



**Number: X-KR/06/200**  
**Sarajevo, 30 May 2008**

## IN THE NAME OF BOSNIA AND HERZEGOVINA

The Court of Bosnia and Herzegovina, Section I for War Crimes of the Criminal Division of the Court, in the Panel composed of Judges Šaban Maksumić, as the President of the Panel, and Pietro Spera and Marie Tuma as members of the Panel, with the participation of the legal officer Manuel Eising as the Record-taker, in the criminal case against the Accused Željko Mejakić, Momčilo Gruban and Duško Knežević, for the criminal offence of Crimes against Humanity in violation of Article 172(1)(a)(e)(f)(g)(k)(h) of the Criminal Code of Bosnia and Herzegovina (CC BH), all in conjunction with Article 29 and 180(1) of the CC BH, in relation to Željko Mejakić and Momčilo Gruban also in conjunction with paragraph (2) of Article 180 and Article 29 of the CC BH, acting upon the Indictment of the Prosecutor's Office of Bosnia and Herzegovina No. KT-RZ-91/06 of 7 July 2006, after the completion of the public main trial (which was partially closed for public), in the presence of the 1<sup>st</sup> Accused Željko Mejakić, 2<sup>nd</sup> Accused Momčilo Gruban, 3<sup>rd</sup> Accused Duško Knežević, Defense Counsel for the 1<sup>st</sup> Accused Jovan Simić, Attorney from Belgrade and Ranko Dakić, Attorney from Prijedor, Defense Counsel for the 2<sup>nd</sup> Accused Duško Panić, Attorney from Doboj and Goran Radić, Attorney from Podgorica, Defense Counsel for the 3<sup>rd</sup> Accused Nebojša Pantić and Milenko Ljubojević, Attorneys from Banja Luka and the Prosecutors of the Prosecutor's Office of Bosnia and Herzegovina Peter Kidd and David Schwendiman, following the deliberation and voting, on 30 May 2008 rendered the following verdict which was announced publically by the President of the Panel.

## VERDICT

### THE ACCUSED

- ŽELJKO MEJAKIĆ**, son of Blagoje, mother's name Milka, born on 2 August 1964 in Petrov Gaj, Municipality of Prijedor, residing at No. 4/5 Svetosavska Street in the place of Omarska, Prijedor Municipality, of Serb ethnicity, citizen of Bosnia and Herzegovina and the Republic of Serbia, formerly employed as a police officer, graduated from the Secondary School for Internal Affairs, married, father of 2 children, no previous convictions, no other criminal proceedings pending.
- MOMČILO GRUBAN**, also known as "ČKALJA", son of Milan, mother's name Radojka, born on 19 June 1961 in the village of Marička, Municipality of Prijedor, Bosnia and Herzegovina, residing in Marička, of Serb ethnicity, citizen of Bosnia and Herzegovina and the Republic of Serbia, machinist by occupation, graduated from Secondary and Post-Secondary Mechanical Engineering School, married, father of 2 children, no previous convictions, no other criminal proceedings pending.
- DUŠKO KNEŽEVIĆ**, also known as "DUĆA", son of Milan, mother's name Dragica, born on 17 June 1967 in Orlovci, Municipality of Prijedor, Bosnia and Herzegovina, residing in the place of Gornji Orlovci, the Prijedor Municipality, of Serb

ethnicity, citizen of Bosnia and Herzegovina and the Republic of Serbia, waiter by occupation, married, father of one child, no previous convictions, no other criminal proceedings pending.

## **ARE GUILTY**

### **Because they:**

From 30 April 1992 to the end of 1992, during the armed conflict in the Republic of Bosnia and Herzegovina and in the context of a widespread and systematic attack on Bosnian Muslim, Bosnian Croat and other non-Serb civilian population of the Prijedor Municipality by members of the Army of Republika Srpska, Territorial Defense, police and paramilitary formations (“Serb forces”) and armed civilians first led by the Prijedor Municipality Crisis Staff and later on by the Serb Assembly of the Prijedor Municipality, a plan was executed to permanently remove Bosnian Muslims, Bosnian Croats and other non Serb inhabitants from the territory of the planned Serb state in Bosnia and Herzegovina and as part of this plan more than 7000 non-Serb civilians from the area of this municipality who survived the first artillery and infantry attacks, among them particularly intellectuals, economic and political leaders as well as wealthy citizens, were systematically captured and taken to and arbitrarily confined at Omarska, Keraterm and Trnopolje camps, which were established and operated under the direction of the Crisis Staff of the Prijedor Municipality, where they were held in inhumane conditions and subjugated to grave physical, psychological and sexual maltreatment, many of them killed on the basis of their ethnicity, religion or political affiliation, and the Accused directly participated in this mistreatment and persecution in a manner that:

### OMARSKA CAMP

#### **ŽELJKO MEJAKIĆ:**

1. Between 28 May 1992 and 21 August 1992, Željko Mejakić was the Chief of Security and de facto Omarska Camp Commander who supervised and was responsible for all three shifts of guards in the camp and had effective control over the work and conduct of all Omarska camp guards and other persons working within the camp, as well as most camp visitors and was supervising and had full control over the conditions in the Omarska camp and the lives and limbs of more than 3000 civilians detained in the Omarska camp, participated in arbitrarily depriving the detainees of their liberty and contributed to and furthered the functioning of the camp's system of ill-treating and persecuting Bosnian Muslims, Croats, and other non-Serbs held in the camp through various forms of physical, mental, and sexual violence and had the authority and duty to improve the conditions of the camp which were brutal and degrading resulting in an atmosphere of terror with detainees being kept without the basic necessities of life such as adequate food, drinking water, medicines and medical care, and in unhygienic and cramped conditions, and subjected to interrogations, beatings, torture, harassment, humiliations and psychological abuse on a daily basis, living in constant fear for their own lives and at least one hundred detainees were killed or died as a result of these conditions, including:

- killings of detainees directly and personally committed by persons over whom Željko Mežak had effective control and which killings were committed in furtherance of the described system of ill-treatment and persecution at the camp in which he participated, including on or about 30 May 1992 Asaf Muranović and Avdo Muranović were shot together and killed by a visitor to the camp or a camp guard; in June or July 1992 Abdulah Puškar and Silvije Sarić were beaten to death by the camp guards; around mid-June 1992 Emir (“Hanki” or “Hankin”) Ramić was shot and killed by Željko Timarac in the presence of Duško Knežević who were both visitors to the camp; on or about 10 June 1992 Mehmedalija Nasić was shot and killed by Milan Pavlić, a camp guard; in June or July 1992 Safet (“Čifut”) Ramadanović was beaten to death by Popović (“Pop”), Draženko Predojević and other camp guards; in mid-June 1992 Bećir Medunjanin was beaten on multiple occasions by Duško Knežević and Zoran Žigić, who were both visitors to the camp, and others, and died as a result of that beating; on one night in June 1992 several men (approximately 12) with the surname Garibović were beaten by a group of Serb soldiers visiting the camp or camp guards, after which they disappeared without a trace; in June 1992 “Dalija” Hrnić was beaten to death by two uniformed men and Zoran Žigić and Duško Knežević; on or about 10 June 1992 Slavko (“Ribar”) Ećimović was beaten to death by Duško Knežević and Zoran Žigić; on about 25-26 June 1992 Mehmedalija Sarajlić was beaten to death by camp guards; in June or July 1992 Velid Badnjević was shot and killed by a camp guard; around mid-June 1992 Amir Cerić and another man named Avdić were shot and killed by or in the presence of visitors to the camp including Duško Knežević and Zoran Žigić; in July 1992 Mirsad (“Mirso”, “Asim”, “Kera”) Crnalić was shot and killed by camp guards; during his detention in the camp Husein Crnkić sustained injuries to which he eventually succumbed; in July 1992 Rizah (“Riza” or “Rizo”) Hadžalić was beaten to death by camp guards; on or about 18 June 1992 Jasmin (“Jasko”) Hrnić, Enver (“Eno”) Alić and Emir Karabašić were beaten to death in the camp; in late June or early July 1992 Miroslav Šolaja died as a result of beatings by the camp guards; in the first half of July 1992 Azur Jakupović, having already been severely beaten by the camp guards was killed along with Edvin Dautović and their bodies were loaded together after that; one day in late July 1992 Dr. Osman Mahmuljin, Dr. Eniz Begić, Zijad Mahmuljin and Ago Sadiković disappeared from the camp; in July 1992 Esad (“Eso”) Mehmedagić disappeared from the camp; on or about 25 July 1992 Nedžad Šerić disappeared from the camp; in July 1992 Gordan Kardum was beaten to death by camp guards; in July 1992 Burhanudin Kapetanović and a man by the surname Badnjević disappeared from the camp; on one evening in July 1992 at least 7 detainees disappeared including Emsud Baltić and several men surnamed Mešić; in late July 1992 a large number of unidentified detainees including at least 50 detained villagers of the Hambarine village were shot dead;
- killings resulting from the described system of ill-treatment and persecution at the camp in which Željko Mežak participated, that is, in June 1992 Ismet

- beatings and other physical assaults on detainees committed directly and personally by Željko Mejakić or in his immediate presence with discriminatory intent, that is, Saud Bešić who while detained in the camp was beaten during interrogation and after a while Željko Mejakić entered the room and kicked him in the chest;
- beatings and other physical assaults on detainees directly and personally committed by persons over whom Željko Mejakić had effective control and which beatings and physical assaults were committed in furtherance of the described system of ill-treatment and persecution at the camp in which he participated, including as follows: on or about the night of 29-30 May 1992 upon their arrival at the camp the new detainees including K041 were beaten by two lines of guards and then later again at the camp canteen and then again on their way back to their rooms from the canteen; on 4 June 1992 K042 was severely beaten by camp guards with thick lengths of cable and whips with iron balls on their ends; during his detention in Omarska camp, Emir Beganović received a number of severe beatings including on or about 10 June 1992 he together with detainees K036, Rezak Hukanović, Asaf Kapetanović and Abdulah Brkić were severely beaten in the same building with fists, other implements and kicked by camp visitors called "Dragan", Nikica Janjić, Šaponja, Zoran Žigić and Duško Knežević, and in addition to Nikica Janjić cutting Emir Beganović with a large knife, he sustained injuries to his head and body from the beating, and the other detainees sustained visible injuries too; in mid-June 1992 a group of visitors to the camp including the person called "Dragan" again severely beat up Emir Beganović and rendered him unconscious; in mid-June 1992 Nikica Janjić, a visitor to the camp, took Emir Beganović to the "White House" where Emir Beganović showed Momčilo Gruban the injuries from his previous beating by Janjić and others and asked for help and Momčilo Gruban told him to go to the "White House" with Janjić and said that Janjić would no longer mistreat him, however, once inside, Beganović received another vicious beating from Janjić during which he sustained injuries and his head and face were covered in blood; in mid-June 1992 witness K022 was severely beaten on multiple occasions including on one occasion by Zoran Žigić and Duško Knežević who used a baton and a truncheon with a metal ball attached; in mid-June 1992 the day after the last mentioned beating, witness K022 together with other detainees, including Fadil Avdagić, were severely beaten by Zoran Žigić and Duško Knežević resulting in Witness K022 losing consciousness, receiving injuries to his nose and other bodily injuries; on or about 23 June 1992 Muhamed Čehajić was severely beaten by at least one camp guard; on or about 4 July 1992 a part of approximately 120 detainees were beaten by the camp guards upon their arrival at the Omarska camp from the Keraterm Camp; on the evening of or before St. Peter's Day (Petrovdan) in mid-July 1992 detainees were severely beaten by the camp guards while being made to walk around a fire and a former football player known as "Durat" was forced into the fire or smoldering

cinders; on or about 17 or 18 July 1992 Mustafa Puškar was severely beaten by camp guards with a bar and kicked again when he fell; on or about 20 July 1992 K017 was beaten on the head and body with a police baton by a camp guard rendering him unconscious.

- rapes and other forms of sexual abuse of detainees committed by persons over whom Željko Mejakić had effective control and which rapes and sexual abuse were committed in furtherance of the described system of ill-treatment and persecution at the camp in which he participated, including witness K019 who was sexually abused on numerous occasions by the camp guards; witness K027 who was sexually assaulted by the Shift Commander Mlađo Radić and on another occasion in July 1992 by Nedeljko Grabovac; witness K040 who was sexually assaulted twice by camp guard Lugar.

### **MOMČILO GRUBAN**

2. Between 1 June 1992 and 21 August 1992 the Accused Momčilo Gruban was a commander of one of the three guard shifts in the Omarska camp and in addition to supervising and effectively controlling the work and conduct of guards and most camp visitors during his shift, he supervised the conditions in the Omarska camp by arbitrarily depriving the detainees of their liberty and contributed to and furthered the functioning of the camp's system of ill-treating and persecuting Bosnian Muslims, Croats, and other non-Serbs held in the camp through various forms of physical, mental, and sexual violence and had the authority and duty to improve the conditions of the camp where conditions were brutal and degrading resulting in an atmosphere of terror with detainees being kept without the basic necessities of life such as adequate food, drinking water, medicines and medical care, and in unhygienic and cramped conditions, and subject to interrogations, beatings, torture, harassment, humiliations and psychological abuse on a daily basis, living in constant fear for their own lives and at least one hundred detainees were killed or died as a result of these conditions, including:

- killings of detainees directly and personally committed by persons during Momčilo Gruban's shift and over whom he had effective control and which killings were committed in furtherance of the described system of ill-treatment and persecution at the camp in which he participated, including when in July 1992 Burhanudin Kapetanović and a person by the surname Badnjević disappeared from the camp; in late July 1992 a large number of unidentified detainees including at least 50 detained villagers of the Hambarine village were shot dead;
- killings of detainees directly and personally committed by persons outside of Momčilo Gruban's shift but in furtherance of the described system of ill-treatment and persecution at the camp in which he participated, including in June or July 1992 Abdulah Puškar and Silvije Sarić were beaten to death by the camp guards; around the middle of June 1992 Emir ("Hanki" or "Hankin") Ramić was shot and killed by Željko Timarac in the presence of Duško Knežević who were both visitors to the camp; on or about 25-26 June

1992 Mehmedalija Sarajlić was beaten to death by camp guards; in June or July 1992 Velid Badnjević was shot and killed by a camp guard; on or about 10 June 1992 Slavko (“Ribar”) Ećimović was beaten to death by Duško Knežević and Zoran Žigić who were both visitors to the camp; around mid-June 1992 Amir Cerić and another man named Avdić were shot and killed by or in the presence of visitors to the camp including Duško Knežević and Zoran Žigić; during his detention in the camp Husein Crnkić sustained injuries to which he eventually succumbed; on or about 18 June 1992, Jasmin (“Jasko”) Hrnić, Enver (“Eno”) Alić and Emir Karabašić were beaten to death in the camp; on or about 10 June 1992 Mehmedalija Nasić was shot and killed by Milan Pavlić a camp guard; in June or July 1992 Safet (“Čifut”) Ramadanović was beaten to death by Popović (“Pop”), Draženko Predojević and other camp guards; in mid-June 1992 Bećir Medunjanin was beaten on multiple occasions by Duško Knežević and Zoran Žigić, who were both visitors to the camp, and died as a result of the beating; on one night in June 1992 several men (approximately 12) with the surname Garibović were beaten by a group of Serb soldiers visiting the camp or the camp guards, after which they disappeared without a trace; in June 1992 “Dalija” Hrnić was beaten to death by two uniformed men and Zoran Žigić and Duško Knežević, who were visitors to the camp; in the first half of July 1992 Azur Jakupović having already been severely beaten by the camp guards was killed along with Edvin Dautović and their bodies were loaded together after that; in July 1992 Rizah (“Riza” or “Rizo”) Hadžalić was beaten to death by the camp guards; in late June or early July 1992 Miroslav Šolaja died as a result of beatings inflicted by the camp guards; one day in late July 1992 Dr. Osman Mahmuljin, Dr. Eniz Begić, Zijad Mahmuljin and Ago Sadiković disappeared from the camp; in July 1992 Esad (“Eso”) Mehmedagić disappeared from the camp; on or about 25 July 1992 Nedžad Šerić disappeared from the camp; in July 1992 Gordan Kardum was beaten to death by the camp guards; on one evening in July 1992 at least 7 detainees disappeared including Emsud Baltić and several men surnamed Mešić;

- killings resulting from the described system of ill-treatment and persecution at the camp in which Momčilo Gruban participated, that is, in June 1992 Ismet (“Ico”) Hodžić died as a result of a lack of medication and medical treatment for his diabetes;
- beatings and other physical assaults on the detainees directly and personally committed by persons during Momčilo Gruban’s shift and over whom he had effective control and which beatings and physical assaults were committed in furtherance of the described system of ill-treatment and persecution at the camp in which he participated, including in mid-June 1992 Emir Beganović was taken to the “White House” by Nikica Janjić where Emir Beganović showed Momčilo Gruban the injuries from his previous beating by Janjić and others and asked for help and Momčilo Gruban told him to go to the “White House” with Janjić and said that Janjić would no longer mistreat him, however, once inside, Beganović received another vicious beating from Janjić during which he sustained injuries and

his head and face were covered in blood; on or about 4 July 1992 a part of approximately 120 detainees were beaten by the camp guards upon their arrival at the Omarska camp from the Keraterm Camp; on or about 17 or 18 July 1992 Mustafa Puškar was severely beaten by the camp guards with an iron bar and kicked again when he fell; on or about 20 July 1992 K017 he was beaten on the head and body with a police baton by a camp guard, rendering him unconscious.

- beatings and other physical assaults on the detainees directly and personally committed by persons outside of Momčilo Gruban's shift but in furtherance of the described system of ill-treatment and persecution at the camp in which he participated, including on 4 June 1992 K042 was severely beaten with thick lengths of cable and whips with iron balls attached by the camp guards; during his detention in Omarska camp, Emir Beganović received a number of severe beatings including on or about 10 June 1992 he together with detainees K036, Rezak Hukanović, Asaf Kapetanović and Abdulah Brkić were severely beaten in the same building with batons and other implements and kicked by camp visitors called Dragan, Nikica Janjić, Šaponja, Zoran Žigić and Duško Knežević, and in addition to Nikica Janjić cutting Emir Beganović with a large knife, he sustained injuries to his head and body during that beating and the other detainees sustained visible injuries; in mid-June 1992 Emir Beganović was again severely beaten by a group of visitors to the camp including a visitor called Dragan, to the point where Emir Beganović lost conscience; in mid-June 1992 Witness K022 was severely beaten on multiple occasions including on one occasion by Zoran Žigić and Duško Knežević who used a baton and a truncheon with a metal ball attached; in mid-June 1992 the day after the last mentioned beating Witness K022 together with other detainees including Fadil Avdagić were again severely beaten by Zoran Žigić and Duško Knežević resulting in Witness K022 losing consciousness, receiving injuries to his nose and other parts of his body; on or about 23 June 1992 Muhamed Čehajić was severely beaten by at least one camp guard; while detained in the camp Saud Bešić was beaten during interrogation and after a while Željko Mejakić entered the room and kicked him in the chest; on the evening of or before St. Peter's Day (Petrovdan) in mid-July 1992 detainees were severely beaten by camp guards while being made to walk around a fire and a former football player known as "Durat" was forced into the fire or smoldering cinders;
- rape and other forms of sexual abuse of detainees directly or personally committed by persons outside of the shift that was under Momčilo Gruban's command but in furtherance of the described system of ill-treatment and persecution at the camp in which he participated, including witness K027 who was sexually assaulted by the shift Commander Mlado Radić and on another occasion in July 1992 by Nedeljko Grabovac, witness K019, who was raped on numerous occasions by camp guards and witness K040 who was sexually abused twice by camp guard Lugar;

### DUŠKO KNEŽEVIĆ

3. Between 28 May 1992 and 21 August 1992, the Accused Duško Knežević, who held no official position in the Omarska camp, entered the Omarska camp at will and unhindered by anyone committed killings and beatings of the detainees and by this contributed to and furthered the functioning of the camp's system of ill-treating and persecuting Bosnian Muslims, Croats, and other non-Serbs held in the camp through various forms of physical, mental, and sexual violence which resulted in the conditions in the camp being brutal and degrading resulting in an atmosphere of terror with detainees being kept without the basic necessities of life such as adequate food, drinking water, medicines and medical care, and in unhygienic and cramped conditions, and subjected to interrogations, beatings, torture, harassment, humiliations and psychological abuse on a daily basis, living in constant fear for their own lives, and at least one hundred detainees were killed or died as a result of these conditions, including:

- killings of the detainees personally and directly committed by Duško Knežević or in his immediate presence with discriminatory intent, including in mid-June 1992 in the “White House” Amir Cerić and a man surnamed Avdić were shot and killed by or in the presence of Duško Knežević and Zoran Žigić; in June 1992 in the “White House” Duško Knežević together with two uniformed men, and Zoran Žigić beat “Dalija” Hrnić to death; in mid-June 1992 in the “White House” Duško Knežević together with Zoran Žigić beat Bećir Medunjanin to death using various implements; on or about 10 June 1992 Duško Knežević together with a visitor to the camp Zoran Žigić severely beat the detainee Slavko (“Ribar”) Ećimović who died as a result of that beating; around the mid-June 1992 Emir (“Hanki” or “Hankin”) Ramić was shot and killed by Željko Timarac, a visitor to the camp, in the presence of Duško Knežević;
- killings of the detainees directly and personally committed by persons other than Duško Knežević but in furtherance of the described system of ill-treatment and persecution at the camp in which he participated, including on or about 30 May 1992 Asaf Muranović and Avdo Muranović were shot together and killed by a visitor to the camp or a camp guard; on or about 10 June 1992 Mehmedalija Nasić was shot by Milan Pavlić, a camp guard; in June or July 1992 Safet (“Čifut”) Ramadanović was beaten to death by Draženko Predojević and other camp guards; on one night in June 1992 several men (approximately 12) with the surname Garibović were beaten by a group of Serb soldiers visiting the camp or camp guards, after which they disappeared without a trace; in June or July 1992 Abdulah Puškar and Silvije Sarić were beaten to death by the camp guards; on about 25-26 June 1992 Mehmedalija Sarajlić was beaten to death by the camp guards; in late June or early July 1992 Miroslav Šolaja died as a result of beatings by camp the guards; in June or July 1992 Velid Badnjević was shot and killed by a camp guard; in July 1992 Mirsad (“Mirso”, “Asim”, “Kera”) Crnalić was shot and killed by the camp guards; during his detention in the camp Husein Crnkić sustained injuries to which he eventually succumbed; in July 1992



Rizah (“Riza” or “Rizo”) Hadžalić was beaten to death by the camp guards; on or about 18 June 1992 Jasmin (“Jasko”) Hrnić, Enver (“Eno”) Alić and Emir Karabašić were beaten to death in the camp; in the first half of July 1992 Azur Jakupović, having already been severely beaten by the camp guards, was killed along with Edvin Dautović and their bodies were loaded together after that; on one day in late July 1992 Dr. Osman Mahmuljin, Dr. Eniz Begić, Zijad Mahmuljin and Ago Sadiković disappeared from the camp; in July 1992 Esad (“Eso”) Mehmedagić disappeared from the camp; on or about 25 July 1992 Nedžad Šerić disappeared from the camp; in July 1992 Gordan Kardum was beaten to death by the camp guards; in July 1992 Burhanudin Kapetanović and a man by the surname Badnjević disappeared from the camp; on one evening in July 1992 at least 7 detainees disappeared including Emsud Baltić and several men surnamed Mešić; in late July 1992 a large number of unidentified detainees including at least 50 detained villagers of the Hambarine village were shot dead;

- murder resulting from the described system of ill-treatment and persecution at the camp in which Duško Knežević participated, that is, in June 1992 Ismet (“Ico”) Hodžić died as a result of a lack of medication and medical treatment for his diabetes;
- beatings and other physical assaults of the detainees directly and personally committed by Duško Knežević or in his immediate presence with discriminatory intent, including on or about 10 June 1992 he together with detainees K036, Rezak Hukanović, Asaf Kapetanović and Abdulah Brkić were severely beaten in the same building with fists, other implements and kicked by camp visitors called “Dragan”, Nikica Janjić, Šaponja, Zoran Žigić and Duško Knežević, and in addition to Nikica Janjić cutting Emir Beganović with a large knife, he sustained injuries to his head and body from the beating and the other detainees sustained visible injuries; in mid-June 1992 in the “White House” Duško Knežević together with Zoran Žigić beat K022 using a baton and a truncheon with an attached metal ball, and the next time Duško Knežević and Zoran Žigić continued to beat the same detainee as well as detainee Fadil Avdagić;
- beatings and other physical assaults of the detainees directly and personally committed by persons other than Duško Knežević but in furtherance of the described system of ill-treatment and persecution at the camp in which he participated, including as follows: on or about the night of 29-30 May 1992 K041 and other detainees newly arrived at the camp were beaten by two lines of guards and then later again at the camp canteen and then again on their way back to their rooms from the canteen; on 4 June 1992 K042 was severely beaten by the camp guards with thick lengths of cable and a whip with metal balls attached; while detained in the camp Saud Bešić was beaten during interrogation and after a while Željko Mejakić entered the room and kicked him in the chest; during his detention in the Omarska camp, Emir Beganović received a number of severe beatings including in mid-June 1992 he was taken to the White House by Nikica Janjić where Emir Beganović showed Momčilo Gruban the injuries from his previous beating by Janjić

and asked for help and Momčilo Gruban told him to go to the White House with Janjić and said that he would no longer mistreat him, however, once inside, Beganović received another vicious beating from Janjić during which he sustained further injuries to his face and head which were covered in blood; in mid-June 1992 Emir Beganović was again severely beaten by a group of visitors to the camp including a visitor called Dragan, which rendered him unconscious; on or about 23 June 1992 Muhamed Čehajić was severely beaten by at least one camp guard; on or about 4 July 1992 a part of approximately 120 detainees were beaten by the camp guards upon their arrival at the Omarska camp from the Keraterm Camp; on the evening of or before St. Peter's Day (Petrovdan) in mid-July 1992 detainees were severely beaten by the camp guards while being made to walk around a fire and a former football player known as "Durat" was forced into the fire or smoldering cinders; on or about 17 or 18 July 1992 Mustafa Puškar was severely beaten by the camp guards with an iron bar and hit him again when he fell; on or about 20 July 1992 K017 was beaten on the head and body with a police baton by a camp guard, which rendered him unconscious;

- rape and other forms of sexual abuse of the detainees directly or personally committed by persons other than Duško Knežević but in furtherance of the described system of ill-treatment and persecution at the camp in which he participated, including witness K019 who was raped on numerous occasions by the camp guards; witness K027 who was sexually assaulted by the shift Commander Mlađo Radić and in July 1992 by Nedeljko Grabovac; witness K040 who was sexually abused twice by camp guard Lugar.

## KERATERM CAMP

### DUŠKO KNEŽEVIĆ

4. Between 24 May 1992 and 6 August 1992, the Accused Duško Knežević, who held no official position in the Keraterm camp, entered the Keraterm camp at will and unhindered by anyone, there he committed killings and beatings of the detainees and these actions contributed to and enhanced the functioning of the camp's system of ill-treating and persecuting Bosnian Muslims, Croats, and other non-Serbs held in the camp through various forms of physical, mental, and sexual violence which resulted in the conditions in the camp being brutal and degrading resulting in an atmosphere of terror with detainees being detained without the basic necessities of life such as adequate food, drinking water, medicines and medical care, and in unhygienic and cramped conditions, and subjected to multiple interrogations, beatings, torture, harassment, humiliations and psychological abuse on a daily basis, living in constant fear for their own lives, and dozens of detainees were killed or died as a result of these conditions, including:

- killings of the detainees personally and directly committed by Duško Knežević or in his immediate presence with discriminatory intent, including

in June 1992, Duško Knežević, the camp guard Predrag Banović, Zoran Žigić and others repeatedly and severely beat Emsud (“Singapurac” and “Snajperista”) Bahonjić, using various implements, so in the second half of June 1992 this detainee died as a result of the beatings that he received ; in late June 1992 Drago Tokmadžić was beaten to death by the camp guards including Predrag Banović, and visitors to the camp Duško Knežević and Zoran Žigić; during the month of June 1992 Sead (“Car”) Jusufović was beaten by Duško Knežević, Zoran Žigić and others and died as a result;

- killings of the detainees directly and personally committed by persons other than Duško Knežević but in furtherance of the described system of ill-treatment and persecution at the camp in which he participated, including: in the second half of June 1992 the camp guards beat a Serb named Jovo Radočaj to death; in late June or early July 1992 an Albanian named Jasmin (“Zvezdaš”) was beaten to death by a group of camp guards or camp visitors; in June or July 1992 Džemal Mešić was beaten to death after having been taken out of his room by the camp guard Banović; on or about 25 July 1992 approximately twenty men were called out including Ismet Bajrić, Behzad Behlić and a person called Šolaja, who were taken from where they were detained in the Keraterm Camp and shot dead; between 9 June 1992 and 24 July 1992 Avdić (“Cacko”) was beaten to death; in July 1992 Dževad Karabegović was beaten to death after having been taken out of his room by Predrag Banović; in June or July 1992 Besim Hergić was beaten to death;
- beatings and other physical assaults of the detainees directly and personally committed by Duško Knežević or in his immediate presence with discriminatory intent including: between 30 May to 5 August 1992 together with Predrag Banović, Zoran Žigić and a person called “Sahadžija”, Duško Knežević beat a detainee K05 with a metal rod, his fists and his feet on several occasions; in June or July 1992 Duško Knežević beat a detainee Fajzo Mujkanović and cut his neck with a knife and due to these injuries this detainee was hospitalized; on or around 16 June 1992 Duško Knežević together with Zoran Žigić beat prisoners Ilijaz Jakupović and witness K033 to the point where their faces were covered in blood; Witness K033 was subsequently beaten by Duško Knežević several times; in late June 1992 Duško Knežević beat a detainee K015 hitting him on the head and all over his body with a baton; in June 1992 Duško Knežević and other persons severely beat Esad Islamović; in late June 1992 Duško Knežević together with Zoran Žigić beat Edin Ganić with a baton inflicting upon him bodily injuries; in June and July 1992 Duško Knežević together with Zoran Žigić and Predrag Banović on several occasions beat a detainee Jasmin Ramadanović who was hospitalized as a result of that; in the second half of June 1992 Duško Knežević beat the detainees Amir Karačić, Josip Pavlović, Dijaz Sivac and several other unidentified detainees as a result of which they suffered bruises all over their bodies; on or about 5 July 1992 Duško Knežević together with Zoran Žigić and three other soldiers known as “Vokić,” “Timarac” and “Karlica” severely beat a detainee K013 using a baton and other implements;

- beatings and other physical assaults of the detainees directly and personally committed by persons other than Duško Knežević but in advancing the described system of ill-treatment and persecution at the camp in which he participated, including between 24 May 1992 and 6 August 1992 Zejro Čaušević, Katlak, Ismet Kljajić and Mesud Terarić were severely beaten by the camp guards with Zejro Čaušević being subjected to multiple beatings, one of which by Tomica, resulting in wounds to his head and body which then became infested with worms due to the lack of medical care; on or around 13 June 1992 together with other persons detainees K05, Ziko Krivdić and Suad Bajrić were beaten and Suad Bajrić was injured by a bayonet; on or about 14 June 1992 Predrag Banović and others beat the new detainees who had arrived from Sivci that day; on the night of 16-17 June or July 1992 Dragan Kondić beat K010 on the chest with a baton and then together with others continued to beat him in another location; in June 1992 two men including a military policeman from Sarajevo clubbed and kicked K016 in the presence of Dušan Fuštar; in June or July 1992 Predrag Banović and his brother Nenad Banović severely beat and kicked Faruk Hrnčić; in late June 1992 three brothers named Ališić were beaten up; between 20 and 24 July 1992 Enes Crljenković was beaten on multiple occasions including on the first day of his detention at the Pista when he was beaten by Predrag Banović, Nenad Banović and others together with other detainees who were forced to lie down on a concrete strip in the sun; the following day Enes Crljenković was beaten again while he was laying on the pista by camp guards, including Dragan Kondić; between 20 and 24 July 1992 Besim Fazlić, Mehmed Avdić, Muharem Sivac and Mirsad Crljenković were beaten by camp guards; in the second half of July 1992 Dragan Kondić and Zoran Žigić beat K010; on or about 20 July 1992 upon his arrival at the camp Ismet Bajić was beaten by the camp guards; on or about 20 July 1992 people who were brought to the Keraterm Camp from the Brdo area were beaten by the camp guards upon their arrival at the camp and were then subsequently kept confined for three days without food or toilet facilities; between 31 May 1992 and 5 August 1992 guard Banović beat Meho Kapetanović; between 3 June and 5 August 1992 Enver ("Žuti") Modronja, was beaten by Predrag Banović on the head with a baton; between 9 June 1992 and 5 August 1992 Šaban Elezović was beaten by Predrag Banović and others to the point where one of his arms was broken or dislocated; camp guard Banović beat Mirsad Karagić in the camp with a police baton; in June or July 1992 Suad Halvadžić was beaten by Predrag Banović and others and Predrag Banović cut off a piece of Suad Halvadžić's ear; on or about 21 July 1992 Predrag Banović shot Uzeir ("Zejro") Čaušević in the leg and he was later taken out of the camp in a military truck and disappeared without a trace.

Thus, as described above, within a widespread and systematic attack against the civilian population from the wider territory of the Prijedor Municipality, with knowledge of such attack, and knowing that they were participating in it:

- Within the Omarska Camp, Željko Mejakić and Duško Knežević by their acts committed or otherwise aided and abetted the crimes described above with discriminatory intent; Željko Mejakić, Momčilo Gruban and Duško Knežević acting in concert with Milojica Kos, Dragoljub Prać, Mlado Radić and Zoran Žigić, among others, also participated in the joint criminal enterprise at the Omarska Camp to ill-treat and persecute Muslims, Croats, and other non-Serbs held in the camp through various forms of physical, mental, and sexual violence and are therefore responsible for the crimes described above, all of which were committed within the objective of the joint criminal enterprise; Željko Mejakić and Momčilo Gruban are also responsible by virtue of their position as superiors for the offences perpetrated by their subordinates over whom they had effective control, when they knew or had reason to know that their subordinates were about to commit such acts, or had done so, and they failed to take the necessary and reasonable measures to prevent or punish the perpetrators thereof;
- Within the Keraterm Camp, Duško Knežević by his acts committed or otherwise aided and abetted the crimes described above with discriminatory intent; Duško Knežević acting in concert with Dušan Fuštar, Duško Sikirica, Damir Došen, Dragan Kolundžija, Predrag Banović, Nenad Banović and Zoran Žigić, among others, also participated in the joint criminal enterprise at the Keraterm Camp to ill-treat and persecute Muslims, Croats, and other non-Serbs held in the camp through various forms of physical and mental violence and are therefore responsible for the crimes described above all of which were committed within the objective of the joint criminal enterprise.

### Whereby the Accused

1. **ŽELJKO MEJAKIĆ committed the criminal offence of Crimes against Humanity under Article 172(1) of the Criminal Code of Bosnia and Herzegovina namely, per sub-paragraph a) murder (killings), per sub-paragraph e) imprisonment (arbitrary and unlawful confinement of camp detainees), per sub-paragraph f) torture (beatings and other physical assaults), per sub-paragraph g) sexual violence (rapes and other forms of sexual abuse), per sub-paragraph k) other inhumane acts (confinement in inhumane conditions, harassment, humiliation and other psychological abuse), and per sub-paragraph h) persecution, all in conjunction with Article 29 and Article 180(1)(2) of the CC BH.**
2. **MOMČILO GRUBAN committed the criminal offence of Crimes against Humanity under Article 172(1) of the Criminal Code of Bosnia and Herzegovina namely, per sub-paragraph a) murder (killings), per sub-paragraph e) imprisonment (arbitrary and unlawful confinement of camp detainees), per sub-paragraph f) torture (beatings and other physical assaults), per sub-paragraph g) sexual violence (rapes and other forms of sexual abuse), per sub-paragraph k) other inhumane acts (confinement in inhumane conditions, harassment, humiliation and other psychological abuse) and per sub-paragraph h) persecution, all in conjunction with Article 29 and Article 180(1)(2) of the CC BH.**

3. **DUŠKO KNEŽEVIĆ**, committed the criminal offence of Crimes against Humanity under Article 172(1) of the Criminal Code of Bosnia and Herzegovina namely, per sub-paragraph a) murder (killings), per sub-paragraph f) torture (beatings and other physical assaults), per sub-paragraph k) other inhumane acts (confinement in inhumane conditions, harassment, humiliation and other psychological abuse) and per sub-paragraph h) persecution (all acts as described in Counts 3 and 5 of the Indictment) and as to COUNT 3 only per sub-paragraph g) sexual violence (rapes and other forms of sexual abuse), all in conjunction with Article 29 and Article 180(1) of the CC BH.

Therefore the Court, pursuant to Article 285(1) of the CPC BH, applying Article 39, 42 and 48 of the CC BH

### SENTENCES

1. **THE ACCUSED ŽELJKO MEJAKIĆ TO A LONG-TERM IMPRISONMENT FOR THE DURATION OF 21 YEARS.**
2. **THE ACCUSED MOMČILO GRUBAN TO A TERM OF IMPRISONMENT FOR THE DURATION OF 11 YEARS.**
3. **THE ACCUSED DUŠKO KNEŽEVIĆ TO A LONG-TERM IMPRISONMENT FOR THE DURATION OF 31 YEARS.**

Based on Article 56 of the CC BH, in conjunction with Article 2(4) of the Law on Transfer of Cases from the International Criminal Tribunal for the former Yugoslavia to the Prosecutor's Office of Bosnia and Herzegovina (Law on Transfer of Cases), the time that according to ICTY and Court of BiH Decisions the Accused Željko Mejačić spent in custody from 1 July 2003 onwards, the Accused Momčilo Gruban from 2 May 2002 until 17 July 2002 and from 21 July 2005 onwards and the Accused Duško Knežević from 18 May 2002 onwards, shall be credited towards the pronounced term of imprisonment.

### I

Pursuant to Article 188(4) of the CPC BH, the Accused persons are relieved of their duty to reimburse the costs of the proceedings, and the costs shall be reimbursed from within the budget.

### II

Pursuant to Article 198(2) of the CPC BH, the injured parties are instructed that they may take civil action to pursue their claims under property law.

## Reasoning

### Proceedings

Under the Indictment of the Prosecutor's Office of Bosnia and Herzegovina No. KT-RZ-91/06 of 7 July 2006, taken over as confirmed from the International Criminal Tribunal for the former Yugoslavia (consolidated Indictment of the International Criminal Tribunal for the former Yugoslavia No. IT-02.65 of 5 July 2002 and submission of the Amended Consolidated Indictment No. IT-02-65 of 13 January 2005), pursuant to the Law on Transfer of Cases from the International Criminal Tribunal for the former Yugoslavia to the Prosecutor's Office of Bosnia and Herzegovina and the Use of Evidence Obtained by the International Criminal Tribunal for the former Yugoslavia in the Proceedings before the Courts in Bosnia and Herzegovina, adapted pursuant to the Criminal Procedure Code (the CPC BH), the Accused Željko Mejakić, Momčilo Gruban and Dušan Fuštar were charged with the commission of the criminal offence of Crimes against Humanity in violation of Article 172(1)(a)(e)(f)(g)(h) and (k) of the CC BH, in conjunction with Article 29 and Article 180(1)(2) of the CC BH, and the Accused Duško Knežević with the criminal offence of Crimes against Humanity in violation of Article 172(1)(a)(f)(g)(h) and (k) of the CC BH, in conjunction with Article 29 and Article 180(1) of the CC BH. At the plea hearing held on 28 July 2006, the Accused persons pled not guilty to the charges of the Indictment, and the case was referred to the Trial Panel for the scheduling of the main trial.

Upon the completion of the prosecution case and before the defense case, the Accused Dušan Fuštar and his Defense Counsel, Attorneys John Ostojić and Zlatko Knežević, on 27 March 2008 signed the Agreement on the admission of guilt with the Prosecutor's Office of BH, which was submitted to the Court for consideration together with the amended Indictment of the Prosecutor's Office of BH No. KT-RZ-91/06 of 21 March 2008, pursuant to Article 275 of the CPC BH. On the Prosecutor's motion, to which the Accused and their Defense Counsel consented, the proceedings with respect to Dušan Fuštar were severed and completed separately under number X-KR-06/200-1.

### Evidence

In the course of the evidentiary proceedings, the following prosecution witnesses were examined: Asmir Baltić, Fadil Avdagić, Emir Beganović, Said Bešić, Saud Bešić, Zlata Cikota, Enes Crljenković, Izet Đešević, Sakib Jakupović, Enes Kapetanović, Senad Kapetanović, Kerim Mešanović, Azedin Oklopčić, Mustafa Puškar, Nusret Sivac, Ermin Striković, Anto Tomić, and witnesses under pseudonyms K01, K03, K05, K07, K08, K09, K010, K013, K014, K015, K016, K017, K018, K019, K022, K023, K027, K029, K033, K034, K035, K036, K037, K040, K041, K042, K043 i K044, and Borislav Knežević, K055 and K056 as additional witnesses for the Prosecution.

After that, the Court heard the following defense witnesses: Rajko Marmat, Milorad Stupar, Pero Rendić, Mirko Kobas, Radovan Kečan, Nada Markovski, Željko Grabovica, Mile Matijević, Boro Vučenović, Svetozar Krecelj, Branko Starčević, Živko Piljić, Stevo Petoš and Boško Matijaš and witnesses under pseudonyms K050, K051,

K052, K053, K054 and K057, and the Accused Željko Mejačić who testified in his own defense.

