service; Constitution of Republika Srpska, Official Gazette of Republika Srpska, No. 21 dated 31 December 1992; Proposals for the award of decorations for the Army of Republika Srpska Day Military Post 7421, Confidential No. 750-2 dated 16 May 1993; List of Military Police members who handed over their ID cards and passports, No. 1-325/93 dated 8 November 1993; List of Military Police members for the purpose of issuance of food supplies No. 1-422/93 dated 23 November 1993; Decision on Strategic Objectives of the Serb People in Bosnia and Herzegovina, Official Gazette of Republika Srpska, No. 22 dated 26 November 1993; List of Army Members 8099/4 dated 7 December 1993 Confidential No. 1778-2/5; RS Ministry of Defense Call-up Papers in the name of Teufik Kamber, No. 95/93 dated 21 December 1993; Handwritten Diary titled "Record of Assignments" – information on provided services; List of Military Police Company for the distribution of supplies No. 1-299/95 dated 28 March 1995; List of P/V Military Post 7421/4 Sanski Most for February salary, No. 1-404/95 dated 1 May 1995; Formation of the Military Police Company Military Post 7421, No. 1-423/95 dated 8 May 1995; Working Map of the Military Police Company, No. 1-424/95 dated 8 May 1995; Social Structure of the Military Police Company No. 1-466/95 dated 16 May 1995; Ministry of Defense Act dated 13 June 1995; List of P/V Military Post 7421 Sanski Most for August salary No. 1-1147/95 dated 1 September 1995; Vob-14a Form, 7421 Tomina Company; Record on On-site Investigation and Exhumation of Bosniak Bodies from Mass Graves in Vrhpolje – Bridge, Sanski Most Municipality, Sanski Most Basic Court Ref. number: Kr: 324/96 dated 7 May 1996 including the enclosed sketches of the scene VM-I and II, VM-II, VM-III; Sanski Most PSS Report No. 13/11-02-531/96 dated 17 May 1996; Sanski Most PSS Report No. 13/11-02-498/96 dated 11 May 1996; Documentation Accompanying the Statement on Missing Person dated 11 May 1996 in the name of Irfan Begić; Documentation Accompanying the Statement on a Missing Person dated 11 May 1996 in the name of Miralem Cerić; Documentation Accompanying the Statement on Missing Person dated 11 May 1996 in the name of Enver Cerić; Record including documentation dated 11 May 1996 and DNA Report in the name of Muharem Begić; Statement on Missing Person including the documentation dated 11 May 1996 in the name Muhamed Dizdarević; Statement on Missing Person including the documentation dated 12 May 1996 in the name of Mirhet Cerić; Statement on Missing Person dated 10 May 1996 including documentation and DNA Report in the name of Elmedin Begić; Statement on Missing Person dated 11 May 1996 including documentation and DNA Report in the name of Mirsad Dizdarević; DNA Report in the name of Enes Dizdarević; Statement

on Missing Person dated 10 May 1996 including documentation and DNA report in the name of Fuad Begić; Record dated 12 May 1996 including documentation in the name of Hakija Begić; Statement on Missing Person including documentation dated 11 May 1996 in the name of Munib Begić; Record dated 11 May 1996 including documentation and DNA Report in the name of Nedžad Begić; Statement on Missing Person dated 21 November 1996 including documentation in the name of Ismet Kurbegović; Record dated 14 May 1996 including documentation and DNA Report in the name of Ismet Dizdarević; Statement on Missing Person dated 10 May 1996 including documentation in the name of Hamid a/k/a Muhamed Begić; Statement on Missing Person dated 10 May 1996 including documentation in the name of Nail Begić; Statement on Missing Person dated 14 May 1996 including documentation in the name of Šaćir Begić; Official Exhumation Report No. 05-1/03-1-768/07 dated 20 September 2007; Official Exhumation report No. 05-1/04-5-976/05 dated 11 October 2005; Death Certificate No. 05-13-3-718/06 dated 5 October 2006 in the name of Eniz Cerić; Death Certificate No. 05-13-3-719/06 dated 5 October 2006 in the name of Faruk Maličević; Constitutional Court Partial Decision with regard to the Constitution of Republika Srpska, Case No. U 5/98-I dated 29 and 30 January 2000; Constitutional Court Partial Decision with regard to the Constitution of Republika Srpska, Case No. U 5/98-II dated 18 and 19 February 2000; Constitutional Court Partial Decision with regard to the Constitution of Republika Srpska, Case No. U 5/98-IV dated 19 August 2000; Constitutional Court Partial decision with regard to the Constitution of Republika Srpska, Case No. U 5/98-III dated 1 July 2000; Court of BiH Decision Ref. number: X-KRN/06/290 dated 7 December 2006; Record on Examination of Witness Rajko Mastikosa; Record on Examination of Witness Ranko Kolar; Map – witness Ranko Kolar drew the unit movement, marked particular locations in the Kljevcı village and the surrounding area; sketch of the scene drawn by the witness Đuro Stojinović; Map – witness Đuro Stojinović drew roads to Begići; Town Plan – witness Dragoslav Krunić indicated the position of settlements and drew approximate location of his residence in Sanski Most; Order of the Military Police Company No. 1-32/92 dated 7 September 1992; Order of the Military Police Company No. 26 February 1993; Order of the Military Police Company dated 12 January 1993 marked 5/93 in handwriting; Order of the Military Police Company dated 12 January 1993, marked "Order 9" in handwriting; Order of the Military Police Company dated 15 January 1993, marked 29/93 in handwriting; Order of the Military Police Company dated 1 February 1993; Order of the Military Police Company dated 11 February 1993, marked 75/93 in handwriting; Order of the Military Police Company dated 18 February 1993; Patrol Sheet No. 1314 dated 27 July 1994; Patrol Sheet No. 9/92 dated 9 December 1992; List of Military Police Officers and Weapons Issued to Them dated 16 September 1994; Patrol Sheet No. 1-1274/94 dated 19 July 1994; Military Police, Daily report No. 1-971/94 dated 15 April 1994; Military Police, daily report No. 1-966/94 dated 12 April 1994; Statement by the Military Police Officer, Marinko Karakaš; Military Police, Request for Allocation of Privately Owned Housing Unit dated 16 September 1993; Registration and Unit Files in the name of Jadranko Palić and Registration and Unit Files in the name of Pero Ilić; Findings of the Forensic Psychiatric Examination of Rufija Šabić; Death Certificate for Hilmo Suljanović;

b) In the course of the presentation of evidence, the following Defense evidence was presented:

The following witnesses were examined: Lazar Popović; Dragan Majkić; Rajko Mastikosa; Ranko Kolar; Đuro Stojinović; Nedeljko Kondić; Željko Baljak and Drago Krunić.

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The following documentary evidence was presented: Excerpt from the "Exclusive" Newspaper dated 13 May 1994 titled "War Criminals from the Sanski Most Municipality"; Certificate issued by the Brčko District Government certifying that Jadranko Palić is not the owner of real estate dated 16 August 2007; Certificate issued by the BD Tax Authority certifying that the accused person is not a tax payer, dated – II –; Certificate issued by the BD Employment Bureau certifying that the accused is unemployed, dated 3 September 2007; Certificate – II- certifying that the wife of the accused – Tatjana Palić is also unemployed; Certificate certifying that the underage daughter of the accused – Ilijana Palić, regularly attends the elementary school, dated 20 August 2007; Certified Photocopy of a portion of the book titled To Forget a Crime is a Crime; Record on Examination of the Witness Rajif Begić at the Sanski Most Basic Court, Ref. number: KR – 171/96 dated 16 April 1996 and Addendum to this Record dated 18 April 1996; Record on Examination of the Witness Senad Šabić at the Prosecutor's Office of BiH, Ref. number: KT – RZ: 123/06 dated 24 November 2006; Record on Examination of the Witness Dika Ališić at the Prosecutor's Office of BiH, Ref. number: KT – RZ: 123/06 dated 23 November 2006; Record on Examination of the Witness A at the Prosecutor's Office of BiH, Ref. number: KT – RZ: 123/06.

Although, in the course of the presentation of documentary evidence the parties and the Defense Counsel challenged its relevance and in certain segments even the validity, the Court admitted all the aforementioned documentary evidence, and reached its final decision on their value in the course of the evaluation of all evidence, both individually and collectively.

On the other hand, the Court did not accept the introduction of certain evidence as elaborated upon in the Section dealing with the procedural decisions of the Court.

### 3. Closing Arguments

#### a) Prosecution

Following the completion of the evidentiary proceedings, the Prosecutor presented her closing argument, which in its concept corresponds to the Indictment. Presenting the facts supporting the existence of a widespread and systematic attack, it was primarily important to mention the existence of the Strategic Plan of the Serb Democratic Party, which was directed towards the creation and maintenance of the Serb territory with Serb majority and in order to achieve that, as further explained by the Prosecutor, crisis Staffs were established, both regional and municipal, including the Sanski Most Municipality whose Crisis Staff Act No. 05/92 dated 21 April 1992 indicates a conclusion that, in the territory of that Municipality, SDS had undertaken certain activities directed towards the realization of the creation of the Serb Republic of BiH and that on 20 April 1992, it started functioning as the Serb Municipality of Sanski Most. The Prosecutor goes on to conclude that with these activities the implementation of the abovementioned plan and the policy of displacement began by disarming non-Serbs, thus making them even more vulnerable and putting them under control, many were detained, banned from going home, subjected to intolerable living conditions by the Serb authorities, which was confirmed by numerous witnesses, both victims and eyewitnesses. It is further said that the main objective of the attack to the villages with predominantly Muslim population was to cause the enemy as much loss as possible in manpower and material and technical resources, in the course of which all of the civilian population was forced out of their homes and detained. According to the Prosecutor,



these are all facts which undoubtedly indicate that a widespread and systematic attack against the civilian population was carried out in the wider territory of Krajina, including Sanski Most, in which the attack was of discriminatory nature, based on political, religious, national and ethnic grounds.

The Prosecutor began the portion of her closing argument related to Count 1 of the Indictment, more precisely to the killing of detained civilians, with the words of the sole surviving witness of this horrible incident, Raif Begić, who says: "I didn't want to be killed that way", stated in the course of his testimony at the main hearing. Describing the events of that day, the Prosecutor tried to evoke a picture, starting with the separation of women and children from the men and the taking of the men to be executed at the Vrpolje Bridge. Out of twenty men in the line, four were already killed on the way to the bridge. The Prosecutor stated that saying goodbye to his brother Nedžad, who was also killed that day, was etched in Raif's memory. Analyzing the evidence given by Defense witnesses, the Prosecutor concluded that the Defense in no way undermined the credibility and truthfulness of the testimony of Raif Begić, and that his testimony was additionally supported by the testimony of his godmother Anđa, whose family gave him shelter after the suffering he had been through, but also by abundant documentary evidence.

The Prosecutor deems that the identity of the accused Jadranko Palija was unquestionable, given that many witnesses knew him and remembered his presence in that area and witness Raif Begić remembers him as a Serb Army soldier at the checkpoint in Stojinovići, where he first heard his name. Finally, emphasis is placed on unsuccessful attempts by the Defense witnesses to eliminate the liability of the accused for the committed murders in different ways, especially using lies, which are scrutinized by the Prosecutor and contested with relevant facts.

In regard of Count 2 of the Indictment, the testimony of the victim of the respective criminal action, Witness A, was analyzed, which, according to the Prosecutor was supported by testimonies of witnesses Dika Alisić and Senad Šabić. Although Witness A did not know the accused at the moment of the rape, given that the witnesses – eyewitnesses knew him and that their testimonies match in significant facts, the Prosecutor believes that there is no doubt that the accused committed the criminal offense in the manner as described in the Indictment.

In the context of the criminal actions, described in detail under Count 3 of the Indictment, the Prosecutor stresses the testimonies of witnesses Mehmed Zukanović and Vehid Zulić, direct victims, who were for no reason whatsoever arrested by the accused and taken for the beating. His presence at the checkpoint in Pobrjeđe was especially remembered, where he instilled fear in those who had to pass through the checkpoint, and many witnesses also remember him because he came to the village where he intimidated the population, maltreated them and threatened them in different ways.

The Prosecutor deems it is beyond doubt that based on testimonies of both the Prosecution witnesses and the Defense witnesses, Nedeljko Kondić, Dragoslav Krunić and Željko Baljak, that in early 1993, the accused Jadranko Palija was a military police officer, which is additionally confirmed by material evidence.

The abovementioned Defense witnesses, however, insisted that the work of the Military Police was lawful, including thus the accused himself, as its member, which in the opinion of the Prosecutor is not true, and the committed crimes are not the result of fighting the armed enemy, but the result of the attack against the civilians, more precisely against persons protected by the 4<sup>th</sup> Geneva Convention.

It is also concluded that the acts in which the accused was involved are connected with the widespread and systematic attack and the war in BiH, more specifically that the accused was aware of the wider context in which his acts took place.

At the end of her closing argument, the Prosecutor based on everything she presented deems that it was proven that in Sanski Most area and in wider area there was a widespread or systematic attack against the civilian population, that the attack was of discriminatory nature against a specific religious, ethnic or political group and that the accused being fully aware of those facts undertook prohibited actions which all represent elements of persecution, whereby he committed the criminal offense of Crimes against Humanity in violation of Article 172 of the CC of BiH and that violating the rules of the international law he committed War Crimes against Civilians in violation of Article 173 of the cited law, therefore the Court is moved to find the accused Jadranko Palić guilty and sentence him according to the law to long-term imprisonment.

#### b) Defense

Defense Counsel for the accused stated that the presented evidence shows that the accused did not commit the criminal offense with which he is charged. The Defense Counsel especially objects to the reading out of the statement of a witness who was unable to appear before the Court.

The Defense Counsel also objects to the application of the substantive law (Article 4a).

With respect to witness testimonies, the Defense Counsel submitted that it is often the case that the witness would place the perpetrators in the context of the commission of acts only after they would hear of those persons.

With regard to Count 1 of the Indictment, the Defense Counsel submits that the accused Jadranko Palić is the victim of his easy-to-remember family name, adding that the witness testimonies are contradictory. Witness testimonies about the weapons that the population had at that time are untrue. All details are stated in the book. The testimony of witness Raif Begić is illogical, and is not consistent with the statements given before the main hearing. In addition to that, the Defense Counsel states that autopsy reports are missing for the persons that Raif Begić claims were killed by Jadranko Palić. Witness Raif Begić stated in the courtroom that Palić does not look like the person who had committed these crimes. The Defense Counsel submits that such a testimony is motivated by jealousy. Raif Begić has given different statements in cases tried before the ICTY. The Defense Counsel believes the reasons for that are personal because Raif Begić and Jadranko Palić had the same lady acquaintance for whom they both allegedly had certain romantic feelings. Furthermore, since Begić did not succeed in charming this girl, he decided to take revenge on Jadranko Palić in every possible way. Because of his injured male pride, he used the incidents that took place in Sanski Most area in the worst possible way to try and accuse Jadranko Palić as one of the worst butchers. What other reason could he have for mentioning him in all of his testimonies, whereas he mentioned the names of other persons only off-handedly, the Defense Counsel wonders. The Defense Counsel says that Raif only heard that there was a soldier Palić, who was interested in that girl, but never saw him. The Defense Counsel also underlines that the existence of a widespread or systematic attack has not been proven either.

He points out that Palić did not hold any important position in the Army, he was a courier. A large number of evidence introduced do not relate to the committed acts with which the accused is charged.

With regard to Count 2 of the Indictment, the Defense claims that the evidence is rigged.

So, for example, Witness A changed her testimony after the testimony of Senad Šabić. Witnesses mentioned that Jadranko Palija patrolled Muhići and Mahala, while other witnesses state that Jadranko was on a different location with his unit. The Defense Counsel finds it strange that Witness A did not even mention the names of the persons who showed up after the incident. He points out that the Court was mistaken in not allowing the wife of the accused – Tajana to be examined as a witness.