The Prosecutor's Office of BH adduced the following physical evidence listed in the original Indictment dated 7 July 2006 against all four Accused persons under following numbers:

1. (1A) Aerial photo of the Omarska Mine (ICTY No. 0100-2444); (1B) Photo of the administrative building, Omarska Mine (0109-7404); (1C) Photo of the hangar, view from the administrative building (0109-7407); (1D) Photo of the right side of the hangar, view from the administrative building (0109-7408); (1E) Photo of the „white house“ (0109-7413); (1F) Photo of the administrative building (0203-0311); (1G) Photo of the kitchen/restaurant (0109-7406); (1H) Photo of the Omarska camp detainees in the canteen (0104-8435); (1I) Photo of the Omarska camp restaurant (0105-6517); (1J) Photo of Kerim Mešanović in the „glass house“ (0045-2452); (1K) Aerial photo of the Omarska Mine (0107-2772); (1L) Photo of the TAM truck (0039-3770); (1M) Photo of the pump and the administrative building (0039-3500); (2) Omarska Mine model; (3) Statement of the witness K017 given to the ICTY in 1998 and 1999; (4A) Decision on termination of employment of Cikota Zlata (0020-2870); (5) Photo of Miroslav Šolaja's clothes (0326-1687); (7) Newspaper article "Bećir Medunjanin and his family", Kozarski vjesnik, 12 June 1992; (0031-9260-7 (BHS), 0096-3674 (ENG)); (8A) Photo of the Keraterm camp (reception booth, entrance) (0200-6266); (8B) Photo of the Keraterm camp (rooms 2, 3, 4, toilets) (0200-6270); (8C) Photo of the Keraterm camp (garage, room No. 1) (0336-4943); (10) Photo of Goran Kardum and another person (0105-6516); (10A) Exhibit 8A marked by K014; (10B) Exhibit 8C marked by K014; (11A) Photo of the Keraterm depicting the garbage disposal and the hangar (0200-6264); (11B) Photo of the Keraterm camp indicating where the executions took place after the massacre in room No. 3 (0200-6270); (11C) Photo of the Keraterm camp depicting the small house behind which, according to the witnesses, there was a light-machinegun mounted for the execution after the massacre in the room No. 3 (0200-6268); (12A) Photo of the Keraterm camp, witness is indicating where the garbage disposal was located on which bodies were discarded (0200-6264); (12B) Photo of the Keraterm camp, witness is indicating where one victim by the name of I. Budimlić was beaten up, on the left from the weigh station (0200-6266); (13A) Photo of the Keraterm camp, witness is indicating the rooms 1 and 2 and the weigh station where his brother was beaten (0200-6265); (13B) Photo of the Keraterm camp– the small house and the weigh station where the witness' brother was beaten up (0200-6266); (13C) Photo of the Keraterm camp, a different view, witness in indicating rooms 3 and 4 where a table with a machinegun mounted on it was positioned before the massacre in the room No. 3 (0200-6262); (14) List of detainees written by K016 (0068-2509); (15A) Photo of the Keraterm camp, witness is indicating where the dead bodies were discarded (0200-6262); (15B) Photo of the Keraterm camp, witness is indicating rooms 1 and 2 and the kitchen (0336-4943); (16A) Photo of the Keraterm camp, witness is indicating the weigh station and where Fuštar had sat (0200-6263); (16B) Photo of the Keraterm camp, witness is marking where the school desks and the machine guns were positioned before the massacre in the room No. 3 (0200-6265); (17) Order of Simo Drljača, Chief of the Public Security



Station Prijedor, to form the Omarska camp of 31 May 1992 (00633763-00633766); (18) The list of employees engaged in providing security for the Omarska collection center who need to be issued with special passes, Željko Mejakić, commander of the station of the wartime police Omarska, 21 June 1992; (19) Order of the Crisis Staff of the Prijedor Municipality No. 01-023-49/92, 2 July 1992; (20) Official note signed by Duško Sikirica about how Zoran Žigić frequented Keraterm and beat up people who subsequently died, 4 July 1992; (21) List of 1<sup>st</sup> category persons, Omarska Collection Center, 28 July 1992; (22) Dispatch note of the Prijedor Public Security Station No. 11-12-2169, 1 August 1992; (23) Letter of the Prijedor Public Security Station addressed to the Security Services Center Banja Luka, No. 11-12-38, 4 August 1992; (24) Letter titled “Selection of POW for the Manjača POW Camp”, Command of the 1<sup>st</sup> Krajiški Corps, 6 August 1992; (25) Letter of the Public Security Station No. 11-12-2188 addressed to the Chief of the Security Services Center Banja Luka, 9 August 1992; (26) Report of the Public Security Station Prijedor about the reception centers in the territory of Prijedor Municipality and the moving out of citizens from the territory of the municipality, 14 August 1992; (27) Report of the Security Services Center Banja Luka on the existing situation and issues regarding the detainees, collection centers, the moving out of the population and the role of the Public Security Station and its connection to these activities, 18 August 1992; (28) Official note of the Public Security Station Prijedor with the list of persons sent from Omarska to Manjača, 17 August 1992; (29) Letter of the Public Security Station Prijedor to the Chief of Security of the Security Services Center Banja Luka on the documentation relative to the POWs transferred from Omarska to Manjača, 23 August 1992; (30) Dispatch note of the Public Security Station Prijedor on the non-existence of detention camps, prisons and collection centers in Prijedor Municipality No. 11-12-2223, 28 August 1992; (31) Report on the activities of the Prijedor Public Security Station in the third quarter, September 1992; (32) Report on the work of the Public Security Station Prijedor in the last 9 months of 1992, Public Security Station Prijedor, January 1993; (33) Letter of Stojan Župljanin, Chief of Staff of the Security Services Center Banja Luka, to all public security stations No. 11-1/01-57, 19 August 1992; (34) List of Prijedor Police Station employees who signed and did not sign the solemn declaration, 29 May 1992; (35) Decision on the organization and activities of the Prijedor Municipal Crisis Staff dated 20 May 1992, Prijedor Municipality Official Gazette, Year I, issue 2/92, 25 June 1992; (36) Solemn declaration of Dušan Fuštar, Prijedor Public Security Station, 8 May 1992; (37) Reserve police payroll for May 1992, Prijedor II Reserve Police Station, Prijedor Public Security Station; (38) Reserve Police Payroll for June 1992, (employed), Prijedor II Reserve Police Station, Prijedor Public Security Station; (39) Reserve Police Payroll for June 1992, (unemployed), Prijedor II Reserve Police Station, Prijedor Public Security Station; (40) List of members of the reserve police force in August 1992, Prijedor II Reserve Police Station, August 1992; (41) Census of the Prijedor Municipalities by local communes No. 02-074-1-16/91, 1991; (42) Results of the 1993 census in Prijedor Municipality (by local communes), undated; (43) Overview of citizens who have moved out and into the area covered by the Sector, Banja Luka SNB Sector, May 1993; (44) Overview of Data on the Number and Ethnic Structure of Population by Municipalities in the Area of Banja Luka Department of State Security for 1991 and 1995, February 1995; (45) Security Assessment for Prijedor

Municipality, operative Duško Jelisić, SNB Sector, Banja Luka Security Services Center, 23 October 1992; (46) Report on the work of the Prijedor Municipal Red Cross for the period from 5 May 1992 until 30 September 1992, 30 September 1992.; (47) Decisions of the Autonomous Region Krajina Crisis Staff of 22 May 1992, Autonomous Region Krajina Official Gazette, No. 2; (48) Decision to release persons from detention, Prijedor Municipality Crisis Staff, 2 June 1992; (49) Conclusion of the Prijedor Municipality Crisis Staff No. 02-111-191/92 of 12 June 1992, Prijedor Municipality Official Gazette, Year I, No. 2/92, 25 June 1992.; (50) List of reserve operational employees from the National Security Service hired to work in the Omarska and Keraterm in June 1992; (51) Letter of the Prijedor Public Security Station to the General Hospital "Dr. Mladen Stojanović" listing hospital employees who can be found in refugee camps, 11 July 1992; (52) Foreign Journalists Visited Collection Centers in Omarska and Trnopolje" - Kozarski Vjesnik article, 14 August 1992; (53) List of persons to be taken to the Omarska Collection Center, entered in the register on 24 July 1992; (54) List of persons to be taken to the Omarska Collection Center, 6 – 8 July 1992; (55) List of persons to be taken to the Omarska Collection Center, 23 July 1992; (56) List of persons to be taken to the Omarska Collection Center, 14 July 1992; (57) Solemn declarations of police employees, Prijedor Public Security Station, May 1992; (58) Certificate of the Municipal Organization of the Red Cross for Azedin Oklopčić, 14 August 1992; (59) Register of visitors to Wartime Police Station Omarska in the period from 11 July 1992 to 22 September 1994; (60) Official Note regarding bribe taking and unauthorized release of detainees by Zoran Žigić, Intelligence and Security Organ of the Prijedor Regional Command, 13 June 1992; (61) "It's Difficult For Everyone", Kozarski Vjesnik article, 17 July 1992; (62) Letter from Bishop of Banja Luka to Simo Drljača, Prijedor Public Security Station Chief, 11 August 1992; (63) Reply of Simo Drljača, Chief of the Public Security Station Prijedor to the letter of Bishop Komarica, 16 September 1992; (64) Approval of the 1<sup>st</sup> Krajiški Corps for visit of the International Committee to the detention camps at Manjača, Trnopolje, Omarska and Prijedor, 3 August 1992; (65) Dispatch note of the Prijedor Public Security Station Chief Simo Drljača explaining the structure and organization of the Prijedor Public Security Station No. 11-12-2031, 29 May 1992; (66) Letter of the Prijedor Public Security Station addressed to RS Ministry of the Interior on determination of rank of Željko Mejakić, 23 October 1995; (67) Map, Map of municipalities (ICTY No. 0229-6710); (68) Map, Big map of Prijedor (ICTY No. 0046-4993); (69) Map, Map of ethnic make-up of Prijedor (ICTY No. 0216-9347); (70) Map, Map of Prijedor with photos (ICTY No. 0124-8887); (71) Map, Map of Prijedor with photos and description (ICTY No. 0216-6220); (72) Rulebook on internal organization of the Republic Secretariat of the Interior, January 1990; (73) „Instruction on organization and activities of the organs of Serb people in Bosnia and Herzegovina in a state of emergency”, Main Board of SDS BiH, 19 December 1991; (74) Abridged minutes of the meeting of the SDS Municipal Board Prijedor and the SDS caucus, 27 December 1991; (75) Decision on the proclamation of the Assembly of the Serb People of Prijedor Municipality, No. 001/92, 7 January 1992; (76) Decision on Joining the Autonomous Region of Bosanska Krajina, Assembly of Serb People in Prijedor Municipality, 7 January 1992; (77) Decision on strategic objectives of the Serb People in Bosnia and Herzegovina of 12 May 1992, Republika Srpska Official Gazette, 26 November

1993; (78) Decision on the Formation of War Presidencies in Municipalities in Times of Imminent Threat of War or Wartime of 31 May 1992, Official Gazette of the Serb People in BiH, Issue 8, 8 June 1992; (79) Memo to Public Security Stations sent by Stojan Župljanin, Head of the Banja Luka Security Services Centre, forwarding the Decision of the ARK Crisis Staff according to which only women, children and elderly may leave the ARK territory, 12 June 1992; (80) Confirmation of decisions falling under the jurisdiction of the Municipal Assembly issued by the Crisis Staff, 24 July 1992; (81) Sketch authored by the witness K013 (0104-7754); (82A) Video footage of the interview with Željko Mejakić, RTV Beograd (V000-2046); (82B) Transcript of the exhibit 82A (0301-1297 (ENG) & 0301-0771 (BHS)); (83A) ITN report from Omarska and Trnopolje detention camps (V000-0401); (83B) Transcript of the exhibit 83A, (84A) Video footage of Omarska and Trnopolje (V000-0664); (84B) Transcript of the exhibit 84A (0305-8493-0305-8507 & 0306-5733-0306-5754); (85A) Video footage of the ITN meeting with the officials in Prijedor regarding visit to Omarska camp (V000-1402); (85B) Transcript of the exhibit 85A (L007-5858-L007-5861); (86A) "Victims of war – a time to mourn", Part 2 (V000-0077); (86B) Transcript of the exhibit 86A (0042-7421-0042-7465); (86C) Transcript of the exhibit 86A, in another form (0015-6765-0015-6800); (87) Video footage of Omarska and Trnopolje (V000-0662); (88) Aerial shots of Prijedor, including detention camps in Omarska, Trnopolje, Keraterm, etc. (V000-4075); (89) Excerpt from "Bosnia, the hidden horror", ABC News Nightline (V000-2843); (90) Video footage of the Manjača camp, Prison and Omarska camp (V000-3190); (91) Testimony of Abdulah Brkić (transcript from the Kvočka trial and the statement given to the ICTY dated 2 November 1994.); (92) Testimony of Sifeta Sušić (transcript from the Kvočka trial and the statement given to the ICTY in 1994 and 1995); (93) Testimony of K012 (transcript from the Tadić trial and the statement given to the ICTY in 1995); (94) Testimony of K021 (transcripts from the Tadić and Stakić trial); (95) Testimony of K031 (transcripts from the Kvočka trial); (96) Testimony of Edin Ganić (transcripts from the Kvočka trial and the statement given to the ICTY on 1 March 1999); (97) Solemn declaration of Predrag Banović (0104-8614); (98) Photos of the beds in Omarska (0212-3687); (99) Floor plans of the ground and first floors of the Administration building at Omarska camp (0100-5923-0100-5924); (100) Floor plans in the Omarska camp, diagram of the hangar and the garage (0045-4062); (101) Newspaper article " ICRC Evacuates 1,560 people from Trnopolje Camp", 2 October 1992 (0031-7985); (102) Letter of the Public Security Station Prijedor addressed to the Security Services Center Banja Luka No. 11-12-2213, 22 August 1992 (0063-3308); (103) Commission report on the visit to the collection centers and other prisons in the AR Krajina, 17 August 1992 (0124-5060-0124-5067); (104) Transcript of the testimony of Nicolas Sebire from the Stakić trial; (105) "Additional Report" of Nikolas Sebire from 2002 (0184-3960-0184-4285); (106) List of Annexes to the Additional Report on Exhumations and Proof of Death (ICTY No. 0184-7968-0184-7969); (107) Exhumation report, list of individuals allegedly killed at the Keraterm camp in late July 1992 (ICTY No. 0184-3960-01884-4285); (108) Exhumation report, list of individuals allegedly killed in Bišćani in July 1992 (ICTY No. 0184-3960-01884-4285); (109) Exhumation report, list of individuals allegedly killed in Briševo on or about 24 July 1992 (ICTY No. 0184-3960-01884-4285); (110) Exhumation report, list of individuals allegedly killed in Čarakovo and surrounding areas in

July 1992 (ICTY No. 0184-3960-01884-4285); (111) Exhumation report, list of individuals allegedly killed in Hambarine from May through July 1992 (ICTY No. 0184-3960-01884-4285); (112) Exhumation report, list of individuals allegedly killed in Jaskići on or about 14 June 1992 (ICTY No. 0184-3960-01884-4285); (113) Exhumation report, list of individuals allegedly killed in Kozarac and the surrounding areas between May and June 1992 (0184-3960-01884-4285); (114) Exhumation report, list of individuals allegedly killed in Mehmed Šahorić's house in Kamičani on or about 26 May 1992 (ICTY No. 0184-3960-0184-4285); (115) Exhumation report, list of individuals allegedly killed in Prijedor town in late May / early June 1992 (ICTY No. 0184-3960-0184-4285); (116) Exhumation report, list of individuals allegedly killed in the Ljubija football stadium on or about 25 July 1992 (ICTY No. 0184-3960-0184-4285); (117) Exhumation report, list of individuals allegedly killed in the military barracks at Benkovac in late May 1992 (ICTY No. 0184-3960-0184-4285); (118) Exhumation report, list of men killed in the Keraterm camp on 24 – 25 July 1992 (0184-3960-01884-4285); (119) Exhumation report, list of individuals allegedly killed at Omarska camp in late July 1992, following the cleansing of the Brdo area (ICTY No. 0184-3960-0184-4285); (120) Exhumation report, list of individuals from Keraterm and Omarska killed on or about 5 August 1992. The remains of some of them were exhumed at Hrastova Glavica (ICTY No. 0184-3960-0184-4285); (121) Exhumation report, list of individuals killed at Keraterm camp between 24 May and 5 August 1992 (ICTY No. 0184-3960-0184-4285); (122) Exhumation report, list of individuals killed at Omarska camp between 27 May and 21 August 1992 (ICTY No. 0184-3960-0184-4285); (123) Exhumation report, list of individuals killed in Trnopolje camp between 25 May and 30 September 1992 (ICTY No. 0184-3960-01884-4285); (124) Exhumation report, list of individuals killed outside Manjača camp on or about 6 August 1992 (ICTY No. 0184-3960-01884-4285); (125) Exhumation report, list of individuals who were executed near Korićanske Stijene on or about 21 August 1992 (ICTY No. 0184-3960-01884-4285); (126) List of individuals allegedly killed in the Ljubija Iron Ore Mine (Redak or Kipe) on or about 25 July 1992; (127) Exhumation report, list of men and women from Omarska who were taken on a bus and killed in late July 1992. Some of them were exhumed from Jama Lisac in Krupa na Uni Municipality (ICTY No. 0184-3960-01884-4285); (128) Flow Chart showing movement of people from Omarska camp to mass gravesites to Visoko mortuary, 6 October 2000; (129) “Book of the Missing Persons from Prijedor Municipality”, March 1998; (130) Video footage of the mass gravesites Kevljani and Jama Lisac, OTP, ICTY, 22 September 2002 (ICTY No. V000-2702); (131) Excerpt from the video footage filmed at the mass gravesite Kevljani in 1999 and at the mass gravesites Jama Lisac and Donji Dubovik in 2000 (ICTY No. V000-3985); (132) Photo of the body of Edvin Dautović at the mass gravesite in Kevljani (ICTY No. 0081-2965-12A); (133) Photo of the skeleton on Edvin Dautović at the mortuary in Visoko (ICTY No. 0092-5054-23); (134) Photo of the body of Miroslav Šolaja at the mass gravesite in Kevljani (ICTY No. 0081-2965-06A); (135) Photo of the clothes of Miroslav Šolaj (ICTY No. 0326-1687-0326-1690); (136) Photo of the ID document of Miroslav Šolaja (ICTY No. 0092-5062-34A); (137) Photo of the handwritten message found next to the body of Miroslav Šolaja (ICTY No. 0092-5062); (138) English translation of the handwritten message found next to the body of Miroslav Šolaja (ICTY No. 0092-6907); (139) Photo of the body of Sadeta Medunjanin in

the cave next to the mass gravesite Jama Lisac (ICTY No. 0103-7652); (140) Photo of the body of Edna Dautović in front of the cave next to the mass gravesite Jama Lisac (ICTY No. 0103-7696-0103-7697); (141) Map showing location of Kevljani and Donji Dubovik mass grave sites in relation to Prijedor and Omarska (ICTY No. 0105-6518); (142) Photograph of graves of the Briševo victims buried at the Raljaš Catholic church (ICTY No. 0203-3351); (143) Photograph of the mass grave and execution site in Redak (ICTY No. 0203-3348); (144) Photo documentation of evidence of mass murder found in Hrastova Glavica – Podvidača, 16 photographs (ICTY No. 0068-1229-0068-1272); (145) Photographs of and around the Kevljani mass grave site, 203 photographs (ICTY No. 0081-2961-0081-2966); (146) Photographs taken at the exhumation site in Kevljani, 152 photographs (ICTY No. 0082-7467-0082-7475); (147) 44 rolls of film of the ICTY mortuary photos regarding the Kevljani mass grave, 1485 photographs, June – August 1999 (ICTY No. 0092-5049-0092-5091); (148) 13 rolls of film regarding the Redak exhumation site, 378 photographs (ICTY No. 0100-6958-0100-6970); (149) Photographs of artifacts and relevant data, 288 photographs and 70 documents, Sanski Most morgue, 2001 (ICTY No. X017-2764-X017-3349); (150) 26 rolls of film with photographs taken at the mortuary in Visoko relating to exhumation of the Redak mass grave site, 923 photographs (ICTY No. 0102-9121-0102-9146); (151) 14 rolls of film with photographs of autopsies performed on remains recovered from the Jama Lisac/Donji Dubovik site, ICTY mortuary, 506 photographs, July – August 2000 (ICTY No. 0103-7444-0103-7457); (152) Photographs of exhumation sites at Redak, Pašinci Cemetery and Ljubija, 198 photographs, ICTY (ICTY No. 0107-4667-0107-4674); (153) Digital photographs of various sites in the former Autonomous Region of Krajina, including the Tomašica and Benkovac exhumation sites in Prijedor, 47 photographs, ICTY (ICTY No. 0219-4058-0219-4104); (154) Digital photographs of the exhumation at Korićanske Stijene, BiH Federal Commission for Missing Persons, 67 photographs, 15 – 21 May 2003 (ICTY No. 0295-2142-0295-2208); (155) Photographs of the exhumation at Korićanske Stijene, 24 photographs (ICTY No. 0297-9309-0297-9309); (156) Digital photographs of clothes associated with the exhumation at the Kevljani mass grave site, 115 photographs (ICTY No. 0326-1653-0326-1767); (157) Digital photographs of the Korićanske Stijene exhumation, 100 photographs (ICTY No. 0402-0753-0402-0852); (158) Electronic copies of pathology reports of examination carried out at the Visoko Mortuary on the remains exhumed at the Kevljani mass grave site, 18 documents (ICTY No. D000-0221); (159) Electronic copies of pathology reports of examination carried out at the Visoko Mortuary on the remains exhumed at the Kevljani mass grave site, 17 documents (ICTY No. D000-0222); (160) Electronic copies of pathology reports of examination carried out at the Visoko Mortuary on the remains exhumed at the Kevljani mass grave site, 16 documents (ICTY No. D000-0223); (161) Electronic copies of pathology reports of examination carried out at the Visoko Mortuary on the remains exhumed at the Kevljani mass grave site, 24 documents (ICTY No. D000-0224); (162) Electronic copies of pathology reports of examination carried out at the Visoko Mortuary on the remains exhumed at the Kevljani mass grave site, 23 documents (ICTY No. D000-0225); (163) Electronic copies of pathology reports of examination carried out at the Visoko Mortuary on the remains exhumed at the Kevljani mass grave site, 10 documents (ICTY No. D000-0226); (164) Electronic copies of pathology reports of examination carried

out at the Visoko Mortuary on the remains exhumed at the Kevljani mass grave site, 18 documents (ICTY No. D000-0227); (165) Electronic copies of pathology reports of examination carried out at the Visoko Mortuary on the remains exhumed at the Kevljani mass grave site, 24 documents (ICTY No. D000-0228); (166) Electronic copies of pathology reports of examination carried out at the Visoko Mortuary on the remains exhumed at the Kevljani mass grave site, 4 documents (ICTY No. D000-0229); (167) Redak Grave Site, Report of the Chief Pathologist, ICTY Operations in Bosnia-Herzegovina, 2000 Season, 15 February 2001, Richard Right, Emeritus Professor of Anthropology, University of Sydney (ICTY No. D000-0595); (168) Redak 1 mass grave site – 3D image of the bodies in the grave, including 3D image program (ICTY No. D000-0596); (169) One electronic folder containing 5313 documents – primary evidence related to exhumation (photographs, autopsy reports, maps, lists of exhumed bodies); (170) Documents from CD ROM marked „Stari Kevljani Mass Grave, Exhumation, Preparation for Autopsy“, Bihać Ministry of the Interior, 430 photographs (ICTY No. D000-1661). Following, from numbers 28 through 31, are the also photographs included in this CD ROM; (171) Bodies and artifacts on site, 719 photographs (ICTY No. D000-1661); (172) Bodies in bags prior to washing, 484 photographs (ICTY No. D000-1661); (173) Artifacts recovered in the course of washing, 154 photographs (ICTY No. D000-1661); (174) Photographs taken at the Jakarina Kosa exhumation site, 439 photographs, ICTY (ICTY No. D000-0757); (175) Part 1 of video entitled „Aerials Exhumation Sites, 16 April 2002“ and including suspected mass grave sites at Gornja Plitska (Kotor Varoš), Tomašica (Prijedor) and Benkovac (Prijedor), SFOR (ICTY No. V000-3882); (176) Part 2 of video entitled „Aerials Exhumation Sites, 16 April 2002“ and including suspected mass grave sites at Gornja Plitska (Kotor Varoš), Tomašica (Prijedor) and Benkovac (Prijedor), SFOR (ICTY No. V000-3883); (177) Video footage of exhumation and excavation at Tomašica in Prijedor Municipality, ICTY (ICTY No. V000-3961); (178) Video footage of exhumation and excavation at Benkovac in Prijedor Municipality (ICTY No. V000-3962); (179) Video footage of exhumation and excavation at Pašinc Cemetery in Prijedor municipality (ICTY No. V000-3963); (180) Part 1 of video footage of exhumation and excavation at Redak 1 and 2 in Prijedor Municipality, ICTY (ICTY No. V000-3964); (181) Part 2 of video footage of exhumation and excavation at Redak 1 and 2 in Prijedor Municipality, ICTY (ICTY No. V000-3965); (182) Annex G to the Amor Mašović report dated 9 January 2004 – video footage of exhumations at various grave sites (ICTY No. V000-4667); (183) Video footage related to exhumations in BiH, conducted at various locations, the original title is „Video film: Ekshumacije masovnih grobnica s nekoliko različitih lokaliteta“ (ICTY br. V000-6210); (184) Video footage of excavation and exhumation works at the Kevljani grave site, possibly June 1999 (ICTY No. V000-6211); (185) Video footage of exhumation material (ICTY No. V000-3893); (186) Video footage of exhumation material (ICTY No. V000-3894); (187) Video footage of exhumation material (ICTY No. V000-3895); (188) Video footage of exhumation material (ICTY No. V000-6278); (189) Video footage of exhumation material (ICTY No. V000-6279); (190) Video footage of exhumation material (ICTY No. V000-6280); (191) DVD of exhumation material containing color photographs of exhumed body parts, clothes and personal artifacts (ICTY No. X009-4467-X009-5464 and X011-1196-X011-1199); Color photographs of grave sites and possible locations of grave sites in

Gornja Plitska, Benkovac (Prijeđor) and Tomašica (Prijeđor) (ICTY No. X014-3005-X014-3092); 12 rolls of film regarding the exhumations at Tomašnica, Benkovac barracks, Harem Vrbanjce II, Gornja Plitksa 1, Gornja Plitska 2, Gornja Plitska 3 (ICTY No. X014-3272-X014-3282); 62 digital photographs of exhumations performed at Korićanske stijene on the Vlašić mountain between 15 and 21 May 2003 (ICTY No. X016-7065-X016-7126) and data with photographs from the mortuary in Sanski Most dated (ICTY No. X017-2211-X017-2763); (192) Lease Contract (Zlata Cikota); (193) ICTY Statement of the witness K034 from 2000, pg. 4, paragraph 5, 9-10; (194) Part of the transcript of the testimony of witness K027 in the Kvočka trial in 2000; (195) Two parts of the transcript of the testimony of witness K019 in Kvočka trial in 2000 and a part of transcript from the Sikirica trial from 2001; Statement given to the ICTY in 2002, pg. 3, paragraph 4 (ENG) and pg. 3, paragraph 5 (BHS); (196) Transcripts of the testimony of the witness Emir Beganović in the Kvočka trial dated 4 May 2000, pg. 1359/14 line through pg. 1360/12 line; pg. 1404/12 line through pg. 1406/19 line; pg. 1407/17 line through pg. 1416/15 line; pg. 1426/20 line through pg. 1430/18 line; pg. 1478/17 line through pg. 1482/25 line; pg. 1550/25 line through 1551/8 line; pg. 1555/2 through 19 line; pg. 1413/4 line through pg. 1416/15 line and pg. 1481/25 line through 1482/19 line; (197) Statement of witness K036 given to the ICTY in April 1996, pg. 3, paragraphs 2 and 3 (ENG and BHS); (198) Statement of witness K010 given to the ICTY in August 2000; Statement given in BiH in September 1994; Statement given in BiH in November 1994; Statement given in BiH in December 1995; Transcript from the Sikirica trial, 2001; (199) Transcript of the testimony of witness K07 in the Sikirica trial in 2001; Statement given to ICTY in March 2001; Statement given to ICTY in March 2002; unsigned notes of the ICTY OTP investigators dated June 1999; Official note of the investigator (undated); Statement given in BiH dated March 1993; Statement from BiH dated March 1999; (200) Excerpt from Instructions for the Work of the Municipal Crisis Staffs of the Serbian People, Government of the Serbian Republic of Bosnia and Herzegovina, 26 April 1992; (201) Memorandum by Prijeđor Public Security Station forwarding a Banja Luka Security Services Center order on treatment of prisoners-of-war and civilian, 21 August 1992; (202) Death certificate to the name of Igor Knežević; (203) List of men named Duško or Dušan Knežević who were members of the 43<sup>rd</sup> Motorized Brigade Prijeđor; (204) Census forms from the 1991 Census for all persons named Dušan or Duško Knežević in Prijeđor Municipality with maps indicating the place of residence for those born between 1950 and 1970; (205) Map of the town of Prijeđor and a certificate confirming that the name of the street “Šoše Mažara” in Prijeđor was changed to “Prote Matije Nenadovića”; (206) Testimony of Ismet Dizdarević.

In the course of the evidentiary proceedings, the Defense adduced the following documentary evidence:

(E-01) Document ERN SA 032086, excerpt from the agreement on division of functions between political parties in the SRBiH Ministry of the Interior; (E-02) Document ERN B0048007, Report of the Banja Luka Security Services Center of 15 April 1992; (E-03) Dispatch note of the Minister of the Interior of BiH, Alija Delimustafić No. 10-70 of 29 April 1992; (E-04) Dispatch note of the Commander of the Staff of the Territorial Defense of RBiH, Colonel Hasan Efendić No.

02/145-1 of 29 April 1992 and English translation of the same document; (E-05) Dispatch note of the Assistant Minister of the Interior of BiH Momčilo Mandić No. 02-24e82 of 31 March 1992; (E-06) Document ERN P0043151, dispatch note of the Prijedor Public Security Station No. 11-12-1873 of 30 April 1992; (E-07) Document ERN P0044255, dispatch note of the Banja Luka Security Services Center No. 11-92 of 10 April 1992; (E-08) Document ERN P 0044242, dispatch note of the Banja Luka Security Services Center No. 11-98 of 16 April 1992; (E-09) Document ERN P 0003932, distribution list for the previous dispatch note authored by the Chief of Staff of the Prijedor Public Security Station, Hasan Talundžić; (E-10) Document ERN P 0035097, excerpt from the Law on Internal Affairs of the Serb Republic of BiH (Official Gazette of SRBiH No. 18 of 29 June 1990, pg. 495); (E-11) Document ERN 00184324, excerpt from the Law on Internal Affairs of the Serb Republic of BiH (Official Gazette of Serb People in BiH No. 4 of 23 March 1992, pg. 79); (E-12) Document ERN 00633780, Decision to release persons from captivity, Prijedor Municipality Crisis Staff, dated 2 June 1992; (E-13, 14, 15, 16) 13- English version of page 6680 of the transcript of the testimony of Sivac Nusret of 30 July 2002; 14 - BCS version of the previous document; 15 - Document ERN 01050397 Decision of the Municipal Court in Sanski Most No. R- 139 of 25 March 1998, 16 – copy of the newspaper article titled „Ahmet Tatarević“ published on 23 January 2007; (E-17) Official document of the RS Ministry of the Interior, Police Station in Kozarska Dubica No. 10-1-11/02-234-55/07 of 10 April 2007; (E-18) Document ERN P0031426 – dispatch note of the Public Security Station Prijedor Chief Hasab Talundžić No. 11-12-3375/91 of 4 August 1991; (E-19) Document ERN P0031410- dispatch note of the SRBiH Ministry of the Interior No. 606 of 6 August 1991; (E-20) Document ERN 01137039- Rulebook on Internal Organization of the Republic Secretariat of Internal Affairs of SR BiH of 29 .1990; (E-21) Document ERN 00184860- Certificate of the Prijedor Municipal Organization of Red Cross to the name of Sivac Nusret; (E-22) Document ERN 00237034- Certificate of the Prijedor Municipal Organization of Red Cross to the name of Azedin Oklopčić; (E-23) Copy of the medical file of Sivac Nusret with the English translation- ICTY number of the document IT -98-30/1-Ap.11/3559; (E-24) excerpt from the book written by Doctor Duško Jakšić- RS- area, population, resources, Banja Luka, 1995, pg. 344, 345 and 348-351; (E-25) Document ERN 00792731- list of persons to be arrested by the Prijedor Public Security Station No. 203; (E-26) Document ERN 03061164 – BCS version, excerpt from the report of N. Sebire – for the needs of the OTP of the ICTY in The Hague; (E-27) Document – movement permit to the name of Duraj Sejdi, Prijedor Public Security Station No. 11-12-181 of 5 June 1992- BCS version; (E-28) English translation of the previous document; (E-29) Document- Decree on disbandment of the former Republic Staff of Territorial Defense No. 01-011-303/92 of 8 April 1992; (E-30) Prijedor- Ano Domini 1992 (testimonies and documents); (E-31) Document ERN P 0053540 and following numbers (BCS and English versions); (E-32) Mobilization call-ups of the RBiH Territorial Defense Staff Kozarac to the names of Softić Senad, Džonlagić Senad and Softić Nedžad from Kozarac; (E-33) Document ERN 00633185 – dispatch note of the Banja Luka Security Services Center for all Chiefs of public security stations, No. 11-01/01-OD-439 of 19 August 1992, about the need for a selection of POWs to be performed at Manjača; (E-34) Document ERN 00633308 – dispatch note of the Prijedor Public Security Station sent to the



Banja Luka Security Services Center, No. 11-12-2213 of 22 August 1992, about the selection and transfer of a group of prisoners from Manjača to Trnopolje; (E-35) Document of the Prijedor Police Station – Police Station Department Omarska, Report of the escort service; (E-36) ET 0149-9488 through 0149-9492, newspaper article "Morala sam reći svijetu" by Diane Taylor with photographs of Jasenko Rasol, BCS version; (E-37) English version of the previous newspapers article published in the magazine "Eve" titled "I had to tell The World", ERN 014948-0149492; (E-38) France-press Agency news of 24 June 1993, English version, ERN 00035638-00035640; (E-39) English version of the previous document ERN 00968375-00968376; (E-40,41,42) 40- interview with K027 published in "Dnevni avaz", 17 February 2007 on pg. 6; 41- newspaper article "Visit to Omarska on 6 August" published in „Dnevni avaz“ on 30 July 2006; 42- newspaper article „Victims' voices do not travel far“ published in „Oslobođenje" on 26 June 2006; (E-43,44,45,46,47,48,49,50) 43 - ERN P0056486 – Decision ordering Muhamed Čehajić into custody, Prijedor Public Security Station No. 11-12/02-KU-210/92 of 3 June 1992; 44 - ERN P0056490 – document of the Prijedor Public Security Station No. 11-12/02-KU-210/92 of 3 June 1992 – information of VPD on bringing Muhamed Čehajić into custody; 45 – ERN 00415329 – document of the Basic Court in Prijedor No. Ki-82/92 of 3 June 1992 addressed to the District Prison in Banja Luka – information on custody ordered for Čehajić Muhamed and Avdić Mehmed; 46 – ERN P0056639 – Decision of the Basic Court in Prijedor No. Kv.20/92 of 7 July 1992 on extension of custody of the accused Alić Bahrija and others; 47 – ERN 00415300 – Decision of the Basic Court in Prijedor No. Kv.21/92 of 21 July 1992 on extension of custody of the accused Sikirić Ferid; 48 – ERN 00415282 – 0045287 : Number of the Public Prosecutor's Office KT-195/92 of 4 June 1992 – Motion to conduct investigation against Mujadžić Mirsad, Čehajić Muhamed and others; 49 – ERN 02199378 – Decision of the Basic Court in Prijedor of 18 August 1992 by which the Basic Court in Prijedor declared the lack of subject-matter jurisdiction in the criminal case against the accused Mujadžić and others and referred the case to the Military Prosecutor's Office, that is, the Military Court; 50 – ERN 02074855-02074863, Indictment of the Military Prosecutor's Office in Banja Luka against Mujadžić Mirsad and others dated September 1992, received in the Military Court in Banja Luka and entered under number IK-3/92 on 11 September 1992; (E-51) statement of the witness given to the OTP in The Hague on 10 December 1997, BIH 00014696 – 00014701; (E-52) Statement of the witness given to the OTP in The Hague on 7 March 2003 L0094459 – 00014701; (E-53) Notes of the investigator of the OTP in The Hague of 1 July 2002 regarding a witness interview; (E-54) The following pages of the transcript of the testimony before the ICTY of 23 January 2003 in the case number IT-99-36-T "Prosecutor vs. Brđanin" : 13671, 13672, 13673, 13674, 13685, 13696, 13698; (E-55) the following pages of the transcript of the testimony before the ICTY on 5 and 06 September 2000 in the case number IT-98-30-T "Prosecutor vs. Kvočka and others": 4730, 4731, 4736, 4741,4751, 4764, 4765, 4766, 4767, 4783, 4784, 4819, 4820, 4821, 4840, 4841, 4843, 4844, 4847, 4848, 4859; (E-56) the following pages of the transcript of the testimony of Emir Beganović before the ICTY at The Hague on 19 July 1996 in the case number IT-94-I-T „Prosecutor vs. Duško Tadić": 2490, 2494, 2501, 2495, 2508, 2514; (E-57) the following pages of the transcript of the testimony of Emir Beganović before the ICTY in The Hague on 4 May 2000 in the case number IT-

98-30/1-T "Prosecutor vs. Kvočka and others": 1378,1386, 1387, 1388, 1390, 1404, 1405, 1413, 1414,1429, 1430, 1342, 1343, 1356, 1357, 1362, 1371, 1372, 1373,1374, 1375; (E-58,59) 58 – Dispatch note of the Prijedor Public Security Center No. 14-02/4-BJ of 24 August – excerpt from the criminal records concerning Beganović Emir, BCS version; 59 - English version of the previous document ERN 5028 and 5029; (E-60) ERN 01060693-01060699, statement of Azedin Oklopčić given to police authorities of the Kingdom of Sweden on 19 March 1993. This document also bears the marking BIH 00014859; (E-61,62) 61 - ERN P0054859-0054850, hospital protocol for Emir Zjakić from Prijedor dated 30 May 1992, 62 – English translation of the hospital protocol; (E-63,64) 63 – a hospital document – Discharge summary issued by the hospital to the name of Nišić Miroslav, a police officer in reserve; 64 – English translation of the previous document; (E-65) document of the Prijedor Police Station – Police Station Department Omarska int. number 79/92 of 11 June 1992 addressed to the Chief of Staff of the Prijedor Public Security Station; (E-66) ERN 03062830, excerpt from the Report of N. Sebire, pg. 48 concerning Ramadanović Safet and Ganić Sulejman; (E-67) ERN 03064884, notes of the OTP investigators Hans Elvebro and Kapila Waideratn of 26 September 1998 from their meeting with the witness Đešević Izet and the photo identification; (E-68,69) 68 – ERN 03501299-035012300, OTP document titled „declaration" on authenticity of the previous document signed by Mazahar Inayat, OTP investigator, English version; 69 – BCS version of the previous document; (E-70) ERN 03074951-03050763, excerpt from the report of N. Sebire- paragraph 47(6), ordinal number 34, Islamović Nedžad; (E-71) ERN P0050761-0050763, Handwritten list of persons who need to be issued the entry passes for the Collection and Remand Center Omarska; (E-72,73) 72 – the following pages of the transcript of the testimony of witness Velić Maruf before the ICTY on 26 September 2000 in the case "Prosecutor vs. Kvočka and others" : 5709, 5711; 73 – the following pages of the transcript of the testimony of Velić Maruf before the ICTY on 26 September 2000 in the case „Prosecutor vs. Kvočka and others" : 5680 – 5687 (the testimony about the death of Šolaja Miroslav); (E-74) ERN 01067887, layout of the ground floor of the administrative building (on which the witness identified „the garage“ during cross-examination; (E-75) the following pages of the transcript of the testimony of K022 before the ICTY in the case "Prosecutor vs. Kvočka and others": 2623, 2624 and 2658; (E-76) ERN 03052960, excerpt from the Report of N. Sebire, "Annex 2" under ordinal number 761 – information on the hardship and death of Medunjanin Haris, BCS version; (E-77,78) 77- ERN 03074835, excerpt from the Report of N. Sebire under number 39 – information on death and exhumation of Medunjanin Haris from Kozarac, BCS version; 78- ERN 01847979, excerpt from the Report of N. Sebire, paragraph 44(1) under number 39 – information on death and exhumation of Medunjanin Haris, English version; (E-79) ERN 02014991-02014992, Document of the Municipal Court in Sanski Most No. R-477/98 of 22 September 1998 – Decision establishing death of Medunjanin Haris and Medunjanin Bećir; (E-80) ERN 03084190-03084191, English version of the previous document; (E-81) Official document of the Swedish authorities dated 18 April 2001 sent to the ICTY in The Hague, English version, in which it reads that the conversation between the Swedish police and the witness was not audio recorded (recorded); (E-82) layout of the ground floor of the administrative building of the Iron Ore Mine Omarska with the markings of the room A19 in which witness K019,

according to her testimony, was raped twice during the day; (E-83) pages 6229 and 6230 of the testimony before the ICTY in the case "Prosecutor vs. Kvočka and others", the part referring to the alleged rapes which took place during the day, which is when according to the witness, the rapes took place in the room marked as B1 (the room on the upper floor of the administrative building); (E-84,85) 84-written statement of the witness given to the OTP in The Hague, to the investigator Susan Tucker on 2 and 3 March 2000 and the statement given to the OTP in The Hague, to the investigator Tariq Malik on 1 November 2002; 85 – written statement of the witness given to the Swedish police authorities in the town of Kalmar on 10 May 1993; (E-86) ERN 01105512 – 01105529 – statement of Jakupović Sakib given to the OTP dated 29 and 30 October 1994; (E-87) ERN 01035462 – 01035479 – statement of Jakupović Sakib to the OTP in The Hague, given to the investigator Tariq Malik on 5 September 200; (E-88,89) 88 – ERN P0053545 and P053546, mobilization lists of the Territorial Defense Staff of the RBiH in Kozarac (ordinal number 55. Jakupović Sakib); 89 – English version of the previous document, ICTY IT-98-30/1-A p.40/3559 bis; (E-90) Record of examination of the witness Jakupović Sakib, Prosecutor's Office of BiH No. KT-RZ-143/06 of 26 July 2006; (E-91) Photographs of residential facilities in Petrov Gaj (presented to the witness Jakupović Sakib during cross-examination); (E-92) transcript of the testimony of the prosecution witness K042 in its entirety before the ICTY in the case "Prosecutor vs. Kvočka and others" of 5 June 2008; (E-93,94,95,96) 93 – ERN P00054849 – hospital report for Zjakić Emir from Prijedor dated 30 May 1992, that is, 11 June 1992; 94 – English version of the previous document; 95 – Document – hospital discharge summary for Nišić Miroslav, No. 5031 in the case before the ICTY in The Hague No. IT-98-30/1-T; 96 – English version of the previous document; (E-97) ERN 00249979 – 00249980 – statement given by K042 to Swedish police authorities on 3 February 1995 on which the witness wrote "Trnopolje Kuruzović Slobodan Faca" (in the cross-examination the witness denied that it was his handwriting); (E-98) ERN 00962318, BCS version of the previous document; (E-99) ERN 01097404, Photograph on which the witness marked certain positions regarding certain persons in relation to the incident involving Hadžalić Rizah; (E-100) Diagram of the ground floor of the administrative building with notes entered by witness K042, admitted as evidence in the ICTY case "Prosecutor vs. Kvočka and others" dated 5 June 2000 under number 3/77-A (Defense requested this exhibit to be obtained from the ICTY), (E-101) ERN B0084759, Document of the Security Body of the Prijedor Tactical Group No. 239/92 of 24 June 1992 about the capturing of Jakupović Azur, Hodžić Hajro, Adamović Darko and Softić Senad; (E -102) ICTY Judgment No. IT-98-30/1-T of 2 November 2001 in the case „Prosecutor vs. Miroslav Kvočka and others" BCS version; (E-103) Rulebook on the manner of work of the public security service 1977; (E-104) Rulebook on internal organization of the RS Ministry of the Interior in the imminent threat of war and war, September 1992; (E-105) Rulebook on disciplinary liability of the employees of the RS Ministry of the Interior; (E-106) ERN 01816880 dispatch of the Chief of Staff of the BiH Army Supreme Command, Sefer Halilović, strictly confidential 02/1513-209 of 23 December 1992 in reference to the status of Mirza Mujadžić; (E-107) dispatch of the Commander of the RBiH Territorial Defense Staff, Colonel Hasan Efendić of 29 April 1992 on the commencement of combat activities; (E-108) Minutes of the 84 Session of the RBiH Presidency held on 6 May 1992 (E-109) ERN 00633885 –

special report of the US Embassy in Belgrade of 9 November 1992; (E-110) ERN P0003541-0003545 – Prijedor Public Security Station, employees performance report for February 1992; (E-111) ERN 0034301-0034306 – National Security Sector Banja Luka: „The most recent information obtained through activities aimed at shedding light on the attack on the military patrol, paramilitary activities and illegal arming of people in the territory of Kozarac, Prijedor and other neighboring settlements, June 1992; (E-112) ERN 00633256 – document of the Prijedor Public Security Station No. 11-12/16 of 13 June 1992 sent by the Chief of the Prijedor Public Security Station, Simo Drljača, to the Chief of the Banja Luka Security Services Center about the unlawful conduct of the members of the Special Police Unit; (E-113) ERN B0043531-0043541- Information of the Public Security Station Banja Luka of 5 May 1993 No. 11-2-str.pov.-79/93 about the recorded unlawful activities of the Special purposes police unit of the Banja Luka Security Services Center; (E-114) ERN 00951920, cover page of the daily paper "Glas" Banja Luka, number 6600, issue for 28 April 1992, the text about the decision passed by the Assembly of the Autonomous Region Krajina to form the unit; (E-115) ERN 00951922 – cover page of the daily paper "Glas" Banja Luka, No. 6601, issue for 29 April 1992, a short interview with the Chief of the Banja Luka Security Services Center, Stojan Župljanin, about the formation of the unit; (E-116) ERN 00951947 – cover page and page 3 of the daily paper "Glas" Banja Luka, No. 6686, issue for 23 June 1992, text under title "Special forces members against police"; (E-117) ERN00633182 – dispatch of the Banja Luka Security Services Center No: 11-1/01-50 of 14 August 1992 conveying the order of the RS Ministry of the Interior strictly confidential No. 10-17 of 27 July 1992 about the disbandment of the special police units in the security services centers; (E-118) ERN 02969857 – 02969871 - /Decree of the RS President on presentation of decorations; (E-119) Order of the Chief of the Prijedor Public Security Station Simo Drljača on the establishment of the Collection and Remand Center Omarska, 31 May 1992; (E-120) ERN 00792696 – List of persons to be apprehended to the Collection and Remand Center Omarska; (E-121) ERN 00792712 – List of persons to be apprehended to the Collection and Remand Center Omarska; (E-122) ERN 00792632 – List of persons to be apprehended to the Collection and Remand Center Omarska; (E-123) ERN 00792691 – List of persons to be apprehended to the Collection and Remand Center Omarska; (E-124) ERN 00792698 – 00792699 – List of persons to be apprehended to the Collection and Remand Center Omarska; (E-125) ERN 00792717 – Official note of the Prijedor Public Security Station of 9 July 1992; (E-126) ICTY No. ET-0042-2310-0042-2310, non-English version of the certificate for Ibro Beglerbegović No. 11-12-30 of 24 July 1992, signed by the Chief of the Prijedor Public Security Station Simo Drljača and the translated version of the same document; (E-127) Prijedor Police Station – Police Station Department Omarska, proposed plan of the security service, 7 June 1992; (E-128) Police Station Department Omarska, Official note concerning the reserve police forces officer Govedar Zdravko, 17 June 1992; (E-129) Police Station Prijedor – Police Station Department Omarska, Report on the escort service dated 21 August 1992; (E-130) Police Station Department Omarska, Official note on the situation in Donji Jakupovići dated 5 October 1992; (E-131) Decision of the Municipal Secretariat of Internal Affairs Prijedor No. 13-120-2/171 of 1 July 1983 deploying Željko Mejakić to the duties of a police officer; (E-132) Decision of the Municipal Secretariat of Internal Affairs Prijedor No. 13-

120-28/83 of 11 December 1984 deploying Željko Mejakić to the duties of the 2<sup>nd</sup> patrol sector leader; (E-133) Decision of the Municipal Secretariat of Internal Affairs Prijedor No. 010-33-345 of 1 June 1987; (E-134) Decision of the RS Minister of the Interior No. 09-120-11/465 of 27 October 1993 deploying Željko Mejakić to the duties of the patrol sector leader in the Prijedor Public Security Station- Police Station Prijedor – Police Station Department Omarska; (E-135) Military Booklet of Željko Mejakić No. BC 142710 (fcc with the presentation of the original); (E-136) Organizational chart of the internal affairs bodies for different periods; (E-137) ERN 00634046-7, 01903324-5, P0042953 and L003799 – correspondence between the Chief of the Prijedor Public Security Station Simo Drljača and the Bishop of Banja Luka dr. Franjo Komarica (exhibit P96-1 in the case before the ICTY "Prosecutor vs. Kvočka and others"; (E-138) ERN 00841608 – Order of the 1<sup>st</sup> Krajiški Corps on re-subordination of police members to the military command, strictly confidential No. 397-430/1-92 of 6 September 1992; (E-139) ERN P0054978 – excerpt from the protocol of the hospital in Prijedor from number 3621 through 3630 of 1 July 1992; (E-140) ERN P00387839-0037845 – List of members of the Assembly of the SDS Municipal Board Prijedor, December 1992; (E-141) ERN P0029404-0029414 – Report of the Prijedor Public Security Station No. 11-17-01-1 of 8 June 1993 – information on the violation of the public law and order and the commission of criminal offences by the members of the RS Army; (E-142) ERN 01312025-01312033 – Report of the 4<sup>th</sup> Tactic Group Command to the Commander of the 1<sup>st</sup> Krajiški Corps of 8 December 1992; (E-143) ERN B0098095-0098097 – Banja Luka Security Services Center, National Security Sector – Report dated 20 January 1993 on the work of the Prijedor Detachment of the NSS between 1 January and 31 December 1992; (E-145) ICTY document IT-97-24-PT p. 4216 BCS version with the English translation – document of the RS Army General Staff No. 02/2-47 of 22 January 1993, information on the recommendations for promotions; (E-146) Collection of 32 photographs of the Collective and Investigation Center Omarska; (E-147) Official Gazette of the Autonomous Region of Krajina – general mobilization call-up, 5 June 1992, ERN 00633799; (E-148) Crisis Staff of the Prijedor Municipality – appeal to respond to mobilization, 2 June 1992 ERN 00633799; (E-149) Prijedor Public Security Station, Police Station Prijedor – Motion to initiate minor offence proceedings against Predrag Muzgonja, 27 July 1992 ERN P0055408; (E-150) Medical Center "Dr. Mladen Stojanović" Prijedor – Patient's log for 1992 ERN P0054742-0054781; (E-151) Duty Roster of the Police Station Prijedor, 18 May 1991 ERN B0032257; (E-152) Banja Luka Security Services Center – Report on reception centers in municipalities of 14 August 1992; (E-153) Letter of the local community of Marička (executive board), handwritten, sent on 19 April 1992 to the Public Security Station Prijedor concerning the recruitment of the police reserve forces; (E-154) Order appointing Jusuf Ramić the commander of the Patriotic League for the territory of Prijedor, 21 May 1992 ERN 00798790; (E-155) Prijedor Public Security Station – disciplinary proceedings against Modić and Badnjević, 18 November 1990, ERN 00587498; (E-156) N. Sebire "Additional report- exhumations and proof of death – Prijedor Municipality", 28 August 2002; (E-157) N. Sebire "Exhumations and proof of death – Prijedor Municipality" Annexes dated 3 September 2002; (E-158) ERN P0033043, handwritten list of employees of the Police Station Prijedor; (E-159) ERN 00451835, dispatch of the Chief of the Banja Luka Security Services

Center; (E-160) ERN 00633164, conclusions of the meeting of the Council of the Banja Luka Security Services Center of 6 May 1992; (E-161) ERN 00633185, POWs selection – dispatch note; (E-162) ERN 00633237, dispatch of the Banja Luka Security Services Center of 28 May 1992; (E-163) ERN 00633298, dispatch of the Prijedor Public Security Station of 5 August 1992; (E-164) ERN 00633308, dispatch of the Prijedor Public Security Station of 22 August 1992; (E-165) ERN 01470203, interview with Simo Drljača; (E-166) ERN 0323-8844, Order of the Minister of the RS Ministry of the Interior 23 July 1992; (E-167) ERN L0058413, Muharem Nezirević and Miloš Aprilski, resignation letters; (E-168) ERN P0022353, dispatch of the SR BiH Ministry of the Interior dated 26 January 1992; (E-169) ERN SA040286, official note, obika in the Croatian Ministry of the Interior; (E-170) ERN 00792732, list of persons to be apprehended; (E-171) ERN 00792737, list of persons to be apprehended; (E-172) document confirming the death of Beširević Mirzet; (E-173) document confirming the death of Čaušević Hasega; (E-174) Photograph of collectors; (E-175) mobilization call-ups of the reserve police force; (E-176) ERN P0031386, 1991 mobilization – dispatch note; (E-177) ERN P0031387, 1991 mobilization – dispatch note; (E-178) ERN P0031385, 1991 mobilization – dispatch; (E-179) the sketches of the rooms in the detention camp with dimensions; (E-180) ERN 00386813, Military Prosecutor's Office (Vaso Marinković); (E-181) Musić Nermina, movement permit; (E-182) Excerpt from the book written by Besim Ibišević, training of the Croatian Ministry of the Interior; (E-183) ERN 00633842, division power in Prijedor; (E-184) "Kozarski vjesnik", cover page of the issue for 17 July 1992; (E-185) ERN 00633259, list of killed people; (E-186) ERN 00633812, dispatch note – the army refuses to take over the security; (E-187) ERN P0044563, information authored by Željko Mejakić of 1995; (E-188) ERN 02010899, Anđić Radomir – statement; (E-189) ERN P005 0660, a request for the passes to be issued to journalists; (E-190) Report of the Ministry of the Interior of 12 March 1992; (E-191) ERN P0003409 performance report for the period between 16 June and 15 July 1992 Police Station Prijedor; (E-192) ERN P0003426, performance report for June 1992 Police Station Prijedor; (E-193) English translation of the previous document; (E-194) ERN P0048684, certificate issued by the Colonel Majstorović; (E-195) ERN 00633258, official note – Ranko Kovačević aka Bato; (E-196) ERN 00633809, Report of the Public Security Station for the Prijedor Crisis Staff; (E-197) Diagram of the ground floor of the administrative building with the notes entered by witness K042, admitted as evidence in the ICTY case „Prosecutor vs. Kvočka and others”, date 5 June 2000, under number 3/77-A; (E-198) two slip notes that Idriz Jakupović wrote in the camp for the members of his family; (E-199) Information on paramilitary formations in the territory of the Serb Republic of BiH, 28 July 1992; (E-200) Decision on retirement of Bujčić Milutin; (E-201) Excerpt from the statement of witness K040; (E-202) excerpt from the transcript of the testimony of KO37 before the ICTY of 2 October 2000; (E-203) ERN 00962233, excerpt from the notes of the OTP investigator about the testimony of KO42; (E-204) excerpt from the transcript of the testimony of witness Y before the ICTY of 5 July 2000 (witness KO9)(E-205) ERN 00878921 document of the Municipal Court in Sanski Most sent to AID for the needs of the Tribunal in The Hague (in reference to witness KO23) and the excerpt from his statement given to the OTP; (E-206) excerpt from the statement of witness KO41 of 27-28 August 1998; (E-207) Excerpt from the statement of the witness Tomić Anto; (E-208) excerpt from the

statement of the witness (KO17); (E-209) excerpt from the statement of the witness (KO35); (E-210) transcript of the testimony of Dr. Gajić Slobodan before the ICTY in The Hague on a CD; (E-211) transcript of the testimony of Novak Pušac before the ICTY in The Hague on a CD; (E-212) transcript of the testimony of Dragan Velaula before the ICTY in The Hague on a CD; (E-213) Decision appointing Željko Mejakić the deputy commander of the PS Omarska, 1994; (E-214) ERN P0003176-P0003180, Report on work during public holidays, Police Station Prijedor; (E-215) copy of the military booklet of Gruban Momčilo No. 148671; (E-216) copy of the employment record card of Gruban Momčilo No. 63562; (E-217) excerpt from the Register of Births for Gruban Mlađan; (E-218) Statement of Puškar Mustafa: 02-1794 dated 20 July 1998 given to AID, Sector Sanski Most; (E-219) Statement of witness Beganović Emir given to the ICTY; Statement of witness Beganović Emir given to the OG Gornji Rahić dated 8 March 1993; (E-220) Statement of witness Baltić Asmir given to the ICTY; (E-221) Statement of Baltić Asmir given to the BiH Ministry of the Interior, Sector of the State Security Service Zenica, No. 02-51/03 of 14 January 1994; (E-222) copy of the Criminal Code of the SFRY with the commentary, 1977 issue; (E-223) notes on evidence authored by the Prosecutor's Office of BiH, drafts, in relation to witness Džešević Izet, dated 1 August 2006; (E-224) Statement of Oklopčić Azedin given to the ICTY and the transcript; (E-225) transcript of the testimony of witness K019 before the ICTY; (E-226) Photograph of Omarska marked as MG1; (E-227) Photograph of Omarska marked as MG2; (E-228) Photograph of Omarska marked as MG3 with the marks denoting buildings; (E-229) Photograph of Omarska marked as MG4; (E-230) Photograph of Omarska marked as MG5 depicting persons resembling police officers; (E-231) Photograph of Omarska marked as MG6 depicting persons running; (E-232) Photograph of Omarska marked as MG7 depicting persons resembling camp inmates; (E-233) excerpt from the Register of Births for Knežević Duško born on 17 June 1967 issued by Prijedor Municipality; (E-234) excerpt from the Register of Births for Knežević Duško born on 29 November 1967, issued by Prijedor Municipality; (E-235) excerpt from the Register of Births for Knežević Duško, born on 29 November 1967, issued by the Prijedor Municipality; (E-236) Letter of the RS Ministry of the Interior, Banja Luka Public Security Center, Public Security Station Prijedor No. 10-1-10/05-207- of 25 February 2003 sent to Attorney Bajić Slavica; (E-237) Certificate of the Catering Commercial School in Prijedor confirming that Knežević Duško successfully passed the exams administered by this school outside regular classes and obtained the calling of a waiter; (E-238) Official note dated 7 June 1992; (E-239) Official note dated 21 June 1992, lieutenant; (E-240) Employment record card for the Accused Duško Knežević; (E-241) excerpt from the patient's log (copy).

## **Procedural decisions of the Court**

### **Decisions on witness protection**

The Court granted protective measures to the majority of the witnesses at their request and upon the reasoned motion of the Prosecutor's Office and after taking notice of the views of the Defense, pursuant to the Law on the Protection of Witnesses under Threat and Vulnerable Witnesses (Law on the Protection of Witnesses). In the majority of the cases protective measures had previously been ordered by the ICTY as those witnesses had given evidence in other cases. The Court was obliged to abide by those protective measures. The majority of the witnesses testified under the granted pseudonyms, and the majority of them testified in the courtroom without voice or image distortion, in which cases the public was present in the courtroom. Upon the reasoned motion of the Prosecution, the Court granted additional image protection measure to a certain number of witnesses, hence the public were shifted to another room where they could follow the trial via audio-streaming only without witnesses' images being shown, while at the same time the Panel, the Accused, their Defense Counsel and the Prosecutor were following the trial directly. At certain stages of the examination-in-chief, in which answers to specific questions could have jeopardized the confidentiality of the witnesses' identities, the trial was closed to the public, pursuant to Article 235 of the CPC B-H, especially when a witness was being asked questions of a personal nature or concerning a particular event. In a certain number of cases, the Court granted the Prosecution motion to grant pseudonyms to the witnesses who had not been granted that protective measure at the trials before the Hague Tribunal, taking into account the witnesses' realistic fear for their own and their families' safety. In other words, the circumstances for many of those witnesses had changed in the meantime and they made a decision to return to their pre-war places, so they either restored their estates in the Prijedor Municipality area or have been visiting them regularly, while some of the witnesses stated that their families had already returned and been living in the area. In addition, these witnesses had previously testified before The Hague Tribunal, and testifying before the Court in Sarajevo caused an additional fear and burden to them, especially due to the proximity of the crime scene. Reviewing the balance between a witness' right to the protection of private life and the right of the general public to accurate and timely information, and noting that the exclusion of the public was an exception to the rule of public nature of proceedings, the Court deemed that the exclusion of the public would bring about the desired goal as long as detrimental consequences for the witness could be prevented, while public information would be made possible in another, more acceptable way.

With respect to the witnesses who were granted pseudonyms and who also requested to testify without the presence of the public, the Court, at their request and upon the reasoned motion, that is, response of the parties and the Defense Counsel, applied Article 235 of the CPC B-H and closed the trial to the public completely during the whole course of these witnesses' examination. This strongest protective measure turned out to be necessary in rare cases only, due to the specific matters in the witnesses' testimonies that could have clearly indicated the said witnesses' identities.

Therefore, in addition to the protective measure of granting pseudonyms to the witnesses who testified before this Court, the Court, in accordance with the legal provisions, also granted the aforementioned additional protective measures, reviewing



each specific situation individually and deeming it necessary to increase the pseudonym measure, as the fundamental measure of witness identity protection. In the opinion of the Court, the aforementioned protective measures, granted pursuant to the Law on the Protection of Witnesses, actually served the goal of completely applying the pseudonym measure and achieving its purpose, that is, preventing disclosure of witnesses' identities. In each specific case the Court reviewed the reasons of necessity of applying a particular protective measure pursuant to Article 4 of the Law on the Protection of Witnesses. Anyway, the Defense did not oppose the granting of additional protective measures if their goal was the protection of a witness' identity, which was the primary goal with respect to each and every witness. This Panel is of the view that all the aforementioned measures were necessary for the sake of protecting witnesses' interests, given the fact that protective measures requests were filed by the witnesses personally because their testifying in the case at hand made them fear for their own and the safety of their families whom they visit on a regular basis, or by the witnesses who returned to the Prijedor Municipality area, that is, for the sake of the witnesses' property safety. That was particularly necessary because some of the witnesses received certain threats which, in view of the Court, additionally justifies ordering the aforementioned protective measures, although the existence of specific threats and intimidation is not a necessary precondition for granting protective measures. In other words, these are primarily vulnerable witnesses who have been severely physically or mentally traumatized by the events surrounding the criminal offense, as well as witnesses under threat who requested certain protective measures because of reasonable grounds to fear that danger for their personal safety or the safety of their families was likely to result from their testimony. The Court was guided by the provisions set forth in Article 3(1) and (3) of the Law on the Protection of Witnesses and, therefore, granted the aforementioned measures to the witnesses, being of the view that it did not violate the rights of the Accused to a public and fair trial, that is, the equality of arms. In each case when a more stringent protective measure was applied to a particular witness, the Court had previously established that the same purpose could not be achieved with a more lenient measure.

Finally, in each aforementioned situation the Accused and their Defense Counsel were informed of the identities of the protected witnesses and the complete contents of their statements.

### **Decision on exception from the direct presentation of evidence**

The Prosecutor's Office of B-H requested in its Motion No. KT-RZ-91/06 of 2 November 2007 that parts of the testimonies of witnesses Abdulah Brkić, Sifeta Sušić, K012, K021, K031, Edin Ganić and Ismet Dizdarević be excepted from the direct presentation of evidence and that the records of these witnesses' depositions at the investigation stage, and the transcripts of their testimony before the ICTY be introduced and used as evidence in the proceedings at hand. The Prosecutor's Office based this request on the provisions of Article 273(2) of the CPC B-H, as read with Article 11 of the Law on the Protection of Witnesses under Threat and Vulnerable Witnesses, and Article 5(1) and 7 of the Law on Transfer.

The Court applied Article 273 of the CPC B-H and granted the witnesses' previous written depositions given in the proceedings before the ICTY or the investigation stage, provided they were used in direct or cross examination.

The Court also granted the aforementioned Prosecution motion, pursuant to Article 273(2) of the CPC B-H, and accepted the depositions, that is, testimonies of witnesses Ismet Dizdarević, Abdulah Brkić, Sifeta Sušić, Edin Ganić, and witnesses K012, K021 and K031, as these persons' coming to the Court was impossible or made considerably difficult for important reasons. As far as all these witnesses are concerned, prior to the admission of their previous depositions, that is, testimonies, it was established that the Witness Support Office of The Registry of the Court of B-H had tried to make contact with these witnesses concerning their testifying, that the witnesses had not been accessible to the Court or able to attend the trial and testify before the Court of B-H for different reasons, of which the Witness Support Office reported. It was established that witness Ismet Dizdarević had died, which follows from the Death Certificate No. 04-202-1-6920/2007 of 29 November 2007, issued by the Prijedor Municipality Registry Office, hence his attendance was impossible. All the aforementioned witnesses, except witness Ismet Dizdarević who has died, refused to testify before this Court, so, given the impossibility of undertaking certain legal measures to secure their presence before the Court of B-H, it was impossible to secure their testifying (the witnesses being abroad). That is why, in this Court's opinion, the legal preconditions for the application of Article 273(2) of the CPC B-H providing a possibility of exception from the direct presentation of evidence, have been met. Having in mind the fact that these persons have serious mental and emotional problems, originating from their traumatic experience in the camp, and that they are vulnerable witnesses, the Court finds that, in addition to Article 273(2) of the CPC B-H, Article 11 of the Law on Protection of Witnesses (Exceptions from the direct presentation of evidence) also justifies the admission of the witnesses' depositions, that is, testimonies, and finds that these persons would be exposed to significant emotional distress by testifying at the main trial. In addition, Article 3 of the Law on Transfer sets forth that the evidence collected in accordance with the ICTY Statute and Rules of Procedure and Evidence may be used in proceedings before courts in Bosnia and Herzegovina, while Article 7 allows for the witness testimonies given to the ICTY personnel during investigations to be read out in proceedings in Bosnia and Herzegovina. The cited provisions lead to the conclusion that it is necessary in certain situations to make an exception from the direct presentation of evidence, pursuant to Article 273(2) of the CPC B-H, especially given that Article 5(1) of the Law on Transfer sets forth that records of depositions of witnesses made before the ICTY shall be admissible before the courts in B-H provided that they are relevant to a fact at issue. In the opinion of the Court, the testimonies, that is, depositions of the aforementioned witnesses contain relevant facts for certain issues and certain events about which the witnesses testified, especially because these witnesses' testimonies were corroborated by the testimonies of other witnesses who were cross-examined before this Court. In addition to this, the Court considered those testimonies to be reliable, given the procedure and manner in which they were obtained, irrespective of the impossibility of cross-examining the witnesses in the case at hand since they were cross-examined in another trial before the ICTY and, given that, as has been said already, these testimonies were corroborated by the testimonies of the witnesses examined before this Court whom the Defense had an opportunity to cross-examine.

## **Decisions on the use of video-link**

For technical reasons, the Court examined witnesses Enes Crljenković and Ante Tomić and four witnesses who testified under pseudonyms via video-link, which was made possible by the authorities of the countries where the said witnesses live, by the application of the European Convention on Mutual Assistance in Criminal Matters and the Second Additional Protocol to the Convention.

These witnesses, who expressed willingness to testify in the case at hand, were not able to travel to Bosnia and Herzegovina and personally attend and testify before this Court for justified reasons, medical and family ones alike. It was made possible to the Defense, the Prosecution and the Court to directly- and cross-examine the witnesses without hindrance and thus to directly follow the witnesses' testimonies owing to direct transmission of image and sound. Therefore, in the opinion of the Court, giving evidence via video-link without the witnesses being directly present in the courtroom in no way diminished the relevancy and credibility of the contents of the testimonies, especially given the fact that in all the aforementioned cases the identity of each and every witness was established in a reliable way and that every witnesses took an oath.

## **Decision on judicial notice of established facts**

By the Decision No. X-KRN-06/200 of 22 August 2007, this Panel partially granted the Motion of the Prosecutor's Office of B-H for judicial notice of facts established in ICTY judgments. Pursuant to Article 4 of the Law on Transfer, the Court accepted the facts established by the respective ICTY Trial Panels in the cases as follows: Prosecutor v. Duško Tadić, Prosecutor v. Miroslav Kvočka et al., Prosecutor v. Milomir Stakić and Prosecutor v. Radoslav Brđanin.

The Court accepted as established the following facts:

With respect to the general information on the organization of the Socialist Federal Republic of Yugoslavia (SFRY) and events in its territory in the 1990-1992 period, the Court accepted the following facts:

1. Under the 1946 Yugoslav Constitution, the SFRY was divided into six republics – Serbia, Croatia, Slovenia, Bosnia and Herzegovina, Macedonia, and Montenegro. The population of Bosnia and Herzegovina, more so than any other republic of the former Yugoslavia, had been multiethnic for centuries, with Serbs, Croats, and Muslims as the largest ethnic groups. (ICTY Kvočka Judgment, para. 9);
2. In 1990, the first multi-party elections were held in each of the republics, resulting in the election of strongly nationalist parties that, in turn, heralded the break-up of the federation. In Bosnia and Herzegovina, these parties were the Muslim Party of Democratic Action (SDA), the Serb Democratic Party (SDS), and the Croat Democratic Union (HDZ). (ICTY Kvočka Judgment, para. 10);
3. On 25 June 1991, Slovenia and Croatia declared their independence from the SFRY. (ICTY Kvočka Judgment, para. 10);

4. In September 1991, several Serb Autonomous Regions in Bosnia and Herzegovina were proclaimed. One of these, the Serb Autonomous Region of Krajina (ARK), consisted of the Banja Luka region and surrounding municipalities; however the Prijedor municipality, in which the SDA held a small majority, did not join the Autonomous Region. (ICTY Kvočka Judgment, para. 11);

6. 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" ("Variant A and B Instructions"). These instructions 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"). The stated purpose of the Variant A and B Instructions was "to carry out the results of the plebiscite at which the Serbian people in Bosnia and Herzegovina decided to live in a single state" and to "increase mobility and readiness for the defence of the interests of the Serbian people". (ICTY Brđanin Judgment, para. 69);

7. 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. (ICTY Brđanin Judgment, para. 70);

8. The Republic of Serbian People of Bosnia and Herzegovina (later to become the Republika Srpska) had been declared by the Serbs on 9 January 1992, and was slated to come into force upon formal international recognition of the Republic of Bosnia and Herzegovina. (ICTY Kvočka Judgment, para. 10);

9. It was composed of so-called Serbian autonomous regions and districts, which included the ARK. (ICTY Brđanin Judgment, para. 71);

10. In Bosnia and Herzegovina, a referendum on independence held in February 1992 was opposed by the Bosnian Serbs; an overwhelming majority abstained from voting. Nonetheless, Bosnia and Herzegovina declared independence in March 1992. That independence was recognized by the European Community and the United States of America in April 1992. (ICTY Kvočka Judgment, para. 10).

With respect to importance of Prijedor Municipality, the Court accepted as established the following facts:

12. [The opština (municipality) of Prijedor is located in north-western Bosnia and Herzegovina.] (ICTY Tadić Judgment, para. 55);

13. Opština [(municipality)] of Prijedor ... includes the town of Prijedor and the town of Kozarac some 10 kilometres to its east. (ICTY Tadić Judgment, para. 55);

14. Opština Prijedor was significant to the Serbs because of its location as part of the land corridor that linked the Serb-dominated area in the Croatian Krajina to the west with Serbia and Montenegro to the east and south. (ICTY Tadić Judgment, para. 127).

With respect to the facts related to Prijedor Municipality before the takeover, the Court accepted as established the following facts:

15. Before the take-over opština Prijedor was ethnically a relatively mixed area: in 1991 ... Muslims were the majority in the opština; out of a total population of 112,000, 49,700 (44%) were Muslims and about 40,000 (42.5%) Serbs, with the remainder made up of Croats (5.6%), Yugoslavs (5.7%) and aliens (2.2%). (ICTY Tadić Judgment, para. 128; See also ICTY Stakić Judgment, para. 51);

16. Prior to the outbreak of war the various ethnic groups in the opština lived harmoniously together, with only limited signs of division. (Tadić Judgment, para. 129);

17. Such tension as existed was exacerbated by the use of propaganda and political manoeuvres. (Tadić Judgment, para. 130; See also Brđanin Judgment, paras. 80, 82);

18. The Prijedor Municipal Assembly, for which elections were held in November 1990, comprised a total of 90 seats, with opština Prijedor divided into five electoral units. Each party had a total of 90 candidates on the ballot. In the outcome the SDA won 30 seats, the SDS 28, the HDZ 2 and 30 seats went to other parties: the so-called opposition parties, namely the Social Democratic, the Liberal Alliance, and the Reformist parties. (Tadić Judgment, para. 132; See also Stakić Judgment, para. 49);

19. [A]ccording to the SDA, if the election results were followed it would be entitled to 50 percent of the appointed positions with the SDS and HDZ entitled to the remaining 50 percent. The SDS, however, insisted upon 50 percent of the seats for itself. (Tadić Judgment, para. 132);

20. That agreement was implemented at the Municipal Assembly of Prijedor in January 1991. Velibor Ostojić, then acting Minister for Information in the Government of the Republic of Bosnia and Herzegovina and one of Radovan Karadžić's confidants, was present at that session to help mediate the agreement. (Tadić Judgment, para. 132);

21. Once implemented, difficulties arose between the SDA and the SDS over the allocation of important government posts, although it was agreed that both the Mayor of Prijedor and the Chief of Police would be from the SDA. (Tadić Judgment, para. 133);

22. In Prijedor the SDS surreptitiously established a separate Serbian Assembly at the direction of the Central SDS ... as well as a separate police force and security unit ... This occurred about six-months before the takeover of the town of Prijedor... (Tadić Judgment, para. 134);

23. The SDS wanted to remain with Serbia as part of Yugoslavia, emphasising that all Serbs should remain in one state. Because of this disagreement with the non-Serbs, who wanted to withdraw from the federation, the SDS proposed a division of opština Prijedor. (Tadić Judgment, para. 136).

With respect to the circumstances surrounding the takeover of Prijedor on 30 April 1992, the Court accepted as established the following facts:

25. On 30 April 1992 the SDS conducted a bloodless take-over of the town of Prijedor with the aid of the military and police forces. (Tadić Judgment, para. 137; See also Stakić Judgment, para. 74, and Brđanin Judgment, para. 104);

26. The actual take-over was conducted in the early hours of the morning when armed Serbs took up positions at checkpoints all over Prijedor, with soldiers and snipers on the roofs of the main buildings. (Tadić Judgment, para. 137);

29. JNA soldiers, wearing a variety of uniforms, occupied all of the prominent institutions such as the radio station, medical centre and bank. They entered buildings, declared that they had taken power and announced their decision to rename opština Prijedor "Srpska opština Prijedor". (Tadić Judgment, para. 137);

30. A local Crisis Staff was established ("Prijedor Crisis Staff") which implemented a number of decisions made by the ARK Crisis Staff. (Tadić Judgment, para. 139);

31. ... [C]ontrol was immediately taken of the two local media sources: Radio Prijedor and the newspaper Kozarski Vjesnik... (Tadić Judgment, para. 139);

32. ... and thereafter their principal function became the dissemination of propaganda. (Tadić Judgment, para. 139);

33. ... Serb nationalist propaganda intensified. (Tadić Judgment, para. 93);

34. The "need for the awakening of the Serb people" was stressed and derogatory remarks against non-Serbs increased. (Tadić Judgment, para. 93);

35. Calls were also made at that time for the surrender of weapons which, although addressed to the population at large, were only enforced in respect to Muslims and Croats... (Tadić Judgment, para. 139);

36. At the same time the mobilization of Serbs allowed for the distribution of weapons to the Serb population. (Tadić Judgment, para. 139).

With respect to the events in Prijedor Municipality in April – September 1992, the Court accepted as established the following facts:

38. On 12 May 1992, the 16th session of the Assembly of the Serbian People in Bosnia and Herzegovina was held in Banja Luka. At the session Radovan Karadžić outlined the six strategic goals of the Bosnian Serb leadership in Bosnia and Herzegovina. ... The first two strategic goals read as follows:

- "The first such goal is separation from the other two national communities – separation of states. Separation from those who are our enemies and who have used every opportunity, especially in this century, to attack us, and who would

continue with such practices if we were to continue to stay together in the same state."

- "The second strategic goal, it seems to me, is a corridor between Semberija and Krajina. That is something for which we may be forced to sacrifice something here and there, but is of the utmost strategic importance for the Serbian people, because it integrates the Serbian lands, not only of Serbian Bosnia and Herzegovina, but it integrates Serbian Bosnia and Herzegovina with Serbian Krajina and Serbian Krajina with Serbian Bosnia and Herzegovina and Serbia. So, that is a strategic goal which has been placed high on the priority list, which we have to achieve because Krajina, Bosnian Krajina, Serbian Krajina, or the alliance of Serbian states is not feasible if we fail to secure that corridor, which will integrate us, which will provide us unimpeded flow from one part of our state to another." (Stakić Judgment, paras. 41-42);

41. After the takeover ... SDS leaders assumed positions in the municipal government, and legally elected Muslim and Croat politicians were forcibly removed. Other leading SDS members were installed in strategic positions throughout the municipality. (Stakić Judgment, para. 473; See also Tadić Judgment, para. 150);

42. ... [I]n the days and months after the takeover in Prijedor, many non-Serbs were dismissed from their jobs. Indeed, only an extremely small percentage of Muslims and Croats were able to continue working. (Stakić Judgment, para. 307; See also Stakić Judgment, para. 125, and Tadić Judgment, para. 150);

43. ... Bosnian Muslims who had lived their whole lives in the municipality of Prijedor were expelled from their homes..., their houses were marked for destruction, and in many cases were destroyed along with mosques and Catholic churches. (Stakić Judgment, para. 544; See also Stakić Judgment, paras. 545-546);

44. ... [There was] widespread looting of Muslim homes in the municipality [of Prijedor]. (Stakić Judgment, para. 294);

45. Travel outside of the [Prijedor] opština for non-Serbs was prevented and within the opština severely restricted by means of a curfew and checkpoints. (Tadić Judgment, para. 465; See also Tadić Judgment, para. 150);

46. Daily searches were conducted in almost every apartment inhabited by non-Serbs... (Tadić Judgment, para. 465);

47. ... [M]ost of the non-Serb population in the Municipality of Prijedor was directly affected [by the events that took place]. (Stakić Judgment, para. 627);

49. ... [T]he Serb military forces had the overwhelming power as compared to the modest resistance forces of the non-Serbs. (Stakić Judgment, para. 627);

50. After the take-over of the town of Prijedor and before the attack on Kozarac, continuous references were made by Serbs on the police radio about destroying mosques and everything that belonged to the "balijas", a derogatory term for Muslims, as well as the need to destroy the "balijas" themselves. (Tadić Judgment, para. 153);

51. ... [T]he attacks on Hambarine, and the ones that followed in the broader Brdo region, coupled with the arrests, detention and deportation of citizens that came next, were primarily directed against the non-Serb civilian population in the Municipality of Prijedor. (Stakić Judgment, para. 627; See also Stakić Judgment, para. 629);

52. ... [T]housands of citizens of Prijedor municipality passed through one or more of the three main detention camps, Omarska, Keraterm and Trnopolje, established in the towns of Omarska, Prijedor and Trnopolje respectively. (Stakić Judgment, para. 630);

53. Those who remained were required to wear white armbands to distinguish themselves and were continuously subject to harassment, beatings and worse, with terror tactics being common. Non-Serbs in opština Prijedor were subjected to gross abuses... (Tadić Judgment, para. 466);

54. [M]any people were killed during the attacks by the Bosnian Serb army on predominantly Bosnian Muslim villages and towns throughout the Prijedor municipality and several massacres of Muslims took place. (Stakić Judgment, para. 544; See also Stakić Judgment, paras. 545-546, 629).