The Defense submits that in case of Count 3 of the Indictment, we have self-persuaded witnesses. There are substantive contradictions in witness testimonies, and especially with respect to the identification of the accused. Thus, witness Mehmed Zukanović did not recognize Jadranko Palija, although, according to him, it was Jadranko Palija himself who beat him up with a shovel so that he was black and blue. The Defense Counsel stated that the duty of the Military Police was to control and catch the deserters and prevent smuggling. That is the reason why the checkpoint was manned by both the military and civil police officers.

The Defense Counsel also deems that the Prosecution failed to prove what the status of the persons allegedly maltreated by Jadranko Palija was. Agreeing with his Defense Counsel, the accused stated that the entire proceedings against him were rigged and that never in his life he had done anything he should be ashamed of.

#### 4. Procedural Decisions

##### a) Established Facts

On 21 September 2007, pursuant to Article 4 of the Law on Transfer, the Prosecutor's Office of BiH filed a motion for the acceptance of established facts (the Motion) seeking that the Court takes judicial notice of facts established by a legally binding decision of the International Criminal Tribunal for the Former Yugoslavia (the ICTY) in the Judgment in the case of *Prosecutor v. Radoslav Brđanin* (IT-99-36) (the *Brđanin* Trial Chamber Judgment). The Prosecutor's Office moved the Court to take judicial notice of facts established by a legally binding decision of the ICTY in its judgment rendered in the case number IT-99-36 *Prosecutor v. Radoslav Brđanin*, Trial Chamber Judgment of 28 November 2003. In total the Prosecutor's Office moved the Court to accept as proven 18 facts established in the above mentioned judgment. The parties were heard on 5 October 2007 and during this hearing the Defense orally objected to the motion, holding it was unfounded.

The Prosecution also submitted that the facts are of a general nature and do not either directly or indirectly incriminate the Accused. Furthermore, the Prosecution argued that granting the Motion would be of a benefit in terms of judicial economy and at the same time justify the principle of a trial within a reasonable time as prescribed by Article 6 of the European Convention on Human Rights (the ECHR).

At the hearing held on 5 October 2007, the Defense orally submitted that it would accept as adjudicated 10 facts proposed by the Prosecution. Regarding 2 facts, the Defense made two remarks relating to discrepancies between the language in the Motion and the language in the original Judgment. For the same reason the Defense objected to the acceptance of one of the facts as established. The Defense further objected to the acceptance of 3 facts because they contained legal characterizations of the elements of the crimes with which the Accused has been charged under the Indictment. Additionally, the Defense objected to 3 facts because they would go directly to the criminal responsibility of the Accused.

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concerning 1 fact, that it contained elements of the crimes that the Accused is charged with.

Concerning the grounds for the acceptance of established facts, the Defense also stated that the principle of judicial economy, even if it intended to support the rights of the Defense, could not be applied in a situation where other rights of the Accused were violated (i.e. the right to a fair trial). The Defense argued that if all the facts were accepted by the Court they were to be considered as proven beyond any reasonable doubt. In that manner the Accused would be precluded from challenging these facts during the proceedings. Also, the Accused would be deprived of the opportunity to challenge the evidence by the examination of witnesses, which would lead to a violation of Article 6(3)(d) of the ECHR. The reason for this is that it is possible that witnesses in the other proceedings were cross-examined in a manner that differs from the manner in which the defense counsel would examine them, while the circumstances of each fact must be established on a case by case basis.

In its letters to the Court dated 12 October 2007 and 18 October 2007, (No. KT-RZ-123/06), the Prosecutor's Office of BiH informed the Court which of the facts stated in the Motion had not been contested at all in the appellate proceedings in the ICTY case against *Radoslav Brđanin*, while the facts that had been contested were confirmed by the Judgment of the Appeals Chamber dated 3 April 2007 (Case No. IT-99-36-A).

On 14 November 2007, the Court partially accepted the Motion of the Prosecutor's Office of Bosnia and Herzegovina number KT-RZ-123/06, dated 27 September 2007, based on Article 4 of the Law on Transfer, and related to the acceptance as proven the facts established in proceedings before the ICTY. As for the elaborate reasoning, the Court refers to its written decision dated 14 November 2007.

The Court accepted as proven 11 facts established in the proceedings before the ICTY and another 2 partially.

aa) The facts stated in the following items of the Motion were accepted:

Item 2: The facts that the ARK was in practice a Serbian organization; that its national nature manifested most clearly through the work of its bodies and that the ARK authorities not only had the potential to be a tool for the implementation of the Strategic Plan, but this was in fact their primary concern.

Item 3: The facts that on 29 October a telex was sent addressed to the presidents of the assemblies of all ARK municipalities, which referred to an order of the SDS Sarajevo that was fully accepted by "the ARK Presidency" and "the ARK Government" which gave instructions to the municipalities to form a command of the town, establish full mobility of the Territorial Defense, form units for the front, take over management in public enterprises, the post office, Public Auditing Service, bank, judiciary, the media and so on.

Item 5: The fact that the ARK Crisis Staff, as with municipal Crisis Staffs in their respective areas of jurisdiction, was established primarily to ensure the cooperation between the political authorities, the army and the police, with a view to co-ordinating the implementation of the Strategic Plan.

Item 6: The fact that, with the exception of Prijedor municipality, all ARK municipalities unquestionably accepted the authority of the ARK Crisis Staff to issue instructions that were

binding upon them, and for that reason they maintained communications with the ARK Crisis Staff commensurate with such a relationship, while a strong indicator of the ARK Crisis Staff's authority over the municipalities is the fact that it controlled appointments of personnel to municipal governments.

Item 7: The fact that in three key areas ARK Crisis Staff decisions were implemented by the municipalities. These areas are

- a) dismissals of non-Serb professionals;
- b) disarmament of paramilitary units and individuals who illegally possess weapons, selectively enforced against non-Serbs;
- c) resettlement of the non-Serb population

and that these three areas were of crucial and vital significance for the success of the overall policy of ethnic cleansing.

Item 8: The facts that on 19 December 1991, the Main Board of the SDS issued a document entitled "Instructions for the Organisation and Activity of Organs of the Serbian People in Bosnia and Herzegovina in Extraordinary Circumstances", which provided for the conduct of specified activities in all municipalities in which Serbs lived, and essentially mapped out the take-over of power by Bosnian Serbs in municipalities where they constituted a majority of the population (Variant A) and where they were in a minority (Variant B).

Item 9: The fact that the Variant A and B Instructions included, amongst others, the directive that the SDS Municipal Boards should form Crisis Staffs of the Serbian people in their respective municipalities, and that the tasks, measures and other activities referred to in the Instructions were to be carried out exclusively at the order of the President of the SDS.

Item 10: The fact that in early 1992, while international negotiations to resolve the question of the status of BiH were ongoing, the Bosnian Serb leadership enforced its plan to separate the territories claimed by them from the existing structures of the SRBH and to create a separate Bosnian Serb State. On 9 January 1992, the SerBiH Assembly proclaimed the SerBiH, which on 12 August 1992 was renamed Republika Srpska, which was composed of so-called Serbian autonomous regions and districts, which included the Autonomous Region of Krajina.

Item 11: The fact that there was a widespread or systematic attack against the Bosnian Muslim and Bosnian Croat civilian population in the Bosnian Krajina. The attack took many forms. By the end of 1992, nearly all Bosnian Muslims and Bosnian Croats had been dismissed from their jobs in, amongst others, the media, the army, the police, the judiciary and public companies. Numerous crimes were committed against Bosnian Muslims and Bosnian Croats, including murder, torture, beatings, rape, plunder and the destruction of property. Villages were shelled, houses were torched and looted, while a number of detention camps where Bosnian Muslim and Bosnian Croat civilians were detained were established in the ARK territory. In several instances, mass killings of civilians took place. Moreover, a policy of "ethnically cleansing" the ARK of its non-Serb population was systematically implemented by the Bosnian Serbs, they expelled tens of thousands of Bosnian Muslims and Bosnian Croats and took them to Bosnian Muslim held territory in BiH or to Croatia. All this was mostly perpetrated with a view to implement the Strategic Plan.

Item 13: The facts that the crimes that were committed in the Bosnian Krajina from A

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1992 until the end of December 1992 occurred as a direct result of the over-arching Strategic Plan. The ethnic cleansing was not a by-product of the criminal activity; it was its very aim and thus an integral part of the Strategic Plan. The conditions of life imposed on the non-Serb population of the Bosnian Krajina and the military operations against towns and villages which were not military targets were undertaken for the sole purpose of driving people away. Many people were kept in detention centres under horrendous conditions. As it was intended to permanently remove these people from the territory of the SerBiH, many of their homes were destroyed in order to prevent them from returning. Bosnian Muslim homes that were not destroyed were allocated to Serb refugees. The deliberate campaign of devastation of the Bosnian Muslim and Bosnian Croat religious and cultural institutions was just another element of the larger attack. The final objective was the removal of the population and the destruction of their homes. The evidence shows a consistent, coherent and criminal strategy of cleansing the Bosnian Krajina of other ethnic groups led by the SDS and the Bosnian Serb forces.

Item 18: The facts that the Bosnian Serb forces destroyed Bosnian Muslim and Bosnian Croat property in the area of Sanski Most municipality in the mentioned period.

ab) The facts stated under items 4 and 12 of the Motion were partially accepted:

Item 4: "On 16 April 1992, the Ministry of National Defense of the SerBiH declared an imminent threat of war. Consequently, on 26 April 1992, the Bosnian Serb Government issued follow up instructions for the work of the municipal Crisis Staffs and defined their functions (26 April Instructions). Again, there was no specific mention of regional Crisis Staffs."

Item 12: "In Sanski Most, the SDS took control on 19 April 1992...(until) ... and people fleeing were deprived of the valuables that they were carrying with them."

Pursuant to Article 4 of the Law on Transfer, at the request of a party or *proprio motu*, the courts may decide to accept as proven those facts that are established by legally binding decisions in proceedings before the ICTY. The Court accepted the facts guided by, among others, the ICTY case law relating to Rule 94(B) of the Tribunal's Rules of Procedure and Evidence (See, for example, ICTY, Trial Chamber, *Prosecutor v. Momčilo Krajišnik*, case number IT-00-39-T, Decision on Third and Fourth Prosecution Motions for Judicial Notice of Adjudicated Facts, dated 24 March 2005, page 8; *Prosecutor v. Zoran Kupreškić et al*, case number IT-95-16-A, Appeals Chamber Decision on the Motions of Drago Josipović, Zoran Kupreškić and Vlatko Kupreškić to admit additional evidence pursuant to Rule 115 and for judicial notice to be taken pursuant to Rule 94(B)).

The Court found that the accepted facts are concrete, identifiable, of a general nature and do not refer to the individual criminal responsibility of the Accused. Furthermore, the facts are relevant to criminal case conducted against the Accused Jadranko Palić before the Court of BiH, since he has been charged with the criminal offenses which were committed within a widespread or systematic attack against the non-Serb population carried out by the Army of the Serb Republic of Bosnia and Herzegovina, police and paramilitary formations in the wider area of the Sanski Most Municipality.

The Court found that judicial economy is achieved by taking judicial notice of facts established by the ICTY. That purpose is in accordance with the right of the Accused to trial without delay guaranteed under Article 13 of the CPC and Article 6(1) of the ECHR.

However, regardless of that, that purpose must be harmonized with the principle of the presumption of innocence and the right of the Accused to a fair trial guaranteed under Article 6 of ECHR.

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

#### **b) Exception from the Imminent Presentation of Evidence**

ba) After the witness Anda Krljić failed to respond to the summons on 29 March 2007, the Prosecutor's Office, pursuant to Article 273(2) of the CPC BiH, proposed that the statement given by this witness during the investigation be read at the main trial, given that the witness was unable to appear before the Court due to her poor health. The Prosecutor's Office also moved the Court to hear the witness in the place of her residence should this motion be denied.

The Defense challenged the motion that the statement be read by submitting that difficulties to come to the Court do not necessarily imply that the witness was actually unable to come and proposed that another attempt be made to summon the witness in the further course of the main trial and presentation of the Prosecution evidence.

The Court, however, instructed the Prosecutor's Office to order a psychiatrist expert evaluation of the witness Anda Krljić in order to get a complete picture of her health condition to be able to render a decision on the necessity of making an exception from the usual presentation of evidence.

Acting upon the guidelines issued by the Court, the Prosecution ordered a psychiatrist expert evaluation, whose findings, substantiated also by the findings of a clinical psychologist, entirely justified the necessity of making an exception from the imminent presentation of evidence, that is, the application of Article 273(2) of the CPC BiH.

Therefore, the Court accepted that the statement number KT-RZ: 123/06, given by the witness Anda Krljić on 1 December 2006 in Banja Luka, be read out.

Bearing in mind that the health condition of the witness was such that any change in her current life style and surroundings could cause anxiety and fear, in relation to angina myocardium and cardiopathy, and was a current and complete vital threat, and considering the statement of the witness Anda Krljić within the context of all the evidence presented in relation to the circumstances described in Count 1 of the Indictment, bearing in mind that this was not a decisive piece of evidence, the Court found the health condition of the witness to be an important circumstance which significantly impeded her coming to the Court, which was not necessary in this case.

Therefore, the Court decided to admit the reading of the statement given by this witness during the investigation.

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bb) The Prosecution also proposed the application of Article 273(2) of the CPC BiH on 27 November 2007. Since the appearance before the Court was made significantly more difficult due to health problems, the Prosecution proposed reading of the statement number KT-RZ:123/06 given by Rufija Šabić on 25 November 2006 in her family house in Sanski Most. In support of the motion to read the statement, the Prosecution submitted that the findings of the expert witness also clearly showed that this witness was seriously ill, suffering not only from heart disease, but also from spine disease, which prevented her not only from moving around, but also from leaving the house. The fact is that the witness Rufija Šabić was unable to come to the Prosecutor's Office of BiH premises, so she gave her statement at her home in Sanski Most.

The Defense contested such a motion by pointing out that every witness could abuse the confidence of the Court in this way, and that this particular witness could contest the statement given by the injured party A.

However, in view of the fact that the witness Rufija Šabić had not seen, but only heard about the relevant events, hence, that her statement was not of vital importance for the charges under Count 2 of the Indictment, the Court decided to grant the motion of the Prosecution which was based on Article 273(2) of the CPC BiH. The Court found that the health condition of this witness required the exception from the imminent presentation of evidence be made. In the Court's opinion, the right of the accused to have a proper defense was not violated in this way.

#### **c) Manner of Questioning of the Witness and Exclusion of the Public**

On 12 March 2007, the Prosecutor's Office of BiH filed a motion to grant additional protective measures to the witness A, stating that the injured party, due to the trauma she suffered as a result of being raped, would not be able to give her testimony in the presence of the accused and other persons in the courtroom, and that the injured party did not want her family and other people to find out about what had happened to her. It was therefore proposed that the public be excluded during the examination of the witness A and that the witness should testify from a separate room.

At the public session held on 20 June 2007, the Prosecutor maintained his motion, while the Defense agreed that the public be excluded, but not that the witness should testify from a separate room, holding that the witness, if she spoke the truth, would be able to bear the presence of the accused in the same room.

Considering all the foregoing, the Court found the Prosecution's motion justified, holding that the protection of the name which was granted to the injured party under the decision of the Court of BiH dated 7 December 2006 was not sufficient or adequate for the ultimate objective of protecting the personal integrity of the witness, in this case the vulnerable witness - a victim of the culpable conduct of the accused person.

Therefore, bearing in mind the provisions of Article 86(6) of the CPC BiH and Article 9 of the Law on the Protection of Witnesses Under Threat and Vulnerable Witnesses, the Court found that the testifying of the injured party from another room was entirely acceptable manner of her examination, and on 20 June 2007 rendered and publicly announced a decision by which, in addition to this measure, it decided to exclude the public during the examination of the injured party A, as stipulated under Article 235 of the CPC BiH.



Available technical capacities allowed for the transmission of a clear picture and sound of the injured party directly to the courtroom, that is, the examination of the injured party by the parties, defense counsel and the Court in a completely acceptable, and for the injured party a less agonizing and traumatic manner.

The Court believes that this manner of examination of the injured party completely achieved the purpose of the protection, at the same time respecting the right of the accused person to question the witness who incriminated him.

It is also important to point out that this is the only witness whose testimony was closed to the public and who testified from a separate room, which indicates an utterly critical approach taken by the Court when deciding whether to deviate from the usual procedure of examining the witnesses, but also that the application of this measure was absolutely necessary due to the severe trauma which the injured party still suffers.

#### **d) Non-admittance of Some Pieces of Evidence**

da) During the main trial session held on 14 November 2007, close to the end of the presentation of the defense evidence, the defence counsel proposed as a witness the spouse of the accused person, Tatjana Palija, who, as he stated, would testify about their pre-marital and marital background and family situation.

The Prosecution immediately objected to this proposal, stating that the spouse of the Accused was present at several main trial hearings, but that her testimony was not relevant to the critical period.

Deciding upon this proposal, the Court particularly bore in mind the fact that the Defence, when announcing and scheduling their evidence, did not include this witness.

However, refusing this defense motion, the Court bore in mind not only the provisions of Article 258(3) of the CPC BiH, that provides that the witnesses, until the moment of their examination, shall be placed outside the courtroom, in the rooms where they cannot contact each other, but also the provisions of Article 81(1) of the CPC BiH, which stipulates that the witnesses shall be heard when there is likelihood that their statements may provide information concerning the offense, perpetrator or any other important circumstances.

The Court also took into account Article 83 of the CPC BiH, which provides that the spouse of the accused person is entitled to refuse to testify.

Assessing the circumstances of the present case, specifically that the spouse of the accused person was present during the examination of many witnesses both for the Prosecution and the Defense, as a result of which she could adjust her testimony, the Court found her testifying to be not only unacceptable, but also irrelevant, given that the information she would provide concerned the family life of the accused person in the period long after the relevant events had taken place.

db) The Court also denied the motion filed by the Prosecution in terms of Article 273(2) of the CPC BiH that the statement given by the injured party Hilmo Suljanović on 7 February 1997 in the Sanski Most Public Security Station be read out.

The Prosecutor's Office reasoned their motion by the fact that the injured party had died and supported that by a Death Certificate, holding that the exception from the imminent presentation of evidence as set forth under Article 273(2) of the CPC BiH was thereby justified.

However, bearing in mind that on 5 September 2007 the Prosecution withdrew the

Šemsa Suljanović, who was supposed to testify about the same events, the Court decided to refuse this motion since the testimony of this injured party would be the only ground for charges against the Accused stated in Count 3 of the Indictment, which concerns beatings, intimidation and unlawful detention of Hilmo Suljanović.

The Court could not base on such evidence its decision regarding the allegations in the Indictment which relate to the injured party Hilmo Suljanović. It is also necessary to point out that in this particular case, even if additional supporting evidence was offered, admitting the statement given in the Public Security Station would require a critical approach.

## 5. Applicable Law

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

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

The principle of legality is also stipulated under Article 7(1) of the ECHR. The European Convention for the Protection of Human Rights and Fundamental Freedoms supersedes all legislation of BiH pursuant to Article 2(2) of the BiH Constitution. Furthermore, this provision of the ECHR stipulates the general principle prohibiting a heavier penalty than the one that was stipulated at the time when the criminal offense was committed, but does not stipulate the application of the most lenient law.

Article 4a of the CC BiH stipulates 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 when it was committed, *"was criminal according to the general principles of international law."*

Article 7(2) of the ECHR stipulates the same exemption, providing that paragraph 1 of the same Article *"...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"*. (See also Article 15(1) and (2) of the International Covenant on Civil and Political Rights which contains similar provisions). The State of Bosnia and Herzegovina, as a successor of Yugoslavia, ratified this Covenant.

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

CC SFRY was such that it did not stipulate either long term imprisonment or life sentence but death penalty for the gravest crimes and maximum 15 year imprisonment for less serious crimes. Hence, it is clear that a sanction cannot be separated from the totality of goals sought to be achieved by the criminal policy at the time of application of the law." "69. In this context, the Constitutional Court holds that it is not possible to simply 'eliminate' the sanction and apply other, more lenient, sanctions, so that the most serious crimes would in practice be left inadequately sanctioned."

In the opinion of the Panel, the principle of mandatory application of a more lenient law is ruled out in the trial of criminal offenses for which at the time of the commission it was absolutely predictable and commonly known that they were contrary to the general rules of international law. In the specific case, it is taken as established that the Accused had to know that in the state of war application of international rules has priority and that a violation of internationally protected values carries heavy consequences. If the provision of Article 172 and 173(1) of the CC BiH is analyzed, it is obvious that it has been clearly stated that the body of this criminal offense include, inter alia, elements of violation of international rules. This makes this group of offenses special, because it is not sufficient only to commit such criminal offenses through certain physical activity, but what is necessary is the awareness that the international rules are being violated by the commission and the assumption that the perpetrator must know that the period of war or conflict or hostilities is especially sensitive and especially protected by the commonly accepted principles of international law and, as such, the offense gains an even greater significance and its commission carries even more serious consequences than an offense committed in another period.

Also, at the time when the criminal offenses were 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>1</sup>

Also, customary status of criminal responsibility for Crimes against Humanity and War Crimes against Civilians and individual responsibility for war crimes committed in 1992 was recognized by the UN Secretary-General<sup>2</sup>, the International Law Commission<sup>3</sup>, as well as jurisprudence of the ICTY and the International Criminal Tribunal for Rwanda (ICTR)<sup>4</sup>. These institutions have established that criminal responsibility for Crimes against Humanity and War Crimes against Civilians constitutes a peremptory norm of international law or *jus cogens*.<sup>5</sup> That is why it appears undisputable that Crimes against Humanity and War Crimes against Civilians constituted part of customary international law in 1992. This conclusion

<sup>1</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 Convention on 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 Convention on Apartheid (1973); The Convention on the Elimination of All Forms of Discrimination against Women (1979); The UN Convention against Torture (1984).

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

<sup>3</sup> International Law Commission, Commentary to the Draft Code of Crimes against the Peace and Security of Mankind (1996), Article 8.

<sup>4</sup> ICTY, Appeals Chamber, *Tadić* case, Decision on the Defense Motion for Interlocutory Appeal on Jurisdiction, 2 October 1995, para. 151; ICTY, Trial Chamber Judgment in the *Tadić* case, dated 7 May 1997, paragraphs 618-623;

<sup>5</sup> International Law Commission, Commentary to the Draft Articles on Responsibility of States for Internationally Wrongful Acts (2001), Article 26.

criminal offenses under international law.

While considering the objection raised by the Defense, it should be noted that no provision of the CC of SFRY, which was applicable in the relevant period, explicitly dealt with Crimes against Humanity in the manner stipulated under Article 172 of the CC BiH. However, taking into consideration other provisions of the applicable substantive law as well as the general principles of international law, this objection of the Defense could not be accepted as well-founded.

The Court points out that the crimes for which the Accused has been found guilty constitute crimes under international customary law and thus fall under "*general principles of international law*" stipulated under Article 4a of the Law on Amendments to the CC BiH and "*general principles of law recognized by civilized nations*" stipulated under Article 7(2) of the ECHR, and thus the CC BiH can be applied in this case on the basis of these provisions.

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

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

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

The foregoing is in line with the position of the Appellate Division of Section I of the Court of BiH taken in its Verdict against Abduladhim Maktouf number KPŽ 32/05 dated 4 April 2006, and the Verdict against Dragoje Paunović, number KPŽ 05/16 dated 27 October 2006. The Constitutional Court of Bosnia and Herzegovina deliberated on this issue in the A. Maktouf Appeal (AP 1785/06) and stated in its Decision dated 30 March 2007: "68. In practice, legislation in all countries of former Yugoslavia did not provide a possibility of pronouncing either a sentence of life imprisonment or long term imprisonment, as often done by the International Criminal Tribunal for crimes committed in the territory of the Former Yugoslavia (the cases of Krstić, Galić, etc.). At the same time, the concept of the

was confirmed by the Study on Customary International Humanitarian Law<sup>6</sup> conducted by the International Committee of the Red Cross. According to that Study "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 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.

Principles of international law recognized in the UN General Assembly Resolution 95 (I) (1946) as well as by the International Law Commission (1950) refer to "the Nuremberg Charter 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", which were adopted by the International Law Commission in 1950 and submitted to the General Assembly, prescribe in Principle 1 that "Any person who commits an act which constitutes a crime under international law is responsible therefore and liable to punishment". Principle 11 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".

Therefore, the criminal offense of Crimes against Humanity and War Crimes against Civilians 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 Crimes against Humanity and War Crimes against Civilians constituted criminal offenses at the critical time; in other words, the principle of legality was complied with in the sense of both *nullum crimen sine lege* and *nulla poena sine lege*.

Therefore, pursuant to the provisions of the Common Article 3(1)(a) and (c) of the Geneva Conventions and Article 27(2) of the Geneva Convention Relative to the Protection of Civilian Persons in Time of War of 12 August 1949, the criminal offense of Crimes against Humanity and War Crimes against Civilians should in any case be subsumed under "international law" or "the general principles of international law" referred to in Articles 3 and 4a) of the CC BiH. Therefore, it is indisputable that Crimes against Humanity and War Crimes against Civilians constituted criminal offenses in the relevant period of time.

## 6. Findings of the Court

### a) General considerations regarding the evaluation of evidence

<sup>6</sup> Jean-Marie Henchaerts and Louise Doswald-Beck, Customary International Humanitarian Law, Cambridge University Press, 2005, pages 568 et seq.  
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The Court has assessed the evidence in this case in accordance with the applicable procedural code, that is, the Criminal Procedure Code of Bosnia and Herzegovina. The Court has applied to the Accused the presumption of innocence referred to in Article 3 of the CPC BiH, which embodies a basic principle of law, so that the Prosecution bears the onus of proving the guilt of the Accused, which has to be proven beyond reasonable doubt.

When evaluating the evidence of the witnesses that testified before the Court, the Court has considered their demeanor, conduct and character as much as this was possible. With regard to all the witnesses, the Court has also considered the probability, consistency and other evidence, as well as the circumstances of the case. Furthermore, throughout the proceedings the Court has been conscious of the fact that the credibility of witnesses depends upon their knowledge of the facts they gave evidence about, their integrity, honesty and the fact that they pledged to speak the truth in terms of the oath they took.

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

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

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

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

The Defense submitted that some of the documents 'for which there is no evidence of authorship or authenticity' are unreliable, and can hold no weight.

However, the fact that a document is not signed or stamped does not necessarily render that document non-authentic. The Court did not consider documents without a signature and stamp, *a priori*, to be void of authenticity. Keeping in mind all the time the principle

according to which the burden of proving authenticity remains with the Prosecution, the Court reviewed all the presented documents, one by one, and is satisfied that the Prosecution has proved their authenticity beyond reasonable doubt. In order to assess the authenticity of documents, the Court considered them in light of evidence such as other documentary evidence and witnesses' testimonies. In addition, even when the Court was satisfied with the authenticity of a particular document, it did not automatically accept the statements contained therein to be accurate portrayal of the facts. The Court indeed evaluated these statements in light of the entire evidence before it.

Also, Article 15 of the CPC BiH established the principle of free evaluation of evidence, which gives the Court the right to evaluate the existence or non-existence of facts freely; that is, when assessing whether a certain fact exists or not, the Court is not bound by or limited to special formal evidentiary rules. The weight of evidence is not determined in advance, either in terms of quality or quantity. In terms of the free evaluation of evidence, the Court is obliged to conscientiously assess every piece of evidence individually and in relation with the rest of evidence and, based on such assessment, draw a conclusion whether a particular fact is proven. The evaluation of evidence includes its logical and psychological evaluation. The free evaluation of evidence is limited by the principle of legality of evidence.

Article 10 of the CPC BiH defines the concept of unlawful evidence, stipulating that information obtained or presented in an unlawful manner is considered as legally invalid evidence. Evidence obtained through a violation of fundamental human rights and freedoms or through an essential violation of the procedural law is defined as unlawfully obtained evidence, which, together with evidence obtained in an unlawful manner, constitute legally invalid evidence, on which a court decision may not be based.

The issue of unlawfulness of evidence may be classified in three basic categories:

1. evidence obtained through violations of certain fundamental rights and freedoms,
2. evidence for which the law explicitly stipulates that may not be used when rendering a court decision in criminal proceedings,
3. evidence which would not be obtained by the prosecution authorities without information from unlawful evidence (so-called fruits of a poisonous tree)

Article 274(2) of the CPC BiH speaks about the authenticity of particular pieces of evidence, which have to be the original writing, document, record, recording, photograph or similar counterpart. The CPC BiH defines the term "original" under Article 20(p), stating that it refers to writing, recording or similar counterpart intended to have the same effect by a person writing, recording or issuing it. This subparagraph defines the term "original" so as to include photographs, and/or negatives or any copy therefrom. Article 20(r) of the CPC BiH defines the term "duplicate" for the purpose of criminal proceedings, stating that, by using scientific advancements, certain procedures (copying, enlarging, minimizing, re-recording, reproduction) are used to make duplicates from the original and matrix. Various technical recordings, if they were obtained under the conditions and in the manner stipulated by the CPC BiH, may be used as evidence in criminal proceedings. However, a verdict may not be based only on recordings as the sole evidence, because that challenges Article 6(2) (the presumption of innocence) and Article 8 of the ECHR (the right to respect for private and family life) – see *Schenk v. Switzerland*, Judgment of 12 July 1998, Series A, number 140. Furthermore, Article 20(s) of the CPC BiH defines the term "telecommunication address", which, according to this code and for the purposes

criminal proceedings, means any telephone number, either landline or cellular, or e-mail or internet address. What is important for the term "telecommunication address", as specified under subparagraph (s), is that a certain address is held or used by a person.

The issue whether documents whose content is important for the evidentiary procedure are originals or photocopies is often problematic. Although, in principle, there is a position that it is necessary to submit original documents to the court, this position in itself does not exclude the possibility of using a copy of a document as lawful evidence. The Supreme Court of the Republic of Croatia, in its Decision number I Kž-645/01, says the following:

*"The accused are right when they say that all documents which have probative value should be submitted in original, which in the present case was not done with the record of the questioning of the suspect NŠ, dated 8 May 1999 (sheet 72-74 of the case file), nor did the first instance court, despite its efforts, succeed in obtaining the original during the proceedings. However, contrary to the arguments stated in the appeal, it cannot be accepted that this is unlawful evidence in terms of Article 9(2) of the CPC only because of this formal omission, given that the accused Š does not challenge the authenticity of that record, and that it was not obtained by breaching the defense rights guaranteed by the Constitution, the law or international law, while, also during the main trial when he presented his defense, the Accused himself stated he maintained that defense, which was then read out and for which he said that what was read out was exactly what he had stated to the law enforcement authorities. In addition, given that the accused Š completely denies the commission of the offense, it is inadmissible that the contested judgment be based on that evidence, and therefore, even if it would be accepted that this is evidence referred to in Article 9(2) of the CPC, the ground for appeal for the unlawful violation referred to in Article 367(2) of the CPC would not be satisfied."*

The European Court of Human Rights (hereinafter: the ECtHR) established a general rule according to which national courts deal with the evaluation of evidence. As for decisions of the European Court of Human Rights (hereinafter: the ECtHR), a general rule was established according to which national courts deal with the evaluation of evidence. Since there is no explicit provision about this in the Convention, the ECtHR did not go to the extent of setting the rules about evidence and firmly maintained its position that its task is not to judge whether evidence was properly accepted at the trial, which is in principle an issue regulated in accordance with the national law, but to establish whether the court proceedings were fair as a whole. When considering whether a trial was fair or not, the Court examines the manner in which evidence was obtained and, if it was obtained in violation of any right of the Convention, the nature of that violation. Weight is given to the issue whether a verdict of guilty was based exclusively or mostly on contested evidence and whether the defense rights were sufficiently respected. The principle according to which the rules about evidence are an issue regulated by the national law was established in the *Schenk v. Switzerland* case and confirmed by that court on numerous occasions thereafter. The ECtHR took the following position:

Although Article 6 of the Convention guarantees the right to a fair trial, it does not lay down any rules on the admissibility of evidence as such, which is therefore primarily a matter for regulation under national law. Hence, the Court cannot, in principle or generally, exclude a possibility that unlawfully obtained evidence of this type may be accepted.