With respect to the attacks upon Hambarine and Kozarac in May 1992, the Court accepted as established the following facts:

66. As a result of the increased tensions between the various ethnic communities, checkpoints were established and run by the different groups. (Tadić Judgment, para. 140; See also Stakić Judgment, para. 129);

67. One Muslim checkpoint was located at Hambarine and it was an incident that occurred there on 22 May 1992 that provided a pretext for the attack by Serb forces on that outlying area. (Tadić Judgment, para. 140; See also Stakić Judgment, para. 130);

68. . . . [T]he Muslim checkpoint personnel opened fire first. (Stakić Judgment, para. 130; See also Brđanin Judgment, para. 401);

69. Following the incident the Prijedor Crisis Staff issued an ultimatum on Radio Prijedor for the residents of Hambarine and the surrounding villages to surrender to the Prijedor authorities the men who had manned the checkpoint as well as all weapons. The ultimatum warned that failure to do so by noon the following day would result in an attack on Hambarine. (Tadić Judgment, para. 140; See also Stakić Judgment, para. 131, and Brđanin Judgment, paras. 104, 401);

70. The Hambarine authorities decided not to comply with the terms of the ultimatum and, following its expiration, Hambarine was attacked. (Tadić Judgment, para. 140; See also Stakić Judgment, para. 132);

71. After several hours of shelling by artillery, armed Serb forces entered the area supported by tanks and other weaponry and after a brief period of intermittent fighting local leaders collected and surrendered most of the weapons. (Tadić Judgment, para. 140; See also Stakić Judgment, para. 132);



72. The TO tried to defend the village, but the residents were forced to flee to other villages or to the Kurevo woods to escape the shelling. (Stakić Judgment, para. 133);

73. By this time many of the inhabitants had already fled to other Muslim or Croat-dominated areas, heading north to other villages or south to a forested area which was also shelled. (Tadić Judgment, para. 141);

74. A number of the residents eventually returned to Hambarine, by then under Serb control, although only temporarily because on 20 July 1992 the last major cleansing in the opština occurred with the removal of approximately 20,000 non-Serbs in Hambarine and nearby Ljubija. (Tadić Judgment, para. 141);

75. ... [D]uring the onslaught on Hambarine, at least three civilians died. (Brđanin Judgment, para. 401);

76. At least 50 houses along the Hambarine-Prijedor road were damaged or destroyed by the Serb armed forces. (Stakić Judgment, para. 291);

77. ... [T]he mosque in Hambarine was shelled during the attack on Hambarine. (Stakić Judgment, para. 297);

78. The area of Kozarac, surrounding Kozarac town, comprises several villages, including Kamičani and Kozaruša, Sušici, Brđani, Babići. (Stakić Judgment, para. 139);

79. After the take-over of Prijedor tension developed between the new Serb authorities and Kozarac, which contained a large concentration of the Muslim population of opština Prijedor. Approximately 27,000 non-Serb individuals lived in the larger Kozarac area and of the 4,000 inhabitants of Kozarac town, 90 percent were Muslim. (Tadić Judgment, para.142; See also Kvočka Judgment, para. 13);

80. As a result of this tension ethnically mixed checkpoints were supplemented with, and eventually replaced by, Serb checkpoints which were erected in various locations throughout the Kozarac area, as well as unofficial guard posts established by armed Muslim citizens. (Tadić Judgment, para. 142);

81. As of 21 May 1992, the Serb inhabitants of Kozarac started to leave the town. (Stakić Judgment, para. 141);

82. On 22 May 1992 telephone lines were disconnected and a blockade of Kozarac was instituted, rendering movement into and out of Kozarac extremely difficult. (Tadić Judgment, para. 143);

83. An ultimatum was addressed to the TO in Kozarac, requiring the Kozarac TO and police to pledge their loyalty and recognize their subordination to the new authorities in Srpska opština Prijedor, as well as to surrender all weapons. (Tadić Judgment, para. 143; See also Stakić Judgment, para. 141);

84. Following the ultimatum, negotiations took place between the Muslim and the Serb sides which were unsuccessful. (Stakić Judgment, para. 141);

85. ... [T]he Serb army was already positioned around the Kozarac area beforehand, and ... an overwhelming force of around 6,700 Serb soldiers was already prepared to encounter only 1,500-2,000 Muslims without heavy weapons. (Stakić Judgment, para. 157);

86. Around 2 p.m. on 24 May 1992, after the expiration of the ultimatum at noon and an announcement on Radio Prijedor, Kozarac was attacked. The attack began with heavy shelling, followed by the advance of tanks and infantry. After the shelling the Serb infantry entered Kozarac, and began setting houses on fire one after another. (Tadić Judgment, para. 143; See also Stakić Judgment, para. 142);

87. Houses were looted and destroyed on both sides of the road leading to the centre of town [of Kozarac]... [T]he destruction was not the result of war operations, rather, houses were deliberately destroyed after the attack, mostly through arson. (Stakić Judgment, para. 287);

88. After the attack, the houses had been not only destroyed, but leveled to the ground using heavy machinery. (Stakić Judgment, para. 145);

89. Muslim and Croat houses in Kozarac were targeted for destruction, while Serb houses were spared. (Stakić Judgment, para. 288);

90. In the attack on Kozarac care was taken to try to avoid damage to Serb property. ... [U]nlike the mosque, the Serbian Orthodox church survived the attack and subsequent destruction. (Tadić Judgment, para. 144);

91. ... [T]he Mutnik mosque in Kozarac was destroyed by Serbs [in May/June 1992]. (Stakić Judgment, para. 299);

92. The attack continued until 26 May 1992 when it was agreed that the people should leave the territory of Kozarac. (Stakić Judgment, para. 143);

93. During the attack the civilian population had sought shelter in various locations and, as the Serb infantry entered Kozarac, requiring people to leave their shelters, long columns of civilians were formed and taken to locations where they were gathered and separated. (Tadić Judgment, para. 146; See also Stakić Judgment, para. 143);

94. A large number of Muslim citizens of these areas who did not succeed in fleeing in the face of the assaults were rounded up, taken into custody and detained in one of the three camps... (Kvočka Judgment, para. 13);

95. [S]ubject to some exceptions, the men were taken either to the Keraterm or Omarska camps and the women and elderly to the Trnopolje camp. (Tadić Judgment, para. 146);

96. ... [A]t least 80 Bosnian Muslim civilians were killed when Bosnian Serb soldiers and police entered the villages of the Kozarac area. (Brđanin Judgment, para. 403);

97. On 26 May 1992, pursuant to an agreement between the Kozarac police department and the Serbs, the wounded were evacuated from the town in an ambulance. However, before this agreement, no wounded had been allowed out of Kozarac. (Stakić Judgment, para. 146);

98. It was reported that by 28 May 1992 Kozarac was about 50 percent destroyed, with the remaining damage occurring in the period between June and August 1992. (Tadić Judgment, para. 143; See also Stakić Judgment, para. 287);

99. Throughout the opština mosques and other religious institutions were targeted for destruction and the property of Muslims and Croats, worth billions of dinar, was taken. (Tadić Judgment, para. 150);

100. Unlike Hambarine, the non-Serb population was not permitted to return to Kozarac after the attack and, subject to some exceptions, the men were taken either to the Keraterm or Omarska camps and the women and elderly to the Trnopolje camp. (Tadić Judgment, para. 146);

101. Eventually the few Serb inhabitants returned and Serbs displaced from other areas moved into Kozarac. (Tadić Judgment, para. 146);

103. ... Fatima Šahorić... and her family along with a number of neighbours had been sheltering in the basement of their house [in Kamičani] on 26 May 1992 when a group of soldiers arrived and asked them to surrender their weapons. Then a soldier fired a rifle-launched grenade into the basement and everyone, except Fatima, was killed. (Stakić Judgment, para. 253);

104. Dr. Idriz Merdžanić spoke with the commander of the [Trnopolje] camp, Slobodan Kuruzović, about collecting and burying the bodies. When granted permission, Fatima Šahorić and six others drove to Kamičani, where the house was located. They were accompanied by soldiers. All of the dead were Muslims and Fatima Šahorić was able to identify the following individuals from among them: Džamila Mujkanović and her brother, Mehmed Šahorić, Lutvija Forić and her son, Tofik, Šerifa Sahrić and Jusuf. (Stakić Judgment, para. 254);

With respect to the subsequent attacks in wider Kozarac Area, the Court accepted as established the following facts:

105. [In June 1992] the mosque in Kamičani was destroyed by Serbs... being set alight. (Stakić Judgment, para. 301);

106. ... [T]he village of Kozaruša, which had a majority Muslim population, was destroyed and... only Serb houses remained, for the most part, untouched. (Stakić Judgment, para. 289).

With respect to the attacks upon Briševo, the Court accepted as established the following facts:

107. The village of Briševo comprised approximately 120 houses and was inhabited almost exclusively by Croats. (Stakić Judgment, para. 284);

108. On 27 May in the morning hours, Briševo was shelled and as the day progressed the shells were complemented by artillery and infantry fire. The soldiers who participated in the attack wore JNA uniforms with red ribbons tied around their arms or attached to their helmets. 68 houses were partially or completely destroyed by fire during the attack. In addition, the soldiers looted various items from the houses, such as television sets, video recorders, radios and certain items of furniture. (Stakić Judgment, para. 284; See also Brđanin Judgment, para. 411);

109. In the early morning hours of 24 July 1992, Bosnian Serb military launched an attack on Briševo. Mortar shells landed on the houses, and the residents hid in cellars. The shelling continued throughout the day and, on the next day, infantry fire joined the artillery. On the evening of 25 July 1992, Bosnian Serb infantry entered Briševo. The soldiers wore JNA uniforms with red ribbons around their arms or helmets. ... (Brđanin Judgment, para. 412);

110. 77 Croats were killed in the village between 24 and 26 July 1992, including three Croats in a maize field and four others at the edge of the woods near Briševo. (Stakić Judgment, para. 269);

111. ... [O]n 29 July 1992 the Catholic church in Briševo was destroyed. (Stakić Judgment, para. 303);

With respect to the attack upon Brdo region, the Court accepted as established the following facts:

112. Brdo comprises the villages of Bišćani, Rizvanovići, Rakovčani, Hambarine, Čarakovo and Zecovi. (Stakić Judgment, para. 204);

113. Bišćani was a village and a local commune comprising the following hamlets: Mrkalji, Hegići, Ravine, Duratovići, Kadići, Alagići and Čemernica. On 20 July 1992, Serb forces attacked this village. (Stakić Judgment, para. 256).

With respect to the attack upon Bišćani, the Court accepted as established the following facts:

114. ... [A]fter the shelling of the village of Bišćani, Serb soldiers looted the Muslim houses while the owners were still inside. ... Muslim houses were found destroyed with traces of fire. (Stakić Judgment, para. 290; See also Stakić Judgment, para. 258);

116. ... [T]he mosque in Bišćani was also destroyed. (Stakić Judgment, para. 302).

With respect to the attack upon Čarakovo, the Court accepted as established the following facts:

117. ... [T]he Muslim village of Čarakovo suffered extensive damage and destruction and ... houses were looted. The village of Čarakovo was attacked by Serb soldiers on 23 July 1992. The soldiers fired mortars and artillery at the fleeing population. (Stakić Judgment, para. 286);

118. Several people were killed. (Stakić Judgment, para. 267; See also Stakić Judgment, paras. 266, 268).

With respect to the attack upon Rizvanovići, the Court accepted as established the following facts:

119. At a date ... not state[d] precisely, in June-July 1992, shelling started at night on Rizvanovići village. (Stakić Judgment, para. 831);

120. ... [H]omes were destroyed and personal belongings looted in the attack on Rizvanovići, a predominantly Muslim village... [A]fter the cleansing of Rizvanovići, all the houses were ablaze. ... [V]aluable were looted in the days following the cleansing. (Stakić Judgment, para. 292);

121. Several men from the village of Rizvanovići were taken out by soldiers and have not been seen since. (Stakić Judgment, para. 197).

With respect to the attacks in Prijedor Town, the Court accepted as established the following facts:

122. Stari Grad was the oldest part of the town of Prijedor and, before the conflict, its residents were predominantly Muslim. (Stakić Judgment, para. 277);

123. After an unsuccessful attempt to regain control of the town of Prijedor on 30 May 1992 by a small group of poorly armed non-Serbs, non-Serbs in Prijedor were ordered to use sheets of white material to mark their homes and indicate that they surrendered. (Tadić Judgment, para. 151; See also Stakić Judgment, para. 128);

124. Serb soldiers and artillery encircled the old town ("Stari Grad") and inhabitants were forcibly removed from their homes and taken to the camps. (Stakić Judgment, para. 277);

125. Ultimately they were divided into two groups: one which consisted of men aged between 12 to 15 or 60 to 65, and one of women, children and elderly men. Generally the men were taken to the Keraterm and Omarska camps and the women to the Trnopolje camp. (Tadić Judgment, para. 151; See also Kvočka Judgment, paras. 14, 15);

126. Some individuals were arrested later in the summer on the basis of a pre-designated list of intellectuals and prominent members of society. These community leaders were routinely taken to the Prijedor police station and beaten. (Kvočka Judgment, para. 14);

127. ... [T]he Stari Grad section of the town of Prijedor, and in particular those houses and businesses belonging to Muslim residents, suffered extensive damage, looting and destruction. (Stakić Judgment, para. 276);

128. ... [T]wo mosques were already destroyed in May 1992, amongst them, the Čaršijska mosque. (Stakić Judgment, para. 298);

129. ... [T]he Prijedor mosque was destroyed on 28 August 1992 by Serbs. (Stakić Judgment, para. 305);

130. A group of ... [Serbs] entered the yard outside the main mosque in Prijedor and set it alight. (Stakić Judgment, para. 298);

131. ... [T]he Catholic church in Prijedor was blown up in the early hours of 28 August 1992 ... by a group of Serb soldiers and police. (Stakić Judgment, para. 304; See also Brđanin Judgment, para. 652).

With respect to forcible transfer and displacement, the Court accepted as established the following facts:

132. Throughout the period immediately after the takeover [of Prijedor], Dr. Stakić, in co-operation with the Chief of Police, Simo Drljača, and the most senior military figure in Prijedor, Colonel Vladimir Arsić, worked to strengthen and unify the military forces under Serb control. (Stakić Judgment, para. 479);

135. ... [A] large number of Muslims and Croats fled the territory of the Municipality of Prijedor [between about 30 April 1992 and 30 September 1992]. (Stakić Judgment, para. 322; See also Stakić Judgment, paras. 314, 601; Stakić Appeal Judgment, para. 310, and Brđanin Judgment, para. 159);

136. The exodus of the mainly non-Serb population from Prijedor started as early as 1991 but accelerated considerably in the run-up to the takeover. The mass departure reached a peak in the months after the takeover. Most people travelled on one of the daily convoys of buses and trucks leaving the territory. These convoys would depart from specified areas within the municipality of Prijedor and were also organised on a regular basis from the Trnopolje camp. (Stakić Judgment, para. 692);

137. ... [T]he Serb authorities organised and were responsible for escorting convoys out of Serb-controlled territory. (Stakić Judgment, para. 318).

With respect to the establishment of Omarska, Keraterm and Trnopolje Camps, the Court accepted as established the following facts:

140. ... [T]he camps were set up in conformity with a decision of the Prijedor civilian authorities... (Stakić Judgment, para. 821; See also Stakić Judgment, paras. 159-161, 477, and Brđanin Judgment, para. 159);

141. ... [T]he Crisis Staff ... determined who should be responsible for the running of those camps. (Stakić Judgment, para. 159)

142. Generally the camps were established and run either at the direction of, or in cooperation with, the Crisis Staffs, the armed forces and the police. (Tadić Judgment, para. 154).

With respect to the command structure of the Omarska Police Force, the Court accepted as established the following facts:

149. ... [T]he security of the local populace was entrusted to the police division of the Public Security Service, which was attached to the Ministry of Interior and was separate from the State Public Security Service. At the regional level, each police division was divided into police stations, which in turn were sub-divided into police station departments. (Kvočka Judgment, para. 334);

150. ... [T]he Omarska police station department grew to the status of a police station in April 1992, before the Prijedor take-over by the Serb authorities... (Kvočka Judgment, para. 338);

151. The commander of the police station before the take-over was Željko Mejakić, who replaced Milutin Bujčić when he retired in April 1992. (Kvočka Judgment, para. 336);

152. ... [S]hortly after Željko Mejakić was appointed commander of the police station, Kvočka was elevated to a de facto position of authority and influence in the Omarska police station. This position paralleled the function of a deputy commander or assistant commander, a slot that was justified by the increase in size of the station and which was not formally filled at that time. (Kvočka Judgment, para. 344).

The facts accepted by the Court as established relative to certain aspects of Omarska Camp:

With respect to the general information on Omarska Camp, the Court accepted as established the following facts:

154. The camp was in operation from 25 May 1992 until late August 1992 when the prisoners were transferred to Trnopolje and other camps. (Tadić Judgment, para. 155);

155. It was located at the former Ljubija iron-ore mine, situated some two kilometres to the south of Omarska village. (Tadić Judgment, para. 155);

156. Although efforts had already begun to set up the Omarska camp and staff and detainees began arriving around the 27th of May, the Prijedor Chief of Police, Simo Drljača, issued the official order to establish the camp on 31 May 1992. (Kvočka Judgment, para. 17);

159. With the arrival of the first detainees, permanent guard posts were established around the camp, and anti-personnel landmines were set up around the camp. (Stakić Judgment, para. 166).

With respect to the layout of Omarska Camp, the Court accepted as established the following facts:

160. The camp consisted of two large buildings, the hangar and the administrative building, and two smaller buildings, known as the "white house" and the "red house". (Tadić Judgment, para. 155);

161. The hangar was a large oblong structure, running north-south, along the eastern side of which were a number of roller doors leading into a large area extending the length of the building with the ground floor designed for the maintenance of heavy trucks and machinery used in the iron-ore mine. The western side of the hangar consisted of two floors of rooms, over 40 in all, extending over the whole north-south length of the building and occupying rather less than one half of the entire width of the hangar. Access to these rooms could be gained either from a door on the western side or, internally, from the large truck maintenance area described above. The bulk of the prisoners were housed in this building. (Tadić Judgment, para. 156; See also Kvočka Judgment, para. 46);

162. To the north of the hangar and separated from it by an open concreted area, known as the "pista", was the administration building, where prisoners ate and some were housed, with rooms upstairs where they were interrogated. (Tadić Judgment, para.156; See also Kvočka Judgment, para. 47);

164. To the west of the hangar building was a grassed area on the western side of which lay the "white house", a small rectangular single-storied building, having a central corridor with two rooms on each side and one small room at its end, not wider than the corridor itself. (Tadić Judgment, para. 156);

165. The small "red house" was on the same side as the "white house", and across from the end of the hangar building. (Tadić Judgment, para. 156).



With respect to detainees at Omarska, the Court accepted as established the following facts:

166. Omarska held as many as 3,000 prisoners at one time, primarily men, but also had at least 36 to 38 women. (Tadić Judgment, para. 155; See also Brđanin Judgment, para. 840, and Kvočka Judgment, para. 21);

167. With little exception, all were Muslims or Croats. (Tadić Judgment, para. 155; See also Brđanin Judgment, para. 840);

168. The only Serb prisoners sighted by any of the witnesses were said to have been there because they were on the side of the Muslims. (Tadić Judgment, para. 155);

169. Boys as young as 15 were seen in the early days of the camp, as well as some elderly people. (Kvočka Judgment, para. 21);

170. ... [M]entally impaired individuals were also detained at the camp. (Brđanin Judgment, para. 842);

171. Inmates were unofficially grouped into three categories. Category one comprised intellectuals and political leaders from the Bosnian Muslim and Bosnian Croat communities, who were earmarked for elimination. Persons who associated themselves with those from the first category would fall into the second category, and the third category encompassed detainees that were in the view of the Bosnian Serb authorities the least "guilty", and eventually were to be released. (Brđanin Judgment, para. 443; See also Brđanin Judgment, para. 843);

172. However, in practice, people from all three categories were kept detained in the camp. (Brđanin Judgment, para. 443).

With respect to detention facilities in Omarska, the Court accepted as established the following facts:

177. Prisoners were held in large numbers in very confined spaces, with little room either to sit or to lie down to sleep. (Tadić Judgment, para. 159);

186. Female detainees were held separately in the administrative building. (Stakić Judgment, para. 164; See also Brđanin Judgment, para. 841).

With respect to hygiene in Omarska, the Court accepted as established the following facts:

188. ... [T]he hygienic conditions and the medical care available in Omarska camp were grossly inadequate. (Kvočka Judgment, para. 67);

189. There were two toilet facilities in the hangar building for use by over a thousand detainees. ... In other locations, such as the garage in the administration building, there were no toilet facilities at all. (Kvočka Judgment, para. 58);

192. There were no effective washing facilities, and men and their clothes quickly became filthy and skin diseases were prevalent, as were acute cases of diarrhoea and dysentery. (Tadić Judgment, para. 161; See also Brđanin Judgment, para. 934).

With respect to food and water in Omarska, the Court accepted as established the following facts:

193. The detainees at Omarska had one meal a day. (Stakić Judgment, para. 168; See also Kvočka Judgment, para. 51, and Tadić Judgment, para. 160);

198. ... [D]etainees received poor quality food that was often rotten or inedible, caused by the high temperatures and sporadic electricity during the summer of 1992. The food was sorely inadequate in quantity. (Kvočka Judgment, para. 55; See also Stakić Judgment, para. 168);

202. The quantity of water supplied to the detainees was clearly inadequate. (Kvočka Judgment, para. 57);

205. By contrast, the camp personnel enjoyed proper food. (Brđanin Judgment, para. 932).

With respect to interrogations in Omarska, the Court accepted as established the following facts:

206. Prisoners were called out for interrogation, usually some days after their arrival, and would be taken by a guard to the first floor of the administration building; guards would beat and kick them as they went. (Tadić Judgment, para. 163);

207. Interrogations were carried out in the administration building by mixed teams of investigators from the army and the state and public security services in Banja Luka. (Kvočka Judgment, para. 68);

208. Some prisoners were very severely beaten during interrogation (...) (Tadić Judgment, para. 163; See also Stakić Judgment, para. 230);

211. No criminal report was ever filed against persons detained in the Omarska camp, nor were the detainees apprised of any concrete charges against them. (Stakić Judgment, para. 170).

With respect to the presence of outsiders in Omarska, the Court accepted as established the following facts:

213. In the evening, groups from outside the camp would appear, would call out particular prisoners from their rooms and attack them with a variety of sticks, iron bars or lengths of heavy electric cable. (Tadić Judgment, para. 164).

With respect to physical violence in Omarska, the Court accepted as established the following facts:

218. Intimidation, extortion, beatings, and torture were customary practices. (Kvočka Judgment, para. 45);

221. ... [T]he guards meted out harsh beatings to the non-Serb detainees on a routine basis. On account of the gross mistreatment, people were in a constant state of fear. Every night between 3 and 10 people were called out, some of whom were never seen again. (Stakić Judgment, para. 231);

226. Dead bodies of prisoners, lying in heaps on the grass near the "white house", were a not infrequent sight. (Tadić Judgment, para. 166);

227. Those bodies would be thrown out of the "white house" and later loaded into trucks and removed from the camp. (Tadić Judgment, para. 166);

229. The "red house" was another small building where prisoners were taken to be beaten and killed. (Tadić Judgment, para. 167; See also Tadić Judgment, para. 156, and Brđanin Judgment, para. 442);

236. Female detainees were subjected to various forms of sexual violence in Omarska camp. (Kvočka Judgment, para. 108; See also Brđanin Judgment, paras. 515-517).

With respect to Omarska at large, the Court accepted as established the following facts:

242. ... [H]undreds of detainees were killed or disappeared in the Omarska camp between the end of May and the end of August when the camp was finally closed. (Stakić Judgment, para. 220).

The facts accepted by the Court as established relative to certain aspects of Keraterm Camp:

With respect to the general information on Keraterm Camp, the Court accepted as established the following facts:

251. ... [Keraterm camp] was staffed by employees of the Prijedor SJB [(Public Security Service)] and the Prijedor Military Police. As in Omarska, interrogators also

consisted of members of the Banja Luka CSB [(Security Services Center)] and of the Banja Luka Corps. Sikirica was the camp commander. Nenad Banović, aka "Čupo", and Zoran Žigić, were amongst the guards. Damir Došen aka "Kajin" was amongst the shift commanders. (Brđanin Judgment, para. 849);

252. ... [T]he Keraterm factory was set up as a camp on or around 23/24 May 1992. (Stakić Judgment, para. 162; See also Tadić Judgment, para. 168);

253. The Keraterm camp, located on the eastern outskirts of Prijedor, was previously used as a ceramic tile factory. (Tadić Judgment, para. 168).

With respect to detainees in Keraterm, the Court accepted as established the following facts:

256. The detainees were mostly Muslims and Croats. (Stakić Judgment, para. 162; See also Kvočka Judgment, para. 111).

With respect to detention facilities and conditions in Keraterm, the Court accepted as established the following facts:

258. In Keraterm, detainees were held in four separate rooms known as rooms 1, 2, 3, and 4. (Kvočka Judgment, para. 112);

259. ... Room 2 being the largest and Room 3 the smallest. (Stakić Judgment, para. 162);

260. Conditions in Keraterm were atrocious; prisoners were crowded into its rooms, as many as 570 in one room, with barely space to lie down on the concrete floors. (Tadić Judgment, para. 169; See also Kvočka Judgment, para. 112).

The facts accepted by the Court as established relative to certain aspects of Trnopolje Camp:

With respect to the general information on Trnopolje Camp, the Court accepted as established the following facts:

291. The Trnopolje camp was located near the Kozarac station, on the Prijedor-Banja Luka railway line. (Tadić Judgment, para. 172);

292. The camp held thousands of prisoners, most of whom were older men and women and children. (Tadić Judgment, para. 172);

293. The 1,600 male detainees were held for approximately two to three months. (Brđanin Judgment, para. 940);

294. In the beginning, the Serb soldiers informed the inmates that they were being held there for their own protection against Muslim extremists. However, the camp actually proved to be rather a point where the civilian population, men, women and children, would be gathered, collected and then deported to other parts of Bosnia or elsewhere. (Tadić Judgment, para. 176);

295. Armed soldiers guarded the camp. The commander of the camp was Slobodan Kuruzović. (Tadić Judgment, para. 172);

296. ... and the guards were Bosnian Serb soldiers from Prijedor. (Brđanin Judgment, para. 449);

297. Trnopolje camp was officially closed down at the end of September 1992, but some of the detainees stayed there longer. (Brđanin Judgment, para. 450; See also Brđanin Judgment, para. 940).

With respect to detention facilities and conditions in Trnopolje Camp, the Court accepted as established the following facts:

298. The camp consisted of a two-storied former school building and what had been a municipal centre and attached theatre, known as the "dom". (Tadić Judgment, para. 173; See also Kvočka Judgment, para. 16);

299. An area of the camp was surrounded by barbed wire. (Tadić Judgment, para. 173);

301. Because of the lack of food and the insanitary conditions at the camp, the majority of inmates, one estimate is as high as 95 percent, suffered from dysentery. (Tadić Judgment, para. 177);

302. There was no running water at all, and only limited lavatory facilities. (Tadić Judgment, para. 177);

303. There was almost no water to drink, as only one pump existed for the whole camp. (Tadić Judgment, para. 177);

304. No food was supplied by the camp authorities at Trnopolje. (Tadić Judgment, para. 174).

With respect to physical violence in Trnopolje Camp, the Court accepted as established the following facts:

306. At Trnopolje there was no regular regime of interrogations or beatings, as in the other camps, but beatings and killings did occur. (Tadić Judgment, para. 175; See also Stakić Judgment, para. 225, 242, and Brđanin Judgment, para. 450);

307. The Serb soldiers used baseball bats, iron bars, rifle butts and their hands and feet or whatever they had at their disposal to beat the detainees. Individuals who were taken out for questioning would often return bruised or injured. (Stakić Judgment, para. 242);

308. Because [the Trnopolje] camp housed the largest number of women and girls, there were more rapes at this camp than at any other. (Tadić Judgment, para. 175);

309. Girls between the ages of 16 and 19 were at the greatest risk. (Tadić Judgment, para. 175);

310. During evenings, groups of soldiers would enter the [Trnopolje] camp, take out their victims from the dom building and rape them. (Tadić Judgment, para. 175; See also Brđanin Judgment, para. 514).

With respect to mass executions of Omarska, Keraterm and Trnopolje Camp detainees outside the Camps, the Court accepted as established the following facts:

313. Around late July 1992, 44 people were taken out of Omarska and put in a bus. They were told that they would be exchanged in the direction of Bosanska Krupa. They were never seen again. During the exhumation in Jama Lisac, 56 bodies were found. Most of them died from gunshot injuries. (Stakić Judgment, para. 210);

314. In the early morning of 5 August 1992 ... detainees from Keraterm who had been brought ... the previous day ... to the Omarska camp ... [a]t least 120 people ... were called out. They were lined up and put on to two buses which drove away towards Kozarac under escort... The corpses of some of those taken away on the buses were later found in Hrastova Glavica and identified. A large number of bodies, 126, were found in this area, which is about 30 kilometres away from Prijedor. In 121 of the cases, the forensic experts determined that the cause of death was gunshot wounds. (Stakić Judgment, paras. 211-212; See also Brđanin Judgment, para. 454);

315. When the camp in Omarska was closed down, detainees from that camp were transferred to Manjača camp. (Brđanin Judgment, para. 453);

316. One transport of prisoners took place on 6 August 1992. The journey lasted the whole day. After arrival at Manjača camp, detainees were made to spend the entire night in the locked bus... [D]uring the night, three men were called out from the bus by the Bosnian Serb policemen accompanying the transport. On the next day, the dead bodies of these three men were seen. (Brđanin Judgment, para. 453);

317. Between six and eight men who were taken in a bus from the Omarska camp to Manjača camp were killed outside the Manjača camp [on 6 August 1992]. (Stakić Judgment, para. 213);

318. On 21 August 1992, buses started to arrive in the Trnopolje camp and the detainees were told to board them. At this stage, there were very few women and children left in the camp, so it was mostly men who boarded the four buses... Buses proceeded towards Kozarac, where they were joined by four other buses which had been loaded in Tukovi

and eight lorries. The buses had been organised by the Serb authorities to transport people out of Prijedor into Muslim-held territory... The buses and lorries came to a halt near a creek. The passengers were ordered to leave the buses and line up outside. At that moment a truck appeared and the women and children were told to board it. Another truck arrived and departed with more detainees but left behind a number of people who had been at the Trnopolje camp and some residents of Kozarac. The prisoners were then ordered to line up and board two of the buses. There were approximately 100 people packed onto each bus. The bus[es] travelled for about another 10-15 minutes and then drew up on a road flanked on one side by a steep cliff and on the other by a deep gorge. The men were ordered to get out and walk towards the edge of the gorge where they were told to kneel down. Then the shooting began. Two soldiers went to the bottom of the gorge and shot people in the head. ... [T]he precise location where the massacre occurred ... is known as Korićanske Stijene. (Stakić Judgment, paras. 215-218).

The facts accepted by the Court as established relative to the detention facilities and executions other than in the three aforementioned camps:

With respect to detention and beating in the region of Miška Glava, the Court accepted as established the following facts:

319. A second attack on Hambarine occurred on or around 1 July 1992. ... [I]n Gomjenica ... the soldiers rounded up ... people and took them to the Zeger bridge. The soldiers started to kill people and threw their bodies into the Sana river, which was red with blood. Not all the men were killed; some were loaded onto buses and taken to the camps – Omarska and Keraterm... (Stakić Judgment, para. 255);

320. Some people who were fleeing the cleansing of Bišćani were trapped by Serb soldiers and taken to a command post at Miška Glava... The next morning they were called out, interrogated and beaten. This pattern continued for four or five days. (Stakić Judgment, para. 197; See also Stakić Judgment, para. 780);

321. Around 100 men were arrested in the woods near Kalajevo by men in JNA and reserve police uniform and taken to the Miška Glava dom (cultural club). They were detained together in cramped conditions. They spent three days and two nights there and during that time were given a single loaf of bread to share and very little water to drink. (Stakić Judgment, para. 198);

322. The secretary of the local commune had his office at the Miška Glava dom, which was staffed by the Territorial Defence. About 114 Bosnian Muslim detainees were locked up in the café therein. (Brđanin Judgment, para. 858);

323. At Miška Glava, detainees were beaten during interrogations by Bosnian Serb soldiers with fists and rifle butts. They suffered concussions, bleeding and heavy bruising. They were beaten in the presence of other detainees. (Brđanin Judgment, para. 859).

With respect to detention, beating and killings at the Ljubija Football Stadium, the Court accepted as established the following facts:

324. Around 25 July 1992 there was shooting and shelling around Ljubija lasting until around 16:00 when the shelling subsided slightly. Subsequently men were taken on buses to the football stadium in Ljubija. (Stakić Judgment, para. 270);

325. In July 1992, Bosnian Muslim civilians detained in Miška Glava were transferred to the Ljubija football stadium, located in Gornja Ljubija. Many civilians were already confined inside the stadium, guarded by Bosnian Serb policemen and members of an intervention platoon. (Brđanin Judgment, para. 413; See also Brđanin Judgment, paras. 860-861);

326. In July 1992, at the Ljubija football stadium, Bosnian Muslim prisoners were made to carry away the dead bodies of those Bosnian Muslims previously executed. One of them did not have a head, while another body had an eye hanging out and the head had been smashed in. (Brđanin Judgment, para. 509);

327. ... [S]erious beatings occurred at the Ljubija football stadium... Around 25 July 1992, civilians were taken on buses to the stadium in Ljubija. Detainees were ordered off the buses and some were made to run. As they ran past the bus driver they each received a blow. Most new arrivals were beaten and forced to look down. They were then lined against the wall in the stadium and ordered to bend down (forward at the waist). As the detainees were beaten "there was a stream of blood running along the wall." (Stakić Judgment, paras. 246, 247; See also Stakić Judgment, paras. 271, 780);

328. ...[S]ome of those who had been made to line up against a wall and withstand mistreatment at the hands of the soldiers were killed. Later, detainees were forced to assist in removing the bodies of the dead. There were between 10 and 15 bodies ... (Stakić Judgment, para. 271);

329. The mine pit in Ljubija was known as Jakarina Kosa. It was cordoned off by the Serbs and trucks could be heard during the night from the direction of the mine. There was also earth-moving equipment and a drill machine that was used to bore holes. One day there was a large explosion and the Serbs left. The locals were told to stay away from the area as it was mined. (Stakić Judgment, para. 273);

330. Both Nermin Karagić and Elvedin Nasić testified about the killing and burial of bodies in a place known locally as "Kipe". Both also managed to escape alive during the executions that took place at the site. According to Nermin Karagić approximately 50 people were killed. ... [A] year and a half later [Karagić] returned to the site in order to identify some of the bodies that had been exhumed. He was able to identify his father's body and a DNA test later confirmed that identification. (Stakić Judgment, para. 274).



With respect to abductions and killings in the region of Tomašica, the Court accepted as established the following facts:

331. Tomašica is a village south of Prijedor where, prior to the conflict, both Bosnian Croats and Bosnian Serbs lived. The latter formed a majority of the population. (Brđanin Judgment, para. 415);

332. On 2 December 1992, Bosnian Serb soldiers took male Bosnian Croat residents from Tomašica to the surrounding forests in order to cut wood. They stayed out for three consecutive days. On 5 December 1992, Mile Topalović, who was returning from the woods, was shot dead ... by Bosnian Serb soldiers ... (Brđanin Judgment, para. 415).

With respect to detention, beating and torture in the SUP building, the Court accepted as established the following facts:

333. ... [M]any people ... were taken to the SUP building in Prijedor and subjected to beatings. ... [T]hey had in common that all of them were non-Serbs...[S]evere beatings were ... committed in ... the SUP building... (Stakić Judgment, paras. 248, 780; See also Stakić Judgment, para. 199);

334. Bosnian Muslims and Bosnian Croats were detained at the Prijedor SUP, including a woman and an underage boy. (Brđanin Judgment, para. 862);

335. Detainees were beaten with metal objects by members of the intervention squad, composed of men from Prijedor. (Brđanin Judgment, para. 863);

336. One detainee had his temple bone fractured as a result of these beatings. (Brđanin Judgment, para. 863);

337. Detainees were also beaten during interrogation and humiliated. (Brđanin Judgment, para. 863);

338. Detainees were subjected to ethnic slurs. (Brđanin Judgment, para. 863);

339. All non-Serb men arrested and taken to the SUP were then bussed to either the Omarska camp or the Keraterm camp. (Kvočka Judgment, para. 15);

340. Women, children, and the elderly tended to be taken to the Trnopolje camp. (Kvočka Judgment, para. 15);

341. Prior to their transfer, they were forced to run a gauntlet of policemen. (Brđanin Judgment, para. 863).

With respect to detention in the JNA barracks in Prijedor, the Court accepted as established the following facts:

342. The JNA barracks in Prijedor, where at least 30 Bosnian Muslim men were detained, were staffed by the Bosnian Serb military. (Brđanin Judgment, para. 864).

In addition to this, by the aforesaid Decision the Court partially accepted the following proposed facts in the scope as indicated in the Annex to the Decision:

24. An atmosphere of mistrust, fear, and hatred was fuelled by the political tensions in the municipality from the second half of 1991 until the takeover of power on 30 April 1992. (Stakić Judgment, para. 688.) (Omitted: As a result of SDS-generated propaganda, the non-Serb population of the municipality of Prijedor was living in constant fear and uncertainty.) This fact concerns Prijedor Municipality before the takeover.

115. Approximately 30 to 40 people were killed by Serb forces with rifles and heavy weapons ... near a clay pit in the hamlet of Mrkalji. The soldiers were wearing camouflage uniforms and the victims were wearing civilian clothes. (Stakić Judgment, para. 256.) (Omitted: The civilian men had not provoked the soldiers and there were people running from the guns before the soldiers opened fire.) This fact concerns the attacks upon the Brdo region, the village of Bišćani.

163. The administration building was in part two-storied, the single-storied western portion containing a kitchen and eating area. (Tadić Judgment, para. 156; See also Kvočka Judgment, para. 47.) (Omitted: There were two small garages forming part of the extreme northern end of the building.) This fact concerns the layout of Omarska camp.

185. As many as 600 prisoners were made to sit or lie prone outdoors on the "pista" ...with machine-guns trained on them. (Tadić Judgment, para. 159.) (Omitted: ... some staying there continuously regardless of the weather for many days and nights on end, and occasionally for as long as a month...) This fact concerns the detention facilities in Omarska.

216. These groups appeared to be allowed free access to the camp (Tadić Judgment, para. 164.) (Omitted: ... and their visits greatly increased the atmosphere of terror which prevailed in the camp.) This fact concerns the outsiders in Omarska.

300. Trnopolje was, at times at least, an open prison but it was dangerous for inmates to be found outside, where they might be attacked by hostile groups in the neighbourhood ...(Tadić Judgment, para. 176) (Omitted: ... and this, in effect, amounted to imprisonment in the camp.) This fact concerns the detention facilities and conditions in Trnopolje Camp.

311. ... [M]any of the detainees at the ... Trnopolje camp... were subjected to serious mistreatment and abuse... (Stakić Judgment, para. 780.) (Omitted: ... amounting to torture.) This fact concerns physical violence in Trnopolje Camp.

The Court refused the facts No. 5, 11, 27, 28, 37, 39, 40, 48, 55-65, 102, 133, 134, 138, 139, 217, 222, 247, 254, 305 and 312 from the Prosecution Motion taking into account the criteria required for acceptance of a fact as established.

Article 4 of the Law on the Transfer of Cases reads: “At the request of a party or proprio motu, the courts, after hearing the parties, may decide to accept as proven those facts that are established by legally binding decisions in any other proceedings by the ICTY or to accept documentary evidence from proceedings of the ICTY relating to matters at issue in the current proceedings.” The Article affords the Court an opportunity to take advantage of previous ICTY findings in order to achieve judicial economy, whilst preserving the Accused’s rights to fair trial. This provision shares the same ratio as Rule 94 (B) of Rules of Procedure and Evidence of the ICTY, according to which: “At the request of a party or proprio motu, a Trial Chamber, after hearing the parties, may decide to take judicial notice of adjudicated facts (...) from other proceedings of the Tribunal related to matters at issue in the current proceedings”. The requirement of the Law on Transfer to hear the parties prior to rendering a decision has been met by offering the Defense an appropriate time to respond to the Prosecution Motions.

The general understanding of this instrument, as pointed out in the Court of BiH<sup>3</sup> and ICTY/ICTR<sup>4</sup> case law regarding an Established/Adjudicated Fact of which judicial notice has been taken, is that it creates a legal presumption by which the initial burden of production of evidence is shifted from the Prosecution to the Defense. By proposing a fact that was already established in a prior judgment but provides equally relevant information to the present case, the Prosecutor has met his initial burden of persuasion as to that particular fact.

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<sup>3</sup> Separate Decisions on Established Facts by Court of B-H Trial Panels:

Decision in the case against *Radovan Stanković*, Case No. X-KR-05/70, of 13 July 2006; Decision in the case against *Gojko Janković*, Case No. X-KR-05/161, of 4 August 2006; Decision in the case against *Miloš Stupar et al. (Kravica)*, Case No. X-KR-05/24, of 3 October 2006; Decision in the case against *Momčilo Mandić*, Case No. X-KR-05/58, of 5 February 2007; Decision in the case against *Krešo Lučić*, Case No. X-KR-06/298, of 27 March 2007.

Decisions on Established Facts included into Trial Verdicts:

Trial Verdict in the case against *Neđo Samardžić*, Case No. X-KR-05/49, of 7 April 2006, pp. 12-16 (in BCS version pp. 10-13); Trial Verdict in the case against *Dragoje Paunović*, Case No. X-KR-05/16, of 26 May 2006, p. 15 (in BCS version p. 13); Trial Verdict in the case against *Boban Šimšić*, Case No. X-KR-05/04, of 11 July 2006, para. 49; Trial Verdict in the case against *Marko Samardžija*, Case No. X-KR-05/07, of 3 November 2006, pp. 16-19 (in BCS version pp. 15-18); Trial Verdict in the case against *Radislav Ljubinac*, Case No. X-KR-05/154, of 8 March 2007, pp. 17-22 (in BCS version pp. 15-20).

Control of Trial Panel Decisions on Established Facts within Appeal Verdicts:

Appeal Verdict in the case against *Dragoje Paunović*, Case No. X-KRŽ-05/16, of 27 October 2006, p. 5 (in BCS version p. 5); Appeal Verdict in the case against *Neđo Samardžić*, Case No. X-KRŽ-05/49, of 13 December 2006, pp. 8-11 (in BCS version pp. 8-12).

<sup>4</sup> See as the most recent example giving an overview of the ICTY/ICTR practice: Decision on Adjudicated Facts in the case against *Vujadin Popović et al.*, Case No. IT-05-88-T, of 26 September 2006, developing further the criteria elaborated by the two ICTY Decisions on Adjudicated Facts in the case against *Momčilo Krajišnik*, Case No. IT-00-39-T, of 28 February 2003 and 24 March 2005.

In accordance with Article 6(2) CPC B-H and the corresponding Article 6(3)(d) European Convention on Human Rights and Fundamental Freedoms (ECHR), the Accused maintains the right to challenge any of the Established Facts that were accepted by the Court. Thus, the principle of Fairness and Equality of Arms has been met; so too, the principle of the Immediacy of the Evidentiary Procedure. In addition to this, the Court of B-H is not bound to base its verdict on any fact established by judgments of the ICTY. Instead, Established Facts are admitted and considered in light of all the evidence produced in the course of the trial, according to the principle of the free evaluation of evidence provided for in Article 15 CPC B-H. Further, the Court of B-H is also not bound by prior decisions of the ICTY Trial Chamber on Adjudicated Facts, in the present case.<sup>5</sup> And finally, the relevant case law of the European Court of Human Rights supports this approach, under the condition that the accepted facts can be challenged by the defendant.<sup>6</sup>

The legislative rationale for providing the Court with this procedural instrument includes general judicial economy and the consideration that often heavily traumatized witnesses should be spared from repeating testimony in a number of cases linked to the same incidents or regions. Also, this approach allows the possibility of harmonizing the practice of the Court of B-H with the corresponding ICTY jurisprudence. Finally, the use of Established Facts can be seen as a means of ensuring the Accused's right to a speedy trial as guaranteed by Article 13 CPC B-H and Article 6(1) ECHR, especially in cases of custody, as this can shorten the trial duration considerably, if introduced at an early stage of the procedure. As neither the Law on Transfer nor the CPC B-H provides for criteria on which to base the exercise of the Court's discretion to accept or reject certain facts proposed by the parties, the standards developed by the ICTY and the ICTR in relation to Rule 94(B) can serve as a guideline. In terms of criteria, the Court bases its conclusions on the ICTY Trial Chamber decision taken on 26 September 2006 in the case against Vujadin Popović et al. (Case No.: IT-05-88-T). This decision further develops the criteria established by the two decisions of the ICTY Trial Chamber in the case against Momčilo Krajišnik<sup>7</sup> (Case No.: IT-00-39-T), these decisions having been already partly taken into consideration by the Court of B-H Appellate Panel within its Judgment against Neđo Samardžić (Case No.: X-KRŽ-05/49) of 13 December 2006, as well as in numerous Trial Panel decisions of this Court.<sup>8</sup>

In order to meet the criteria for being accepted as an Established Fact:

1. The fact must have some relevance to an issue in the current proceedings

This precondition requires that the proposed fact be of relevance to the case. The Decision on Established Facts is part of the evidentiary procedure and only relevant evidence shall be accepted as such by the Court.