In the *Khan v. the United Kingdom* case, the ECtHR took the position that the use of evidence obtained in violation of the rights set forth in the Convention does not necessarily conflict with the right to a fair trial. It was not suggested in this case that the right to a fair trial necessarily implies the exclusion of evidence obtained in violation of Article 8, but that the verdict of guilty based *solely* on evidence obtained through unlawful acts of the criminal prosecution authorities conflicts with legal provisions and is not in accordance with Article 6. Dismissing the appeal filed by the appellant, the Court noted that he had ample opportunity to challenge the authenticity of that recording and that it is at the discretion of national courts to exclude evidence if they think that its admission would render a trial unfair.

As for the case law of the International Criminal Tribunal for the former Yugoslavia, a position is taken that the Rules do not contain a single rule pertaining to the exclusion of unlawfully obtained evidence and that, as it was confirmed in the *Kordić* case, "even if the illegality was established [...] [w]e have come to the conclusion that [...] evidence obtained by eavesdropping on an enemy's telephone calls during the course of a war is certainly not within the conduct which is referred to in Rule 95. It's not antithetical to and certainly would not seriously damage the integrity of the proceedings." Such a position was also accepted in the decision of the Trial Chamber in the *Brđanin* case, dated 3 October 2003.

Hence, when evaluating the evidence, the Court struck a balance between the fundamental rights of the Accused and the essential interests of the criminal prosecution of a person accused of grave violations of international humanitarian law.

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

The Accused has been charged with the criminal offense of Crimes against Humanity referred to in Article 172(1)(h), in conjunction with subparagraphs (a), (e), (g) and (k) of the CC BiH.

For a criminal offense to qualify as a Crime against Humanity, the law stipulates that the Prosecutor's Office, in addition to specific elements of individual offenses, must prove the general or *chapeau* elements of Crimes against Humanity, more specifically:

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

As it follows from the foregoing and as it was stated in the Decision on the admission of established facts, dated 14 November 2007, and corroborated by the testimonies of several witnesses, individually and collectively, who were examined during the presentation of evidence, as well as the documentary evidence presented by the Prosecution, the Court finds it indisputable and considers it as an established fact that at the time relevant to the Indictment, in the territory of Sanski Most Municipality, as a part of Bosanska Krajina, a widespread and systematic attack was launched by the Army of the Serb Republic of Bosnia and Herzegovina, members of police and paramilitary formations against Croat and Muslim civilian population, while that attack, in the context of Crimes against Humanity and pursuant to international customary law, was not exclusively limited to the existence of "an armed conflict".

As for the other necessary key elements of Crimes against Humanity, having evaluated the presented evidence individually and collectively, the Court established beyond any reasonable doubt that during the relevant period of time (namely from May 1992 to 31 December 1992), the accused Jadranko Palić was a member of the Bosnian Serb Army, first as a soldier and later as a military police officer in the 6<sup>th</sup> Sana Brigade in the area of Sanski Most Municipality in the Autonomous Region of Krajina. Furthermore, the evidence shows that in the relevant period of time the Accused stayed in the area of Sanski Most Municipality, as well as in the wider territory of Bosanska Krajina, and that he actively participated in the attack by killing, raping and beating the non-Serb population, which follows from the testimonies mentioned in this Verdict, individually and collectively.

It can be concluded that the Accused was fully aware of the existence of a widespread and systematic attack directed against the non-Serb civilian population and that his acts constituted part of that attack; hence, all essential elements of the criminal offense of Crimes against Humanity referred to in Article 172 of the CC BiH are satisfied.

#### **c) General characteristics of the criminal offense of War Crimes against Civilians**

Pursuant to the Indictment of the Prosecutor's Office, the Accused, *amongst others*, has been charged with the commission of the criminal offense of War Crimes against Civilians in violation of Article 173 (1)(a) and (c), which reads:

*"Whoever in violation of rules of international law in time of war, armed conflict or occupation, orders or perpetrates any of the following acts:*

- a) attack on civilian population, settlement, individual civilians or persons unable to fight, which results in the death, grave bodily injuries or serious damaging of people's health;*
- b) killings, intentional infliction of severe physical or mental pain or suffering upon a person (torture), inhuman treatment, biological, medical or other scientific experiments, taking of tissue or organs for the purpose of transplantation, immense suffering or violation of bodily integrity or health;*

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

The Accused is charged with this criminal offense in relation to the listed sub-categories of the criminal offense referred to in the aforementioned Article. The following general elements of the criminal offense of War Crimes against Civilians, all of which need to be proven by the Prosecution, follow from the legal definition thereof:

- i. The act of the perpetrator must be committed in violation of the rules of international law;
- ii. The violation must take place in time of war, armed conflict or occupation;
- iii. The act of the perpetrator must be related to war, armed conflict or occupation;
- iv. The perpetrator must order or perpetrate the act.

#### **i. The act of the perpetrator must be committed in violation of international law.**

The Indictment charges the accused Jadranko Palić with War Crimes against Civilians in violation of Article 173(1) of the CC BiH, namely, that in the relevant period he acted

contrary to Article 3(1)(a) of the Geneva Convention relative to the Protection of Civilian Persons in Time of War from 1949 (hereinafter: the Geneva Convention).

Article 3(1)(a) of the Geneva Convention reads:

*"In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:*

*1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, color, religion or faith, sex, birth or wealth, or any other similar criteria.*

*To this end the following acts, among others, are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:*

- a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;*
- b) taking of hostages;*
- c) outrages upon personal dignity, in particular, humiliating and degrading treatment;*
- d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court affording all the judicial guarantees which are recognized as indispensable by civilized peoples."*

Article 2(b) of the Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts (Protocol I) provides:

*"Rules of international law applicable in armed conflict" means the rules applicable in armed conflict set forth in international agreements to which the Parties to the conflict are Parties and the generally recognized principles and rules of international law;"*

Common Article 3 of the Geneva Convention from 1949 is generally considered a provision of customary law and it is binding on all parties to a conflict, either internal or international, and therefore this provision was in effect at the time and in the place of the incidents charged against the Accused.

When interpreting this provision, it is clear that it is not necessary that the perpetrator be aware of or intends to violate international norms, but rather it is sufficient that the commission itself is contrary to the rules of international law.

In order to establish a violation of the rules of international law, it is necessary to establish against whom the commission was directed, that is, whether the act was directed against the special category of population protected by Article 3(1) of the Geneva Convention.

According to the definition of the term protected categories contained in Article 3(1) of the Geneva Convention, civilians are persons not taking part in hostilities, including members of armed forces who have laid down their arms and/or those placed hors de combat.<sup>7</sup>

Moreover, Protocol I Additional to the Geneva Conventions defines civilians in the negative by stating that civilians are "those persons who are not members of the armed forces".<sup>8</sup>

<sup>7</sup> *Prosecutor v. Blagojević and Jokić, Case No. IT-02-60-T, Judgment, 17 January 2005, paragraph 544.*

<sup>8</sup> J. Picot et al, Commentary, Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977, p. 610.

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Article 43(1) of Protocol I prescribes that:<sup>9</sup>

"the armed forces of a Party to a conflict consist of all organized armed forces, groups and units which are under a command responsible to that Party for the conduct of its subordinates, even if that Party is represented by a government or an authority not recognized by an adverse Party. Such armed forces shall be subject to an internal disciplinary system which, inter alia, shall enforce compliance with the rules of international law applicable in armed conflict".

Thus, apart from members of the armed forces, every person present in a territory is a civilian.<sup>10</sup> Article 50 of Protocol I further considers that the civilian population is made up of all persons who are civilians and that the presence within that civilian population of individuals who do not come within the definition of civilians does not deprive the population of its civilian character. The Article also states that in case of doubt, a person should be considered to be a civilian.

Therefore, considering the definition of the term "civilian", explicitly stating that civilians are all persons who are not taking part in hostilities and who are not members of the armed forces, it is clear that all the persons injured by unlawful conduct of the Accused described in Section 3 of the operative part were civilians. Therefore, the option of participation in a combat is ruled out. None of these persons had weapons. They were not in a position to fight, while the act the Accused is charged with was directed against civilians of an ethnicity different from the ethnicity of the military force that controlled the territory where the civilians lived. This category of civilians is especially protected by international law. Injuries to life and bodily integrity, particularly all types of murders, mutilation, cruelty and torture, inflicted upon this category are especially forbidden. Therefore, it is obvious that the criminal action referred to in the Indictment, which the Accused has been found to have committed, was contrary to the rules of international law, namely Article 3(1)(a) of the Geneva Convention.

The Court has taken notice of the submissions made by the Defense that there was also a situation of an armed defense by Muslim groups; while assessing the evidence presented at the main trial, the Court found it established that the persons – victims of the events charged against the Accused were exclusively civilians, and not members of such armed groups. To this extent the Court considers that Article 51(3) of Additional Protocol I states that civilians will enjoy protection unless and for such time as they take a direct part in the hostilities. Such a situation becomes particularly pressing in situations of the possible existence of a Territorial Defense (TO) in lieu of a fully operational army. In the ICTY *Kordić Appeals Judgment*, the Appeals Chamber examined the question whether members of a TO were to be considered as combatants at all times during the armed conflict or only when they take direct part in the hostilities. The Chamber concluded that members of armed forces, as well as members of a TO, retain the status of combatants at all times, even when they are resting in their homes, or for the time being armed.<sup>11</sup>

<sup>9</sup> Besides pointing to Article 43 of Additional Protocol I, Article 50 ("Definitions of civilians and civilian population") of the same protocol also makes explicit reference to Article 4(A) of the Third Geneva Convention concerning those included in the definition of armed forces. The Commentary to Article 50 of Additional Protocol I, however, suggests that Article 43 of Additional Protocol I contains a new definition that includes the provisions of Article 4(A) of the Third Geneva Convention; see *supra* note 4, p. 611.

<sup>10</sup> See *supra* note 4, p. 611.

<sup>11</sup> *Prosecutor v. Kordić and Čerkez*, Case No. IT-95-14/2-A, Judgment, 17 December 2004, paragraph 51.

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Furthermore, it is evident from the testimonies of all witnesses who gave evidence about the incidents referred to under Section 3 of this Verdict, that all the victims of the critical incidents were Bosniaks and that it was because of their ethnicity and nationality that they were subjected to beatings and degrading treatment. It clearly follows from the presented evidence that the beatings at the Pobježje checkpoint represented a discriminatory measure imposed on Bosniaks, who were not members of the Serb ethnic group under whose control they were. Based on the testimonies of these prosecution witnesses, which the Court assessed as credible and consistent, it is clear that Bosniaks were victims of the actions of the Accused and his fellow combatants.

**ii. The violation must take place in time of war, armed conflict or occupation.**

Pursuant to Article 280(2) of the CPC BiH, the Panel is not bound by the Prosecution's proposed legal qualification of the offense, as follows from the amended Indictment, and it does not find that the acts of the Accused satisfy the elements of the sub-category of the criminal offense under Article 173(1) of the CC BiH, as specified in the amended Indictment. The Panel recognizes that the basic element under Article 1 is the existence of "an armed conflict".

Article 173 of the CC BiH provides that the criminal offense has to be in connection with violations of the rules of international law during, inter alia, an armed conflict. Since the Panel has found that the actions of the Accused satisfy the elements of a violation of the rules of international law, to wit, Article 3(1)(a) of the Geneva Convention, which provides that the Article is applicable to an armed conflict not of an international character, in that regard the Panel notes that many courts have concluded that this Article applies not only to internal conflicts, but to conflicts of an international character as well<sup>12</sup>. However, the Court did not deal with establishing the character of the armed conflict which has been found in this case to have taken place in BiH at the time relevant to the Indictment, because Article 173 of the CC BiH does not require that the character of the armed conflict, internal or international, be determined.

An armed conflict exists whenever there is a resort to armed force between States or protracted armed violence between governmental authorities and organized armed groups or between such groups within a State. In terms of Common Article 3, the nature of this conflict is irrelevant. Namely, it is irrelevant whether a serious violation occurred in the context of international or internal armed conflict, if the following conditions are met: the violation must constitute an infringement of a rule of international humanitarian law; the rule must be customary in nature or, if it belongs to treaty law, the required conditions must be met; the violation must be serious, that is to say, it must constitute a breach of a rule protecting important values, and the breach must involve grave consequences for the victim, and the violation of the rule must entail the individual criminal responsibility of the person breaching the rule.

<sup>12</sup> *Prosecutor v. Delalić et al*, Case No. IT-96-21-A, Judgment, 20 February 2001, paragraphs 140-152, especially paragraph 147. See also *Prosecutor v. Hadžihasanović et al*, Case No. IT-01-47-AR72, *Decision on Interlocutory Appeal Challenging Jurisdiction in Relation to Command Responsibility*, 16 July 2001, paragraph 13.

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It follows from the material evidence presented by the Prosecution that there was an armed conflict between the Army of the Serb Republic of BiH and the Army of Bosnia and Herzegovina in the period concerned, while the conflict inevitably took part in the territory of Sanski Most as well.

In the proceedings conducted before the ICTY, several defenses (unsuccessfully) denied the existence of armed conflict in relation to a particular crime charged against the defendant, claiming that the crime was outside of an armed conflict (cases of *Kunarac*, *Blaškić*, *Tadić* ...). However, "[i]t is not necessary to prove that the conflict took place on every meter of the territory generally covered by a conflict". Crimes must be linked to an armed conflict by its nature or its consequences in order to be treated as war crimes. However, in order to be treated as a war crime, an individual offense does not have to coincide temporally or territorially with an effective conflict, and it may be committed outside of direct combat (*Vasiljević* and *Rutaganda* cases). The crime itself is not necessarily of a "military" nature, and it does not necessarily have to be a part of a policy or officially encouraged practice, plan and similar.

It is considered that an armed conflict exists "wherever there is a resort to armed force between States or protracted armed violence between authorities and organized armed groups, or between such groups within a State."

There is no necessary correlation between the area where the actual fighting is taking place and the geographical reach of the laws of war. The laws of war apply in the whole territory of the warring states or, in the case of internal armed conflicts, the whole territory under the control of a party to the conflict, whether or not actual combat takes place there, and continue to apply until a general conclusion of peace or, in the case of internal armed conflicts, until a peaceful settlement is achieved. A violation of the laws or customs of war may therefore occur at a time when and in a place where no fighting is actually taking place. To wit, the requirement that the acts of the accused must be closely related to the armed conflict would not be negated if the crimes were temporally and geographically remote from the actual fighting. It would be sufficient, for instance, for the purpose of this requirement, that the crimes were closely related to hostilities occurring in other parts of the territories controlled by the parties to the conflict.

What ultimately distinguishes a war crime from a purely domestic offense is that a war crime is shaped by or dependent upon the environment – the armed conflict – in which it is committed. It need not have been planned or supported by some form of policy. The armed conflict need not have been causal to the commission of the crime, but the existence of an armed conflict must, at a minimum, have played a substantial part in the perpetrator's ability to commit it, his decision to commit it, the manner in which it was committed or the purpose for which it was committed. Hence, if it can be established, as in the present case, that the perpetrator acted in furtherance of or under the guise of the armed conflict, it would be sufficient to conclude that his acts were closely related to the armed conflict. The Court's finding on that point is unimpeachable.

In determining whether or not the act in question is sufficiently related to the armed conflict, the Court took into account, inter alia, the following factors: the fact that the perpetrator is a combatant; the fact that the victims are non-combatants; the fact that the victims are members of the opposing party; the fact that the act may be said to serve the ultimate goal of a military campaign; and the fact that the crime is committed as part of or in the context of the perpetrator's official duties.