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<sup>5</sup> The ICTY Trial Chamber in the case against *Željko Mejačić et al.*, ICTY Case No. IT-02-65-PT, on 1 April 2004 rendered its Decision on Adjudicated Facts prior to the referral of the case to the Court of BiH.

<sup>6</sup> Judgment of the European Court of Human Rights in the case *Salabiaku v. France*, rendered on 7 October 1988, 13 EHRR 379, para. 28-29.

<sup>7</sup> See *supra* 2.

<sup>8</sup> See complete list of decisions at *supra* 1.

In addition, the formulation of this requirement, closely linked with the wording of Rule 94(B) and Article 4 of the Law on Transfer, demonstrates that it cannot be a precondition for the proposed fact "not to be in dispute" between the parties (having the same meaning as not "being an issue"), as stated in earlier ICTY and some Court of B-H practice.<sup>9</sup> As an established fact only creates a presumption in favor of one party, such a presumption can always be successfully challenged through reasonable argumentation and evidence. The Panel agrees with the Prosecution's contention in this regard, which is itself based on the ICTY decisions cited.<sup>10</sup> No facts from the Prosecution Motions have been refused on the basis of this criterion.

## 2. The fact must be distinct, concrete, and identifiable

To fulfill this prerequisite, according to the ICTY Popović et al. decision, the proposed fact must not be inextricably commingled either with other facts which do not themselves satisfy the criteria for Established Facts or with other facts that obscure the principal fact. In order to examine whether this is so, the Court must consider the proposed fact in the context of the original judgment<sup>11</sup>. No facts from the Prosecution Motions have been refused on the basis of this criterion.

## 3. The fact as formulated by the moving party must not differ in any substantive way from the formulation of the original judgment

The Panel upholds the approach found in recent ICTY jurisprudence, namely, that in the case of minor inaccuracy or ambiguity resulting out of its "abstraction" from the original judgment, the Court may, using its discretion, correct the inaccuracy or ambiguity proprio motu. In the light of this criterion the Court refused the certain Fact-Summaries offered in the Supplementary Prosecution Motion, but accepted the facts from the first Prosecution Motion instead, as stated in the operative part of the Decision of 22 August 2008 and as shown in the Annex thereof.

The Panel concludes that even if the summaries accurately reflect a large number of discrete facts, the summaries were not adjudicated by ICTY decisions and therefore cannot be accepted as Established Facts. Moreover, the use of fact-summaries raises rather new issues as to whether the summaries accurately reflect the context of the facts summarized, whatever advantages such summaries may provide in terms of brevity.

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<sup>9</sup> See this criterion being listed in the First ICTY Decision on Adjudicated Facts in the case against *Momčilo Krajišnik*, Case No. IT-00-39-T, of 28 February 2003, p.7, while this criterion was then expressly abandoned in the Second Decision on Adjudicated Facts in the same case, rendered on 24 March 2005, p. 8, footnote 45.

This criterion is listed, for example, in the Court of B-H decisions on Established Facts in the case against *Gojko Janković*, Case No. X-KR-05/161, of 4 August 2006, see Decision p. 2; in the case against *Marko Samardžija*, Case No. X-KR-05/07, of 3 November 2006, see Trial Verdict p. 19 (in BCS version p. 17), and in the case against *Radislav Ljubinac*, Case No. X-KR-05/154, of 8 March 2007, see Trial Verdict p. 18 11 (in BCS version p. 17).

<sup>10</sup> See also ICTY Decision on Adjudicated Facts in the case against *Vujadin Popović et al.*, Case No. IT-05-88-T, of 26 September 2006, para. 5, footnote 19.

<sup>11</sup> ICTY Decision on Adjudicated Facts in the case against *Vujadin Popović et al.*, Case No. IT-05-88-T, of 26 September 2006, para. 6.

4. The fact must not be unclear or misleading in the context in which it is placed in the moving party's motion

In order to evaluate whether the context in which the proposed fact is cited within the motion creates some confusion about its true meaning, the fact must be analyzed in its original context. If the meaning in the original judgment differs substantially in strength or content when compared with the context suggested in the motion, the fact should not be accepted.

On the basis of this criterion the Panel excluded the proposed fact No. 254. The two ICTY judgments cited give two different numbers of detainees held in Keraterm camp. The combination of these two different figures is a conclusion made by the Prosecutor's Office. As only findings stemming from the ICTY judgments are acceptable as Established Facts, but not conclusions of the moving party, even if based on such ICTY-facts, fact No. 254 has been refused.

5. The fact must be identified with adequate precision by the moving party

This precondition asks for a precise identification of the paragraphs of the judgment that the proposed facts have been taken from. Again, as under criterion 3., the Court may accept facts in circumstances where the party mistakenly cited the wrong paragraph of the judgment, provided that the proximity of the intended factual finding to the wrongly cited paragraph makes the mistake so obvious that the non-moving party could have understood which factual finding was intended. No facts from the Prosecution motions have been refused on the basis of this criterion.

6. The fact must not contain characterizations of an essentially legal nature

As highlighted in the second Krajišnik decision: "Many findings have a legal aspect, if one is to construe this expression broadly. It is therefore necessary to determine on a case-by-case basis whether the proposed fact contains findings or characterizations which are of an essentially legal nature."<sup>12</sup>

When analyzing ICTY's case-by-case approach, the position of the Trial Chamber within the ICTY Decision on Adjudicated Facts in the case against Međaković et al., as an example, excludes facts that speak of the existence of a "policy to commit inhuman acts against the civilian population" and of "acts that were committed on both a widespread basis and a systematic fashion" because of their legal character.<sup>13</sup> However, in contrast to this decision, the ICTY Trial Chamber decided, for example, in the case against Krajišnik to accept proposed facts stating that crimes were "committed during an armed conflict as part of a widespread or systematic attack on a civilian population", facts that purport that "ethnic cleansing (...) was committed in the context of an armed conflict",

<sup>12</sup> ICTY Decision on Adjudicated Facts in the case against *Momčilo Krajišnik*, Case No. IT-00-39-T, of 24 March 2005, para. 15.

<sup>13</sup> ICTY Decision on Adjudicated Facts in the case against *Željko Međaković et al.*, Case No. IT-02-65-PT, of 1 April 2004, p. 6.

as well as a perpetrator having taken part in "the common criminal purpose to rid the Prijedor region of the non-Serb population by committing inhuman acts".<sup>14</sup>

This Panel is of the opinion that facts containing any legal conclusions should not be accepted as Established Fact. Thus, neither facts containing a legal element of the criminal act, for example, "armed conflict" or "widespread or systematic attack", nor legal qualifications attributing a mode of perpetration, for example, the "existence of a common criminal purpose" or "having superior responsibility", have been admitted as Established Facts by this Panel. Although the examples cited in this paragraph also have a factual component, this Panel is of the view that their acceptance is excluded by this precondition, even if they only consist of "general facts placing the concrete action of perpetration in a wider context of the war events"<sup>15</sup>. Concepts like "widespread or systematic attack" or "armed conflict" are legal elements of the crimes charged and should not be considered Established Facts in order to create clearly defined boundaries for the use of this new instrument.

Despite its strict approach towards the acceptance of facts that contain legal qualifications as Established Facts, the Panel holds that once a purely factual finding has been accepted as an Established Fact, it will be treated as evidence in the same way as evidence obtained from witnesses or material evidence tendered in the ongoing trial. Therefore, this Panel, in accordance with Article 15 CPC B-H, will be free to draw its own legal conclusions on the basis of those factual findings which it accepted as Established Facts.<sup>16</sup> For not fulfilling this criterion the Court has refused to accept the proposed facts No.: 5, 11, 24 in the scope as indicated in the Annex to the Decision, 27-28, 37, 39-40, 48, 55-65, 102, 115 in the scope as indicated in the Annex to the Decision, 133-134, 138-139, 216 in the scope as indicated in the Annex to the Decision, 217, 222, 247, 305, 311 in the scope as indicated in the Annex to the Decision, and 312.

#### 7. The fact must not be based on an agreement between the parties to the original proceedings

It is of importance that the proposed fact was previously challenged in trial. Therefore, a fact taken from a judgment which is the result of a plea agreement or an agreement to regard certain facts as not being under dispute between the parties to the prior case does not meet the requirements for being accepted as an Established Fact. If not contested in the prior trial, the evidentiary value of the fact does not reach the level of persuasion necessary to produce a shift in the burden of production of evidence towards the side of the non-moving party.

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<sup>14</sup> ICTY Decision on Adjudicated Facts in the case against *Momčilo Krajišnik*, Case No. IT-00-39-T, of 24 March 2005, List of Adjudicated Facts admitted by the Chamber, facts No. 323, 321, 316.

<sup>15</sup> See wording of Appeal Verdict in the case against *Dragoje Paunović*, Case No. X-KRŽ-05/16, of 27 October 2006, p. 5 (in BCS version p. 5).

<sup>16</sup> See ICTY-Decision on Adjudicated Facts in the case against *Miroslav Kvočka et al.*, Case No. IT-98-30/1-T, of 8 June 2000, p. 6.

None of the ICTY judgments that facts were proposed from was based on a plea agreement between the Office of the Prosecutor in The Hague and the Accused, thus no facts from the Prosecution motions have been refused on the basis of this criterion.

#### 8. The fact must not relate to the acts, conduct, or mental state of the Accused

The ICTY Popović et al. decision explains the latest ICTY practice as follows: "This exclusion focuses narrowly on the deeds, behavior, and mental state of the Accused – that is on the conduct of the Accused fulfilling the physical and mental elements of the form of responsibility through which he or she is charged with responsibility. It does not apply to the conduct of other persons for whose criminal acts and omissions the Accused is alleged to be responsible through one or more of the forms of responsibility (...)." <sup>17</sup>

In contrast to this narrow definition, the ICTY Trial Chamber in the Međakić et al. case excluded all facts concerning the living conditions inside the Omarska camp as being too tendentious, without giving any more specific explanation for its decision. <sup>18</sup>

This Panel holds that indirectly incriminating facts should not be excluded from acceptance as Established Facts. <sup>19</sup> As every piece of evidence presented in trial has to be relevant to the case, every piece of evidence tendered by the Prosecution must at least indirectly go towards establishing the responsibility of the Accused. <sup>20</sup>

In the present case, the definition of the position that the Accused had inside the camps is a conclusion that the Court must reach before the severe living conditions inside the camps can trigger criminal responsibility. Thus, the facts in question only indirectly attest to the Accused's criminal responsibility and are therefore admissible as Established Facts. No facts from the Prosecution motions have been refused on the basis of this criterion.

#### 9. The fact must not be subject to pending appeal or review

This criterion has to be assessed particularly carefully where facts proposed are from a first instance judgment which is still under appeal. In such circumstances, a fact stemming from such a judgment under review can only be accepted if the fact itself is clearly not the subject of the appeal. <sup>21</sup> This was, for example, often the case at the ICTY, where superior military commanders or political leaders did not deny the crimes to actually have happened but appealed the first instance verdict only on the grounds that it assigned to them effective control over the direct perpetrators of the crimes.

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<sup>17</sup> ICTY Decision on Adjudicated Facts in the case against *Vujadin Popović et al.*, Case No. IT-05-88-T of 26 September 2006, para. 13.

<sup>18</sup> ICTY Decision on Adjudicated Facts in the case against *Željko Međakić et al.*, ICTY Case No. IT-02-65-PT, of 1 April 2004, p. 6.

<sup>19</sup> See this criterion being named, for example, in the Decision on Established Facts in the case against *Miloš Stupar et al. (Kravica)*, Case No. X-KR-05/24, of 3 October 2006, p. 6.

<sup>20</sup> See reasoning in ICTY Decision on Adjudicated Facts in the case against *Vujadin Popović et al.*, Case No. IT-05-88-T, of 26 September 2006, para. 13, in particular footnote 48.

<sup>21</sup> ICTY Decision on Adjudicated Facts in the case against *Vujadin Popović et al.*, Case No. IT-05-88-T, of 26 September 2006, para. 14.



The four verdicts that the facts in the Prosecution Motions were taken from were appealed, and in those appeals, either the facts in question were not challenged or those challenges were not successful.<sup>22</sup> Therefore, no facts from the Prosecution motions have been refused on the basis of this criterion.

After analyzing all proposed facts singularly on the basis of all preceding criteria, the Panel took into consideration whether accepting all the admissible facts of the Prosecution motion in the composition, number and content would achieve judicial economy while still preserving the right of the Accused to a fair, public and expeditious trial. Such a test is deemed necessary as "the principle of judicial economy is more likely to be frustrated in this manner where the judicially noticed (...) facts are unduly broad, vague, tendentious or conclusory".<sup>23</sup> In the final analysis, even those facts that meet all of the above listed preconditions may be refused at the discretion of the Panel if the facts taken together infringe the Accused's right to a fair trial.

In the present case, this Panel repeatedly heard witness testimony that partly contradicts two of the proposed facts and therefore the Panel has redacted facts No. 163 and 185 as stated.

#### Facts of Common Knowledge

Apart from accepting facts deriving from prior ICTY judgments as Established Facts, the Prosecutor moved the Court to consider accepting certain facts as so-called "Facts of Common Knowledge". The ICTY and ICTR deal with such facts through Rule 94(A) RoPE. Although there is no corresponding legal provision in BiH law, this Panel draws its right to equally address this issue *a maiore ad minus* from Article 4 of the Law on Transfer which – as seen – explicitly opens the path for the direct use of factual findings which even do not rise to the level of common acceptance.

When addressing the question of how to treat facts proposed as "Facts of Common Knowledge", this Panel can rely on the initial findings of the Court of B-H in the Decision on Established Facts in the case against Miloš Stupar et al. (Kravica)<sup>24</sup>. According to this Decision, a fact can be characterized by the Court as being a Fact of Common Knowledge and the Court then has the discretionary right to accept such a fact even if the fact does not fulfill each of the criteria, namely if it "relates to an element of criminal responsibility"<sup>25</sup>. The wording of the Decisions on Established Facts rendered within the Trial Verdicts against Paunović, Samardžija and Ljubicinac seem to indicate a

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<sup>22</sup> See ICTY Appeal Judgements in the cases against: *Duško Tadić*, Case No. IT-94-1-A, of 15 July 1999, *Miroslav Kvočka, et al*, Case No. IT-98-30/1-A, of 28 February 2005, *Milomir Stakić*, Case No. IT-97-24-A, of 22 March 2006, and *Radoslav Brđanin*, Case No. IT-99-36-A, of 3 April 2007.

<sup>23</sup> ICTY Decision on Adjudicated Facts in the case against *Vujadin Popović et al.*, Case No. IT-05-88-T, of 26 September 2006, para. 16.

<sup>24</sup> Decision on Established Facts in the case against *Miloš Stupar et al. (Kravica)*, Case No. X-KR-05/24, of 3 October 2006, p. 6.

<sup>25</sup> Decision on Established Facts in the case against *Miloš Stupar et al. (Kravica)*, Case No. X-KR-05/24, of 3 October 2006, p. 6.

similar approach to Facts of Common Knowledge, all speaking of certain facts being "beyond dispute".<sup>26</sup>

With regard to the criteria for identifying a fact as one of Common Knowledge, this Panel endorses the standards elaborated by the ICTY/ICTR practice in regard of Rule 94(A).<sup>27</sup> In accordance with this practice, a fact can only be regarded as having risen to the level of being "Fact of Common Knowledge" if it can no longer be reasonably disputed.

The ICTY Trial Chamber in the Popović et al. case denied the status of Common Knowledge because of the insufficiency of the judicial and documentary record provided by the Prosecution to prove that this fact was notorious and commonly accepted.<sup>28</sup> As the Prosecution in this ICTY case provided a wide range of documents from different judicial, academic and political sources in support of its motion, the level of persuasion that has to be met for proving the existence of Common Knowledge about a specific fact at the ICTY seems to be particularly high.

This Panel adopts a conservative approach, requesting the same high level of persuasion for a fact to be qualified as being Common Knowledge as required at the ICTY. Therefore, the evidence cited to prove the existence of Common Knowledge about a specific fact does not only have to derive from a variety of reliable sources, but also have to make explicitly reference to the fact in question showing the common acceptance this fact has gained.

The Prosecution moved the Court to accept as Facts of Common Knowledge facts that contain legal conclusions such as a "widespread or/and systematic attack" having occurred in the area of Prijedor Municipality. Excluded for the same reason according to criterion No. 6 above, there are also the facts speaking to the existence of a "common purpose" or "joint criminal enterprise" to ethnically cleanse the Prijedor area from non-Serbs, as well as other facts containing different legal conclusions that are refused above according to criterion No. 6.

In this Panel's view, as already elaborated under criterion No. 6. concerning Established Facts, only factual information can be qualified as a Fact of Common Knowledge if the necessary common acceptance of the fact can be proven as elaborated above. Facts containing legal conclusions, in the opinion of this Panel, cannot be qualified as Facts of Common Knowledge, as it is up to the Court in each specific case to draw legal conclusions from the evidence. For these reasons, the facts refused above in accordance with criterion No. 6 cannot be qualified as Facts of Common Knowledge.

The facts that have been refused on the basis of criteria No. 3. and 4., as well as the facts refused according to the Overall Test, have not been accompanied by evidence which

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<sup>26</sup> Trial Verdict in the case against *Dragoje Paunović*, Case No. X-KR-05/16, of 26 May 2006, p. 15; Trial Verdict in the case against *Marko Samardžija*, Case No. X-KR-05/07, of 3 November 2006, p. 17; Trial Verdict in the case against *Radislav Ljubicinac*, Case No. X-KR-05/154, of 8 March 2007, p. 22.

<sup>27</sup> See for example: ICTY Decision on Facts of Common Knowledge in the case against *Vujadin Popović et al.*, Case No. IT-05-88-T, of 26 September 2006, para. 13.

<sup>28</sup> ICTY Decision on Facts of Common Knowledge in the case against *Vujadin Popović et al.*, Case No. IT-05-88-T, of 26 September 2006, para. 18.

would prove their common acceptance. The Court itself is not aware of the existence of common knowledge which would otherwise qualify these particular facts as per se Facts of Common Knowledge.

Finally, after an analysis of the practice of this Court and that of the ICTY, the Panel endeavored to abide by the strictest criteria for the acceptance of facts established in ICTY judgments, striking a balance between the goal of judicial economy through shortening the evidentiary proceedings, on the one hand, and the Accused's right to a fair and just trial, on the other.

The Defense Counsel for the Accused did not submit motions for judicial notice of facts established in ICTY judgments.

### **Non-acceptance of certain evidence by the Court**

By the application of provisions of the Law on the Transfer of Cases from the ICTY to the Prosecutor's Office of B-H and the Use of Evidence Collected by ICTY in Proceedings before the Courts in B-H, the Court accepted certain evidence obtained in the proceedings before the ICTY, including the finding, that is, testimony of the expert witness Nikolas Sebire.

The Court refused to accept some evidence proposed by the Prosecution and the Defense due to its irrelevance for deliberation in the present case, as well as in the instances when a certain previous statement was not presented to a witness at the main trial, that is, when it was not used in the course of witness examination before this Court. The Court accepted certain Prosecution evidence proposals opposed by the Defense, as it held the said evidence to be relevant to the present case, which particularly concerns the evidence that had already been the subject of evidentiary proceedings in other trials before the ICTY. Finally, the Defense had opposed the tendering of certain evidence, but used it in the cross-examination, as was the case with, for example, Exhibit No. 2 – the Omarska Camp scale model.

### **Prosecutor's Office of BiH - Closing argument**

Prosecutor Peter Kidd structured his Closing Argument in three major parts relating to the three remaining accused persons in this case.

As for the first accused, Željko Mejačić, the Prosecutor started by pointing out that Mr. Mejačić's own confession given during his testimony before the Court, would suffice to convict him as charged in the Indictment. The Prosecution pointed to a number of facts that could be taken by the Court to conclude that it was precisely the accused Mejačić who held the position of the only Chief of Security in the Omarska camp, as was stated in the Indictment, and that his authority and permanent presence in the camp made him the de facto camp commander. Prosecutor Kidd then referred to the evidence that contradicted the allegations made by the Defence in terms of the number of victims and the nature of the entire camp system, and stated that the same evidence identifies the

accused Mejakić as a loyal disciple to the same system, notwithstanding that his position and role in the camp, as well as his background as a professional police officer, obligated him to protect the detainees. Contrary to this obligation, the accused Mejakić allowed various groups inside the camp to take turns in ill-treating and killing the detainees. Although aware of the overall situation and to a large extent of the individual criminal offences that left the consequences he could see every day in Omarska, he not only failed to fulfil his responsibility to the detainees and prevent their abuse and killing to the extent possible, but he left them to be constantly attacked and to suffer poor living conditions in general.

Concerning the second-accused, Momčilo Gruban, the Prosecution first presented numerous facts that could lead the Court to conclude that the accused held a position of one of the three Shift Leaders in the Omarska camp. His shift was called “Čkalja’s shift”, which is a nickname of the accused. The Prosecution submitted that his behaviour towards the guards and detainees, the fact that he had control over the situation in the entire camp during his shift, that he exercised other duties like registering the names of detainees that was not done by plain guards and the fact that he used the office on the first floor of the administrative building, like other shift leaders did, all suggest that Momčilo Gruban was a Shift Leader. The Prosecution further submitted that, according to the majority of witnesses, Momčilo Gruban’s shift was the best one in the Omarska camp. Both Defence and Prosecution witnesses described the accused Gruban as a person of positive character in such difficult conditions, they said that they would turn to him for all kinds of assistance and that he would help them best he could. The Prosecution, however, submitted that the criminal offences were perpetrated during Gruban’s shift as well, although not in the same number and scope as during the other two shifts in the Omarska camp, and that even though the accused Gruban knew about the criminal nature of the camp, he nevertheless kept the system going by his own work.

Reflecting upon the third-accused, Duško Knežević, prosecutor Kidd focused on the issue of identity of the individual in the courtroom and the perpetrator of a number of criminal offences that were analyzed by the Prosecution in written form. The Prosecutor started by referring to numerous evidence that the Court could take to conclude that the crimes committed in the Omarska and Keraterm camps were always perpetrated by one same individual who was called “Duća,” and that according to the descriptions of his physical appearance, his probable age, his behaviour, objects used for the abuse of detainees and the same well drilled routine followed in all incidents, some of which were documented in official notes, it must have been the same person. The Prosecutor then tried to prove that this sole perpetrator was precisely this Duško Knežević, the individual present in the courtroom. The Prosecutor supported the conclusion by a number of facts, like the nickname of the accused, who was known by it among the detainees, then stating that his place of residence was in Orlovci and that some of the detainees knew him from there, then the fact that this Duško Knežević was a goal-keeper in the football club and worked as a waiter. He particularly emphasised the evidence obtained by the Defence witnesses and the accusations that he tried to find the individuals in the camps who were responsible for his brother’s death. The Prosecutor further submitted that the majority of witnesses failed to identify the accused in the courtroom, but that it should not be given much weight, as a lot of time had passed since then, the physical appearance of the accused had changed, he now had his head shaved

and wore a suit, and the witnesses had a limited range of sight in the courtroom and could not properly see the accused. The Prosecutor concluded that all the foregoing objective criteria undoubtedly make the accused and the perpetrator one and the same person.

### **Defence for the accused Željko Mejakić – Closing Arguments**

In their Closing Arguments, the Defence Counsel for the accused Željko Mejakić – attorneys Jovan Simić from Belgrade and Ranko Dakić from Prijedor, pointed to the lack of credibility of the witnesses and to the deficient documentary evidence. They submitted that the events in the camps in the Prijedor Municipality were exaggerated. Reflecting upon Nickolas Sabire's report, the Defence indentified mistakes in it, given that the names of survivors were allegedly included in the list of victims among the camp detainees, as well as false code numbers of the total number of victims. The Defence further submitted that some of the witnesses before the Court requested protective measures that were not actually necessary and that the Prosecution prepared the witnesses for testifying in an improper manner.

According to the Defence, the Prosecution was supposed to amend the Indictment not later than the moment when the proceedings against Dušan Fuštar were separated, and the Defence should have been given some time to prepare for such an amended Indictment in order to adjust the defense with the new substance of the Indictment. The Defence further submitted that in absence of such a procedure, the Court itself was prevented from harmonising the account of facts with the amended Indictment after the presentation of evidence.

Attorney Jovan Simić reiterated that his defendant took over the position of the Chief of Security in the Omarska camp from Miroslav Kvočka and that Željko Mejakić did not personally commit any criminal offence while he held that position. The Defence disagrees with the allegation made in the Indictment that Mejakić was the de facto camp commander. According to the Defence, in reality, Mejakić did not have any authority over the group of interrogators who questioned the detainees in the camp, he could not have prevented the Special Police from Banja Luka, which spent some time in the camp, to perpetrate criminal offences, and he was not superior to members of the Territorial Defence that were directly involved in the outer circle of security in the camp, given that the Police had to be subordinated to the Army in time of war. The Defence also submitted that Željko Mejakić could not have stopped those who visited the camp. In a detailed analysis of witness testimonies, the Defence pointed to, in their opinion, significant discrepancies and differences between this body of evidence and the allegations of the Indictment.

Along these lines, the Defence voiced their legal opinion as to the necessity of establishing a de iure superior-subordinate relationship in order to be able to establish criminal responsibility. Actually, the Defence argued that command was an ICTY concept, not applicable in BiH. In addition to this legal ground, the Defence also submitted that Simo Drljača would not have tolerated any other de facto authority in his proximity. The Defence Counsel for Željko Mejakić also criticised establishing one's criminal responsibility on the ground of his participation in the JCE, given that, in their

opinion, anyone who was ever in the Omarska camp could be charged in the Indictment on the grounds of mere presence. The Defence agreed to this principle provided that it be applied to the highest political officials in the region, but they opposed to it if it be applied only to attempt to charge Željko Mejačić on the grounds of JCE with all the offences perpetrated at higher levels, since the Omarska camp would have existed even without his participation.

In his analysis of the elements of the criminal offences his defendant was charged with, attorney Simić argued that the number of criminal offences committed in the Omarska camp did not indicate that they were perpetrated in an organised manner. According to the Defence, the camp was established with the purpose of establishing who among the detainees posed a risk to the Serb authorities. Attorney Simić argued that his defendant may not be held responsible on the grounds that the originally planned period of detention of 2-3 weeks was extended due to those interrogations, since he, as a plain police officer, did not have any authority to release the detainees.

The Defence also submitted that Mejačić could not have changed the living conditions in the camp in terms of food, size of rooms, water or medical supply. The Defence reflected upon every single incident involving abuse or killing in the camp and pointed out that the accused Mejačić was not present in the camp at the relevant time, or that the evidence corroborating certain incident was not consistent. They also pointed to the complete absence of the evidentiary foundation, argued that the deaths were a consequence of a natural disease or attempted escapes of detainees from the camp, and that the crimes happened outside the camp following the disappearance of detainees from the camp.

The accused Željko Mejačić personally exercised his right to have the last word in order to support his Defence Counsel. Having expressed his regret for all the victims of the war, particularly in the Prijedor area, he drew the attention of the Court to his voluntary surrender to the Serb authorities. The accused reiterated that he entirely adhered to his statements given during his testimony at the main trial, notwithstanding that he did not have the legal possibility to swear an oath with regard to those. The accused Mejačić further submitted that he was not involved in establishing the camp, that he had no authority to release any detainee, but that he, together with Momčilo Gruban and other police officers, helped the detainees. Finally, Željko Mejačić thanked the Court for the fair conduct of the proceedings.

### **Defence Counsel for the accused Momčilo Gruban – Closing Arguments**

The Defence Counsel for Momčilo Gruban, attorneys Duško Panić and Goran Rodić, argued that the absence of transcripts before the Court of BiH made it impossible to follow the trial and that it was contrary to the provisions of Articles 153/1/ and 253/1/ and 2/ of the CPC of BiH. The Defence pointed to some portions of audio records and noted that they did not correspond to the interpretation of the same testimonies by the Prosecution. They further submitted that some of the audio records were not handed over to the parties in time, so that the Prosecution was not able to take into account the extenuating information provided by the defence witnesses who were last to testify.

Attorney Panić noted that individual camps in the Prijedor Municipality were not linked together in legal terms, but that each of them existed as a separate unit. The Defence also emphasised a serious lack of organisation and a high level of improvisation in establishing and running the camps. Momčilo Gruban's lawyers raised an objection to the Prosecution that by using the JCE concept, they made everyone guilty, regardless of the shift in which the criminal offences were perpetrated.

Attorney Panić submitted that his defendant could not be held responsible for the criminal offences he is charged with either under direct or command responsibility. According to the Defence, there was no evidence to support the allegation from the Prosecution that Momčilo Gruban was the leader of one of the three shifts in the Omarska camp. The facts used by the Prosecution to try to prove that their defendant held such a position, did not show that Gruban had authority, quite the opposite, they showed that he was a plain guard. The Defence specially emphasised that, the fact that a person recorded arrivals and departures from the camp does not suggest that an individual held an important position and that everyone in the camp was called "sergeant" or "chief". According to the Defence, there were only eight witnesses who provided a more detailed account of Momčilo Gruban's role and explained why they considered him to be the leader of one of the shifts, but even these few witnesses were inconsistent in their testimonies.

The Defence Counsel for Momčilo Gruban addressed individual incidents involving the killings or disappearances of Omarska camp detainees by submitting that their defendant did not have authority to release anyone from the camp and that the incident when Enes Kapetanović was singled out from one group of detainees happened by pure chance. As for the killing of a large group of detainees from the Brdo area, the Defence argued that the evidence in support of this incident was too vague to be used as grounds to render a verdict for such a large number of victims. To that end, the Defence submitted that no analogy could be made to conclude that the similar massacre took place in Omarska as the one in room number 3 of the Keraterm camp in the same night.

The Defence pointed out the inconsistent testimonies given by the witnesses before the ICTY and the Court of BiH pertaining to Gruban's knowledge of the abuse of the detainees and his instructions that the real situation in the camp be veiled during the visits of the Red Cross. They also indicated the absence of evidence to prove that individual incidents took place in the Omarska camp precisely when the shift Gruban was assigned to was in the camp.

According to his Defence, Momčilo Gruban was bound by law to respond to the mobilization call-up and he was assigned to the particular location in Omarska as a reserve police officer and he did not choose it personally. In the given situation, he did his best to make life generally more tolerable for the detainees. He brought them food secretly and made their life more tolerable to such an extent that even the Prosecution witnesses thanked him in the courtroom for his help. Former detainees testified also as Defence witnesses and, having completed their testimonies, they asked the Court to acquit Momčilo Gruban. The Defence also submitted that while it would have been better for Gruban personally that he had left the camp, would it have been better for the detainees.

In his Closing Argument, the accused Gruban entirely supported the submissions made by his Defence Counsel.

### **Defence Counsel for the accused Duško Knežević – Closing Arguments**

The Defence Counsel for the third-accused, attorneys Nebojša Pantić and Milenko Ljubojević, linked their defence strategy to the defence presented for the first accused and stated that they endorsed the arguments provided by attorney Simić as their own arguments.

The Defence Counsel for Duško Knežević reiterated their main argument that their defendant was misidentified and that the wrong man was charged with the crimes committed by another person. The Defence further submitted that the fundamental evidence was based only on indirect information provided by witnesses about the names of perpetrators of the criminal offences in the Prijedor Municipality camps.

According to the Defence, the important witnesses failed to recognise in the courtroom the person they knew from the camp and, contrary to the allegations made by the Prosecution, direct identification of the perpetrator in the courtroom plays an important role, especially in common law court proceedings.

The Defence also wondered how could any person commit such brutal criminal offences during the war, like those their defendant is charged with, and that there is no record of any breach of law by the same person after the war, as opposed to Zoran Žigić, for instance, who was involved in criminal activities after the war as well and was also convicted by the Military Court in Banja Luka.

Attorney Pantić proceeded by saying that it clearly followed from the testimonies of defence witnesses that some of the criminal offences his defendant was charged with were actually perpetrated by other individuals and that Duško Knežević was brought before the court only to be the scapegoat.

The Defence Counsel for Duško Knežević also submitted that the Indictment remained unclear until the very end and, same as the Defence Counsel for the first and second accused, reaffirmed the principle of application a more lenient law and the *nulla poena sine lege* principle. In his Closing Argument, the accused Duško Knežević entirely supported the Closing Argument of his Defence Counsel.

Having evaluated all the presented evidence in detail, both individually and in their interconnection, the Court has established the following:

### **THE OMARSKA CAMP**

The evidentiary proceedings showed that the first group of detainees was brought to Omarska camp during the night between 27 and 28 May 1992 (fact No: 156), while the very last detainees were taken from the camp around 21 August 1992. This was not disputed even by the Defence. The mentioned facts followed primarily from the testimonies of heard prosecution witnesses who were imprisoned in the camp and were



corroborated by the accused Željko Mejakić himself, in his testimony given as a witness at the main trial. According to witness Fadil Avdagić, he was deprived of liberty and spent some time in the Keraterm camp, then he was transferred to the Omarska camp during the night between 27 and 28 May 1992. This witness also stated that detainees were transported by 21-22 buses to the Omarska camp and that approximately 1000 people were transferred from the Keraterm camp to the Omarska camp. Witness K018, who was deprived of liberty on 26 May 1992, stated that he was brought to the Omarska camp on 28 May 1992 and that at the time, he counted 21 buses bringing detainees. In his testimony, witness K041 stated that, having been deprived of his liberty, he spent one night in Benkovac and was then brought to the Omarska camp on 28 May 1992, together with others on two buses. The Court based their conclusion that the Omarska camp actually started functioning on 28 May 1992, similarly on the testimony given by witness Ermin Striković, who stated that having spent 24 hours in Keraterm, he was brought to the Omarska camp in the night of 28 May 1992 and claimed that he was the very first detainee brought to the camp. Like other witnesses before him, he also stated that detainees were transported there in a number of buses. It undoubtedly followed from the testimonies of the mentioned witnesses that the first detainees arrived in the Omarska camp on 28 May 1992 and that there were many of them, since all the witnesses claimed that there were many buses bringing detainees to the camp that night. As already mentioned, even the accused Željko Mejakić confirmed these assertions made by the Prosecution witnesses, and as a defence witness he also stated that he personally learned that the camp was set up in the night between 27 and 28 May 1992 and that he himself arrived in the camp on 28 May 1992 in the morning hours, therefore shortly after the camp started functioning.

According to the testimonies of the Prosecution witnesses, new detainees were being brought to the camp in the days to follow. Witness Asmir Baltić stated that he was brought to the Omarska camp on 30 May 1992, as well as witnesses Emir Beganović, Azedin Oklopčić, K042, K037, K017, then witness K034, who stated he had been brought to the Omarska camp on 29 or 30 May 1992. The mentioned facts lead to the conclusion that following the establishment of the Omarska camp, new detainees were brought there on a daily basis and the majority of rooms in the camp were full to capacity. It followed from the testimony of witness Asmir Baltić, who was originally placed in the room called “Mujina soba”, that the living conditions there were tolerable at the beginning, but later on, as new detainees were arriving, it became crowded and too hot. Witness K023 said that he was among those detainees who arrived first and that he found around one hundred detainees in the room, but as new detainees continued to arrive, they had less and less space. It also followed from the presented evidence that the whole time the Omarska camp existed, new detainees were being brought. According to witness Kerim Mešanović, he was brought to the camp on 24 June 1992, witness Zlata Cikota on 23 June 1992, witness Nusret Sivac on 10 June 1992, witness Enes Kapetanović on 12 June 1992, witness K019 on 14 July 1992, while witnesses Anto Tomić, Izet Đešević, K015 and other detainees were brought there from the Keraterm camp on around 4 July 1992. Hence, the whole time the camp was in operation, new detainees were being brought in and only a few were released from the camp, like witness Fadil Avdagić, for instance, who left Omarska on 16 June 1992. The first mass-scale transfer of detainees from the Omarska camp to the Trnopolje and Manjača camps took place on 5 or 6 August 1992. Witness K034 left the Omarska camp on 6 August 1992 and was taken to Manjača, just like witness K023 and witness Kerim Mešanović.

Witness Enes Kapetanović was taken from the camp on 5 August 1992, witness Asmir Baltić on 5 or 6 August 1992 and witness Ermin Striković on 7 August 1992. Witness Senad Kapetanović said that he left Omarska in early August 1992, witness Emir Beganović on 6 August 1992 and witness Azedin Oklopčić on 5 August 1992. After those days when the majority of detainees left the camp, only a small number of detainees remained, including witnesses K017 and Saud Bešić. According to these witnesses, a large group of detainees left the camp on 6 August 1992, so that around 174 detainees remained in the camp according to witness K017, while witness Saud Bašić stated that there were between 147 and 162 detainees who remained. Witness K017 said that he left the Omarska camp on 21 August 1992, while witness Saud Bešić left on 22 August 1992 and he said that the Omarska camp was closed down soon thereafter. In keeping with the previously established facts, the account of facts as stated in the Indictment was corrected by changing the dates of operation of the Omarska camp when the accused Željko Mejakić was the de facto camp commander. The Court indisputably established that the accused Mejakić took over the position in the camp on 28 May 1992 and that he held that position until 21 August 1992, when the camp stopped operating and when he was seen there by the detainees who were the last to leave the camp, more precisely witnesses K017 and Saud Bešić. Relevant reasoning in support of such conclusion is provided in the part of the Verdict pertaining to the responsibility of the accused Željko Mejakić.

The fact that Bosnian Muslims, Croats and other non-Serbs were imprisoned in the Omarska camp (fact No: 167) was established on the grounds of testimonies given by witnesses or individuals imprisoned in the camp. Witness Asmir Baltić stated that he was a Bosniak Muslim by ethnicity, witness Ermin Striković said that he was a Bosniak by ethnicity, so did witnesses Azedin Oklopčić, Fadil Avdagić, K01, K027, Nusret Sivac, K037, Izet Đešević and K022, while witnesses K041, K023, Saud Bešić, Enes Kapetanović, Mustafa Puškar, Sakib Jakupović, K042, Said Bešić, K036, K03 and K019 stated that they were Muslims. Witness Anto Tomić stated that he was Bosnian by nationality, witness Kerim Mešanović said that he was Bosnian of Islamic faith, while witness K035 stated that he was a Croat-Catholic. Witnesses who testified about the detainees who were killed or beaten up in the Omarska camp stated that they were Bosniaks or Croats. According to witness Asmir Baltić, Slavko Ećimović was of Croat ethnicity and the Court will reflect upon his beating and death at a later stage, then witness K041 stated that members of the Garibović family were Muslims, same as Dr. Osman Mahmuljin, as was also confirmed by witness Nusret Sivac who said that Dr. Mahmuljin was a Bosniak. Witnesses Ermin Striković and Fadil Avdagić stated that Silvije Sarić was of Croat ethnicity, Emir Karabašić was Bosniak, while witness Ermin Striković together with witness K018 confirmed that Miroslav Šolaja was of Croatian ethnicity. According to witness Zlata Cikota, Abdulah Puškar was a Muslim, same as Husein Crnkić, Nedžad Šerić, Esad Mehmedagić and Ago Sadiković, which was also confirmed by witness Kerim Mešanović, who also stated that Dr. Enis Begić was a Muslim. Witness Nusret Sivac said that Ago Sadiković and Rizah Hadžalić were Bosniaks, while witness K03 stated that Ismet Hodžić was a Muslim. Therefore, all the mentioned witnesses, detainees of the Omarska camp, who were heard before the Court, stated that they were Bosniaks, Muslims or Croats-Catholics, and when they testified about the fate of people they knew before the war and whom they had seen in the Omarska camp and whose plights they described, they also mentioned their ethnicity. It

followed from these testimonies that Bosnian Muslims, Croats and other non-Serb inhabitants of the Prijedor Municipality were imprisoned in the Omarska camp.

## **THE OMARSKA CAMP**

The evidentiary proceedings showed that the first group of detainees was brought to Omarska camp during the night between 27 and 28 May 1992 (Fact No. 156), while the very last detainees were taken from the camp around 21 August 1992. This was not disputed even by the Defence. The mentioned facts followed primarily from the testimonies of heard prosecution witnesses who were imprisoned in the camp and were corroborated by the accused Željko Mejačić himself, in his testimony given as a witness at the main trial. According to witness Fadil Avdagić, he was deprived of liberty and spent some time in the Keraterm camp, then he was transferred to the Omarska camp during the night between 27 and 28 May 1992. This witness also stated that detainees were transported by 21-22 buses to the Omarska camp and that approximately 1000 people were transferred from the Keraterm camp to the Omarska camp. Witness K018, who was deprived of his liberty on 26 May 1992, stated that he was brought to the Omarska camp on 28 May 1992 and that at the time, he counted 21 buses bringing detainees. In his testimony, witness K041 stated that, having been deprived of his liberty, he spent one night in Benkovac and was then brought to the Omarska camp on 28 May 1992, together with others on two buses. The Court based their conclusion that the Omarska camp actually started functioning on 28 May 1992 similarly on the testimony given by witness Ermin Striković, who stated that having spent 24 hours in Keraterm, he was brought to the Omarska camp in the night of 28 May 1992 and claimed that he was the very first detainee brought to the camp. Like other witnesses before him, he also stated that detainees were transported there in a number of buses. It undoubtedly followed from the testimonies of the mentioned witnesses that the first detainees arrived in the Omarska camp on 28 May 1992 and that there were many of them, since all the witnesses claimed that there were many buses bringing detainees to the camp that night. As already mentioned, even the accused Željko Mejačić confirmed these assertions made by the Prosecution witnesses and as a defence witness he also stated that he personally learned that the camp was set up in the night between 27 and 28 May 1992 and that he himself arrived in the camp on 28 May 1992 in the morning hours, therefore shortly after the camp started functioning.

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continued to arrive, they had less and less space. It also followed from the presented evidence that the whole time the Omarska camp existed, new detainees were being brought. According to witness Kerim Mešanović, he was brought to the camp on 24 June 1992, witness Zlata Cikota on 23 June 1992, witness Nusret Sivac on 10 June 1992, witness Enes Kapetanović on 12 June 1992, witness K019 on 14 July 1992, while witnesses Anto Tomić, Izet Đešević, K015 and other detainees were brought there from the Keraterm camp on around 4 July 1992. Hence, the whole time the camp was in operation, new detainees were being brought in and only a few were released from the camp, like witness Fadil Avdagić, for instance, who left Omarska on 16 June 1992. The first mass-scale transfer of detainees from the Omarska camp to the Trnopolje and Manjača camps took place on 5 or 6 August 1992. Witness K034 left the Omarska camp on 6 August 1992 and was taken to Manjača, just like witness K023 and witness Kerim Mešanović. Witness Enes Kapetanović was taken from the camp on 5 August 1992, witness Asmir Baltić on 5 or 6 August 1992 and witness Ermin Striković on 7 August 1992. Witness Senad Kapetanović said that he left Omarska in early August 1992, witness Emir Beganović on 6 August 1992 and witness Azedin Oklopčić on 5 August 1992. After those days when the majority of detainees left the camp, only a small number of detainees remained, including witnesses K017 and Saud Bešić. According to these witnesses, a large group of detainees left the camp on 6 August 1992, so that around 174 detainees remained in the camp according to witness K017, while witness Saud Bašić stated that there were between 147 and 162 detainees who remained. Witness K017 said that he left the Omarska camp on 21 August 1992, while witness Saud Bešić left on 22 August 1992 and he said that the Omarska camp was closed down soon thereafter. In keeping with the previously established facts, the account of facts as stated in the Indictment was corrected by changing the dates of operation of the Omarska camp when the accused Željko Mejačić was the de facto camp commander. The Court indisputably established that the accused Mejačić took over the position in the camp on 28 May 1992 and that he held that position until 21 August 1992, when the camp stopped operating and when he was seen there by the detainees who were the last to leave the camp, more precisely witnesses K017 and Saud Bešić. Relevant reasoning in support of such conclusion is provided in the part of the Verdict pertaining to the responsibility of the accused Željko Mejačić.

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Silvije Sarić was of Croat ethnicity, Emir Karabašić was Bosniak, while witness Ermin Striković together with witness K018 confirmed that Miroslav Šolaja was of Croat ethnicity. According to witness Zlata Cikota, Abdulah Puškar was a Muslim, same as Husein Crnkić, Nedžad Šerić, Esad Mehmedagić and Ago Sadiković, which was also confirmed by witness Kerim Mešanović, who also stated that Dr. Enis Begić was a Muslim. Witness Nusret Sivac said that Ago Sadiković and Rizah Hadžalić were Bosniaks, while witness K03 stated that Ismet Hodžić was a Muslim. Therefore, all the mentioned witnesses, detainees of the Omarska camp, who were heard before the Court, stated that they were Bosniaks, Muslims or Croats-Catholics, and when they testified about the fate of people they knew before the war and whom they had seen in the Omarska camp and whose plights they described, they also mentioned their ethnicity. It followed from these testimonies that Bosnian Muslims, Croats and other non-Serb inhabitants of the Prijedor Municipality were imprisoned in the Omarska camp.

Based on the statements of the witnesses it stems that the Omarska Camp consisted of two large buildings, namely the administration building and the hangar building, as well as of two smaller buildings called the “white house” and the “red house” (Fact No. 160). In addition, a clear view of the Omarska Camp and of the position of the buildings within the Camp’s complex is also provided by the scale-model of the Camp, which was tendered as Exhibit No. 2 upon the motion of the Prosecutor’s Office of BiH during the referenced proceedings, whose authenticity was confirmed in the criminal proceedings against Miroslav Kvočka and Duško Tadić before the Hague Tribunal, as well as other scale-related pieces of evidence – the photographs of the scale model, the sets of the photographs of the Omarska Camp and the sketches and plans of the Omarska Camp. Detainees were held in the three above-mentioned buildings, as well as on the concrete strip called the pista, which was located between the administration buildings and the hangar building shaped as letter L, which also stems from the above-mentioned evidence. The statements of the heard witnesses suggest that the majority of detainees were held in the hangar building, which is also the largest building within the Camp complex. According to the claims of the heard witnesses, around 3.000 civilians were detained in the Omarska Camp (Fact No. 166), which stems from the statements of the witnesses, that is, from the documentary evidence in the case file, among whom there were also between 36 and 38 women, which stems from the statement of Witness K035, which was also confirmed by the accused Mejakić himself in his statement. According to the statement of witness Asmir Baltić, between 3.000 and 3.500 people were detained in the Camp, which he estimated by the number of the groups of detainees when they would go to lunch, in the manner that there were 180 lines of detainees who would go to lunch in groups of 30 persons. From the statement of witness Kerim Mešanović it stems that around 3.000 detainees were held in the Omarska Camp, since this witness noted that detainees would go to have meals in groups of 30 persons and that there were around a hundred groups and he could estimate this because he was held in the room called the glass-house, which was located right by the restaurant, so that he was able to see the detainees coming to lunch. According to the estimation of witness Azedin Oklopčić, around 3.500 people were held in the Omarska Camp, whereby witness Zlata Cikota, who was brought to the Camp on 23 June 1992, noted that she observed frequent arrivals of new detainees, as well as Witness K027, who watched how new detainees were brought to the Camp on a daily basis and who noted that there were around 3.500 detainees in the Camp, based on which, as it has been already stated, it stems that detainees were brought during the whole time the Omarska Camp was

operational. With regard to the allegations in the Indictment, the Court has made a correction in the operative part of the Verdict in terms of the number of civilians who were detained in the Camp, and has found it realistic that the number of civilians amounted to around 3.000, which also allows the possibility that the number of the detainees was lower but also higher than the set one, as it was noted in the Indictment. The above-mentioned number was confirmed by the accused Željko Mejakić himself in his statement given as a witness while he was presenting the information on the number of the persons who were transferred from the Omarska Camp to the Manjača and Trnopolje camps on 6 August 1992. The accused Mejakić noted that on this occasion around 1.350 persons were transferred to Manjača, while around 1.750 were transferred to Trnopolje, whereas 171 men and 5 women were left in the Omarska Camp, which overall surpasses the number of 3.000 persons. In addition, from the Report of the Prijedor Public Security Station (Exhibit No. 26) that was forwarded to the Commission of the Banja Luka Public Services Centre it also stems that during the period from 27 May 1992 until 16 August 1992 the total number of 3.334 persons who were subjected to interrogation were held in the Omarska Camp, which was also noted in the Report of the Banja Luka Public Services Centre (Exhibit No. 27).

The fact that these were civilians from the Prijedor Municipality stems primarily from the statements of the heard witnesses, who were personally detained in the Omarska Camp and who noted in their statements that they were apprehended in their houses, apartments and in the street, that they were not members of any military unit at the moment of their apprehensions and that they were unarmed. Therefore, witness Asmir Baltić noted that he was at home when the attack was launched, after which soldiers knocked at people's doors and took them out. In his statement the witness noted that they first asked him for his name and surname and that he answered that his surname was Baltić and as soon as he told them his first name the persons who came to his door, having been assured that he was a person of Bosniak ethnicity, told him "get out". Witness Asmir Baltić stressed that all men who were found in their houses were taken away and that they were all Muslims. From the statement of witness Ermin Striković it stems that he surrendered himself as a civilian to the Serb soldiers, as well as witnesses K023, K042 and Said Bešić, who were apprehended together with their fellow-citizens in the column of civilians which headed towards Prijedor, and then they were taken to the Camp. According to the statement of Witness K017, after Prijedor was shelled, on 30 May 1992 at 3:30 a.m. the Serb soldiers showed up and ordered the citizens to get out from their houses and apartments, after which they forced them to move towards the center of Prijedor, so that everybody set off, as he stated, including his family and neighbors. While he was describing the events that took place when he was deprived of liberty, witness Fadil Avdagić noted that, after the Kozarac settlement was shelled, a column of inhabitants who were all Muslims and a small number of Croats headed towards Prijedor and they were stopped at the check-point in the Sušići village by the Serb soldiers and that, without any explanation, they separated women and children from men, after which men were taken to the Keraterm Camp. Witness Zlata Cikota was apprehended on 22 June 1992, as she noted, in her apartment, when police officers from the Prijedor MUP came to get her and took her to the premises of MUP, whereas, according to the statement of Witness K01, he was apprehended when Serb soldiers surrounded the houses in the village in which he lived, took out men from the houses and took them to Keraterm and then to Omarska. According to the statement of witness Kerim Mešanović, he was deprived of liberty on the premises of the Secretariat of

Defense, where he worked, at the moment when they sent him from his work place and told him that he was needed in Omarska, whereas witness Emir Beganović was apprehended in his friend's house when an order was issued over the Prijedor radio station that people from certain parts of the town should get out of their homes, put on white ribbons and set off towards certain places. Witness Azedin Oklopčić was apprehended on 30 May 1992 after he heard shooting while he was in his house, so he and his family members got out of the house and they were taken to the "Balkan" hotel, where men were separated from the women and the children and taken away by buses. Witness K036 was apprehended while he was walking from his house towards his neighbor's house, whereas witness Izet Đešević was apprehended in Donja Ljubija while he was doing some work around his beehives, after which he was taken to the police station without being informed about the reasons of his deprivation of liberty, whereby Witness K03, who was a patrolman in the Reserve Police Force, was apprehended in fact as a civilian after he no longer held that post and after he returned the weapons and the uniform that had been issued to him. Witnesses Nusret Sivac, K019 and K037 were also apprehended in their homes, whereby according to the claims of Witness K037 none of the apprehended men who were in the column, including himself, was armed, while Witness K034 was apprehended by the persons who wore camouflage uniforms and who drove military trucks while he was on his way home, going back from work. Statements of a certain number of witnesses also suggest that among the persons who were detained in the Omarska Camp there were underage persons too and that some of them remained there even until August 1992, which stems from the statement of Witness K017, who noted that it was found out that there was an underage person among the detainees and that Željko Mejakić issued an order that he should be transferred to Trnopolje. In addition, Witness K01 also confirmed these claims by noting that his brother, who was 16 at that time, was with him in the Omarska Camp during the whole period, and that he left the Camp together with him. According to the statement of Nusret Sivac too, there were many underage persons in the Omarska Camp, since fathers were detained together with their children in the Camp. He noted the example of Burho Kapetanović, Sead Henić, Hilmo Crnalić and their sons. When he was apprehended and in the police station this witness also met a young man who, according to his estimation, could not have been older than 15 and who introduced himself as Malovčić from Raškovac and who was taken to the Omarska Camp together with him and who was even killed in the Camp. Among the detainees of the Omarska Camp there were also older persons (Fact No. 169), as well as sick and physically disabled persons, for example detainee Safet Ramadanović, who was, according to the statement of Witness K018, between 65 and 70 years old, and who had a heart condition, as well as mentally disabled persons (Fact No. 170), for example detainee Crnalić who was mentally ill according to the statement of witness Nusret Sivac, detainee Ismet Hodžić, who had diabetes and who depended on insulin therapy according to the claims of witnesses K03 and Asmir Baltić, and detainee Esad Mehmedagić, who before the war and during the time he was held in the Omarska Camp had weak eyesight to such an extent that he was unable to move around without another person's help. Along with this, in his statement witness Asmir Baltić noted that there were two deaf-mute detainees who were brought to the Camp together with him by a bus. Finally, women with underage children were also held in the Camp, which stems from the statement of the Witness K040.

During the evidentiary proceedings and based on the evidence presented, the Court has found it determined that that the conditions in the Omarska Camp were brutal and degrading, while the very conduct of the Camp staff, along with the above-described conditions in which the detainees were held, created the atmosphere of terror among the detainees. A series of witnesses who gave their statements during the main trial testified about the inhumane conditions in the Omarska Camp in which the detainees were held without the basic necessities of life, including food, drinking water, medicines and medical care, in unhygienic conditions and in cramped rooms. As far as the accommodation in the area of the Omarska Camp is concerned, the witnesses who were held in different rooms of the Camp testified about poor conditions in all the rooms. First of all, the rooms in which the detainees were held were overcrowded due to the large number of people who were held there and the rooms were so cramped that the detainees could hardly sit or lie down (Fact No. 177). From the statements of witnesses K041, Fadil Avdagić, Emir Beganović and K034 it stems that the room called the garage was a small room and, according to the statement of witness Fadil Avdagić, it was just large enough for one car to be parked there. According to the statements of witnesses Emir Beganović and Fadil Avdagić, around 200 people were held in the above-mentioned room, whereby according to Witness K034, who was, as a detainee, an orderly of the room for some time, at one point there were around 250 people held in the garage. While he was describing the conditions in that room, Witness K041 noted that the detainees were so cramped that they could not stand, which was also confirmed by witness Fadil Avdagić, as well as witness Emir Beganović who noted that detainees were *packed like sardines*, that they were so cramped inside the room that once the door was opened they would automatically get out, and that he himself was standing on one foot due to the lack of space and he described the “garage” as one of the worst horrors of the Omarska Camp. Witnesses who were held in the above-mentioned room consistently described the difficult situation in the room caused by the lack of air and too much heat. Witness K041 noted that he was unable to breathe due to the lack of oxygen, since there was only a small utility window open, so that people fainted. Witness Fadil Avdagić also confirmed that there was enormous heat in the room called the garage due to which people fainted, whereby witness Emir Beganović described it as horrible, a room in which there was no air and which only had a small window. According to the statement of Witness K034, the door of the garage was closed, while out of two windows which were in the room one was nailed shut, whereas the other one was closed so that the only way air could get in was through the keyhole and underneath the door, which made water pour down from the ceiling caused by the steam that was created by breathing. Witness K034 noted that three detainees died in such conditions. While he was describing his stay in the room called the “garage”, in which he spent an hour upon his arrival at the Omarska Camp, witness Izet Đešević noted that the door was closed, that it was unbearable since the detainees were cramped over each other, whereas the guards threw inside a bucket full of human waste to make things even more difficult and they said: “Here, drink this”, whereas they would let some air inside the room only if some of the detainees would give them money or cigarettes. The housing conditions were also bad in other rooms in which the detainees were held. While describing the conditions in the room number 26 which was located on the first floor of the hangar building, witness Sakib Jakupović noted that this room was 12 by 12 meters large with two small windows facing the restaurant and that it was at one point so cramped with people that the door, which was a double winged iron door with two leafs and no door-handle, was hard to close. These claims by witness Sakib Jakupović were



also confirmed by Witness K03, who described the conditions in the room 26 as unbearable, since the room was covered with a tin roof and since it was summer time and there were between 300 and 400 people in the room. Witnesses Ermin Striković, K023 and K018 described the state in the room number 15, which was also located near the hangar building and, according to their claims, the state in this room was not much different from the conditions in other rooms. According to the statement of witness Ermin Striković, between 300 and 350 people were held in the room number 15, it was overcrowded and one could neither sit nor lie down. According to the statement of witness K023, who was brought to room number 15 at the point when there were around 100 detainees there, new detainees were being brought so that there was less and less space, one could not sit down and, as this witness stated, the temperature in the room could have reached even up to 50 degrees Celsius, since it was summer time, the building was covered with a tin roof and the heat was unbearable considering the fact that there were even between 500 and 600 people there. The claims of the above-mentioned witnesses were also confirmed by Witness K018, who described the conditions in room number 15 as worse than just bad, since between 300 and 400 people were held there, so that the detainees had to lie down by one another's side, like "sardines", whereas, according to the estimation of witness Asmir Baltić, between 700 and 800 people were held in the room number 15 and they even slept on the concrete floor in the bathroom. While he was describing the conditions in the room called the "cloakroom", which was among the detainees also known as *Mujina soba* (after detainee Mujo who was chosen as the orderly of the room), witness Asmir Baltić noted in his statement that the room was filled to capacity, that the detainees were crammed, which was also confirmed by Witness K037, who described the conditions in the cloakroom as horrible, noting that there were 625 detainees held in a small space area and noting that there was no toilet, that the room smelled offensively, that detainees were lice-infested, whereas Witness K017, as he noted, moved to the space called the pista because *Mujina soba* was overcrowded. According to the statement of witness Asmir Baltić, who spent one night in the room called the "white house", the room in which he stayed was 2.5 by 2.5 meters, while 64 detainees were held there, so that, according to this witness, it was unbearable, especially since the room was stained with blood of beaten detainees, and since they were ordered to close the windows, the witness described the night he spent in the "white house" as hell. Witness K01 described the conditions in the "white house" as unbearable, so that people fainted because it was so overcrowded, they sat over each other, it was stuffy and there were 180 people in his room, where they took care of their bodily functions too, whereas, according to witness Kerim Mešanović, who was also held in the "white room" for a short period of time, the situation was ghastly since 53 men were held in a 5 by 5 meters room where the door was closed as well as the windows. According to this witness, people smelled of sweat and blood, in the corner there was a canister which was used for taking care of bodily functions, so that the situation was getting worse because of the high temperatures outside. Witness Sakib Jakupović also described the conditions in the "white house", although he did not stay in the above-mentioned rooms, but he had to clean them after the "white house" was emptied and after the detainees were transferred to other rooms. According to this witness, the "white house" smelled disastrously repulsive, whereby there were blood stains even on the ceiling of the rooms. While he was describing the largest room on the first floor of the hangar building which was located at the end of the corridor, Witness K017 noted that it was overcrowded, since between 200 and 300 people were held there, and that detainees slept even on the stairs and in the toilet. According to the statements

of witnesses, just like the conditions in the rooms which were crammed and in which the housing conditions were bad, the conditions were very bad on the pista too, which also reinforces the conclusion of the Court that the conditions in the Omarska Camp were generally bad, regardless of the part of the Camp in which detainees were held, including the part of the Camp called pista (Fact No. 185). Witness Anto Tomić noted that the living conditions on the pista were difficult, since it was July and the air temperature reached even up to 40 degrees Celsius, the detainees were exposed to the sun all day long, whereby there was insufficient water. Witness Nusret Sivac also confirmed the conditions on the pista, he described the first time he saw the Omarska Camp, on the occasion of his arrival there, as shocking, since on the pista he saw motionless bodies of detainees who were forced to lie on their stomach, whereas in his statement witness Asmir Baltić, who also spent some time on the pista, noted that detainees had to lie motionless on their stomach on the concrete, and if some of the detainees would move, a guard would come and beat him. The above-mentioned difficult conditions were additionally worsened by the lack of access to a toilet, that is, the detainees' inability to use toilet facilities, so that, according to the statements of the witnesses, the hygienic conditions were most inadequate (Fact No. 188), to which the Camp staff also significantly contributed with their conduct. As witness Asmir Baltić noted, during the time he spent in the hangar the detainees had to perform their bodily functions inside the hangar. Witness K041 described the time he spent in the room called the "garage" by noting that detainees could not use the toilet, so that they were given a plastic bucket in which they relieved themselves, because of which some of them got dysentery, while the room smelled repulsively, which was also confirmed by Witness K017, who noted that toilets were extremely dirty and smelled bad. Witness Ermin Striković noted that the detainees from the room in which he was held were taken out only once a day to perform their bodily functions, namely in the open air, since there was no toilet, whereas, according to the statement of Witness K023, the detainees took care of their bodily functions in the rooms where there was no toilet, just concrete washing basins. While he was describing the conditions in the room in which he was held, witness Azedin Oklopčić noted that detainees could not use the toilet and that they relieved themselves with their clothes on, which was also confirmed by witness Fadil Avdagić, whereby from the statement of witness Azedin Oklopčić it stems that some of the detainees in the Camp had dysentery and that a detainee called Maho Habibović even died of dysentery and hunger. Witness K034 also noted that the detainees did not go to toilet to take care of their bodily functions, but that they relieved themselves in a bucket in the room in which they were held. According to the statement of witness Emir Beganović, who also confirmed the claims of other witnesses that there was a bad smell in the Camp and that detainees were sick of dysentery, during the time he was held in the room called *Mujina soba* human waste poured out into the room, since both toilet bowls were blocked, so that their contents poured out of the toilet bowls and detainees slept on this human waste. Hygienic conditions in the "white house" were as bad as in other rooms in the Camp, since the detainees took care of their bodily functions inside the rooms in which they were held. Based on the statements of witnesses who described the conditions in each room in which they were held, it clearly stems that one of the reasons why detainees did not use the toilet to take care of their bodily functions was the fact that on such occasions they used to be beaten by guards, so that they preferred to relieve themselves in the rooms in which they were kept because they were in fear for their safety. In this way, according to the statement of Witness K03, a guard would come in and tell the detainees to line up to go to the toilet and then the first detainees

who would line up would be beaten, so that the others would give up on going to the toilet. This witness, as he stated, chose to relieve himself in a boot or a bag, rather than to go to the toilet. According to the claims of the witness who, as it has been already noted, spent some time in the room called the “garage”, detainees who would return from the toilet were beaten and covered with blood, so that nobody wanted to go to the toilet any more, whereas Witness K023 confirmed that detainees who were held in the room number 15 were beaten on their way to the toilet, so that they took care of their bodily functions in the rooms with concrete washing basins. Witness Azedin Oklopčić also noted that detainees were beaten on their way to the toilet, which also happened to him, as well as to Witness K017, who was beaten on his way to the toilet and witness Mustafa Puškar, which are the circumstances the Court shall refer to in the part of the Verdict that deals with individual events. Witness K034 also testified about the beatings of detainees on their way to the toilet and he said that the detainees were beaten while they were running to the toilet, so that they would give up on going to the toilet. The conditions in the Omarska Camp were also partly described by Defense witness Mirko Kobas, who visited the Omarska Camp on several occasions as a medical technician, noting that the Camp was in a disastrous state, that an infection was spreading and that detainees were dirty, which was also confirmed by witness Branko Starčević, a former guard in the Omarska Camp, who noted that detainees were hungry and dirty and that a *horrible smell* spread all over the Camp, as well as witness Milorad Stupar, who confirmed that detainees, whom he saw on the occasion of his visits to the Omarska Camp, were in a miserable state. According to the statements of witnesses, supplies of drinking water in the Omarska Camp were in fact non-existent. Therefore, witness Asmir Baltić noted that water was very bad and that it was not safe to drink, but that detainees had to drink it whenever there was some. Witness K041 described the lack of drinking water in the room called the garage by noting that guards would give detainees water to drink only if they would sing nationalistic songs. Namely, when detainees would ask the guards to give them water to drink, the guards would tell them: “Sing songs, we will give you water”, after which they would throw them bottles of water, which was insufficient even for 10 persons. Witness K023 also confirmed the claims of witness Asmir Baltić that water was 100 percent not safe to drink and that the diseases which spread among the detainees, such as dysentery, were a result of the lack of water and unhygienic conditions (Fact No. 192). According to the statement of witness Zlata Cikota, detainees drank industrial water, whereas guards drank spring water. The consequences which this witness suffered from the consumption of this water were such that she urinated blood and felt pain in her kidneys. It is true that during the cross-examination witness Kerim Mešanović said that the water that was used in the Omarska Camp was tap water, whereby witness Asmir Baltić said that the detainees drank from the tap, however witness Mešanović did not say whether the water was safe to drink or not, while witness Baltić, as it has been noted above, stressed that water was not safe to drink. From the statements of other witnesses it stems that the detainees drank water that was not technically safe to drink. According to the statements of witnesses Emir Beganović and Azedin Oklopčić, it is undisputable that there was a water tap, but witness Azedin Oklopčić clearly noted that detainees did not drink the same water as the guards, which means that drinking water was not available for detainees, since drinking water was brought from a spring, as he noted, from which it follows that tap water was not safe to drink. Witness Nusret Sivac described the water which poured out of the tap by noting that it was red and that it was used only for washing huge industrial machines and it was not allowed to drink, so that, due to the use of such water detainees suffered

from dysentery and other stomach-related illnesses. The statements of witnesses Zlata Cikota and Azedin Oklopčić that guards did not drink the same water as the detainees were also confirmed by this witness, who noted that the guards drank water from a cistern which was brought especially for them. Just like Witness K041, witness Nusret Sivac also noted that detainees had to sing nationalistic songs in order to get a canister of drinking water. According to the statement of Witness K027, the water which detainees drank was used in the mine, it had an insipid taste and it was turbid and this witness noted that on one occasion Dr. Esad Sadiković, a detainee who took care of other detainees' health, recommended them not to drink that water, because it was bad for the kidneys. This witness also confirmed the claims of other witnesses that the guards in the Camp used special water that was brought in for them in canisters. The fact that during their stay in the Omarska Camp the detainees drank water that was not safe to drink was also confirmed by the testimony of Emir Beganović, who described the situation in which he was questioned, on which occasion the person who questioned him offered him a glass of water stressing that it was spring water. These claims of witness Beganović corroborate the evidence provided by other witnesses about the fact that the detainees and the Camp staff did not drink the same water. The very fact that the detainees did not have sufficient water at their disposal imposes the conclusion that they particularly did not have water to take a bath or wash themselves (Fact No. 192), which was also confirmed by many witnesses in their statements, such as Witness K035, who noted that it was impossible to have a bath and that the water was often turbid, just like Witness K023. The detainees bathed themselves on one occasion only, in the way that they were stripped naked and washed with a fire-hose, so that they clearly remember this only bath they had as a shameful and humiliating experience. According to the statement of Witness K03, detainees were taken out to the grassy area and then they were washed with a fire-hose, which was so strong that people used to fall under the pressure of the water. These claims of Witness K03 were also confirmed by Zlata Cikota, who noted, while she was describing the referenced event, that all the detainees were naked on this occasion while guards were washing them with the fire-hose between the "white house" and the pista, which was very uncomfortable for her to watch, since the detainee Hajra Hodžić was also there among the men and she was also naked. The incident of the detainees' bath was also described by Witness K027, who noted that the detainees were lined up on the pista and that they were washed with a large fire-hose, while the water jet was so strong that it hit the bodies of the detainees, due to which they would stumble and fall over the pista. According to the statement of this witness too, all the detainees who "had bath" on this occasion were naked, while among them there was also a woman called Hajra Hodžić. The Court did not accept the position of the Defense that the insufficient quantity of water given to detainees was safe to drink, in particular the claims of the accused Željko Mejakić himself that he personally drank that water, since based on the statements of the Prosecution witnesses it clearly stems that the water was not safe to drink, although it poured out of the tap, which, according to the statements of many witnesses, could be visibly determined, since it was colored, which resulted in frequent cases of dysentery among the detainees only. The frequent cases of dysentery and diarrhea among the detainees were also confirmed and determined by the established Fact No. 192, admitted by the Decision of this Court number X-KRN-06/200 dated 22 August 2007.

The witnesses who were held in the Omarska Camp during the critical period described in their statements also the food that was distributed to them during the meals. Based on

the statements of witnesses the Court undoubtedly concluded that the food in the Camp was not appropriate, that is, that it was of bad quality and in insufficient quantities, which was also confirmed in the Decision on the Admission of Established Facts number X-KRN-06-200 dated 22 August 2008, as Fact No. 198, whereas some detainees were given no food for days. All the witnesses consistently stated that the food was prepared outside the area in which the detainees were held and where they ate, which is an undisputable fact in terms of both the Prosecution and the Defense. As far as the quality of the food given to the detainees is concerned, from the statements of the Prosecution witnesses it clearly stems that meals in the Omarska Camp were sparse and of low-quality, namely the detainees were given inadequate food only once a day, which was also admitted by the Decision on the Established Facts dated 22 August 2007 as Fact No. 193. According to the statement of witness Asmir Baltić, the detainees were given one eighth of a loaf of bread and cabbage leaves boiled in water or sometimes beans. Witness Ermin Striković also confirmed that the food in the Omarska Camp was so bad by noting that meals consisted of a piece of bread and some soup with nothing in it, as well as Witness K023 who described the meals given to the detainees noting that they consisted of a leaf of cabbage in some water and one eighth of a loaf of bread, which was also confirmed by witness Senad Kapetanović, who stressed that meals consisted of some soup made of scarce cabbage or beans and that one kilogram of bread was divided among 20 detainees. According to the claims of Witness K027 the food was unvaried, sour because of high temperatures, and tasteless, while the detainees were given a piece of bread with 2 or 3 leaves of cabbage cooked in some water or some beans. Witnesses K017, Mustafa Puškar, Nusret Sivac, K035, Zlata Cikota and Azedin Oklopčić also consistently noted that the detainees ate low-quality food, whereby witnesses Nusret Sivac and Zlata Cikota described such food as hogwash. According to the statements of witnesses Zlata Cikota, K035 and K027 the quality of the food that was given to the detainees was drastically different from the food that was given to the guards in the Camp, and, according to the claims of Witness K027, after the food was brought in, the food for the detainees was separated from the food for the staff. The Witness K035 had an opportunity to eat the food that was given to the guards and he described it as tasteful and of good quality, whereby, according to the claims of witness Zlata Cikota, the guards ate steaks, mashed potato and tomato. These claims were also confirmed by witness Senad Kapetanović, who on one occasion got a meal from Rendić, a man who cooked the food for the detainees and the Camp staff, upon the order of Momčilo Gruban Čkalja, and on this occasion the witness got a steak, more bread than usual, a vodka and a coffee. Fact No. 205 also confirms the fact that the Omarska Camp staff had good meals and it was included in this Court's Decision on the Admission of Established Facts number X-KRN-06/200 dated 22 August 2007. A number of witnesses during their testimonies noted that they had their first meal only several days after they arrived at the Camp, such as witness Asmir Baltić, who claimed that he personally had nothing to eat for the first 5 or 6 days, after which he got his first meal, whereby Witness K023 got his first meal 2 or 3 days after his arrival. According to the statement of witness Sakib Jakupović, while he was held in the room number 15, sometimes the detainees would not receive their meals every day, whereby witness Ermin Striković, who was held in the room called the "garage" for 2 or 3 days noted that during his stay in this room he ate only once, namely a slice of bread and that he drank a glass of water. While he was describing the low quality of the food, witness Anto Tomić said: "The food was such that we used to have a quiz trying to guess what we just had for lunch. It consisted of some soup with nothing in it and one eighth of a loaf of bread

which was several days old.” Along with the indisputably established fact that the detainees were given low-quality food, based on the statements of several witnesses it undoubtedly stems that during the whole time they spent in the Camp the detainees were given food only once a day, while some of the witnesses testified about the short time during which they had to eat their meals, that is, that the guards forced them to go to the restaurant, to eat the meal and to get out of the restaurant in only 3 minutes, and in this way the Camp staff made the already difficult position of the detainees additionally hard. Based on the statement of Witness K041 it stems that the detainees had a very short time to eat the meal, whereby according to the claims of witness Asmir Baltić meals were distributed once during 24 hours and the detainees had 9 seconds to finish their meals, whereby those who would continue eating would be beaten by the guards. Witnesses Ermin Striković, K017, Senad Kapetanović, Sakib Jakupović, Nusret Sivac, K035 and Anto Tomić also confirmed the claims of the above-mentioned witness that the food was distributed to the detainees only once a day, while witness Kerim Mešanović noted in his statement that the detainees would go to have a meal in groups of 30 persons and that they had very little time to eat, approximately 3 minutes for each group, which was also confirmed by witnesses Sakib Jakupović and Nusret Sivac, K027, Emir Beganović and witness Azedin Oklopčić, who said that the time for eating was limited to 2 or 3 minutes. Witness K035 also confirmed that the detainees had limited time to eat. He noted that the detainees often had no time to eat the meal, while Witness K027 noted that sometimes the guards would beat the detainees who would not manage to finish their meals. The above-mentioned contents of the witnesses’ statements about the quality and the amount of food which they were given in the Camp for the meals, from which it follows that it was far below the satisfactory level, are additionally corroborated by the physical condition of the detainees, namely their body weight before and after the time they spent in the Camp, since from the witnesses’ statements it follows that each of them lost on average between 25 and 30 kilograms. Witness Asmir Baltić noted that before the Omarska Camp he had 105 kilograms, whereas after that, when he was weighed in the Trnopolje Camp, he had 70 kilograms. Witness Ermin Striković weighed, as he noted, 85 kilograms before the Omarska Camp, while he had 51 kilograms when he was weighed in the Manjača Camp, where he was taken directly from the Omarska Camp, while Witness K023 had 88 kilograms before his stay in the Omarska Camp, whereby he weighed 58 kilograms in Manjača. Witness Zlata Cikota stated that before the Omarska Camp she had 86 kilograms, whereby she weighed 51 kilograms after she was released from the Camp, as well as witness Anto Tomić, who had 80 kilograms before the war conflict commenced, whereby he had 54 kilograms at the point when he was released from the Camp. According to the statements of the above-mentioned witnesses, the state of exhaustion of all the detainees was bad in general due to the low-quality and insufficient food, as well as due to other conditions, since, according to the statement of witness Asmir Baltić, the detainees dragged themselves around and they were exhausted, while witness Mustafa Puškar too noted that the people started losing kilograms and that their bodies became weak, as well as witness Ermin Striković who described his state by noting that he was unable to stand or walk, or even to sit, and that the only position which he was able to endure was to lie down. The Court did not accept the claims of the Defense witness Branko Starčević, who worked as a guard in the Omarska Camp during the critical period and who noted that the guards ate the same food as the detainees primarily because the claims of this witness are in contrast with the claims of numerous Prosecution witnesses and also partly with the statement of witness Milorad Stupar, who, being a member of

the territorial defense, worked on the outside security of the Camp and who used to have a meat pie for lunch, whereas, according to the statement of this witness, in the afternoon he would have lunch that consisted of cooked beef, rice and potato, which suggests that this was absolutely not the food that was given to the detainees. Witness Pero Rendić, who worked in the kitchen in which the food was prepared in the Omarska Camp, noted in his statement that the same food was cooked in one cauldron for the detainees and the staff of the Camp, which claims the Court could not accept since they are in contrast with the statements of the Prosecution witnesses who had an opportunity to see and even to taste the food that was eaten by the guards, which they claimed was incomparably better. Even in case it was the same food, the Camp staff who prepared the food given to the detainees had ample opportunity to separate the thin food of leaves in some water, as the detainees described their meals, and give it to the detainees, and give vegetables and meat to the guards. Besides, the clear fact that some guards would give to the detainees additional food they would not eat themselves, as it was noted by witness Milorad Stupar, lead to the conclusion that the food for the detainees was considerably worse than the food for the guards. The overall above-described bad conditions in the Omarska Camp were also confirmed by the accused Željko Mejačić himself, who noted in his statement that the accommodation of the detainees was well below any level of decency, that the rooms were overcrowded and hygiene was non-existent since the detainees could have no bath, that is, they had no access to toiletries. In his statement the Accused also partly corroborated the claims of the Prosecution witness about the meals which were given to the detainees by noting that the food was of low-quality, that the detainees were given only one meal a day and that sometimes some detainees would have no meal at all.

Along with the above-described way the detainees had meals, the witnesses also described the beatings which took place on their way to have lunch, so that, in fact, going to the restaurant was for detainees associated with physical abuse. According to the statement of Witness K041, he was beaten on the occasion of his first visit to have a meal, on his way there and on his way back from the meal, whereby the beating of the detainees on the occasion of their going to have a meal was also confirmed by Witness K01, as well as witness Emir Beganović and Witness K027, whereas Witness K018 noted that he was beaten three times during the lunch time and that the detainees were beaten on several occasions during the lunch time. The beating during the lunch time which all the detainees remember took place on the day which the detainees call *the black Friday* or *the bloody lunch*, as it was noted by witnesses K035 and Kerim Mešanović. According to the claims of witness Nusret Sivac, on that day all the detainees had to go through torture because the guards in the Camp *turned wild*. While he was describing the referenced event, witness Nusret Sivac said that two rows were lined up along the way towards the restaurant, that the path was oiled and that certain items and pieces of furniture were placed along it so that the detainees would be kept in the corridor for as long as possible, while many of them fell under the blows, which was also confirmed by witness Ermin Striković by noting that the detainees had to jump over the set barriers, so that those who would fail to pass over and who would fall would be beaten by the guards. As witness Striković noted himself, his cervical bone was fractured on this occasion, since he was hit by a metal object over that part of his body. According to the statement of witness Asmir Baltić, on the critical occasion the guards spilt water and set trays on their way to lunch, so that the detainees who passed between the two rows would slip, on which occasion they were beaten. While he was describing

the way the detainees were beaten on their way to have a meal, witness Emir Beganović also mentioned the beating which took place on the critical day when, as he noted, the guards threw trays on the ground as they made their way to the restaurant so that the detainees would slip and fall. Witness Azedin Oklopčić also confirmed the statements of the above-mentioned witnesses, since from his statement it also stems that on that day water was spilt over the route to the canteen and trays were placed along the path which the detainees had to run, whereby he personally slipped over a tray and fell in the direction of stairs. Witness K042 also confirmed that the detainees were on the critical day beaten on their way to lunch and he noted that trays were set on tiles over which the detainees had to run and he said: “Those who fell had bad luck”, which leads to the conclusion that those who fell were beaten. According to the statement of witness K035 on that day the guards were beating the detainees to such an extent that many of them gave up on going to have lunch, whereby as pieces of bread fell out of the detainees’ hands, the guards would pick them up and put them in bags and later on they said that the detainees entered a hunger strike. While he was describing the referenced event, witness Kerim Mešanović noted that on the day which he called *the black Friday* the beating took place which lasted from the morning until the afternoon and that there were rumors that trays were set in the corridor, so that the detainees who would slip would be beaten. Witness Anto Tomić also testified about the same event and he noted that a bench was set at the entrance to the restaurant, so that the detainees had to jump over it to get into the restaurant, on which occasion they were beaten. From the statements of the above-mentioned witnesses it follows that the detainees were beaten on their way to have lunch, especially on that day when barriers were placed on their route towards the restaurant, to which some detainees referred to as trays, while others referred to furniture, that is, benches, which clearly represented a method the Camp guards used to beat and maltreat the detainees, which resulted in the already present fear of the detainees, so that many of them, as witness Kerim Mešanović noted, gave up on going to lunch. Witness Emir Beganović himself noted that he avoided going to have a meal because he was afraid of being beaten. From the above-mentioned facts it stems that the detainees were beaten by the guards on a regular basis, so that they avoided going to the toilet or lunch precisely for the reason that they were constantly afraid of being beaten.

As far as medicines and medical care are concerned, based on the statements of the heard witnesses the Court undoubtedly determined that the persons who were detained in the Omarska Camp were deprived of them. Witnesses Asmir Baltić, K017, Emir Beganović, K042 and Nusret Sivac noted that Dr. Esad Sadiković, who was a detainee himself, offered the detainees medical assistance, as well as that the detainees had to manage on their own as far as medical assistance was concerned. It is true that some witnesses saw certain people, who wore white overcoats, walking around the Camp, however, according to the claims of witnesses, those medical workers did not offer any medical assistance to any detainees. In this way, witness Ermin Striković, who did not get any medical assistance even at the time he received injuries on his way to *the bloody lunch*, noted that a man who wore a white overcoat and who was physically disabled used to come to the Camp, but he did not know if any detainee received medical assistance. Witness K023 also testified about the fact that there was no medical assistance in the Omarska Camp and he noted that only once he saw medical worker Ljuban Anđić and Dr. Jusuf Pašić walk through the rooms, but that they did not offer their assistance to anyone, whereby he himself received medical assistance for the injuries he sustained while he was beaten only after he was transferred to the Manjača



Camp, on which occasion he received five penicillin injections. Witness Azedin Oklopčić also said that he saw medical personnel, namely Ljuban Anđić, doctor Ivić and Kobas, in the Omarska Camp, but that no medical assistance was offered, while witness Nusret Sivac too confirmed that the detainees received no medical care, whereby, according to the claims of Witness K018, he did not hear nor see that any detainee received medical assistance, although he knew that people applied for help. Even in the situations in which the detainees needed medical assistance they were too afraid to ask for it, since the fear for their lives was stronger, which was also confirmed by the statement of witness Emir Beganović, who said: “I was too afraid to ask for medical assistance so that I would not be killed because of that.” According to this witness’s statement, he received such head injuries that his wound became worm-infested, however, he asked assistance only from detainee Dr. Sadiković, but not from the Camp staff, since he was afraid for his life. What kind of medical assistance was available in the Omarska Camp can be partly seen from the statement of Defense witness Mirko Kobas, who noted in his statement that, while he was passing through the Camp area, he noticed that the detainees had open wounds which could be very harmful for the injured persons, whereby he described the medical assistance as very bad. From the statement of this witness it also stems that his visits to the Omarska Camp were not focused on offering medical assistance to the detainees, but that they were mostly focused on the disinfection of toilets, that is, on splashing toilets with chlorine, which was also harmful for the detainees, according to the claims of Witness K017, since they slept in toilets, so that their eyes and respiratory tract hurt them because of the chlorine.