It is indisputable that the laws of war may frequently encompass acts which, though they are not committed in the theatre of conflict, are substantially related to it. The laws of war can apply to two types of acts. The laws of war do not necessarily displace the laws regulating a peacetime situation; the former may add elements requisite to the protection which needs to be afforded to victims in a wartime situation.

**iii. The act of the perpetrator must be related to war, armed conflict or occupation**

The third requirement is to allow for the distinction that not all crimes committed in times of armed conflict can be automatically labeled as war crimes. International jurisprudence has firmly established that for an act to be labeled a war crime there has to be a sufficient nexus to the armed conflict; that is, the acts of the Accused have to be "closely related to the armed conflict".<sup>13</sup>

This close connection does not necessarily mean there has to be actual fighting occurring in the territory where the acts are being committed. The ICTY Appeals Chamber in *Tadić* held that: "international humanitarian law continues to apply in the whole territory of the warring States, or in the case of internal conflicts, the whole territory under the control of a party, whether or not actual combat takes place there, and continues to apply until a general conclusion of peace is reached, or in the case of internal armed conflicts, a peaceful settlement is achieved".<sup>14</sup>

Furthermore, "[t]he armed conflict need not actually have been causal to the perpetration of the crime. But the existence of an armed conflict must, at a minimum, have played a substantial part in the perpetrator's ability to commit it, his decision to commit it, the manner in which it was committed or the purpose for which it was committed".<sup>15</sup>

To establish whether acts were indeed 'closely related to the armed conflict', the Appeals Chamber in *Kunarac* listed indicators such as: "the fact that the perpetrator is a combatant; the fact that the victim is a non-combatant; the fact that the victim is a member of the opposing party; the fact that the act may be said to serve the ultimate goal of a military campaign; and the fact that the crime is committed as part of or in the context of the perpetrator's official duties".<sup>16</sup>

Taking into account the presented evidence, the Court finds that the acts of the Accused as alleged under Count 3 of the Indictment were sufficiently related to the armed conflict. The Court takes particular notice of the position of the Accused in the military structure, his daily presence and work as a member of the Military Police at the checkpoint in Pobriježje, as well as the length of time over which the acts were committed. Moreover, due to his work and his duties at the frontline there can be no doubt whatsoever about the awareness of the Accused of the armed conflict and the fact that he was very much a part of it.

<sup>13</sup> See *inter alia*, *Prosecutor v. Kunarac*, Case No. IT-96-23 & IT-96-23/1-A, Judgment, 12 June 2002, paragraph 55; *Prosecutor v. Vasiljević*, Case No. IT- 98-32-T, Judgment, 29 November 2002, paragraph 24; *Tadić* Jurisdiction Decision, paragraph 70.

<sup>14</sup> *Tadić* Jurisdiction Decision, paragraph 70.

<sup>15</sup> *Prosecutor v. Kunarac et al*, Case No. IT-96-23 & IT-96-23/1-A, Judgment, 12 June 2002, paragraph 58.

<sup>16</sup> *Ibid*, paragraph 59.

The Court has already established above that an armed conflict was in progress and that the state of war was declared in the territory of Sanski Most Municipality in the period relevant to the Indictment. Therefore, it follows from the aforementioned evidence that an armed conflict was in progress and that the state of war was declared in the relevant period in the territory of Sanski Most Municipality. The Accused was beyond doubt a member of the Army of Republika Srpska (VRS).

**iv. The perpetrator must order or perpetrate the act**

From the testimonies of the witnesses and the analysis of the material evidence, individually and collectively, there follows the conclusion that in early spring 1992, the relations between the Bosniak and Serb population became strained and this happened also in the territory of Sanski Most Municipality and the neighboring municipalities. All the witnesses state that the security situation was not satisfactory and some witnesses state that at certain places barricades and checkpoints were erected at the crossings separating respective territories controlled by different military formations. The witnesses also state that, at the beginning of the state of emergency, all able bodied men in the territory of the municipality were engaged in some self-organized units whose primary task was to guard their homes and settlements. Also, it is clear that the threat of war and the state of war were declared in that period.

Having analyzed the evidence given by the Prosecution witnesses who were examined, the Court finds it proven that the accused Jadranko Palija inflicted severe physical and mental pain on the victims by his acts. This pain and suffering is inferred from the nature of the beatings, or rather blows, as well as from the duration of the beatings and the objects used. The circumstances surrounding the beatings reasonably indicate that the required degree of severe pain and suffering has been satisfied.

Therefore, the Court is satisfied that the beatings, insulting and humiliating acts were committed exactly by the accused Jadranko Palija with the intent to discriminate against Bosniak men who had to pass through the checkpoint controlled by him. He knew that the men he stopped at the checkpoint were Bosniaks, members of an ethnic group that was obviously considered less worthy, and he treated them accordingly. Therefore, the discriminatory intent of the Accused towards these persons, against whom he committed these offenses, is clear.

Therefore, the Panel concludes that the Accused also committed the criminal offense of War Crimes against Civilians with direct intent, being aware of the act he was committing and willing to commit it.

The acts which the Accused committed in person were aimed at severe deprivation of fundamental rights, such as the right to life, freedom and security, which is contrary to international law and which, under the above-quoted provision of Article 3(1) of the Fourth Geneva Convention, is impermissible against unarmed persons or those who are not part of an armed force, whereby he violated the rules of international law beyond doubt. The acts were committed during the armed conflict of which the Accused was aware and in which he undoubtedly took part.

Based on the foregoing and considering all the statements of the Prosecution witnesses who testified about the events described under Count 3 of the Indictment, the Panel finds the statements to be reliable, convincing and mutually corroborative. Therefore, the Panel concludes beyond any reasonable doubt that the acts of the Accused satisfy the elements



of the criminal offense of Crimes against Civilians under Article 173(1)(a), (e) and (c) of the CC BiH and that he is individually responsible for the perpetration of the offense as referred to in Article 180(1) of the CC BiH.

**d) Charges against the accused Jadranko Palija**

In relation to Section 1 of the operative part, this Court has established that on 31 May 1992, the accused Jadranko Palija, together with other soldiers of the Army of Republika Srpska (the VRS), participated in the attack on the hamlet of Begići – the village of Kljevc, on which occasion they brought all civilians whom they found there in front of the house of Ismet Kurbegović, where they separated women and children and confined them in Ismet Kurbegović's house, while they took the men across the fields called *Vinogradine* and then, having arrived to a slaughterhouse next to the bridge over the Sanica River, Jadranko Palija killed Miralem Cerić and Enver Cerić, having arrived to an intersection in Vrhpolje, he killed Ismet Kurbegović, on the main road towards Sanski Most he killed Irfan Begić, having arrived to the Vrhpolje bridge, he killed Enes Dizdarević, while together with other soldiers he participated in the killing of Safet Begić, Muharem Begić, Fuad Begić, Elmedin Begić, Munib Begić, Nedžad Begić, Hakija Begić, Hamid Begić, aka Muhamed, Nail Begić, Šaćir Begić, Mirhet Cerić, Ismet Dizdarević, Muhamed Dizdarević and Mirsad Dizdarević in the way that they ordered them to take off their clothes and jump from the bridge and, while they were falling into the water, they were shooting at them, and on that occasion they did not succeed in killing Rajif Begić.

Hence, that within a widespread or systematic attack which was carried out in the territory of the Sanski Most Municipality against the civilian Muslim population, he committed the persecution of the civilian Muslim population from the area of the Kljevc village by unlawful imprisonment, killings and other inhumane acts, committing thereby the criminal offense referred to in Article 172(1)(h) in conjunction with subparagraphs (e), (a) and (k) of the CC BiH.

As detailed under Section 6(b) of the reasoning of this Verdict, the Court found indisputable the existence of a widespread or systematic attack, as a basic element of the criminal offense of Crimes against Humanity, which follows not only from the Prosecution's motion to accept as established the facts established in the ICTY Judgment in the Radoslav Brđanin case, which was largely accepted by the defense, but also from the testimonies of a number of witnesses, for both the prosecution and the defense, who were examined at the main trial, and the material documentation which indisputably indicates the existence of the widespread or systematic attack concerned here.

The Court also found indisputable the existence of another basic element of the criminal offense of Crimes against Humanity.

The Accused was aware of the existence of the widespread or systematic attack which was carried out against the Bosniaks and also the Croat civilian population in the relevant period in the wider area of Bosanska Krajina, which follows not only from the fact that the Accused was a member of the Army of the Serb Republic of Bosnia and Herzegovina but also from the general state of emergency, which is evident both from the material documentation that confirms the organized nature and objectives of such an attack and from the testimonies of the following prosecution and defense witnesses: Rajif Begić, Fikret Kurbegović, Sadika Begić, Anda Krljić, Arif Begić, Mehmed Begić, Mirzeta Cerić, Hikmet

Zukić, Rasema Mehmedović, Abdulah Kenjar, Fatima Eminić, Rajko Mastikosa, Ranko Kolar and Đuro Stojinović.

That the Accused was a member of the VRS 6<sup>th</sup> Krajina Brigade particularly follows from the Certificate of the RS Ministry of Defense number 02-831-1/1545, dated 25 July 1997, and the Military ID number 109436, dated 1 February 1978, as well as the other documentary evidence and the statements of the witnesses for both the prosecution and the defense who were members of the same VRS unit.

The fact that the described attack took place exactly on 31 May 1992 proved indisputable based on the testimonies of the witnesses for both the prosecution and the defense; however, what proved to be disputable is whether the Accused took part in that attack, that is, persecuted the civilian Muslim population from the territory of Sanski Most Municipality – the village of Kljevc, the Begići hamlet, in the described manner.

However, assessing all the presented evidence individually and collectively, in particular the testimonies of the witnesses Rajif Begić – the only victim of the execution who survived, Fikreta Kurbegović, Sadika Begić, Anda Krljić, Arif Begić and Mehmed Begić, and the witnesses who confirmed the identity of the accused Jadranko Palija and his presence in the territory of Sanski Most Municipality in the relevant period, namely the witnesses Mirzeta Cerić, Hikmet Zukić, Rasema Mehmedović, Abdulah Kenjar and Fatima Eminić, the Court concluded that there is no doubt that exactly the accused Jadranko Palija was one of the VRS BiH soldiers who participated in the attack on the Begići hamlet of the village of Kljevc and the separation of women and children from men, and that during the escort of the captured men in the direction of the Vrhpolje bridge, he killed Miralem Cerić and his son Enver Cerić, then Ismet Kurbegović and Irfan Begić, at the bridge itself he killed Enes Dizdarević, while together with other soldiers he participated in the killing of the remaining captured men, yet did not succeed in killing Rajif Begić, who testified about this event.

Such a conclusion of the Court was also corroborated by the testimonies of the defense witnesses Rajko Mastikosa, Ranko Kolar and Đuro Stojinović, who, in an effort to provide an alibi for the Accused, came up with completely illogical circumstances, position and role of the Accused at the relevant time.

Starting primarily from the identification of the Accused, who, although not a person from the relevant area, is a person whose figure, and in particular deed, left a deep imprint on the memory of many victims and witnesses to his acts, the Court particularly assessed the testimonies of the witnesses who confirmed that the accused Jadranko Palija came to the territory of Sanski Most Municipality from Croatia, where he was born, that he was a corpulent man, around 30 years old, that he had a specific speech, more precisely pronunciation, as the witness Rasema Mehmedović said "*he babbled, like the letter S*".

The witness Hikmet Zukić remembers that he often sat with the Accused in Stojinovići, where the Accused, together with Serb inhabitants, was at a check point where people and goods that were passing through were controlled and where also the witness Rajif Begić saw the Accused for the first time, who then searched the tractor which Rajif was driving. The witness Abdulah Kenjar also confirmed the presence of the Accused in this area, stating that the Accused kept guard together with Serb neighbors near the school in the local community Kljevc, while the witnesses Arif Begić and Sadika Begić spoke about "*the reservist from Sisak*" who often visited the godmother Anda because he "*fell in love*" with her daughter, which indisputably follows also from the testimony of the witness Anda

Krljić, who confirmed that the accused Palija used to come to her house exactly for the mentioned reasons.

Having found the identification of the Accused indisputable, the Court paid particular attention to the testimony of the witness Rajif Begić, the only victim who survived the unlawful deprivation of liberty, inhumane treatment and then execution of the group of men who were taken away, which is, as reasoned in the text below, completely convincing and logical, and also corroborated by other direct and indirect evidence.

The witness Rajif Begić remembers that the inhabitants, afraid because of the attack which took place on 25 May 1992, were gathered in Arif Begić's house, believing that together they were more protected and safer, and that on 31 May 1992 soldiers raided his Donji Begići in the same manner as the first time. These soldiers came again from the direction of Dizdarevići, and they were bringing with them members of the Dizdarević family, the Hadžić family and other inhabitants of that hamlet. Then, a soldier raided Arif Begić's house and ordered that everyone should go out, that no one should hide and that they should set off in the direction of Gornji Begići together with the inhabitants who arrived.

Upon the arrival to Gornji Begići, the witness saw inhabitants going out of the basement of Safet Begić's house, who were immediately ordered to line up along the road.

Then the women and children were separated from the men, and even minors were separated with the men, while the witness is sure that Jadranko Palija also participated in this, in addition to many others whom he knew from school, street, and the town, and he even shook hands with one of them. The very same Jadranko Palija who searched the witness's tractor at the checkpoint in Stojinovići, Jadranko Palija who would later escort him in the direction of the Vrhpolje bridge.

The women and children were confined in Ismet Kurbegović's house, while the men, including minors, were lined up in a line two by two, and after provocations, humiliation, spitting and threats, lead by the accused Jadranko Palija and escorted by another eight soldiers, they were taken towards the Vrhpolje bridge, where, as they were told then, a bus was waiting to transport them to another territory.

However, not all captured men arrived to the bridge alive.

As soon as they crossed the bridge over the Sanica River, the last one in the line – Miralem Cerić, who was around 64 years old, lost consciousness, and his son Enver Cerić, who helped him walk, asked that the line stop.

Then the witness watched from the immediate vicinity the accused Jadranko Palija approaching them, taking his pistol out of a holster, and ordering them to come down from the road to a shed, which used to be a slaughterhouse before. Then shots were heard and the Accused came back alone to the line which proceeded without Miralem Cerić and his son Enver Cerić.

The witness pointed out how he nevertheless looked back, hoping that the Cerićs, father and son, would join the line; however, as later established, those shots brought the death of Miralem and Enver Cerić, father and son.

Having arrived to the main road connecting Ključ and Sanski Most, the Accused took Ismet Kurbegović, who walked right in front of the witness, out of the line and asked him: "Where is your sniper?", and after Ismet replied that he did not have it, he fired a bullet at him, as a result of which Ismet immediately fell on the ground, while the Accused put his pistol back into the holster. Hence, Rajif Begić saw the Accused shoot at Ismet Kurbegović. This shot too, as later established, was fatal.

As they went on, after a van caught up with the line and the accused Jadranko Palija sat in the passenger seat upon the driver's invitation, Irfan Begić was killed, too.

The line proceeded parallel with the van, which was on the right side of the line, and since they had to carry the exhausted Šaćir Begić almost all the way long, at one moment one of the captives told Irfan Begić that he would take over carrying Šaćir Begić, who was 79 years old. The Accused noticed that commotion and called Irfan Begić through the open driver's window to come to his – co-driver's side.

Then the witness, for the third time after the line set off, saw the Accused taking his pistol out of the holster and then shooting, this time at Irfan Begić.

The line and the van did not even stop, but the witness managed to look back and see Irfan Begić's dead body rolling down a slope next to the road.

Arriving at the Vrhpolje bridge, where they were awaited by a large number of soldiers who were lined up from the left to the right side of the bridge, many of whom the witness recognized, including Marinko Aćimović, Željko from Tomina, Predrag, aka *Peda*, Nenad, who was a schoolmate of the witness's brother Osman, the witness realized what the purpose of bringing them to the bridge actually was. Hakija, Safet and Nail Begić were first beaten at the bridge, while the rest of them awaited their fate with fear.