The fact that the detainees were forced to help each other treat the injuries and illnesses which they sustained in the Omarska Camp due to the lack of medical assistance is also confirmed by the statement of Witness K017, from whose statement it follows that other detainees, who were held in the same room as he was, helped him when he got sick with dysentery. The fact that the detainees were not offered assistance although they asked for it stems from the statement of witness K018, who described the occasion in which detainee Miroslav Šolaja was beaten, which was elaborated in the part of the Verdict in which individual cases of killing and beating are listed. According to the statement of this witness, after Miroslav Šolaja was beaten for the third time and after he asked for medical assistance, the witness turned to two guards in the Camp, after which one of them said: “He did not deserve any help, he caused too much evil to the Serb people to be offered any help” and these claims of Witness K018 were also confirmed by Witness Anto Tomić.

According to the factual part of the Verdict, the detainees of the Omarska Camp were subjected to interrogation on a daily basis and, according to the claims of all the heard witnesses who testified about the circumstances, this was carried out in the offices on the first floor of the administration building above the restaurant, where they were taken by the guards, which is also suggested by Fact No. 206 that was established by the Decision dated 22 August 2007. In their statements witnesses Asmir Baltić, K041, Ermin Striković, K023, K017, Senad Kapetanović, Emir Beganović, Azedin Oklopčić, Fadil Avdagić, Zlata Cikota, K01, Kerim Mešanović, Enes Kapetanović, Sakib Jakupović, K09, K015, Anto Tomić, Nusret Sivac, K035, Said Bešić, Saud Bešić, K037, K019, K027, K034, K022, K018, K036 and K03 noted that during the time they were held in the Omarska Camp they were questioned by investigators in the offices that were located on the first floor of the administration building, whereas some of the witnesses,

such as Enes Kapetanović, K022, Said Bešić and K036 were questioned two or more times. Only Witness K018 noted that he signed the statement that was made on the occasion of his questioning, while witness Sakib Jakupović was forced to sign a statement with false contents. Many of the heard witnesses were beaten on the occasion of their questioning, such as witnesses Senad Kapetanović, Kerim Mešanović, Sakib Jakupović, K09, K015, Said Bešić, K036. Some were beaten while they were taken to or brought back from the questioning, such as witnesses K036 and K037, who was kicked in the stomach by the guard who took him there, whereby some of them who were not beaten personally heard moans and screams of other detainees who were questioned in other rooms. Witness Fadil Avdagić said that he heard screams of detainees coming from other rooms while he was being questioned, whereby, according to the claims of witness Ante Tomić, although he was not personally beaten, he was afraid of getting beaten, since all the detainees who were taken there were moaning and screaming. From the statements of all the witnesses who testified about the circumstances of interrogation it clearly stems that the questions, which differed only slightly, were targeted to check if they were engaged in the armed forces and armed conflicts, if they had weapons and if they were members of nationalist parties, as well as to check the general situation in the Prijedor Municipality. Witness Emir Beganović provided a convincing description of the position of the detainees during the questionings, and in his statement he noted: “We had to admit what we were not, 95 percent of us were beaten. When I saw them (referring to the investigators) I froze in fear,” whereby a number of detainees were also verbally insulted, that is, cursed during the questioning, such as witnesses Azedin Oklopčić and Kerim Mešanović. However, none of the witnesses noted that either criminal charges were filed against him or that he was accused of having committed a criminal offence during the time he was detained in the Omarska Camp, which is also confirmed by the fact number 211 that was established under the Decision of this Court dated 22 August 2007, which is why the Court is convinced that this suggests that the Omarska Camp was not a legitimate investigation centre. During the evidentiary proceedings the Defense tried to impose the conclusion that the majority of the beatings took place while the detainees were questioned by the inspectors and guards who worked with the inspectors. From the evidentiary proceedings it follows that the investigators used to come every workday in the morning and that they would leave in the afternoon. First of all, the above-mentioned fact stems from the statements of the following Prosecution witnesses: Asmir Baltić, K041, Zlata Cikota, Nusret Sivac and other witnesses who testified about the above-mentioned circumstances, which was also confirmed by Defense witness Nada Markovski, who did the typing work in the Omarska Camp for the investigators and who noted in her statement that her working hours were the same as the inspectors’. However, during the evidentiary proceedings the Court heard a series of Prosecution witnesses who noted that the beating of the detainees occurred during the questionings by the investigators, as well as before or after the work of the investigators, and they even noted that the majority of the beatings took place during night hours when the inspectors were not present in the Camp, since, as witness Enes Kapetanović noted: “During the day they would roll-call us for questioning, whereas they would beat us during the night.” In addition, witness Nusret Sivac noted that the killings did not take place only during the questionings and that the majority of the killings took place during night hours, so that during the night the detainees would just wait for the door to be opened and would expect the guards to roll-call someone. In the same way, Witness K037 noted in his statement that the beatings took place during night when the guards would take people away after 10 or 11 p.m. and would return

them beaten and, as this witness stated, “people started disappearing”. Therefore it is an undisputable fact that a certain number of beatings and killings took place during the questionings, however, the beating of the detainees also took place during the night when the investigators were not present in the Camp, as well as when the detainees were on their way to the toilet or lunch, they took place in all parts of the Camp and on all occasions, in rooms other than the ones in which the investigators stayed during the questioning, and unrelated to the interrogations. The above-mentioned facts lead to the conclusion that many beatings of the detainees were not targeted at any particular person as a result of questioning, but that the victims were chosen indiscriminately. Furthermore, the Defense tried to impose on the Court the conclusion that the worst atrocities which took place in the Omarska Camp occurred at the time when members of the Special Unit from Banja Luka were present in the Camp. It is an undisputable fact, according to both the Prosecution and the Defense, that members of the Special Unit from Banja Luka, who were well trained and armed, stayed for some time in the Camp, and that the above-mentioned persons treated the detainees in a cruel way. However, the fact is that the above-mentioned special units left the Omarska Camp very shortly after the Camp was established, which stems from the statements of witnesses, whereas the beatings and killings continued, committed by either the guards or the visitors. The Court based the conclusion that the special forces from Banja Luka left the Omarska Camp very shortly after the Camp was established on the statements of a string of witnesses who mentioned the members of the Special Unit from Banja Luka. According to the statements of both the Prosecution and the Defense witnesses, the above-mentioned special forces stayed in the Camp for a short period of time. According to the Prosecution Witness K042, they were present there during the first 20 days. According to the Defense witness Željko Grabovica, a guard in the Omarska Camp, the special forces stayed in the Camp for some 10 or 15 days, whereby witness Emir Beganović noted that “the persons from Banja Luka”, meaning the special forces whom he saw while he stayed on the pista, were there for some time and that they left afterwards. Only the witnesses who were held in the Omarska Camp from the very beginning talked about the special forces from Banja Luka, such as, in addition to the above-mentioned witnesses, Sakib Jakupović, Azedin Oklopčić and others, which also imposes the conclusion that the special forces left the Camp at the beginning of its operation. Finally, the position of the detainees was not improved by the departure of the special forces from Banja Luka, but became more tolerable to a certain extent only after the arrival of the international media and the International Committee of the Red Cross in early August 1992, as Witness K017 testified. According to the assessment of the Court, the fact that the special forces from Banja Luka were cruel in their treatment of the detainees, as it was noted by many witnesses, cannot deny the fact that even after they left such cruel treatment was continued by other persons, namely the guards, visitors to the camp and others, as it was noted in statements of many witnesses.

Statements of the heard Prosecution witnesses, through different events that were individually listed in the factual description of the Indictment, lead to the conclusion that the beatings of the detainees that were committed along with torture, which often resulted in the victims’ death, as well as the humiliation and psychological abuse, took place on a daily basis in the Camp. One of the most obvious examples of the humiliation represents the event of the collective bathing of the detainees, as described above, as well as the way the guards in the Camp treated detainee Muhamed Čehajić, the first Mayor of the Prijedor Municipality after the multi-partisan elections, on which

occasion, according to the statements of witnesses Nusret Sivac and K041, this detainee suffered certain provocations, as described by the witnesses in their statements, as well as the situations in which sexual abuses took place. In addition, numerous individual events that were described by the heard witnesses lead the Court to the conclusion that, along with physical abuse, the detainees were exposed to psychological abuse as well, such as, for example, singing nationalistic songs, different types of blackmailing in which the detainees were requested money, such as, for example, the case of Muhamed Čehajić as described by witnesses Nusret Sivac and K041 and others. From the statements of the witnesses it stems that the detainees in the Camp were exposed to beatings on all occasions, which eventually, as the Court finds, caused the death of at a minimum a hundred detainees. In this manner, the detainees were beaten and killed at any time during the day and even in front of other detainees, as it was the case with the killing of Rizo Hadžalić, Mehmedalija Nasić, Safet Ramadanović and others, which are the events included in the part of the reasoning that refers to individual events. The number of the killed detainees in relation to the number of the killed and the dead noted in the Indictment was corrected precisely in accordance with the contents of the statements of the witnesses, former detainees of the Omarska Camp, so that “at a minimum a hundred of detainees” was subsequently inserted in the operative part of the Verdict instead of “at a minimum hundreds of detainees”, which also leaves the possibility that hundreds of detainees were killed in the Omarska Camp. Not a single Prosecution witness testified before the Court that he did not see dead bodies of detainees, on the contrary, from the statements of the witnesses it follows that they could see bodies of detainees on a regular basis, usually near the building called the “white house”, whereas some of the witnesses noted that they could see piles of bodies on several occasions. Therefore, in his statement Witness K017 noted: “It was not only once that I saw bodies on the grass, they were often there on that place. Killings and torture took place during the night. In the morning, at around 4 - 4:30 a.m. a yellow TAM truck would come and take the bodies away.” Witness K015 also testified about the dead bodies and he said that on one occasion he loaded dead bodies of the killed, noting: “We loaded them on a truck, a yellow TAM truck, which would usually take the bodies away. I often saw this truck coming in and going out.” In his statement Witness K042 mentioned that on the first morning of his stay there he saw a yellow *tamić* on the pista driving bodies away, noting: “On that day I saw them load the dead on *žućo* (the yellow truck), there were ten bodies.” Witness K027, who had a good view from the restaurant section over the area around the “white house” where the bodies were dumped, said that the female detainees would ask each other how many bodies they counted on each morning. This witness noted that the mornings in which there were no bodies were rare, that sometimes there were 20 and sometimes 30, and that a yellow *tamić* would come and the bodies would be loaded on it and driven away. Witness K034, who loaded bodies on the yellow *tamić* on several occasions said that on the first occasion he loaded between 30 and 50 bodies, which were already decomposing and which had visible marks of beating, then on one occasion he loaded three groups of between 12 and 15 bodies, which were also taken away by the yellow *tamić* and on another occasion he loaded 10 bodies, adding that he loaded bodies on 3 or 4 occasions. During the cross-examination the Defense used the statement of this witness in which he noted that he did not see bodies on that day and on the following day, noting the statement of this witness and trying to prove that there were no mass killings in the Omarska Camp, especially when on one occasion a large group of detainees was killed, including the inhabitants of the Hambarine village, which event is described in the part

of the Verdict in which individual events are listed. However, from the statement of this witness it follows that he was not always in the group of the detainees who loaded the bodies. The fact that on the critical day the witness was in the part of the Camp where the pump was located does not necessarily lead to the conclusion that the witness must have seen dead bodies on that day, since they could have been loaded and taken away before he came to the place where the pump was located, especially since, as many witnesses noted, bodies of the dead detainees were usually taken away in the early morning. Witness Emir Beganović also noted in his statement that on two occasions he saw piles of around 15 or 20 bodies in front of the “white house”, stressing that this was an everyday sight. Witness Zlata Cikota also confirmed that dead bodies of the detainees were taken away by a truck called “tamić” on a daily basis. She used to see the bodies in the morning in front of the left window of the “white house”. Witness Kerim Mešanović used to see dead bodies between the “white house” and the “red house” in the morning hours when the yellow *tamić* would arrive and take the bodies away which according to him happened very often. Witness K018 on one occasion also saw over 11 dead bodies among whom he recognized Sead Sivac and Miroslav Dujmušić and this witness noted that on many occasions he saw the yellow *tamić* taking the dead bodies away, since he often looked through the window of the room in which he was held. Witness K018 was on one occasion, on 3 August 1992, even selected to take six bodies out of the room number 25. Therefore, all the above-mentioned witnesses are completely consistent in their statements regarding the claims that they used to see dead bodies in the Omarska Camp almost every morning when the yellow truck would arrive and take those bodies away. Not all the witnesses precisely noted the number of bodies and the number of times they saw the bodies, however from their statements it undoubtedly stems that this happened on a daily basis and that there were always several bodies (some said 6, some 15 or 20, while some witnesses mentioned 50 bodies). When the time of the operation of the Omarska Camp is considered, as well as the fact that the detainees were killed on a daily basis, as it was noted in the witnesses’ statements, and especially when individual killings are considered, it is clear that at a minimum a hundred detainees were killed in the Omarska Camp, which allows the possibility that this number is much higher than the one established. From the statements of the witnesses who testified about the circumstances of individual events in the Omarska Camp it undoubtedly stems that a large number of the detainees died of beatings, since, as witness Emir Beganović said: “In Omarska a bullet was a reward.”

### **Individual events**

According to the factual allegations in the Indictment, the Prosecutor’s Office of Bosnia and Herzegovina classified all the individual incidents in the manner that the killings of the detainees directly and personally committed by the persons over whom the accused Željko Mejakić, as the Chief of Security and de facto the Camp Commander, had effective control were first listed point by point, which are the killings committed in the furtherance of the Camp’s system of abuse and persecution in which he participated. The first event noted in this part of the Indictment is the fact that Ahil Dedić was shot dead on or about 28 May 1992. Having assessed the evidentiary material, the Court omitted the above-mentioned event from the operative part of the Verdict since based on the evidence presented it stems that the accused Željko Mejakić was not involved in any activities in the Omarska Camp at the time the referenced killing took place. Namely,

according to the statements of witnesses Ermin Striković and Fadil Avdagić, who were among the detainees who were the first to arrive at the Camp, it is undisputable that the referenced killing did take place, since the witnesses identified Ahil Dedić as the person who was killed on the critical night in the Camp. The statements of these witnesses were also partly corroborated with the statement of the accused Željko Mejakić himself which he gave as a witness within the concept of his Defense, when he noted that on the morning of 28 May 1992 on his way to the Camp he found several bodies of the killed persons who were brought to the Omarska the night before. However, the contents of the statements of the above-mentioned witnesses suggest that Ahil Dedić was killed in the night between 27 and 28 May 1992, when the first detainees started arriving at the Omarska Camp, whereas according to the statement of the Accused himself, as it has been already noted, he came to the Camp for the first time in the morning of 28 May 1992 when the referenced killing had already taken place. Along with this, according to the claims of the accused Željko Mejakić, Miroslav Kvočka, who was also an active police officer in the Omarska Police Station Department and who arrived in the area of the Omarska Camp before the Accused, had already found dead bodies of the civilians who had been brought there. Since the above-mentioned facts suggest that Željko Mejakić did not officially take over the post of the Chief of Security of the Omarska Camp before the moment Ahil Dedić was killed, and since he in fact came to the Camp only after the killing was committed, the Court did not find the Accused guilty of the referenced event under any of the counts of the criminal liability and especially since none of the witnesses confirmed that he saw the Accused in the Camp area during that time.

According to the allegations in the Indictment, on or about 30 May 1992 one of the visitors to the Camp shot dead both Avdo Muranović and Asaf Muranović. During the main trial witnesses K037, Azedin Oklopčić, K042 and partly witness Asmir Baltić gave their statements about the above-mentioned circumstances. From the statements of the above-mentioned witnesses it stems that they were brought to the Omarska Camp on 30 May 1992 and that, while the buses were arriving at the Camp, shooting was heard. Witness K037 said that his brother was in the group of detainees who were shot at and that his brother told him later on that Asaf and Avdo Muranović passed away near him, whereby the witness was personally present when those two persons were buried in 2006. According to the statement of witness Azedin Oklopčić, who noted that Avdo and Asaf Muranović were together with him when the bus stopped on the pista, while they were getting out the shooting was heard, on which occasion these two persons were killed. At the beginning of the examination, the witness noted that these were Avdo and Asaf Kapetanović, but he corrected himself during the further course of the giving of the statement and he called those persons Avdo and Asaf Muranović. According to the statement of Witness K042, who was also brought to the Omarska Camp by a bus on 30 May 1992, while six persons were getting off the bus a burst of fire was heard and all six persons were killed. The truth is that this witness did not mention the persons who were killed on this occasion by their names, however the contents of the witness's statement suggests that several persons were killed during the shooting, which also stems from the statement of Witness K037. Witness Asmir Baltić, who was also brought to the Omarska Camp on 30 May 1992, described the referenced event in his statement, noting that on the critical occasion he heard a burst of fire and then Senad Osmančević, who got off the bus before him, was injured. Witness Asmir Baltić did not mention the names of Avdo and Asaf Muranović, but his testimony about the referenced event

clearly suggests that this was the same event, since the witness tied it with the killing of the brother of one of the soldiers or security members, after which the same person shot a burst of fire towards Avdo and Asaf Muranović, which was also confirmed by previous witnesses. Since the Court could not determine in a reliable manner if the burst of fire that killed these two persons was shot by the guards of the Camp or by one of the Serb soldiers who visited the Camp, a correction was made with regard to the facts stated in the Verdict in the manner that a possibility was left that the referenced killing was committed either by a guard in the Camp or by a soldier who visited the Camp on that occasion.

With regard to the event that refers to the beating of Abdulah Puškar and Silvije Sarić, the persons who died of beating in the Camp, which took place in June or July 1992, the Court has also found established the allegations in the Indictment regarding this event. The following witnesses were heard regarding the above-mentioned circumstances: K027, Ermin Striković, Fadil Avdagić, Mustafa Puškar, K035 and Zlata Cikota. Witness Mustafa Puškar, who was in family relations with Abdulah Puškar, stated that he heard when Abdulah Puškar was taken out of the room called “cloakroom,” which was also the last time he saw him and, according to him, it happened after 20 July 1992. According to the statement of this witness, he heard a conversation between two persons on which occasion one of them said: “I will not stop until I kill him”. In terms of the roll-call of Silvije Sarić and his physical state after he was beaten, witnesses Ermin Striković and Fadil Avdagić, who were together with Silvije Sarić in the same room, gave their statements about the above-mentioned circumstances. These two witnesses consistently stated that Silvije Sarić was roll-called one evening and that he was brought back to the room all beaten up. The witnesses concluded this based on the traces of the beating on the victim’s body. According to the statement of witness Ermin Striković, after Silvije Sarić was brought back from the beating he was not able to walk and he died in the room where he was brought, whereby witness Fadil Avdagić stated that Silvije Sarić walked out after he was roll-called and after some time he was thrown back inside the room in which he had been held, and this witness later on heard that Silvije Sarić died shortly afterwards. According to the statements of witnesses K027, K035 and Zlata Cikota, Abdulah Puškar and Silvije Sarić were beaten during the night on the first floor of the administration building. According to the statement of Witness K027, terrible sounds were heard during the critical night, while the witness heard one of the perpetrators calling Silvije Sarić by his name while he was being beaten and that Silvije Sarić and Abdulah Puškar begged them to let go of them. From the statement of Witness K035, who also heard the beatings on the critical occasion, it stems that this witness recognized Silvije Sarić’s voice as he begged them not to beat him, whereby this witness heard later on that another victim was brought and beaten there, and that this was professor Abdulah. The statements of these two witnesses are also corroborated by the statement of witness Zlata Cikota, who heard other women talking about how “Sikura Slavko” and Puškar were beaten between the stairs and the rooms, meaning the stairs in the administration building, as well as that cries and screams were heard on the critical night. It is clear that witness Zlata Cikota was thinking about the person called Silvije Sarić at the moment she mentioned detainee Slavko Sikura, which is also suggested by the fact that none of the witnesses mentioned that there ever was a detainee called Slavko Sikura in the Camp, but only Silvije Sarić. The statements of all three above-mentioned witnesses are entirely consistent with the statements of witnesses Fadil Avdagić and Ermin Striković about the death of Silvije Sarić and Abdulah Puškar.

Namely, Witness K027 stated that he heard from a detainee that these two persons had died of severe pain, whereby from the statement of Witness K035 it stems that this witness heard that the professor had died, referring to professor Abdulah Puškar, while after he got out of the Camp he heard that Silvije Sarić had died of beating. The statements of these witnesses about the death of Abdulah Puškar were supplemented by the statement of witness Zlata Cikota who saw Abdulah Puškar on one occasion after the beating, noting that he was “in a poor and miserable state” and that she did not see him after that, while the information she had suggested was that Abdulah Puškar died of the consequences of the beating. Having rendered a decision on the time set in the Indictment, when the beating and death of these two persons occurred, the Court determined that Silvije Sarić and Abdulah Puškar were beaten in July 1992, which is suggested by the statement of witness Mustafa Puškar, who said that it happened after 20 July 1992, while Witness K027 was certain that the critical event took place in July 1992.

According to the allegations in the Indictment, in June 1992, Željko Timarac, in the presence of the accused Duško Knežević, both of whom were visitors to the Camp, shot dead Emir (“Hanki” or “Hankin”). The Court based the conclusion that the referenced event took place on the statements of witnesses Azedin Oklopčić and Emir Beganović, as well as on a part of the statement of the Accused which he gave as a witness within the concept of his Defense. In terms of the incident involving Emir Ramić a.k.a. “Hankin”, witness Emir Beganović noted that he knew him because they were neighbors and friends from school and that he got the nickname Hankin after his mother, which is the nickname also mentioned by witness Azedin Oklopčić. According to the statement of witness Azedin Oklopčić, the above-mentioned event took place near the “white house”, when Željko Timarac came and asked Hankin: “Is there anyone from Prijedor here,” and Hankin told him that everybody there were “villagers”. This witness further noted that Željko Timarac hit Hankin on his forehead with a baton with a metal ball attached at the top, due to which Hankin’s forehead was broken and Hankin fell, and a shot was heard. The witness, as he noted, saw the injuries that were inflicted on Hankin and he saw Hankin lying on the ground, while Željko Timarac was standing above him with a pistol in his hand. These claims of witness Azedin Oklopčić were significantly corroborated by the statement of witness Emir Beganović who heard from a detainee who was near Emir Ramić that he was killed in front of the “white house”, that he was asked about the people in the group before that, after which Hankin answered that he did not know anyone because those were people from the villages, after which he was hit on his head by a piece of wire cable with a metal ball attached on top of it. The fact that Hankin died on this critical occasion is also confirmed by the claims of the accused Željko Mejakić himself, from whose statement it follows that he was informed that a group from Prijedor had come and that they had been beating people, including Emir Ramić “Hankin” and that those people died. The Accused noted that the referenced event took place on around 12 or 14 June 1992, which is completely consistent with the period of time witness Azedin Oklopčić stayed in the “white house”, since he was taken inside that building from the pista in mid June 1992 following a summer shower. From the statements of witnesses Azedin Oklopčić and Emir Beganović it follows that the event of the killing of “Hankin” took place during the time a group of visitors, including Željko Timarac and Duško Knežević used to go to the “white house” and beat the detainees to death, which was a fact generally well-known to the camp prisoners, so that, according to the assessment of the Court, such close



connection between the actions of the persons who used to visit the Camp led Emir Beganović to conclude that Duško Knežević killed Hankin, since this group of visitors was a synonym for the beating of detainees in the Camp, especially in the “white house”.

The Court has also undisputedly determined the allegations from the Indictment of the Prosecutor’s Office of BiH that on or around 10 June 1992 a guard in the Camp Milan Pavlić shot dead Mehmedalija Nasić. Many Prosecution witnesses gave their statements about the circumstances of the killing of detainee Mehmedalija Nasić while describing the events that occurred before the above-mentioned killing. The Court finds that the statements of these witnesses, with regard to the above-mentioned event, are completely consistent as far as the decisive facts are concerned. In this manner, witnesses Asmir Baltić, K03, Emir Beganović, Azedin Oklopčić and K042 consistently stated that the referenced incident took place in the restaurant section, which was located on the ground floor of the administration building of the Omarska mining complex. According to the statements of witnesses Asmir Baltić, K03 and Emir Beganović, on the critical occasion Mehmedalija Nasić lost his nerves and got up and started talking after which he was warned to sit down, while all the above-mentioned witnesses eye-witnessed that a guard in the Camp whom they identified as Milan Pavlić shot Mehmedalija Nasić, after which they saw that Nasić was dead. Regarding the time when the above-mentioned event took place, the Court determined that the witnesses generally agreed about that fact too, since witness Azedin Oklopčić said that it was around 10 June 1992, Witness K03 mentioned the period in mid June 1992, while witness Asmir Baltić and Emir Beganović connected it with the length of their stay in the Camp. Therefore, Asmir Baltić estimated that Mehmedalija Nasić was killed at some point during the middle period he spent on the pista, which would approximately be around 10 June 1992, while Emir Beganović said that he was killed around 6 or 7 days after he arrived at the Camp (30 May 1992), which also represents a period close to the time noted in the Indictment. These claims of the Prosecution witnesses were completely corroborated by the statement of the accused Željko Mejakić given within the concept of his Defense, who noted that Mehmedalija Nasić was killed by members of the police security. The above-mentioned subjective evidence on the death of Mehmedalija Nasić was also additionally corroborated by the documentary evidence in the case file, namely by the Additional Report of Nicolas Sebire, dated 28 August 2002, Exhumations and Proof of Death, from which it stems that during the exhumation of the above-mentioned person on 22 September 2001, his personal documents were found (JK01-74BP).

In the view of the death of Safet Ramadanović a.k.a. “Ćifut” which, according to the Indictment, took place due to the beating by guards in the Camp in early June 1992, witnesses Azedin Oklopčić and Nusret Sivac, as well as Witness K018 gave their statements about the above-mentioned circumstances. Witnesses Azedin Oklopčić and Nusret Sivac consistently stated that Safet Ramadanović was beaten in the Omarska Camp and that he died of the beating, which they knew because they saw it personally, since witness Azedin Oklopčić saw that the above-mentioned person was beaten by members of the guards, including Predojević and Popović, that he was in a very bad physical state and that he could not walk without help. From the statement of these two witnesses it follows that they saw the body of Safet Ramadanović, whereby witness Nusret Sivac recognized him by his clothes when he saw the body lying motionlessly on the pallet. This witness also stated that he got the information from other guards who

told him that Safet died of injuries sustained during the beating. The statements of witnesses Azedin Oklopčić and Nusret Sivac were also partly corroborated by the statement of Witness K018, who said that he was held together with Safet Ramadanović in the same room, which this detainee left at one point. In the view of the time when the referenced event took place, the Court could not determine in a reliable manner that it took place in early June 1992 by relying primarily on the statement of witness Nusret Sivac, who noted that he was apprehended for the second time around 20 June 1992, whereby the incident occurred while he was held in the garage, which would be consistent with the precise time that was noted in the operative part of the Verdict – in June or July 1992.

The death of Bećir Medunjanin, who died of beating by Duško Knežević and Zoran Žigić, which, according to the allegations in the Indictment, took place in mid June 1992 was also determined in an undisputable manner by the assessment of the Court, since a series of witnesses who eye-witnessed the beating consistently stated that the referenced event took place at the time and in the manner closely described in the factual description of the Indictment. The Court has based its conclusion about this primarily on the statement of Witness K022 who was beaten at the same time when Bećir Medunjanin was beaten too, and who, as a direct witness of the event, described in detail all the beating which Bećir Medunjanin went through and especially the beating that caused his death. From the statement of this witness it stems that Bećir Medunjanin was brought to the Omarska Camp on around 10 June 1992, that he spent a short period of time in the military barracks in Prijedor before that, as well as that Bećir Medunjanin was beaten on a regular basis from the moment he was apprehended until he died, and especially after he was questioned for the second time, which took place a couple of days after he was brought to the Camp, when he was held in the “white house”. Furthermore, from the statement of Witness K022 it stems that a group of three or four soldiers wearing camouflage uniforms arrived on this occasion; he remembered very well two persons who beat Bećir Medunjanin more than anyone else and he said that the names of these persons were Dušan Knežević a.k.a. Duća and Zoran Žigić. While he was describing the way Bećir Medunjanin was beaten by the two above-mentioned soldiers, Witness K022 said that on one occasion Duća broke a metal school chair while he was beating Medunjanin and that during the beating he also used a short baton with springs and a metal ball attached at the top. Witness K022 stated that he personally saw the above-mentioned beating of Bećir Medunjanin and the state he was in after the beating, noting that Bećir Medunjanin had cuts and that he was black and blue all over his body, that he was bleeding from several wounds and that his bones were broken. Witness K022 also described in detail the second time Bećir Medunjanin was beaten, which took place shortly after the first beating, when the above-mentioned person in fact died of the injuries sustained. While he was describing the above-mentioned event, Witness K022 said that he had an impression that with regard to the second beating Duća came to the Camp with the intention to beat Medunjanin to death, while, according to this witness’s statement, he beat him with iron bars, he kicked him and hit him with the pistol handle. Since Witness K022 too was beaten on this occasion, he fainted and after he regain consciousness he had an opportunity to see the state in which Bećir Medunjanin was after the beating, and he described that he was completely unconscious, that he was unable to stand on his feet, that he started panting, and that the witness was shortly afterwards informed by Dr. Eso Sadiković, who was also a detainee in the Camp, that Bećir Medunjanin died. The above-mentioned witness was present on

the occasion when the body of Bećir Medunjanin was loaded and taken outside to a meadow left from the “white house”. Witnesses K034, Fadil Avdagić and Azedin Oklopčić also entirely confirmed the statement of Witness K022 regarding the severe beating of Bećir Medunjanin, whereby witnesses Mustafa Puškar and K027, who did not see the beating part, confirmed the part that refers to his death. Namely, according to the consistent statements of witnesses Fadil Avdagić and Azedin Oklopčić, who were in the “white house” on that occasion, Bećir Medunjanin was maltreated and beaten by Duća, who was accompanied with soldiers Žigić and Timarac. Furthermore, witness Fadil Avdagić noted that he last saw Bećir Medunjanin when he was left in the “white house” and that he looked horrible, which is entirely consistent with the statement of witness K034, who also saw Medunjanin in the “white house”, describing that he was beaten and was all black and blue and that his shirt was so stained with blood that one could not see the linen, but only blood, whereby witness Azedin Oklopčić saw the above-mentioned beating and heard screams and crying of Bećir Medunjanin. Although witnesses Fadil Avdagić and K034 in fact did not see Bećir Medunjanin’s body after he died, their statements, together with the statements of other witnesses, entirely corroborate the allegations in the Indictment that Bećir Medunjanin died as a result of beating, since along with Witness K022 his body was also seen by witness Azedin Oklopčić, who said that his body was in front of the “white house”. Witness Mustafa Puškar also confirmed these claims, noting that Bećir Medunjanin’s body was near the “white house” throughout the entire day, as well as witness K027, who also noted that his body was taken out and put in front of the “white house”. With regard to the time of Bećir Medunjanin’s death, the Court has reliably determined that it took place in mid June 1992, namely several days after he was apprehended, which primarily stems from the statement of Witness K022. According to the statement of this witness, it was raining on the day Bećir Medunjanin was beaten and killed, so that some detainees from the pista were transferred to the “white house”, which is consistent with the statements of witnesses Fadil Avdagić and Azedin Oklopčić, who also noted that they were taken inside the “white house” because of the heavy rain and from their statements it follows that this took place in mid June 1992. Bećir Medunjanin’s death was additionally corroborated by the documentary evidence in the case-file, that is, by the Additional Report by Nicolas Sebire dated 28 August 2002, Exhumations and Proof of Death, from which it stems that the person was officially declared dead by a decision of the relevant court.

The following event that was noted in the factual part of the Indictment is the beating of approximately 12 men with the surname Garibović, who were then shot dead one night in June 1992. Witnesses K034 and K041, who were held in the room called “garage” together with the members of the Garibović family, gave their statements about the referenced circumstances. According to the consistent statements of these witnesses, one night it was ordered that all the detainees with the surname Garibović must get out of the “garage” and Witness K034 said that after that 10 or 11 people with that surname got out, while Witness K041 was resolute in his claims that 12 detainees with the surname Garibović left the room on that occasion. Both witnesses confirmed that the sound of beatings, moans and screams were heard after that, while Witness K034 described the above-mentioned beating as if “bones were being crushed.” In addition, both witnesses were consistent in their claims that, after that, a truck arrived and the above-mentioned persons were loaded by other detainees and taken away, whereby Witness K041 afterwards heard bursts of fire. In the view of these statements the Court

could not reliably determine if the group of people with the surname Garibović were killed on that occasion, but the fact is that they were not seen after that, which was also confirmed by both witnesses. The Court also did not determine beyond reasonable doubt that the men from the Garibović family were roll-called by a group of Serb soldiers, because the Court had no reliable evidence that would corroborate it, since Witness K034 stated that a masked guard or a person outside the Camp roll-called them, while Witness K041 noted that the guards did that. With regard to this, a correction was made in the factual part of the Indictment, leaving a possibility that the Garibovići were roll-called either by the guards or by the Serb soldiers who came to the Camp as visitors. With regard to the time the referenced event took place, the Court has found it completely determined that it took place during a night in June 1992, since both witnesses who were heard noted that it was night time, whereby Witness K041, who noted that he was held in the “garage” until 2 July 1992, was more precise and noted that the Garibovići were roll-called in early June. The above-mentioned subjective evidence was also additionally corroborated by the documentary evidence in the case-file, that is, the Additional Report by Nicolas Sebire dated 28 August 2002, Exhumations and Proof of Death, from which it stems that the above-mentioned group of men from the Garibović family, by their names and surnames, were officially declared dead by a decision of the Municipal Court in Sanski Most.

With regard to the beating of Dalija Hrnić, who, according to the allegations in the Indictment, died of a beating in June 1992, the Court has found it established that the beating of this person indeed took place and that it caused his death. Witness Fadil Avdagić, who was present on the occasion of the beating of Dalija Hrnić, gave a statement about the referenced event and he identified the persons who, as the witness noted, beat Dalija while he was lying on the floor. Witness Fadil Avdagić determined with certainty that 4 persons who wore uniforms participated in the beating of Dalija Hrnić, namely Zoran Žigić, Duća and another two uniformed persons. The witness was precise in terms of the time when the referenced event took place, noting that he was brought to the “white house” on 16 June 1992, which is completely consistent with the time when other events took place in the “white house” during that period, when a group of soldiers, including Duško Knežević Duća, used to beat the detainees to death. In addition, this witness noted that, after he got out, he heard that Dalija Hrnić had died, which was confirmed by Witness K035 who said that he had heard that Dalija Hrnić had succumbed to the injuries sustained during the beating. It is true that Witness K035 stated that the above-mentioned person died as a result of the beating while he was interrogated by one of the inspectors, however, the Court completely trusted witness Fadil Avdagić about the above-mentioned circumstances, since he visually witnessed that Duško Knežević and others beat Dalija Hrnić, whereby the statement of Witness K035 represents a corroborating evidence about the fact that Dalija Hrnić died of beating in the Camp. From the Additional Report of Nicolas Sebire dated 28 August 2002, Exhumations and Proof of Death, it stems that Dalija Hrnić was officially declared dead by a decision of the Municipal Court in Sanski Most, which additionally corroborates the subjective evidence regarding the death of this person.

Furthermore, according to the allegations in the Indictment of the Prosecutor’s Office of BiH, on or around 10 June 1992 Slavko Ećimović was beaten by Duško Knežević and Zoran Žigić, as a result of which he died. The Court has found these allegations of the Indictment to be established as well, having assessed the statements of witnesses who

were heard about the circumstances of the beating of Slavko Ećimović. According to the statements of witnesses Emir Beganović, K036 and Abdulah Brkić, they saw Slavko Ećimović in the “white house” during the time they themselves were also beaten, that is, on around 10 June 1992. Witness Emir Beganović, who had an opportunity to see the physical and mental state of Slavko Ećimović, stated that Ećimović was in a state of delirium, that he did not know what he was talking about, that he was beaten, that he hallucinated and that his mouth was tied with a piece of wire. Witnesses K036 and Abdulah Brkić also confirmed that Slavko Ećimović was severely beaten, whereby witness K036 explicitly claimed Ećimović was beaten a lot by Žigić, Duća and others, while witness Abdulah Brkić stated in the context of the beating that took place in the “white house” on that day that on the critical occasion Duća Knežević, Zoran Žigić, Sapina (how he called Šaponja) and Timarac came, that they provoked Ećimović by calling him *ustasha* and that they beat him. From the statements of the above-mentioned witnesses, who consistently confirmed that Slavko Ećimović was in a bad state, stems the only logical conclusion that he died of the above-mentioned beating, which is confirmed by the statement of Witness K036, as well as of other witnesses, about the fact that they did not see this person after the above-mentioned event. Since all the witnesses link their last sighting of Slavko Ećimović with the above-mentioned beating, after which nobody saw him again, it is clear that this person died of the injuries sustained during the beating, especially since the witness Emir Beganović in his statement noted “he was alive”, in which way he described Slavko Ećimović’s difficult state when he last saw him, as if he was describing a man that was going to die at any moment.

As for the beating of Mehmedalija Sarajlić and his dying of beating, the Court also had at its disposal sufficient pieces of reliable evidence based on which the Court could determine that the above-mentioned beating took place at the time and in the manner described in the operative part of the Verdict. From the statements of both witnesses who were heard about the above-mentioned circumstances, namely witness Kerim Mešanović and Witness K021, it stems that the above-mentioned event took place on or around 25 or 26 June 1992, since witness Kerim Mešanović was brought to Omarska on 24 June 1992 and he spent two nights in the “white house” where Mehmedalija Sarajlić was beaten, whereby Witness K021 noted that the above-mentioned incident took place on 26 June 1992. Both witnesses consistently stated that they heard Sarajlić being maltreated, whereas Witness K021 stated that he recognized his voice while he was begging them not to beat him. According to the statement of Kerim Mešanović, before he saw Mehmedalija Sarajlić’s dead body he heard terrible cries, screams, prayers, as well as hitting with different items and eventually this witness personally took out Sarajlić’s dead body, which was, as he noted, beaten up, while his pants were dirty and bloody. Witness K021 also confirmed the statement of witness Kerim Mešanović, who saw the body of Mehmedalija Sarajlić in the morning not far from the “white house” and this witness also agreed with witness Kerim Mešanović’s claims that Mešanović was one of the detainees whose duty was to take out the dead body of Mehmedalija Sarajlić. Witness K027 also saw the dead body of Mehmedalija Sarajlić, since, while he was testifying about dead bodies which were laid down by the “white house”, he noted that on one occasion he recognized the body of Mehmedalija Sarajlić, who was wearing a light-colored suit.

According to the allegations in the Indictment, Velid Badnjević was shot dead by a guard in the Camp, between 24 May and 6 August 1992. With regard to this killing, the Court has also determined that it took place beyond reasonable doubt, with certain corrections that were noted in the operative part of the Verdict regarding the factual part of the Indictment in the view of the time when the event took place. The Court has reached its conclusion about the killing of Velid Badnjević based on the statement of Witness K036, who was an eye-witness to the referenced killing and this witness stated that Velid Badnjević was killed within a month or a month and a half after he arrived at the Omarska Camp. Since at the beginning of his statement the witness noted that he was brought to the Camp on 30 May 1992, the Court finds that the killing of Velid Badnjević took place in June or July 1992. According to the statement of this witness, Velid Badnjević was killed at the exact moment when he was located between the “white house” and the restaurant which was on the ground floor of the administration building, that he personally saw when Velid Badnjević was shot, after which his body was moved away. While he was describing the referenced event, this witness also described the circumstances which occurred before Velid Badnjević was killed, noting that he lost his nerves, got up and headed somewhere, after which one of the guards started shouting, warning him to stop and then he shot him. During the cross-examination the Defense tried to present the referenced event as the killing of Mehmedalija Nasić in the restaurant, however, the witness explicitly claimed that he stands by the statement given during the main trial. The conclusion of the Court that this witness indeed saw the killing of Velid Badnjević and not the killing of Mehmedalija Nasić is also based on the fact that the witness personally knew this person, that Badnjević was killed outside, between the restaurant and the “white house” and not inside the restaurant and that the killing took place within a month or a month and a half after the witness arrived at the Omarska Camp, which all leads to the conclusion that those were two separate events. The statement of Witness K036 was also additionally confirmed by Witness K022, who also knew Velid Badnjević very well before the war and who noted that Velid Badnjević was in the Omarska Camp and that he was killed.

The circumstances regarding the killing of Amir Cerić and a man called Avdić were entirely confirmed by the statement of Witness K022, who visually witnessed the above-mentioned killings. From the statement of this witness it stems that the killing of Amir Cerić and Avdić took place during the beating of this witness and Bećir Medunjanin, which occurred in mid June 1992 in the “white house”. According to the claims of Witness K022, a group of people, including Duško Knežević and Zoran Žigić, came to the “white house” on the critical occasion and started beating everyone without exception, after which they started piling up severely beaten detainees over one another. Then the witness heard the following words: “Look, this one is still stirring, he is moving,” after which two or three shots were heard and when the other detainees came in to take the bodies off the pile, the witness saw that only two bodies remained, namely the body of Amer Cerić from Prijedor and Avdić from Brdo, and then he saw that those two bodies were taken outside on the right side of the “white house”, where the dead were dumped. It is true that Witness K022 did not see the person who shot Amer Cerić and Avdić, however he stressed that only Knežević and Žigić were in the room at that time, claiming that he could not either feel or hear the presence of other persons and that these two were in charge. The witness particularly explained the circumstances under which he remembered that it was Cerić from Prijedor, since he remembered that name because Cerić’s father used to bring food to his son to the “white house”, whereby he

heard about Avdić from other detainees who knew him. Witness K022 identified the person with the surname Cerić as Amer Cerić, however the witness was a bit reserved in terms of the first name of the victim, meaning that his name could have been Amir. Bearing in mind the objective evidence, namely the Additional Report by Nicolas Sebire dated 28 August 2002, the Court has determined in a reliable manner that the first name of the killed Cerić was Amir, since the person called Amir Cerić was officially declared dead by the relevant court and it was determined that he was killed in the Omarska Camp.