The captives soon realized what was destined for them.

"Who knows how to jump into the water nicely?", Nenad asked, and then, addressing Mirhet Cerić, who was the first one in the line, ordered: "Come on, Cera, what are you waiting for!"

Mirhet Cerić squeezed through the fence and jumped into the water, while the mentioned soldiers, together with another one who was unknown to the witness, having seen his body on the water surface, each fired around ten bullets from automatic rifles at him, then the water turned red and his body floated down the middle of the river.

At that moment, the witness remembers, everything became clear to the captives. They lost every hope. They realized that buses would never come.

Then, according to the same scenario, Munib Begić was killed and then Mirsad Dizdarević as well.

When Mirsad's younger brother Enes's turn to die came, he started squeezing through the fence, while the accused Jadranko Palija rushed towards him and fired a bullet in Enes's left temple from the distance of around three steps, after which the dead body of Enes Dizdarević remained hanging over the fence, and when Jadranko Palija pushed him with his foot into the river, those who were present there opened fire again, shooting at the already lifeless body of Enes Dizdarević.

Now Elmedin Begić's turn to die came, and then the witness Rajif Begić's as well.

When interrogated by Nenad, Elmedin said that Rajif Begić had a weapon, and then the beating of the witness Rajif Begić started; among many who took part in his beating, the witness particularly remembers Nenad, *Rambo*, Marinko, Peda, Željko, Goran Topić and Jadranko Palija. During this beating, the witness Rajif Begić managed to see how Elmedin Begić was also killed in an already established manner, after he jumped from the bridge.

The witness pointed out that he was conscious all the time and he watched how after that all soldiers present at the bridge started beating all captives; he remembers that Fuad Begić and Hakija Begić were particularly beaten up. They kicked and punched them and beat them with batons and rifle butts, and then the accused Jadranko Palija ordered them to stop.

Then the accused Jadranko Palija put a barrel of an automatic rifle into the witness's mouth,

intending to fire, while Nenad stopped him, telling him that he should not kill him at the bridge, because he would stain the bridge by doing so.

Nenad then caught the witness Rajif Begić by his neck, dragged him to the fence, beat him up, and then ordered him to jump.

And the witness Rajif Begić jumped. Headfirst.

However, the witness Rajif Begić managed to stand up on his feet under the bridge, and, although he injured his head because the water was shallow, he remained conscious. Then he took off his white undershirt and pushed it deep into the water, while the soldiers opened fire in rapid succession from the bridge when his undershirt appeared on the surface, believing it was Rajif Begić's body. During that time, the witness squatted in the water under the bridge, and when the shooting ceased, he dived into the water and rose to the surface only about 100 meters downstream, and hid behind a willow and a big tree stump. Hidden in this way, he continued watching the scenario on the bridge he had already seen, and three more corpses floated by him. The shooting and cries from the bridge did not cease, and then he saw two soldiers grabbing hold of the old Šaćir Begić – one by his arms, the other one by his legs, and throwing him off the bridge.

Šaćir Begić's body also floated downstream, right by the witness Rajif Begić.

Then the witness heard a long burst of fire and then it ceased. The soldiers, he remembers, left the bridge singing.

In order to reason the decision stated in the operative part, the Court found it necessary to give such a detailed description of the relevant event, given that the witness Rajif Begić is the only victim who survived the execution, which was preceded by unlawful imprisonment and other inhumane treatment.

The described sequence of events follows from the completely consistent statements of this witness, starting from his testimony given at the main trial on 29 March 2007, the statement given to the Prosecutor of the Prosecutor's Office of BiH on 16 August 2006 in the case number KT-RZ-123/06, but also the testimony given on 16 April 1996 and supplemented on 18 April 1996, on his own initiative, before the Basic Court in Sanski Most, in the case number KR-171/96.

The most detailed statements from 1996 (which the witness explained by the fact that his memory was the freshest), tendered into evidence by the defense counsel for the Accused, indicate the witness's objectiveness in recounting the events that were extremely traumatic and painful for him and the absence of any intention to groundlessly incriminate the Accused. These statements, as well as the other indirect evidence which will be stated in the text below, convinced the Court of the credibility of this witness's statement.

At the main trial, the witness made a sketch of his route from the moment of his capture in Begići, across the Vinogradinc fields, up to the Vrhpolje bridge. He also drew in this sketch the points where Miralem Cerić and his son Enver were killed, and then the points where Ismet Kurbegović and then Irfan Begić were killed, corroborating also in this way the sequence of events which follows from the mentioned statements.

After describing in detail the places where these individual killings took place prior to the mass killing at the Vrhpolje bridge, the witness also identified them in the photo documentation presented by the Prosecutor.

Although the witness Rajif Begić did not see the killings of all the men who were brought to the bridge, carefully analyzing the complete sequence of the events, from the individual killings on the way to the bridge; the beatings and inhumane treatment; and then the killings on the bridge itself; the number and the behavior of the soldiers on the bridge; the long by

of fire which denoted the cessation and the withdrawal of the soldiers from the bridge, the Court particularly assessed the fact that all the men who had been taken away were seen alive for the last time exactly on the critical date and at the critical place, namely on 31 May 1992 at the Vrhpolje bridge.

The bridge under which, as it was found in the spring of 1996, not only these captives, but also others who were killed before and after the critical event, were buried in two mass graves.

The Court's conviction that there is a cause-and-effect relationship between the described acts of the Accused and the deaths of all the men who were brought to the bridge is corroborated by the facts established in the records on exhumations from these very graves, but also from the third one, 800 meters down from the bridge, where the body of Ismet Dizdarević was found with a bullet in his skull.

That the beatings and shots at the Vrhpolje bridge meant death also for Safet Begić, Muharem Begić, Fuad Begić, Elmedin Begić, Munib Begić, Nedžad Begić, Hakija Begić, Hamid Begić, aka Muhamed, Nail Begić, Šaćir Begić, Mirhet Cerić, Ismet Dizdarević, Muhamed Dizdarević and Mirsad Dizdarević, the Court established on the basis of: Record on the on-site investigation and exhumation of the bodies of Bosniaks from the mass graves in Vrhpolje – bridge, Sanski Most Municipality, made in the Sanski Most Basic Court under number Kr:324/96, dated 7 May 1996, with the sketches of three grave sites marked as VM-I, VM-II and VM-III; Statement on a missing person dated 12 May 1996 with a copy of the ID card in the name of Safet Begić; Record with documentation dated 11 May 1996 and a DNA report in the name of Muharem Begić; Statement on a missing person dated 10 May 1996 with documentation and a DNA report in the name of Fuad Begić; Statement on a missing person dated 10 May 1996 with documentation and a DNA report in the name of Elmedin Begić; Statement on a missing person with documentation dated 11 May 1996 in the name of Munib Begić; Record dated 11 May 1996 with documentation and a DNA report in the name of Nedžad Begić; Record dated 12 May 1996 with documentation in the name of Hakija Begić; Statement on a missing person dated 10 May 1996 with documentation in the name of Hamid Begić, aka Muhamed; Statement on a missing person dated 10 May 1996 with documentation in the name of Nail Begić; Statement on a missing person dated 14 May 1996 with documentation in the name of Šaćir Begić; Statement on a missing person with documentation dated 12 May 1996 in the name of Mirhet Cerić; Record dated 14 May 1996 with documentation and a DNA report in the name of Ismet Dizdarević; Statement on a missing person with documentation dated 11 May 1996 in the name of Muhamed Dizdarević; Statement on a missing person dated 11 May 1996 with documentation and a DNA report in the name of Mirsad Dizdarević.

As it follows from the mentioned Record on exhumation number Kr-324/96, dated 7 May 1996, the information about the existence of the mass graves at the Vrhpolje bridge locality was collected from citizens who lived in the Sanski Most territory throughout the war.

The mass graves were discovered when human bones appeared on the surface during the removal of the remains of the bridge which had been mined. The following persons were identified soon after the exhumation: Irfan Begić, Miralem Cerić and Mirsad Dizdarević, whose killings the witness Rajif Begić watched, as well as Fuad Begić, Hakija Begić, Muhamed Dizdarević, and Muhamed's and Mirsad's father - Ismet Dizdarević, for whom the Court also indisputably concluded that they were killed during the critical event.

Therefore, it indisputably follows from the evidence listed above that the bodies of the Begići inhabitants who were killed and who had been taken away on 31 May 1992 were

found not only in the mentioned three mass graves but also next to the bridge itself, under its ruins caused by mines, while they were often found by their very relatives. The victims were first identified by direct identification based on the identification documents which the victims had on them or by identification done by their relatives and friends on the basis of their clothes or items found with the victims, and then by the forensic medical examination, which, in addition to the DNA analysis and 99.99% probability that these are exactly the mentioned persons, confirmed that the victims who were found, died a violent death, mostly resulting from projectiles, but also from fractures and bleeding caused, as it was established, by beatings.

Also, it is indisputable that the witness Rajif Begić saw when Miralem Cerić and his son Enver Cerić were singled out and then heard shots, which, as it was proved, were fatal, and that he then eye-witnessed the killings of Ismet Kurbegović, and Irfan Begić and Enes Dizdarević, on the grounds of the following: Documentation enclosed with the statement on a missing person dated 11 May 1996 in the name of Miralem Cerić; Documentation enclosed with the statement on a missing person dated 11 May 1996 in the name of Enver Cerić; Statement on a missing person dated 21 November 1996 with documentation in the name of Ismet Kurbegović; Documentation enclosed with the statement on a missing person dated 11 May 1996 in the name of Irfan Begić, and a DNA report in the name of Enes Dizdarević.

On the other hand, the Court did not deal with the subsequent events of the witness Rajif Begić's survival although it was described in a detailed and entirely credible manner, given that the charges brought against the accused Jadranko Palić are related to the events which ended at the Vrhpolje bridge, but not to the cause-and-effect relationship with further torture – traumas which the witness Rajif Begić suffered.

However, although the witness Rajif Begić is the sole survivor, he is not the only witness to the acts described under Section 1 of the Verdict, namely the attack on the inhabitants of Begići, the separation of women and children from men, and their confinement in Ismet Kurbegović's house.

Fikreta Kurbegović was also in the group of the Begići inhabitants who were attacked. At the moment when soldiers entered the village, she was in her house with her husband, Ismet Kurbegović, and their two underage daughters. She remembers that inhabitants of Donji Begići and other hamlets of Kljevcı were brought in front of her house and she remembers that the men were separated from the women and children after her family was also forced out of the house and joined the others. Then the women and children were confined in her house. After entering the house, the witness went upstairs and peeped behind the curtain on the window to see where the soldiers were taking the men who had been separated, around 21 of them, as she remembers. She saw them being taken towards Vrhpolje, watched as far as the eye could see, and then went back to other women and children who were imprisoned in her house. Although there was a road there, the men were taken across the Vinogradine fields.

The women and children were all imprisoned in her house until Sunday, and after that Serb neighbors told them to accommodate themselves in Serb houses in the village "for security reasons". The witness went to the godmother Anda Krljić and less than three hours later soldiers, among whom were also her Serb neighbors, came again and transferred them to Tomina, a predominantly Muslim village where they were accommodated in Muslim houses and where they all stayed until they were transferred – imprisoned in the ceramics factory.

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*Krinks in Sanski Most.*

She learned about her husband's fate when the witness Rajif Begić also appeared in Tomina and told her: *"Take care of your children and provide for them". "That was a sign for me that my Ismet was not alive anymore, that they had killed him"*, the witness remembered. She learned later from Rajif Begić that all those who had been taken away were executed on the way to and at the Vrhpolje bridge itself.

The witness Sadika Begić was also imprisoned in the house of Ismet and Fikreta Kurbegović. She remembers well how Fikreta Kurbegović went upstairs to see where they were taking the men, and then told them that they were taking them across the fields towards a weekend cottage.

They were imprisoned in the house for a few days and then they were accommodated in Serb houses in the village. Yet, she remembers, they could not stay there long either, but they were transferred to Tomina, where they were accommodated in Muslim houses. Rajif Begić came to Tomina soon and they learned from him that all the men who had been taken away were killed at the Vrhpolje bridge.

The witness Mirzeta Cerić was also among the inhabitants who were attacked.

She remembers that the men were immediately separated on one side, even her husband from whose arms they grabbed a baby.

Her husband Mirhet Cerić, her father-in-law Miralem Cerić and brother-in-law Enver Cerić were taken away then. She did not see where they were taken to; however, she learned later from Rajif Begić that her husband, father-in-law and brother-in-law were killed.

By hiding himself in the brook just before the attack, the witness Arif Begić managed to avoid the fate of the other captured men. When he met Rajif Begić in Tomina, he learned that all the men had been killed. As the witness Rajif Begić told him, the Cerićs were killed first.

Mehmed Begić, the witness who met the sole survivor – the witness Rajif Begić while he was a prisoner in the *Manjača* camp, also testified about these killings indirectly.

They made contact via pieces of paper, and Rajif Begić, when asked about the fate of the inhabitants of Begići, replied to Mehmed that they had been killed at the Vrhpolje bridge and that Mehmed's brother Muharem Begić had been among them, too. After the prisoners of the *Manjača* camp were registered by the International Red Cross, they managed to see each other, and then Rajif told Mehmed how the captured men had been killed on the way to the bridge, and then, when they arrived to the bridge, the others were executed while jumping off the bridge.

The witness pointed out that he saw Rajif Begić also later, but that they never again spoke about that event in which Mehmed's father, Hakiya, and brother Muharem Begić were killed.

He also heard that there was no one alive in Begići on one occasion during his detention at Manjača when a guard – neighbor Dragan Ćosić, aka Gaga, told him that there was no *"living cat"* in Begići.

Anda Krljić also testified about the event concerned here.

While she could not remember the exact date, the witness Anda Krljić recounted how in the spring of 1992 the Serb soldiers based in Žegari took away from Begići all Muslim men whom they found there and brought women and children to her house. She remembers that Fikreta Kurbegović and the godmother Nura Begić were among them. She remembers that



her female neighbors were upset and that they cried, but she could not help them in any way, except tell them that it was a war.

Soon soldiers came again and took her female neighbors to Tomina.

What the witness particularly remembers is that her son Željko cried that day for his neighbors, especially for his friend Nedžad Begić, for whom he learned that they had been killed at the Vrhpolje bridge.

A couple of days later, Rajif Begić, son of the godmother Nura, appeared in her yard, more precisely in her barn. After Anda and her son Željko administered him the first aid and helped him revive, soldiers came for Rajif Begić and took him away with them. The witness remembers that she begged them to take Rajif to his mother, who she knew was in Tomina.

Yet, during that short time she spent with Rajif, who had swellings on his head which, as he told her, he sustained when he hit the gypsum in the river, Rajif managed to recount to the witness how they first took off their clothes at the Vrhpolje bridge and then executed them, as well as how he dived for a long time and was under the water. The witness pointed out that all this was difficult for her because, as she said, *"I had no one else to rely on but my neighbors, the wood leans on another wood, while the man leans on another man."*

The witness does not know who did the killing on the bridge, because she did not hear that either from Rajif or her son Željko.

The witness Branko Dobrijević heard that his friend Irfan Begić was killed on the Vrhpolje bridge. He also heard that Irfan was in a group of Begići inhabitants who resisted the soldiers of the VRS 6<sup>th</sup> Krajina Brigade, because of which the soldiers of the VRS 6<sup>th</sup> Krajina Brigade, *"as I do not know who else it could be"*, the witness pointed out, killed those who offered resistance.

The witness was in a work detail, and he heard from the commander Todo Vukić that some members of the work detail went to clear the area around the bridge, that is, to collect and bury the bodies of those who were killed on the Vrhpolje bridge.

Bearing in mind such consistent statements of the witnesses, particularly the direct victims of the attack who remember all the men who were taken away, and the corroborative material documentation, the Court drew a conclusion about the relevant acts of the accused Jadranko Palija without any doubt, regardless of the defense's attempt to deny the presence of the Accused in Begići and thus his participation in the relevant events by the statements of the witnesses who were allegedly fellow-fighters of the Accused.

Thus the witness Rajko Mastikosa claimed that the accused Jadranko Palija was a member of the command of the 1<sup>st</sup> Company – a courier, and that they were together in this company. The witness claimed that the members of this 1<sup>st</sup> Company, although in full combat readiness, did not leave the village of Krkojevci all until 2 June 1992 and that only members of the 2<sup>nd</sup> and 3<sup>rd</sup> Company went to Begići.

The witness Ranko Kolar, who was the commander, claimed that the accused Jadranko Palija was not allowed to separate from him because he was a courier and that from 30 May to 2 June 1992, although in full combat readiness, they did not move from the place where they were deployed.

Yet, the witness Mastikosa pointed out that a courier could not have been with the commander constantly, given that the courier's duties included leaving the base and going to perform his task – the conveyance of information. The task duration depended on the distance of a subject to whom the courier had to convey information.

Hence, the Court notes that, even if the Accused was indeed a courier, he still could go to Begići and join, as Mastikosa and Kolar pointed out, members of the 2<sup>nd</sup> and 3<sup>rd</sup> Company.

However, in the Military ID of the accused Jadranko Palija number 109436, dated 1 February 1978, in which all duties the Accused had as a soldier and later on as a military police officer are listed, the duty of a *courier* is not listed and, as it follows from the rest of the evidence, the accused Jadranko Palija did not perform it at all.

In providing an alibi for the Accused, the witness Đuro Stojinović went further and said he saw some soldiers escorting the men from Begiči, but he did not see Jadranko Palija, whom he knew, among them. He pointed out that they were escorted by soldiers unknown to him. However, bearing in mind the testimonies of both the witnesses who were eyewitnesses to the critical event and the witnesses whose loved ones were killed in the event itself and who were separated immediately before that and kept in the house of Ismet Kurbegović, the Court assessed the testimonies of the defense witnesses who were examined solely as testimonies given with the intention to absolve the Accused of responsibility, but without any valid arguments.

In relation to Section 2 of the operative part, this Court has found that the accused Jadranko Palija, on an unidentified date in the summer of 1992, in the Muhići Street, came to a house where he found two women with two children, who had come there to take some food, and having checked their identity documents, he intimidated them telling them that their life in Sanski Most was worthless, and under the pretext that he wanted to search the other part of the house which was locked, he took the female A to the entrance door to that other part of the house, broke the door off, and having entered inside, he raped her, threatening her with a pistol, and then threatened with killing them if they spoke about what had happened.

Hence, that within a widespread or systematic attack which was carried out in the territory of Sanski Most Municipality against the civilian Muslim population, he committed the persecution of the civilian Muslim population by rape and inhumane treatment, committing thereby the criminal offense of Crimes against Humanity referred to in Article 172(1)(h), in conjunction with subparagraphs (g) and (k) of the Criminal Code of Bosnia and Herzegovina.

The Court has found that the first two of the elements of the criminal offense of Crimes against Humanity are indisputable and reasoned it in Section 1 of the operative part, while it reached the conclusion on the relevant behavior of the Accused stated in Section 2 of the operative part after it assessed the testimonies of the witness under the pseudonym A – direct victim of the accused person's acts, and the witnesses Dika Ališić, Rufija Šabić and Senad Šabić.

The Court also assessed the statements of the witnesses Senad Šabić, Dika Ališić and the injured party A given during the investigation and tendered into evidence by the defense, who attempted to challenge the allegations stated in Count 2 of the Indictment with the discrepancies stemming from those statements.

In reaching its decision regarding the relevant acts of the accused Jadranko Palija, the Court particularly assessed the fact that the victim herself – witness A, did not know the person who raped her, this person being exactly the accused Jadranko Palija, as confirmed by the testimonies of the witnesses Dika Ališić, Senad Šabić, and Rufija Šabić.

To wit, after the attack on Sanski Most – Mahala neighborhood was launched, among few

previous residents, the witnesses Dika Ališić, Rufija Šabić and Senad Šabić remained to live in Šabića sokak, the street separating the neighborhoods of Mahala and Otoka. Most of the residents had been expelled, while some would just occasionally come to their houses to take food and clothes. Among those, on the relevant day, was the injured party A with her friend and her two children.

During that period, as the witnesses clearly recollect, the accused Jadranko Palija used to come to their street almost every day, on a bicycle. They particularly remember him by the knife he carried in his boot.

They remember that he had a specific pronunciation, with an accent which was not like theirs, and that he came to Sanski Most from the Republic of Croatia.

The witness Dika Ališić pointed out that Jadranko Palija was in charge of their street, and that she was particularly afraid of him because her daughters and daughter-in-law were with her, while Palija was known as being very rude and arrogant.

The witness Rufija Šabić also testified about this. She and her husband met Jadranko Palija in Alagići, when the Accused threatened them and swore at them.

This witness pointed out that Jadranko Palija was the only Jadranko who came to their street during that period.

She also remembers that Jadranko Palija was involved with Tanja, cousin of Dika's daughter-in-law, Radmila. Senad Šabić also testified about this, and described the shock of all victims and witnesses to Palija's evil deeds when they heard that Tanja had married Jadranko Palija.

Senad Šabić pointed out that various soldiers used to come to and pass through their street, but that it was exactly the accused Jadranko Palija who was the terror of the street.

Exactly these witnesses confirm that on the relevant day the accused Jadranko Palija was in the yard and the house of the injured party A, while the witness Dika Ališić, whose house is only about 20 meters away from witness A's house, saw his arrival as well as when the accused Jadranko Palija grabbed the injured party by the hand and took her behind the house, that is, to the other part of the house which had two separate entrances. The witness Dika Ališić saw the Accused also taking the other woman who was with the injured party A behind the house.

To wit, on the relevant day, witness A, together with her friend and her two children, intending to take some food, came to her house in the Muhići neighborhood, which she, as most of the residents, had to leave. They thought that no one was living in their neighborhood any longer.

At one moment, she recollects, she saw a soldier coming from the direction of the Otoka neighborhood on a bicycle. That soldier, unknown to her, entered her front yard and asked for their ID cards, and then, having seen that they were Muslims, he told them that their life in Sanski Most was worthless, and asking who lived in the other part of the house, he took witness A to the entrance to that part of the house, which he broke into, since the witness did not have a key to it.

Then he pointed a pistol at the witness, and under the threat of death, he insisted on the witness removing all of her clothes. Then he first made her, already frightened because of the threats with the pistol and because of what might happen to her, perform *fellatio*, and then raped her.

The witness pointed out that she was screaming throughout that time, but that the Accused still did not stop and kept the pistol pointed at her all that time, and when he finished,

simply left the room.

When the witness also came out of the house, in front of the house she found the Accused, who, before that, made death threats to the friend of the injured party, witness A, and her children, if they told anyone what happened.

The neighbors soon came in front of the house of the injured party, while the injured party was unaware that they were still living in the neighborhood.

However, the witness told no one about this rape, but she said that the unknown soldier had only slapped her because he had found the Koran in the house.

She once again met that soldier in the neighborhood called Narodni front in Sanski Most, he was again on a bicycle, but the witness, in fear, crossed to the other side of the street.

She only later learned his name, Jadranko Palija, from the neighbors who knew him for beating Muslims.

The witness particularly emphasized that she was trying to erase his picture from her memory, and that she was not sure whether she would recognize him after more than 15 years, while the Court noted that the severity of her trauma was a reason why she could not remember the exact date when all this described above happened.

The witness Dika Ališić saw the arrival of a soldier on a bicycle and his entrance into the witness A's front yard.

She recognized Jadranko Palija, whom she knew from before.

The witness Ališić saw when he took the injured party A behind the house, then she heard screaming and shouting, and, as she pointed out, she suspected the worst.

That the worst did happen was also confirmed to her by the policeman Mile Marčeta, who, as almost every day, soon came to their street, and having seen that something was going on in the injured party A's yard, visited her. Having returned from the injured party A, this policeman confirmed that Jadranko Palija committed a violent act - rape.

The witness Senad Šabić, having returned from the field, heard from a cousin that something was going on in the injured party A's house, and immediately went over there; pecking from the neighboring yard, he saw the Accused and the injured party A. He remembers that the injured party was looking in front of her and was all disheveled, and he thought then that "*the worst thing that can happen to a woman*" happened to her.

The policeman Mile Marčeta confirmed to him that it indeed happened.

The witness Rufija Šabić, although not an eyewitness to the arrival of the accused Palija and his stay in the injured party A's yard, remembers hearing horrific screams and crying from the direction of the injured party A's house.

After that, she found out from her neighbors what had happened to the injured party A, and that she and another woman who was with her had been attacked by Palija who was dating a cousin of Dika's daughter-in-law Radmila.

She also heard that they had been saved from further abuse by the policeman Mile Marčeta, who often patrolled their street.

Marčeta then came and said that there had been a rape, but that it would not happen again because he would find Palija and send him to the front line.

Discrepancies to which the defense pointed with respect to the statement given during the investigation, and because of which it tendered this statement of the injured party A as an exhibit, primarily the following discrepancies: Who was sitting on the couch after the injured party came out of the house, and whether or not she told her friend what happened

to her, by which the defense attempted to say that there was no rape at all, since had there been one, the friend would have surely known, the Court found to be absolutely irrelevant, bearing in mind the trauma that the witness suffered not only at that time, during the rape, but also during the repeated traumatization caused by the very recollection and retelling of the incident.

The Court finds the evidence given by the aforementioned witnesses and the injured party A at the main trial and also during the investigations to be credible, bearing in mind their consistency and obvious objectivity which denies any intention to unfoundedly charge the Accused. Thus, having in mind the testimony of the injured party A, and the consistent testimonies of the witnesses Dika Ališić, Senad Šabić and Rufija Šabić, the Court found the relevant behavior of the Accused to be indisputable, particularly taking into account that the defense did not challenge these facts by any of its evidence.

In relation to Section 3 of the operative part, the Court established that, during the armed conflict in Bosnia and Herzegovina, in the period from 1993 to October 1995, in his capacity as a military police officer, the accused Jadranko Palić moved around in the territory of Sanski Most and stopped Muslim civilians, intimidated and beat them, including Maličević Faruk, Ljila and Zlatko, Husein Aganović, Mehmed Zukanović and Vehid Zulić, participated in unlawful arrests of Mehmed Zukanović and Vehid Zulić and taking them to the military police prison located in the Mahala settlement, at a checkpoint in Pobježje demanded that civilians who were passing through the checkpoint show their identity documents, insulted them in various ways, intimidated and beat them, including Velid Jakupović, Vehid Zulić, Eniz Cerić, Idriz Alagić, aka Iba, who was deaf and dumb, Agan Habibović, and very often he intimidated and beat Teufik Kamber, telling him to move out, until Teufik Kamber was killed in his house which was mined in December 1994.

Hence, that acting contrary to Article 3 of the Fourth Geneva Convention, during the armed conflict in Bosnia and Herzegovina, in the period from 1993 to October 1995, he committed the criminal offense of War Crimes against Civilians referred to in Article 173(1)(a), (e) and (c) of the Criminal Code of Bosnia and Herzegovina, in conjunction with Article 180(1) of the cited code.

As detailed under Section 6 c) of the reasoning, the Court found the existence of the basic elements of this criminal offense indisputable, specifically: that the offense was committed contrary to the rules of international law; that it was committed in time of war, armed conflict or occupation and that it was related to war, armed conflict or occupation. However, the existence of the fourth basic element of this criminal offense, that is, whether the perpetrator, in this case the accused Jadranko Palić, ordered or committed the criminal acts charged against him, turned out to be at issue; however, the presented evidence made this element completely indisputable.

Having reviewed all evidence presented in relation to the circumstances described in this section, individually and collectively, the Court found the role of the accused Jadranko Palić, as described in Section 3 of the operative part, indisputable.

This is evident from the consistent statements of both the injured parties and the witnesses: Ismet Čehajić, Mehmed Zukanović, Vehid Zulić, Velid Jakupović, Ismet Kamber, Severin Jolić, Suada Cerić, Mugba Zukić, Sead Jakupović, Emina Habibović, Hajrudin Kamber, Senad Šabić, Šemso Aganović, Senad Aganović and Rufija Šabić, and also from

material documentation which confirms the presence of the Accused in the territory of Sanski Most Municipality in the relevant period and his membership in the Military Police of the VRS BiH.

Based on the testimonies of the prosecution witnesses relating to Section 3, the Court established that the identity of the Accused is not disputable.

Thus, the witness Ismet Čehajić pointed out that he knew the accused Jadranko Palija from the very beginning of the state of emergency in BiH, since the Accused moved into his neighborhood. He remembers that he came from the Republic of Croatia and stayed with his relatives in Sanski Most, and that since that time he saw him almost every day. He lived, the witness remembers, at his uncle Vlado's - a painter who still lives in Sanski Most.

The witness Mehmed Zukanović also met the accused Jadranko Palija, a military police officer whom he saw almost every day even before he himself fell victim to his sadistic abuse.

Vehid Zulić remembers well the accused Jadranko Palija - the person who beat him up at the checkpoint in Pobježje.

Velid Jakupović remembers the Accused especially by, as he says, "cute babbling of letters s and š".

Other witnesses too, as detailed below, undoubtedly pointed to the accused Jadranko Palija.

It is indisputable that the accused Jadranko Palija was a member of the Military Police of the Army of the Serb Republic of BiH in the relevant period not only on the basis of the material documentation, especially the military ID of the Accused and the Military Police certificate number 157-14/112, dated 23 February 1994, and the very fact that a military police badge was found during the search of the family house of the accused Jadranko Palija, which was executed upon an order issued by the Court of BiH, but also on the basis of the unequivocal statements of the witnesses who saw the Accused wearing a recognizable military police uniform.

The presence of the Accused in the territory of Sanski Most Municipality in the relevant period is also indicated in the material documentation, especially the Sanski Most Municipality Decision on allocating for temporary use a state owned apartment in the Narodni front neighborhood to Jadranko Palija, as of 15 November 1992.

Senad Šabić and Rufija Šabić testified about the intimidation and beating of the Maličević family, namely Faruk, Ljilja and Zlatko.

Thus, the witness Rufija Šabić, pointing out that Jadranko Palija was the only Jadranko who used to come to their street - Šabića sokak, and saying that she knew him back from Alagići, when he threatened her and her husband and since when she saw him frequently, said that on one occasion, it was summer time, she heard terrible screaming and shouting coming from Ljilja's house. She heard Ljilja Maličević crying and screaming: "*Kill me Jadranko, don't harm my son, I am a Serb from Serbia, he's my only son!*" Jadranko then left their house and the witness heard all three of the Maličevićs crying. Later on, Ljilja Maličević herself told her that Jadranko wanted to kill her son Zlatko and that they were saved by the police officer Mile Marčeta.

The witness Senad Šabić, who pointed out that many soldiers passed through Šabića sokak but that Jadranko Palija was terrifying, remembers that, among others, he maltreated the Maličević family, especially Zlatko, Ljilja's and Faruk's only son. He also remembers that

Ljilja said she was from Serbia and begged Jadranko to kill her and not her son and husband.

The evidence about the maltreatment of Husein Aganović was given by his son Senad Aganović and his wife Šemsa Aganović.

The witness Šemsa Aganović said that on the critical day they were in their field, which was ready for sowing, when she, her husband and her aunt were approached by the accused Jadranko Palija who started shouting right away and asking about their son. When Husein said their son was in the 5<sup>th</sup> Corps, Jadranko started beating him, broke his nose and injured his head. Soon thereafter, they left the field crying and did not dare to go back there again.

The witness pointed out that at that moment she did not know the military police officer who was beating her husband and who, she clearly remembers, was a rather young and heavy built person with a specific pronunciation of c and s. Right after that, she learned from the people who lived in the same place as the Accused that it was Jadranko Palija, who was known exactly for such violent behavior.

In the evening of the same day, upon returning from forced labor - compulsory work service in the 5<sup>th</sup> Company, and not the 5<sup>th</sup> Corps - as erroneously stated by his father Husein, the witness Senad Aganović found his father in a state of distress and with injuries to his head. After his parents told him what had happened, he realized that Jadranko Palija was looking for him and not for his father. He was looking for him because on the previous day the witness did not allow two Serb women to pick all the leek from their field, which was almost the only source of food for the Aganović family.

The witness met the Accused as a new neighbor, a military police officer who had come to the Sanski Most area from the Republic of Croatia. He has heard about his behavior from many of his neighbors, while he also remembers him by his specific pronunciation.

Unlawful imprisonment and beating of Mehmed Zukanović happened in September 1995.

The injured party Mehmed Zukanović recalls that in September 1995, he was forced out of his house by two police officers and together with several locals headed in the direction of Šehovci on a horse-drawn cart. Soon after they set off, a military police patrol stopped them and "removed" the witness and Muhamed Smajić from the cart, and the accused Jadranko Palija took them in a military police vehicle to the Delalić house in Mahala for interrogation. Having spent the night in a hen-house in the yard of this house, the injured party was released immediately the following morning, but since he did not dare to go back home, he headed for Šehovci again. However, on that road, more precisely at the military police checkpoint located between Šehovci and Poljaci, he was deprived of liberty again and again the accused Palija, now in a vehicle resembling the police "paddy wagon" took the witness to the Delalić house, where the injured party this time stayed for about 20 days. He recalls that during the day all detainees had to do whatever they were ordered to, while during the night they were subjected to beatings. He especially remembers an incident when the Accused started throwing stones at him, and since the witness dared dodge them, the Accused said "1:0 for me if I hit you". After that, the Accused took a shovel and repeatedly hit the witness on his hands until they turned almost black.

The injured party has no doubts about the identity of the person who took him to the Delalić house on both occasions and then beat him. It was Jadranko Palija, the military police officer he saw almost every day while he was tending his cow by the road travelled by the Accused. He recalls that Jadranko Palija lived in his neighborhood, but not before the

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and that he was the biggest of all the military police officers stationed there.

The injured party Vehid Zulić met the accused Jadranko Palija at the checkpoint in Pobrježje. He was one of the military police officers who beat those who passed through the checkpoint. He recalls that he had to pass through the checkpoint because that was the shortest road to town where he went to fetch milk. And every time, he pointed out, it was exactly Jadranko Palija who knocked the milk out of the witness's hands, then took him into the container at the checkpoint, and kicked and punched him and beat him with a rifle butt all over his body. He was beaten by other military police officers too, because, the injured party recalls, they considered him the worst extremist in Pobrježje. The injured party also remembers the Accused as one of the two soldiers who deprived him of liberty during 1994 and took him in a van to the command located in a Muslim house in Šehovići. During the ride, the Accused beat the witness, again on the account of his alleged extremism. The witness recalls that upon his arrival to that command, he was met by about 10 soldiers who also beat him. During his stay at this command, the witness was subjected to various forms of torture, including electric shocks.

A relative of the injured party Vehid Zulić – witness Hajrudin Kamber, recalls that the injured party told him about the maltreatment he was subjected to by the accused Jadranko Palija, a military police officer whom the witness himself had an opportunity to meet at the checkpoint in Pobrježje, but luckily, due to the changing of the guard he managed to avoid the maltreatment that had already started with curses and threats.

Having heard about what was happening at the checkpoint in Pobrježje, the injured party Velid Jakupović avoided using that road when he went to perform forced labor - compulsory work service in the platoon to which he was assigned. However, on one occasion, being too tired to take the detour roads on his way home, he took the one that led through the checkpoint. It was the accused Jadranko Palija's shift and it was then that the injured party realized why the checkpoint should be avoided during his shift. Cursing and threatening and constantly asking him about Teufik Kamber, the Accused kicked and punched the witness, while the witness especially remembers the kicks with military boots. During those couple of hours, the witness was also forced to chop wood which was there in front of the container and sing *Serb songs* while doing that, and since the witness did not know those songs, the Accused took him inside the container and beat him. The witness remembers the Accused as a man who was bigger than him and at least "by a head" taller than him, with a cute babble when pronouncing s and š.

The witness Senad Aganović also remembers that the injured party Velid Jakupović told him that he avoided passing through the checkpoint in Pobrježje, but that on one occasion he had to do so and that then he was beaten by the accused Jadranko Palija. This is also indicated in the testimony given by the witness Hajrudin Kamber, who is also a relative of the injured party.

The evidence about the suffering of Eniz Cerić is given by his daughter Suada Cerić, who met the Accused as one of the military police officers manning the checkpoint in Pobrježje. The checkpoint was about 100 to 150 meters away from their family house and they could clearly see all that was going on at the checkpoint since nothing was blocking the view. The witness also met the Accused in the shop, when she noticed his specific pronunciation – as if he was babbling. However, what the witness especially remembers the accused

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Jadranko Palija by is an incident when the Accused, believing that her father was hiding money, followed him into the house, lined up all the household members, and insulting them requested that her father and mother take him around the house, whereupon he locked them in one of the rooms. The witness did not see what happened in the room, but based on her mother's reaction when she came out of the room, it seemed like her father was being beaten. The witness managed to sneak out of the house and call the police for help. They arrived soon and asked the Accused to join them in front of the house. Threatening to kill the person who called them, the Accused left their house, but soon returned and took her father to the checkpoint. The witness saw when her father was taken into the container and she recalls that those who were taken inside the container were beaten. Upon returning home, her father said nothing and had no signs of violence on his face, but the witness's mother frequently went into the room with compresses in her hands. The witness recalls that her father and mother wanted to hide what had happened to him, but still her mother later admitted that Jadranko Palija had beaten him both in the house and at the checkpoint in Pobježje.

The witness Emina Habibović, whose husband, Agan Habibović, was also a victim of Palija's abuse, also gives evidence about the checkpoint in Pobježje and its most infamous controller – the accused Jadranko Palija, who, as the witness heard, was also one of the soldiers who killed people from Hrustovo on the Vrhpolje bridge. She stated that the checkpoint was near their house and that they always tried to avoid it because they heard what was happening there. However, on one occasion, her husband – Agan Habibović came to the checkpoint because he could no longer take the detour roads and there he was met by the accused Jadranko Palija. The Accused beat Agan on the head and kidneys, whereupon Agan came home swollen and bruised, the witness recalls. She saw the Accused, who was tall and heavy built as she recalls, only after the relevant incident and when people started addressing him with the name Jadranko Palija, she remembered that it was exactly Jadranko Palija that her husband told her about.

Ismet Čehajić testified about the beating of Idriz Alagić, aka Iba.

On the critical day, while performing his compulsory work service in the attic of a house which was only about 60 meters away from the checkpoint in Pobježje, the witness Ismet Čehajić first heard a painful scream and then somebody shouted: "*There, Palija is killing Iba*". The witness, he recalls, immediately peaked through a small opening in the attic and saw how Idriz Alagić, aka Iba, was hit two more times by the military police officer Jadranko Palija. He also saw that a woman resisted that police officer, but he struck her too and knocked her down on the ground. The witness also heard that Palija was extremely difficult and that passing through that checkpoint during his shift should be avoided. As already explained, the witness had no doubts about the identity of the Accused.

The evidence about the suffering of Teufik Kamber is given by his wife Ismeta Kamber, and also other witnesses whom Teufik personally told about the particular treatment he received from the accused Jadranko Palija.

She pointed out that, from the beginning of war operations, her husband survived the detention in *Betonirka*, the compulsory work service and even being used as a human shield on the Gradačac battlefield, while she also remembers that he frequently had problems with the accused Jadranko Palija, not only at the checkpoint in Pobježje through which he had to pass, and that the Accused came to their house twice and banged on the door. The

time, the witness recalls, they called the police and the second time the Accused left on his own. They knew the Accused well, since they met him at the checkpoint in Pobježje, which was only about 100 meters away from their house. On one occasion, from the distance of about 50 meters, she saw the Accused stop her husband and start beating him, whereupon she immediately ran into the house and called the police, who then saved him from further beating. However, she heard the Accused say: "You'll get it!" The witness had no doubts about the identity of the Accused, and describing him as a tall and heavy built person, she pointed at him in the courtroom, remembering their frequent meetings at the checkpoint in Pobježje. During the night between 5 and 6 December 1994, while the married couple Kamber were sleeping inside, their house was blown up. Teufik Kamber did not survive.

The witness Severin Jolić, who was a member of a work detail together with Teufik Kamber, does not know the accused Jadranko Palija, but he remembers well that Teufik told him that every return home – passing through the checkpoint in Pobježje meant he would be maltreated by the military police officer Jadranko Palija, who often slapped his face and forced him to clean the area around the checkpoint. The witness Jolić remembered the name, or more precisely the family name of the Accused because it was not characteristic of their area.

The witness Mugbo Zukić, who was also a member of the work detail at that time, also heard about the particular treatment that Teufik Kamber received from the Accused.

On the other hand, the Court also evaluated the evidence given by the defense witnesses, Nedeljko Kondić, Željko Baljak and Drago Krunić, military police officers who were also in the territory of Sanski Most Municipality at the relevant time, and were assigned to the checkpoint in Pobježje; however, since these witnesses were not always in the same shift or on the same roster as the Accused, they could not claim that there was no beating and maltreatment at the military police checkpoint in Pobježje. On the contrary, it is indisputable that the beatings also took place at the military police checkpoint in Pobježje also on the basis of the official note, dated 29 June 1993, written by the military police officer Marinko Karakaš, who on 28 June 1993, after taking over the shift, found out that his colleagues – military police officers beat a Muslim civilian who passed through the checkpoint. The Court accepts the possibility that maltreatment and beatings of civilians who passed through the checkpoint did not occur regularly in all shifts of the military police assigned to the checkpoint in Pobježje, but the Court is satisfied, and it is evident from the statements of all the abovementioned witnesses and victims of unlawful conduct of the Accused that during his shifts at the checkpoint in Pobježje the accused Jadranko Palija insulted, abused and beat numerous non-Serb civilians.

The Court found credible the abovementioned testimonies of the injured parties and witnesses to the unlawful acts of the Accused that occurred during a fairly long period of time, when the non-Serb civilians in Sanski Most area lived in constant fear, especially bearing in mind their indisputable consistency and objectivity, as well as logical explanations about knowing the Accused as the person who committed the relevant acts. Therefore, the testimonies given by the defense witnesses, who pointed out that inappropriate conduct of any of the military police officers in the command would have been sanctioned, seem unreliable if taken into consideration that none of the members of the Military Police would report their war colleagues to the relevant authorities for inappropriate conduct knowing that this military police officer would be sanctioned

immediately.

However, although Count 3 of the Indictment states that the accused Jadranko Palija also intimidated and beat Hasib Hodžić and Hilmo Suljanović and participated in the unlawful arrest and taking of Hilmo Suljanović to the military police camp, the Court did not find sufficient evidence that would support that these unlawful acts were also committed by the accused Jadranko Palija. This primarily resulted from the fact that the Prosecution withdrew the witnesses proposed in the Indictment who would have testified about these circumstances, namely Asima Hodžić and Šemsa Suljanović. On the other hand, the witness Zemka Talić mentioned in her testimony that she saw Hilmo Suljanović, who was a detainee then, being escorted by some soldiers; however, her testimony did not indicate the person who deprived him of liberty and who, according to the Prosecution, was the Accused. On the contrary, the witness did not recognize at all any of the soldiers who were present then or display any knowledge about the very act of depriving the injured party Suljanović of liberty, with which the Accused was charged. Except the testimony of Zemka Talić, the Prosecution did not offer any other evidence that would support these allegations or allegations stated in the Indictment concerning the maltreatment of Hasib Hodžić, while the mere fact that the witness saw the injured party Hilmo Suljanović at the time of his detention does not indicate who deprived him of liberty and does not even mention the Accused in the context of imprisonment or the time spent in detention.

## **7. Meting Out the Punishment**

In ruling on the punishment of 28 years of long-term imprisonment or 10 years of imprisonment, pursuant to Article 48 of the CC BiH, the Court particularly assessed the fact that the criminal offenses of which the Accused has been found guilty were committed with direct intent, hence with the Accused's indisputable awareness of the character of his acts and their consequences, that is, knowingly and willingly.

The Court also particularly assessed the fact that all unlawful acts, both those described under Sections 1 and 2 of the operative part and those described under Section 3, were committed against members of a group which was attacked solely because of their ethnicity, which was different from that of the Accused.

The group which, as it has been established, throughout the period when the relevant incidents occurred, was unarmed and therefore absolutely subjected to the Accused's willful behavior.

In ruling on the length of long-term imprisonment, the Court particularly assessed the brutality of the Accused, who knowingly proceeded with his discriminatory behavior towards the unprotected civilians, and the attack on the Donji Begići hamlet, maltreatment of the people who were attacked and imprisonment of women and children were followed by planned killings, first on the way to the bridge and then at the Vrhpolje bridge itself.

The Court finds that the killing, which was preceded by insults, maltreatment and beatings, of Miralem Cerić and his son Enver, the killing of Ismet Dizdarević and his sons Mirsad, Muhamed and Enes, then Hakija Begić and his son Muharem, hence, almost all male members of one family, in which the accused Jadranko Palija had a decisive role, represents a particularly aggravating circumstance. In a single day, 19 men from the Donji Begići hamlet were killed, while the life of the sole survivor – Rajif Begić remains forever troubled by the execution on the Vrhpolje bridge.

As another aggravating circumstance, the Court finds the brutality displayed in the course of the rape of Witness A at gunpoint, who due to the trauma suffered at that time, 15 years ago, is still unable to talk publicly about what happened to her out of entirely undeserved and unprovoked shame, shame experienced by a rape victim.

The determination and ruthlessness displayed by the Accused over an extremely long period of time, specifically through multiple commission of unlawful acts in the period from 1993 to 1995 in his capacity as a military police officer, being aware of his position and power in relation to the civilians, especially the vulnerable group whom it was his duty to protect, led the Court to impose a 10-year prison sentence for the acts described under Section 3 of the operative part.

On the other hand, the fact that the Accused is currently a family man, father of an underage child, constitutes an extenuating circumstance, but it is not sufficient to impose a more lenient sentence than the one imposed.

The Court finds that the sentence imposed is proportionate to the gravity of the criminal offense committed, the degree of criminal liability of the Accused, the circumstances in which the crime was committed and the motives which the Accused had for the commission of the criminal offense, and that the sentence imposed will fulfill the purpose of punishment referred to in Article 39 of the CC BiH in terms of specific and general prevention.

Pursuant to Article 56 of the CC BiH, the time the Accused spent in custody starting from 26 October 2006 to 2 November 2006 shall be credited towards the sentence of long-term imprisonment.

**8. Decision on the costs of the criminal proceedings and claims under property law of the injured parties**

Pursuant to Article 188(4) of the Criminal Procedure Code of Bosnia and Herzegovina, the Accused is partially relieved of the duty to reimburse the costs of the proceedings, given that evidence about the financial status of the Accused indicate that the duty to reimburse all the costs of the proceedings could jeopardize the support of the Accused, or his family. The Court will determine the amount of these costs in a special decision, pursuant to Article 186(2) of the CPC BiH.

When referring the injured parties to take civil action to pursue their claims under property law, the Court considered the fact that the number of injured parties is large in this proceeding, that determining the amounts upon claims under property law would take a fairly long time, and that the proceeding would be prolonged in this way. Therefore, the decision was made pursuant to Article 198(2) of the CPC BiH.

**RECORD KEEPER – LEGAL ADVISOR**  
**AMELA SKROBO**  
*/Signature affixed/*

**PRESIDENT OF THE PANEL**  
**MINKA KREHO**  
*/Signature and seal affixed/*

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

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

*Sarajevo, 04.03.2008*

*Certified Court Interpreter for English*

*Certified Court Interpreter for English*