As for the event of the killing of Mirsad (“Mirso”, “Asim”, “Kera”) Crnalić, who was, according to the allegations in the Indictment, shot dead by the Camp guards in July 1992, based on the evidence presented the Court has also found that these allegations from the Indictment were undoubtedly proved. The Court has based its conclusion about it on the statements of witnesses Kerim Mešanović, Nusret Sivac and Asmir Baltić, who heard shooting on the critical occasion, after which they personally saw the dead body of Mirsad Crnalić. Witness Asmir Baltić stated that he saw Crnalić’s body which was hanging over the window of the “white house”, as opposed to the other two witnesses, who saw Crnalić’s body in front of the “white house”. However, the statements of these witnesses are completely consistent in terms of the decisive fact that Mirsad Crnalić was killed, whereas the information about whether the body was seen in front of or on the window of the “white house” is irrelevant in the light of the circumstances of the above-mentioned event, since all the above-mentioned witnesses first heard voices, then shots, after which they saw the body of Mirsad Crnalić. According to the statement of witness Nusret Sivac, the name of the person who was killed on the critical occasion was Asmir Crnalić Vićo, which, according to the assessment of the Court, does not bring in question the identity of the victim, since this witness precisely stated that he was a mentally ill person and that the guards put him in the “white house”. Witness Asmir Baltić too confirmed the claims of Nusret Sivac, noting that Crnalić started behaving in a strange manner and that they told him to go to the “white house”, as well as the witness Kerim Mešanović, who saw that Crnalić got out of the “white house” and that the guards killed him since he allegedly started running away. The statements of the above-mentioned witnesses were entirely confirmed by witness Saud Bešić as well, who was at that moment in the “white house” and who saw Mirsad Crnalić frantically trampling on other detainees, after which he opened a window and jumped, and then this witness heard some of the guards shouting at him not to run and finally he heard shots. Witnesses Asmir Baltić and Kerim Mešanović confirmed that the above-mentioned event took place in July 1992, as it was noted in the factual part of the Indictment.

According to the allegations in the Indictment, in late July 1992 Husein Crnkić was shot dead by the Camp guards. With regard to this factual part of the Indictment the Court has made certain corrections, in accordance with the substantive results of the evidence presented about the above-mentioned circumstances, bearing in mind the fact that none of the witnesses saw that Husein Crnkić was shot dead in the Omarska Camp. In his statement Witness K019 noted that Husein Crnkić was taken away together with a group of intellectuals in late July 1992 towards the “red house”, however, the statement of this witness was not corroborated by any other statement by the witnesses who saw the intellectuals being taken away and this witness was unable to confirm that Husein Crnkić was shot dead. Witnesses Sifeta Sušić and Zlata Cikota consistently stated that they saw Husein Crnkić in the Omarska Camp during the time when he would go to

have lunch in the restaurant. Both witnesses precisely described Crnkić's physical state and the injuries they noticed, which were visible to them since they were, as witness Sifeta Sušić noted, 2 or 3 meters away from him. According to the statements of witnesses Zlata Cikota and Sifeta Sušić, on one occasion Husein Crnkić removed his shirt to show them the injuries he sustained, and both witnesses saw the injuries in the region of his clavicles, that is, his shoulder-blades. On this occasion witness Zlata Cikota saw that both his shoulder-blades were broken, that his arms were hanging and that everything was purulent, which was also confirmed by witness Sifeta Sušić, who said that she saw a hole between the shoulder-blades on the back of the above-mentioned person, which was so big that an entire fist could fit into it. From the statement of witness Zlata Cikota it stems that her husband told her that Husein Crnkić had died of a beating, that is, of the injuries sustained, which was partly confirmed by witness Sifeta Sušić, who noted that it was incredible how Crnkić was alive at all with such a big wound. Since the Court was unable to determine with certainty that the death of Husein Crnkić took place in late July 1992, in the operative part of the Verdict it is noted that it took place either in June or July 1992, when all other beatings and the majority of the killings too took place in the Omarska Camp. With regard to the death of Husein Crnkić, the allegations of the witnesses were additionally corroborated by the objective documentation, namely the Additional Report by Nicolas Sebire dated 28 August 2002 from which it stems that his body was found in the Kevljani mass grave and identified under number KV16-002B.

One of the events that were described by several witnesses, since it took place in front of a large number of detainees, is the beating of Rizah Rizo Hadžalić by the guards in the Camp, due to which beating this person died and this event took place in July 1992. With regard to this event, the Court has also determined beyond any reasonable doubt that it took place in the manner and during the time described in the operative part of the Verdict. Witnesses Ermin Striković, Nusret Sivac, K027, Mustafa Puškar, Azedin Oklopčić and K036 gave their statements about the above-mentioned circumstances. All the above-mentioned witnesses consistently agreed that they knew Rizah Hadžalić well from before, and according to their statements this person died in July 1992. The statements of all the above-mentioned witnesses were also completely consistent in the fact that the beating and death of Rizah Hadžalić were linked to the event in which the above-mentioned person mentioned the word "bujrum" to one of the guards, after which the guards in the Camp started beating him. Along with this, all the above-mentioned witnesses personally saw that Rizah Hadžalić died in the aftermath of the above-mentioned beating, that is, they saw his lifeless body, while Witness K027 heard when Dr. Esad Sadiković, who was also a Camp detainee, declared that Rizah Hadžalić died. The consistent statement of these witnesses were also entirely corroborated by the statement of Witness K019, who heard that Rizah Hadžalić was killed around 12 July 1992, namely several days after this witness was brought to the Omarska Camp, and that the guards Popović, Predojević and others did that. The above-mentioned subjective evidence about the death of the above-mentioned person was also additionally corroborated by the documentary evidence in the case-file, that is, by the Additional Report of Nicolas Sebire dated 28 August 2002, Exhumations and Proof of Death, from which it stems that Rizah Hadžalić was officially declared dead under a decision of the Municipal Court in Sanski Most.



The Court has undoubtedly determined that on or around 18 June 1992 Jasmin “Jasko” Hrnić, Enver “Eno” Alić and Emir Karabašić were beaten in the Camp and that these persons died as a result of the beatings. In the Indictment of the Prosecutor’s Office of BiH a person called Fikret Harambašić was also included in the Indictment, however, not a single piece of evidence presented during the main trial led to the conclusion that the above-mentioned person was in the group that was beaten to death on the above-mentioned occasion, since the witnesses did not mention the name of Fikret Harambašić within the context of this event. The Court has based the conclusion that the referenced event indeed took place primarily on the statement of Witness K017, who knew all three persons from before and who described in detail the developments on the critical occasion as much as this witness could see or hear anything about it. According to the statement of Witness K017, detainees Jasmin Hrnić, Emir Karabašić and the Alić brothers (Ekrem and Eno) were roll-called and killed on 20 June 1992, which is consistent with the statement of Emir Beganović, who said that he was in room number 15 in the hangar on or around that date, when he heard what was going on. Since witness Emir Beganović was brought to the Omarska Camp on 30 May 1992, after which he spent one night in *Mujina soba*, and then between 10 and 12 days on the pista, after which he spent one night in the “white house”, after which he was taken to room number 15, it is undisputable that the above-mentioned persons were roll-called within the time frame set in the factual description of the Indictment, that is, in the operative part of the Verdict. Witness K017 was completely precise in his description of the above-mentioned event, noting that he heard when Jasmin Hrnić was roll-called at precisely 4:25 p.m. and that, along with Jasmin and Emir Karabašić, there were also the Alić brothers, Eno and Ekrem, about whom he learned later on from the detainees who knew them. According to this witness, on the critical occasion he heard terrible screams, which appeared to be screams of people who were dying and, as this witness noted, this lasted for 35 minutes, after which a period of silence followed. This witness also described the events which took place in the meantime, noting that he personally heard several voices and blows, that several persons participated in the beating, and that one of them was Tadić, who issued orders such as “bite” and who ordered a person with the surname Jakupović to bite off Emir and Jasmin’s testicles. The witness did not personally see what happened on that occasion, but he clearly heard blows, screams and orders, whereby he learned what happened directly from the detainees who were held together with him in the same room and who observed the above-mentioned event looking through the window from time to time. The claims of Witness K017 were corroborated by the statement of witness Emir Beganović, who, as it has been already stated, was held on the critical occasion in room number 15, which is located above the place from which the screams were coming. This witness stated that he had never heard such screams before, that it went on for a long period of time and that it was unbearable to listen, while later on he heard that those were of Jasmin Hrnić and Emir Karabašić. Witness Emir Beganović confirmed the statement of Witness K017 with regard to the fact that the detainee with the surname Jakupović, who survived the Omarska Camp, was forced to bite off Jasmin and Emir’s testicles with his teeth, since Jakupović, who is witness Beganović’s cousin, allegedly told the witness what happened. None of the witnesses stated that he later on saw the persons who were the victims of the above-mentioned beating and torture, so that this, along with the statement of Witness K017 about the fact that the above-mentioned persons were killed on the critical occasion, lead to the conclusion that these persons did not survive the beating. Witness Saud Bešić also partly testified with regard to the killing of Enver “Eno” Alić. He never saw the

body of the above-mentioned person, nor the killing, but he stated that he last saw Eno Alić on the occasion of his being taken away for questioning and that he was lost ever since. Emir Karabašić's death was additionally corroborated by the documentary evidence in the case-file, that is, the Additional Report by Nicolas Sebire dated 28 August 2002, Exhumations and Proof of Death, from which it stems that the above-mentioned person was officially declared dead under a decision of the relevant court.

As noted in the Indictment, in July 1992 Miroslav Šolaja died of a beating. Having assessed the statements of witnesses who were heard about the death of Miroslav Šolaja and the material documentation regarding the identification of the above-mentioned person, the Court has also found the above-mentioned event established. The key-witness who was heard about the circumstances of the beating and death of Miroslav Šolaja is Witness K018 who knew him, whereby according to his statement, Miroslav Šolaja was held near him in the Omarska Camp, namely in the room with shower cubicles. During the main trial, the above-mentioned witness gave a detailed statement about the multiple beating of Šolaja from the time he arrived at the Camp in early June 1992, until his death. According to this witness, Miroslav Šolaja was roll-called three times, whereby the beating he went through the last time he was roll-called (the third time) led to his death. The witness stated that Šolaja was first beaten around 15 days after the arrival at the Camp, the second beating took place 2 or 3 days after the first beating, whereby the third beating took place 2 or 3 days after the second one, from which it stems that Miroslav Šolaja was beaten to death in late June or early July 1992. According to the claims of this witness, the Court made a correction in the factual part of the Indictment which refers to the time of Miroslav Šolaja's death. As it has been already stated, Witness K018 described in detail the circumstances of the physical abuse of Miroslav Šolaja, and he described his third beating in a particularly detailed way, after which he died. While he was describing his state after the third time he was beaten, Witness K018 noted that Šolaja looked as if he was dead rather than alive, that he was severely beaten and unable to move and that he moaned due to the pain. According to the description provided by this witness, an arm of the above-mentioned person was broken, his back were of dark blue color, as well as his left leg, he was in a state of agony and insanity, which were results of torture and terrible pains. The witness also explicitly stated that Miroslav Šolaja did not receive medical assistance in time, although he requested it from the guards. Witness K018 confirmed that Šolaja's physical and mental state was deteriorating and he noted that, at the time he was finally taken to the sick room, Šolaja looked even worse and he was in a dreadful physical and mental state, after which, as the witness said, he heard that Miroslav Šolaja died on that day and he did not see him ever since. During the direct examination, Witness K018 stated that Miroslav Šolaja wore a green and black tracksuit, a white t-shirt and shoes, which was eventually confirmed by the photographs presented to the witness by the Prosecutor, which were tendered as Prosecution evidence. Witness Anto Tomić also entirely confirmed the statement of Witness K018 about the death of Miroslav Šolaja. He said that he saw him after the beating and after he died and was taken behind the "white house", where dead bodies were taken. In the view of Miroslav Šolaja's death, the statements of the witnesses were also corroborated by the objective documentation, namely the Additional Report by Nicolas Sebire dated 28 August 2002, from which it stems that his body was found in the Kevljani mass grave and was identified under number KV13-006B.

Having made certain corrections in the Indictment of the Prosecutor's Office of BiH, the Court has determined that a person called Azur Jakupović was killed in the first half of July 1992 after he was beaten by the guards, as well as Edvin Dautović, so that their bodies were together thrown onto a truck. The persons who were held in the "white house" and who were right by the place where Azur Jakupović and Edvin Dautović were killed on the critical occasion were heard about the above-mentioned circumstances. According to the statement of Witness K022, he met Azur Jakupović in the "white house" and he claimed that he was being beaten and maltreated for two days, that he went out of the "white house" on one occasion and started screaming and cursing and that there has been no sign of him ever since. Witness K022 gave his statement also about the circumstances of the death of Edvin Dautović, which occurred, as it stems from the above-mentioned statement, after one night Edvin Dautović had a pain in his stomach and he had to use the toilet, regardless of the warning of other detainees that he should not go out, after which Dautović called a guard in the Camp, who took him away passing in front of the window of the "white house", after which blunt blows and moans could be heard, followed by wheezing sounds, and this witness did not see Edvin Dautović ever since. The statement of Witness K022 was confirmed in its entirety by Witness Saud Bešić, who was in the "white house" on the critical occasion, which is when he personally saw the dead bodies of Azur Jakupović and Edvin Dautović and he put them into a van. The statement of witness Saud Bešić is entirely consistent with the statement of witness K022 given about the circumstances that occurred prior to the killing of the two above-mentioned persons, since witness Saud Bešić stated that Azur Jakupović was roll-called and never came back again, while Edvin Dautović went out because he had to use the toilet, whereas the next time the witness saw him Edvin Dautović was dead. From the statement of this witness it stems that the killing of Edvin Dautović and Azur Jakupović took place during a short time interval, and the witness explicitly said that it took place between 10 and 15 July 1992. According to the statement of this witness, the Court made a correction with regard to the factual part of the Indictment by stating that the killings took place in the first half of July 1992. As far as witnesses Kerim Mešanović and Sakib Jakupović are concerned, they only confirmed that Azur Jakupović was detained in the Camp, while from the statement of Kerim Mešanović it stems that Jakupović was alive in early July, since that was when he last saw him, and that his leg was injured. In view of Edvin Dautović's death, the statements of the witnesses are corroborated also by the objective documentation, namely the Additional Report of Nicolas Sebire dated 28 August 2002, from which it stems that his body was found in the Kevljani mass grave and identified under the number KV14-004B.

The Court has determined beyond any reasonable doubt that in late July 1992 a group of intellectuals, including Dr. Osman Mahmuljin, Dr. Eniz Begić, Zijad Mahmuljin and Ago Sadiković, disappeared from the Camp. A large number of witnesses, who were heard about the above-mentioned circumstances, consistently confirmed that the above-mentioned persons were roll-called and taken away, that they never returned and that they are no longer alive. Witness K041 stated that in July 1992 around 20 persons were roll-called, including Dr. Osman Mahmuljin, Dr. Begić and Dr. Jusuf Pašić, and that they have been unaccounted for ever since. Witness Enes Kapetanović too testified about the taking away of Dr. Osman Mahmuljin and Dr. Begić, and he noted that these persons were roll-called after mid July 1992, that they were taken outside and did not return ever again, which was also confirmed by witness Asmir Baltić, who stated that

Dr. Mahmuljin was roll-called in late July 1992 together with other intellectuals, after which he has been unaccounted for. Witness Zlata Cikota, who personally knew Dr. Osman Mahmuljin and Dr. Begić, also confirmed the statements of the previous witnesses about the taking away of these two persons. From the statement of this witness it stems that she saw Dr. Begić being taken along the pista towards the “red house,” and then the taking away of Dr. Osman Mahmuljin also towards the “red house”, which, according to this witness, took place on the same day Dr. Begić was taken away. Witness Zlata Cikota stated that she knew Ago Sadiković well too, as well as Zijad Mahmuljin, to whom she referred to as Ziko during her testimony, and she also noted in her statement that Ago Sadiković and Zijad Mahmuljin were taken towards the “red house” on the same day as Dr. Mahmuljin and Dr. Begić. The witness even stated that she heard shots after Ago Sadiković was taken away and that she saw and heard that he was killed, but that she did not see the bodies, however, she stated that she was certain that she did not see any of these men after that. Witness Kerim Mešanović also confirmed the statements of the above-mentioned witnesses while testifying about the circumstances of the taking away of the persons from the group of intellectuals who were held together with him in the part of the Camp called the “glass-house”. According to the statement of witness Kerim Mešanović, Dr. Eniz Begić and Ago Sadiković were taken out of the “glass-house”. They were first roll-called by the guards who read the names from a list, after which they were taken toward the “red house” and this witness did not see them again. Nusret Sivac also confirmed the statements about the taking away of these persons and, according to his statement, he was held in the same room as Dr. Osman Mahmuljin and he was present when Dr. Mahmuljin was taken out towards the “red house”. This witness stated that Ago Sadiković was also taken towards the “red house”, as well as Zijad Mahmuljin, whose taking away he personally witnessed, and Dr. Eniz Begić, after which they were killed. He noted that one of the guards came back wearing Ago Sadiković’s jacket, which was also confirmed by witness Zlata Cikota. Witness K036, who knew Dr. Begić, Dr. Osman, Ago and Zijad, confirmed that the above-mentioned persons were roll-called and taken away. Finally, Witness K019, who confirmed that the roll-call was carried out for the whole day and he referred to it as “the great roll-call” and who was located in the place from which he had a good view over the pathway towards the “red house”, stated that on that day a large group of detainees were roll-called and taken towards the “red house”, including Dr. Osman Mahmuljin, Dr. Eniz Begić, Ago Sadiković and Zijad Mahmuljin. The statements of witness Enes Kapetanović, who noted that the roll-call was conducted in the second half of July 1992, the statement of witness Zlata Cikota, who defined the time more precisely by noting that the above-mentioned event took place on 23 or 25 July 1992, as well as the statement of witness Kerim Mešanović, who noted that he last saw Ago Sadiković on 25 July 1992, and of Witness K019, who said that the day of the roll-call was “around 20 July 1992,” clearly suggest that all the above-mentioned persons disappeared from the Camp in late July 1992, whereby all the above-mentioned witnesses are completely consistent in their claims that they did not see them after the roll-call ever again. The above-mentioned subjective evidence was additionally corroborated by the documentary evidence in the case file, namely the Additional Report of Nicolas Sebire dated 28 August 2002, Exhumation and Proof of Death, from which it stems that the above-mentioned person was officially declared dead under a decision of the Municipal Court in Sanski Most.

According to the assessment of the Court, after the presentation of evidence, the event regarding the disappearance of Esad Eso Mehmedagić from the Omarska Camp in July 1992 is closely connected with the taking away and disappearance of the group of intellectuals in late July 1992. The Court has determined in a reliable way that Esad Mehmedagić, whom all the detainees knew as the municipal public attorney or judge, was roll-called and disappeared from the Camp at the time of “the great roll-call of the intellectuals”, when all the above-mentioned persons were taken away towards the “red house” from which point there has been no trace of them, since they have not been seen alive again. However, the Court did not find it proven that Esad Mehmedagić was beaten before he was taken away, since none of the witnesses who mentioned the events related to this person gave any information about it. In his statement, witness Kerim Mešanović, who testified about the taking away of other persons towards the “red house”, claimed that he knew Esad Mehmedagić and that he personally heard when the name Esad Mehmedagić was roll-called by the guards, after which he was taken away together with Ago Sadiković towards the “red house”. Witness K019 also testified about the taking away of Esad Mehmedagić towards the “red house” and he saw him along with all other above-mentioned persons, whereby Witness K018, who was held in the same room with him, also heard and saw the roll-call of Esad Mehmedagić, noting that he last saw him in late July 1992 when he was roll-called, went away and never came back again.

Based on the evidence presented, the Court has found as established the disappearance of Nedžad Šerić from the Omarska Camp, which, according to the Indictment, took place between 25 and 30 July 1992, whereby from the contents of the evidence presented regarding these circumstances it stems that this disappearance was connected with the above-mentioned disappearances of the detained intellectuals. Witnesses Kerim Mešanović, Nusret Sivac, K019 and Zlata Cikota, who testified about the above-mentioned circumstances, personally knew the President of the Prijedor Court Nedžad Šerić and all these witnesses consistently stated that they saw when the above-mentioned person was taken towards the “red house” together with a group of intellectuals. Witness Kerim Mešanović stated that he was held together with Nedžad Šerić in the same room and that he was present when a guard read a list of names, including the name of Nedžad Šerić, on 25 July 1992, after which the witness saw two guards take away Šerić towards the “red house” together with Eso Mehmedagić and Ago Sadiković. Witness K019, who was, as it has been already noted, located in the place from which he could clearly see the path towards the “red house” and who saw that the roll-call of people was carried out during the whole day and that they were taken out and taken to that direction, including Nedžad Šerić, also confirmed that Nedžad Šerić was taken away towards the “red house”. The statements of these witnesses were also confirmed by the statement of witness Zlata Cikota, who saw Nedžad Šerić being taken towards the “red house” and who also noted that he was killed there. Finally, witness Nusret Sivac also eye-witnessed the taking away of Nedžad Šerić, noting that he was taken away together with Mujo Crnalić. Contrary to this, none of the above-mentioned witnesses noted in his statement that Nedžad Šerić was beaten prior to being taken away, so that, therefore, the Court made a correction with regard to the facts noted in the Indictment in the way that the Court omitted the beating of Nedžad Šerić prior to his being taken away. In addition, the Court has also more precisely determined the date the named person was taken away, since from the above-mentioned statements it stems

that the taking away of the above-mentioned persons took place on or around 25 July 1992.

Witnesses Nusret Sivac, K042 and K03 were heard with regard to the circumstances of the beating of Gordan Kardum by the guards in the Camp, as a result of which this person died. It stems from the statement of witness Nusret Sivac that Gordan Kardum was beaten by the guards, together with Rizo Hadžalić, on the pista in the incident in which Rizo Hadžalić said *bujrum* to one of the guards. Since the witness was held on the pista during the above-mentioned event, it is quite certain that he was able to see the above-mentioned beating, whereby his claims that Gordan Kardum was afterwards transferred to the place called “hangar”, where he died after 2 or 3 days, are entirely confirmed by Witness K03, who personally knew Gordan Kardum a.k.a. “Gogi” and who saw him being taken away to room number 26 (which was located in the “hangar” building). According to the description of Witness K03, Gordan Kardum was all beaten up and his body was so black and blue that he did not go to lunch for the first several days, which leads to the conclusion that he was in a bad physical state, in the aftermath of which he died. The death of Gordan Kardum a.k.a. “Gogi” was also confirmed by Witness K042, who was Kardum’s friend and who confirmed that Kardum was held on the upper floor of the “hangar” building. This witness noted that he personally saw Gordan Kardum dead on one morning while he was on the way to the toilet and when he recognized the dead beaten body of Gordan Kardum among the dead bodies that were located between the “white house” and “red house”. From the statement of the above-mentioned witnesses it stems that the beating which resulted in the death of Gordan Kardum took place in July 1992, which was also confirmed by Witness K03, who noted that Kardum was brought beaten around mid July 1992. The above-mentioned subjective evidence about the death of the named person was also corroborated by the documentary evidence in the case file, namely the Additional Report of Nicolas Sebire dated 28 August 2002, Exhumations and Proof of Death, from which it stems that Kardum Gordan was officially declared dead under a decision of the Municipal Court in Sanski Most.

The Court has also established beyond any reasonable doubt the disappearance of Burhanudin Kapetanović and a man with the surname of Badnjević in July 1992, however, based on the evidence presented, it was not reliably determined that this was a person called Nijaz Badnjević, so that, with regard to this, a correction was made in terms of the factual description in the Indictment with the note that it was “a man with the surname Badnjević.” The statement of witness Enes Kapetanović, who eye-witnessed this event, primarily represents the basis for this conclusion of the Court with regard to the above-mentioned event, since on the critical occasion he was roll-called together with the above-mentioned persons. Witness Enes Kapetanović noted that in the group of the roll-called persons there were Burho Kapetanović, Badnjević and Murtić from Kozarac, and that he himself was roll-called shortly after that. According to the statement of this witness, the above-mentioned three persons left before him and, when he got out, Momčilo Gruban a.k.a. Čkalja passed by and told him: “Stop, have you been roll-called?”, and then he hugged him and told him: “Come here, it would be a pity if such a fellow were gone.” The above-quoted words and behavior of Momčilo Gruban precisely suggest the uncertainty of the faith of the roll-called detainees and it even leads to the conclusion that they were supposed to be liquidated, even more so because Enes Kapetanović stated that, later on, he heard from his friends that Čkalja had said

that he saved him from certain death, and this statement was confirmed by witness Senad Kapetanović too. Witness Senad Kapetanović, who confirmed that his brother Enes Kapetanović was roll-called together with their cousin Burhanudin Kapetanović, but that Čkalja sent him back, noted in his statement that Burho left the room and that he did not see him again after that, namely that he did not survive the Camp. Witness Asmir Baltić also said what he knew about the disappearance of Burhanudin Kapetanović. He stated that the critical event took place in the second half of July 1992, as well as witness Zlata Cikota, who, as she stated, last saw Burho Kapetanović on 24 July 1992 when he was taken towards the “red house” together with Ziko Ekinović, Čargo and Mujo Crnalić. This witness stated that she attended the funeral of the above-mentioned persons, which took place in Raškovac. The statements of these witnesses were partly confirmed by witness Ante Tomić too, who during the cross examination noted that he heard that Nijaz Badnjević was roll-called and that he disappeared, however, as it has been already elaborated, the Court did not have sufficient evidence at its disposal from which it would stem that it was precisely Nijaz Badnjević. Namely, this witness did not see the above-mentioned being taken away, whereas the eye-witness Enes Kapetanović mentioned only a person with the surname of Badnjević. The subjective evidence about the death of Burhanudin Kapetanović was also additionally corroborated by the documentary evidence in the case file, namely by the Additional Report of Nicolas Sebire dated 28 August 2002, Exhumations and Proof of Death from which it stems that the named person was officially declared dead under a decision of the Municipal Court in Sanski Most.

According to the facts noted in the Indictment, one night in June 1992 approximately between 30 and 40 detainees disappeared, including Emsud Baltić and several men with the surname of Mešić. Having determined that this event took place, the Court made certain corrections with regard to the allegations in the Indictment, namely in the view of the number of persons who were roll-called on the critical night and taken to an unknown direction. The Court has based the finding that Emsud Baltić was taken away together with several other men with the surname of Mešić on the statement of witness Asmir Baltić, Emsud Baltić’s brother, who was in the same room with the named person during the roll-call. In his statement witness Asmir Baltić noted that his brother did not survive the Camp and that he was taken away along with a group of people on 24 or 25 July 1992. Since this witness was held together with Emsud Baltić in the room called *Mujina soba*, he had an opportunity to see when Emsud Baltić was roll-called and when, together with him, around 8 or 9 p.m. the following persons were roll-called and taken away: Mesud Hadžić, Alija Čomić and Mešić with his three sons. The witness stated that he had not seen the above-mentioned persons ever again and that the last place where he saw his brother alive was at the Omarska Camp, and after that in the mass grave in Kevljani. Based on the statement of the above-mentioned witness, the Court has determined that the referenced event took place in the way described in more details in the Indictment, however, the number of persons who were roll-called and who disappeared that night was more precisely determined in accordance with the claims from the statement of this witness, with the determination that at least 7 persons disappeared, whom witness Asmir Baltić personally saw and listed their names. The truth is that witness Asmir Baltić stated that between 30 and 40 people were roll-called on that night, but the Court assessed that the above-mentioned number is arbitrary, since the witness, who is the only eye-witness of this event, counted 7 persons, including his

brother, whereas he probably only heard about number 30 or 40, but did not know who those persons actually were.

As noted in the Indictment, in late July 1992 a large number of unidentified detainees were shot dead, including between 100 and 150 detained inhabitants of the Hambarine village. Regarding this event, the Court has also determined beyond any reasonable doubt that it took place, however, based on the contents of the statements of a number of witnesses who were heard about the above-mentioned circumstances, it was determined that at least 50 detained inhabitants of the Hambarine village was killed at the critical time. Witnesses Said Bešić, K037, K040, Izet Đešević and K018 consistently stated that on that day a group of inhabitants from the region of Brdo, including village Hambarine, Čarakovo, Rizvanovići, Biščani, Rakovčani and others, were taken away, and they consistently stated that a large shooting and mass killing could be heard on the same night. According to the statement of witness Izet Đešević, who through a toilet window noticed the rush and people falling down, at first he thought that those were cattle, which leads to the conclusion that a large number of people were outside in the open field that night. This witness described in detail the event that took place on that night, since he observed it from the toilet window, whereby his statement was entirely confirmed by other witnesses who on the critical night heard that “something unusual was going on.” Witness Said Bešić stated that there was a lot of shooting and yelling heard that night, so he presumed that people were killed during the night, while Witness K037 heard moans, knocking, yelling of guards, beatings, shooting, which was also confirmed by witness Zlata Cikota, who heard noise the same night too. According to the statement of Witness K019, shooting and curses by guards were heard that night and it started at around 1 a.m., whereby witness K018, who also saw a part of the above-mentioned event through a window, stated that he remembered that night as a bad one, since there was a lot of shooting, that the shooting was fierce and screams and moans could be heard, as well as the words “Please don’t, I didn’t do anything.” That those were inhabitants of the Brdo region, among whom there were also inhabitants of the Hambarine village, was also confirmed by Witness K034, who saw buses which arrived at the Omarska Camp on that day and who recognized the person called Medo Šinik from Hambarine, as well as the witness Kerim Mešanović, who noted in his statement that people from Brdo were brought in July 1992 and that screams could be heard especially after that. The statements of the above-mentioned witnesses were partly confirmed by witness Nusret Sivac as well, whose statement given before the Hague Tribunal in November 1994 was used in the cross examination. He noted that he heard that people from the villages in the region of Brdo had arrived in 12 buses, while one person told him that on the following day he saw only two groups of 30 people each who came to lunch that day. During the evidentiary proceedings the Defense tried to point out that on the critical night the guards of the Omarska Camp were not present there, since the witnesses did not recognize anyone from the regular guards, however, the fact is that the witnesses heard and saw the event, and considering that it took place during the night, it cannot be expected that the witnesses could recognize the guards in the dark. By pointing to the claims of witness Izet Đešević from his statement given in 1995 about the fact that it was foggy that night and that it was a very dark night, the Defense tried to impose a conclusion that the witness was unable to see the referenced event, which the Court did not accept. Namely, this witness noted that it was summer and that the weather was nice, so that even in case there was summer fog, the witness was unable to recognize anyone from among the perpetrators of the killing or the



victims, but it is quite certain that he was able to see what was going on and the shapes of human bodies. The statement of witness Izet Đešević about the decisive fact that the detainees were killed on the critical night is completely consistent with the statements of other witnesses, who were able to hear, that is, see what was going on from the perspective of the place where they were held. All the heard witnesses were also entirely consistent with reference to the large number of dead bodies which they saw the following morning around the “white house”, from which a clear conclusion stems that those dead bodies were a result of the shooting which occurred during the previous night, when the newly-arrived inhabitants of Brdo were killed, including the inhabitants of the Hambarine village. Witness Said Bešić stated that he saw over 50 bodies piled up, witness Kerim Mešanović noted that he saw the largest number of bodies in the second half of July 1992 and that he heard that a trench-digger/loader loaded the bodies on a yellow truck which was filled to the top, that the bodies were taken away in two turns, namely by two full trailer trucks. The statements about the dead bodies of the detainees from the region of Brdo were also confirmed by witness Zlata Cikota, who saw the bodies at around 4:30 a.m. on the following morning in front of the “white house” and she estimated that there were over 240 bodies. Witness K040 also confirmed the statements of previous witnesses, noting that on the following day on the meadow in front of the “white house” she saw many dead people, that there were around 200 bodies which were lined up and that everything could be seen clearly. According to this witness, there were 3 or 4 rounds of trucks taking away dead bodies. Regarding this event, witness K019, who saw “a terrible sight” on the following morning, stated that he personally saw a truck piled high with bodies, based on which he concluded that there had been a mass execution the previous night. As noted by witnesses K040 and K019, they were not allowed to look and they were ordered to turn their heads, namely to go back to their rooms, which also leads to the conclusion that the Camp staff wanted to cover up the results of the shooting from the previous night. Witness Izet Đešević also described in detail the events of the morning after, when he heard the noise of the loader and then he saw rigid human arms and legs in its front bucket. The witness stressed that there was summer fog that morning, but that it was a bright morning and the fog was not so dense, so that he was able to see a truck loaded up to the top and covered with blankets pass by two times, whereas the smaller TAM truck drove the bodies away several times. The witness stated that he did not see, but he presumed that it was dead bodies loaded on the truck, since he saw blood coming out of the truck, which leads to the conclusion that those were human bodies, even more so since the witness saw rigid human arms and legs on the loader prior to that. According to the statement of Witness K018, that night, or rather the morning after, he saw a maximum of 11 bodies, which did not dissuade the Court from concluding that there were many more bodies there, since other witnesses, who saw the bodies from different positions in the Camp, stated that they saw even up to 200 or over 240 bodies. The very fact that a large number of witnesses saw trucks driving away bodies on several occasions suggests that at least 50 people were killed during the above-mentioned night, which leaves an open possibility that there were many more, even up to 200 people. The above mentioned facts were also confirmed by witness Asmir Baltić, who during the second time he was held in the room called *Mujina soba*, which coincided with the period during which the detainees from the region of Brdo were killed, saw bodies on the truck that drove them away in two or three rounds. In his statement with regard to these circumstances the witness stressed that bodies could be seen since the truck was no more than 8 meters away. In the opinion of the Court it is also an indisputable fact that the referenced event took place in

late July 1992, since the following witnesses gave consistent statements about the time when it took place: witness Izet Đešević, who stated that it took place on 23 or 24 July 1992, Witness K018 mentioned 24 July 1992, while witness Kerim Mešanović noted the second half of July 1992 as the time period in which the referenced event took place, which is consistent with the time period witness Asmir Baltić, who saw the bodies being taken away, spent in *Mujina soba*.

As it has been already noted, within the above mentioned system of abuse and persecution in which the detainees were, among others, held without any medications, the Court has determined that during the time the Omarska Camp existed a killing took place as a result of the above-described system, when in June 1992 detainee Ismet "Ico" Hodžić died due to the lack of medicine because of which he was unable to treat his diabetes. Witnesses Asmir Baltić and K03, who gave their statements about the circumstances of the death of Ismet Hodžić, noted that they knew the named person from before the war and that they knew that he had diabetes. Both the above-mentioned witnesses consistently stated that they saw Ismet Hodžić lying down for 2 or 3 days, while Witness K03 was more specific in his claims that Ismet Hodžić died after that time and that afterwards he was taken away in the direction of the "white house". These claims were also confirmed by witness Asmir Baltić, who stated that he last saw "Ico" in front of the "white house", noting that it was around 10 or 12 July 1992, however the witness corrected himself during the cross-examination and he stated that Ismet Hodžić died due to the lack of insulin 5 or 6 days after their arrival at the Camp. Bearing in mind the fact that witness Asmir Baltić was brought to the Omarska Camp on 30 May 1992, as well as the generally well-known fact that the persons who have diabetes and who depend on taking insulin cannot live long without this medicine, it can be quite clearly concluded that Ismet Hodžić died in June and not in July 1992. Therefore, the statements of both witnesses lead to the conclusion that this person died because he was deprived of the necessary medical assistance, namely of being provided with insulin on which his life depended, particularly since Witness K03 heard from Hodžić's brother that he was not allowed to take his insulin on the occasion of his apprehension, whereas witness Asmir Baltić claimed that Dr. Esad Sadiković asked the guards to help "Ico", but nobody helped him and Ico died because they did not bring him his medicine. The above-mentioned subjective evidence about the death of Ismet Hodžić were also additionally corroborated by the documentary evidence in the case file, namely by the Additional Report of Nicolas Sebire dated 28 August 2002, Exhumations and Proof of Death, from which it stems that the named person was officially declared dead under a decision of the relevant Court.

The group of events that was qualified as beatings and other forms of physical abuse committed against the detainees either directly or personally by the accused Željko Mejakić or in his direct presence with a discriminatory intent also includes the event in which Camp detainee Saud Bešić was beaten up, while after some time the accused Željko Mejakić entered the room and kicked him in his chest. The Court has found this event also established, however, during the main trial, the time when it took place was not determined with certainty, as opposed to the date set in the Indictment, according to which it took place on or around 25 June 1992, so that a correction was made with regard to the allegations in the Indictment in the manner that it was noted that the named person was beaten during the time he was held in the Camp. In addition, during the proceedings it was not determined that Saud Bešić was beaten by the guards, since in his

statement he noted that he was beaten during the questioning, without precisely saying who beat him on that occasion. According to the statement of this witness, when he entered the interrogation room which was located on the upper floor, an interrogator who was wearing a police uniform waited for him, and another member of the police also entered the room. According to the statement of witness Saud Bešić, he was hit on his back and he was told “You were dating Serbian women.” Furthermore, the witness stated that he was beaten during the questioning until he fainted, after which the interrogator would splash him with water and, when he regained consciousness, he was ordered to sit down on a cube drawn on the floor. As the witness stated, during the above-mentioned events, the Camp Chief Željko Mejakić entered the room and told him “Young man, I know you, if you do not say...” and then he kicked him in his chest with his boot and the witness fell over his side due to the kick and he fainted, and when he regained consciousness the accused Mejakić was no longer there. With regard to the identity of Željko Mejakić, the witness stated that he remembered him particularly because he entered the room in which he was questioned and kicked him, and because he used to see him walking around the Camp and talking to the reporters and he noticed that the Camp staff were doing what he told them and that the guards were afraid of him. The witness based all his knowledge about the fact that the person who kicked him on the critical occasion was none other than Željko Mejakić on the information which he received from the guards and other detainees. Such a description of the accused Mejakić’s behavior, as the witness saw it, is completely consistent with the description provided by other witnesses, who also thought him to be the Camp Chief and a person who moved freely around the Camp giving certain orders to the guards. The Court finds that it is quite logical that the witness particularly remembered the person who kicked him personally and that he remembered his name when the others informed him about who that person was after the beating. In terms of the description of the person who kicked him, the witness provided certain information which suggests that it was none other than Željko Mejakić. Namely, according to the witness, the accused Željko Mejakić wore a blue beret on special occasions, which was also confirmed by Witness K042, whereby witness Saud Bešić provided a certain physical description of the Accused, after which he recognized him in the courtroom. This witness, who linked the person who kicked him in his chest on the critical occasion with the accused Mejakić, noted that he remembered him as the person who read the lists of names on the occasions of the transfer of detainees from Omarska to Trnopolje. These claims were also confirmed by witnesses K03 and K023, who saw the accused Mejakić reading the lists of detainees who were supposed to leave the Omarska Camp. During the cross-examination, the Defense tried to deny the veracity of the statement of witness Saud Bešić with regard to the identity of the accused Željko Mejakić, but the witness was explicit in his statement that it was precisely the Accused who kicked him and he even corrected himself with regard to the age of Željko Mejakić during the critical period. Namely, during the direct examination the witness said that the accused Željko Mejakić was 40, whereas during the cross-examination he said that he was younger, which the Court accepts in its entirety, since a person’s ability to assess someone’s age is individual and depends on a series of factors.

With regard to the beatings and other forms of physical abuse that were committed against the detainees directly and personally by the persons over whom Željko Mejakić had effective control and which were committed in furtherance of the system of abuse and persecution in the Camp in which he participated, the Indictment primarily notes the

event when in the night of 29 or 30 May 1992 two rows of the Camp guards beat the detainees who were just brought to the Camp, including Witness K041, after which they were beaten in the restaurant and on their way back from the restaurant. During the main trial, many witnesses testified about the circumstances of the beating of the detainees when they arrived at the Camp, on which occasion the guards would line up in two rows and beat the newly-arrived detainees. In this manner, witness Ermin Striković, who was among the first detainees who arrived at Omarska, noted in his statement that, upon arrival at the Camp, the detainees were forced to run the gauntlet comprising uniformed persons who cursed and beat them. According to witness Sakib Jakupović too, on the occasion of the arrival of the detainees at the Camp, when they would get off the buses armed persons would line up in two rows and hit them over their heads, backs and chests, so that the detainees had to run, since it would be disastrous for them if they would fall. The statements of the previous witnesses about two rows that were lined up on the occasion of the arrival of detainees are also corroborated by the statement of Witness K034, who noted that two groups were formed on two sides and they beat the detainees while they were passing by, namely with their fists, feet and rifle-butts. Witness K041 described the two rows of the Camp guards who beat a group of detainees who were just brought to the Camp, including himself. As Witness K041 stated, he was brought to the Omarska Camp in the evening of 28 May 1992, which is consistent with the time set in the Indictment, in which it was noted that K041 was brought to the Camp in the night of 29 or 30 May 1992. The date when K041 was brought to the Camp was not definitely determined in the Indictment, so that it leaves a possibility that the named person arrived at the Camp on 28 May 1992, as it was noted by the witness himself. The fact that K041 was beaten on the occasion of his arrival at the Camp stems from the part of his statement in which he noted that two buses arrived on that occasion and they were stopped in the place opposite of the garage and the detainees were then ordered to get off the buses, to walk on all fours and to bark like dogs and this was ordered by the people who brought them. As far as the forming of two rows is concerned, the witness noted that the two rows were formed from two columns and the witness was specific in his claims that the two rows were formed from the persons who were already in the Camp and who beat the newly-arrived detainees, including the witness. Precisely this statement of Witness K041 leads to the conclusion that the two rows were formed by the Camp guards and not the persons who escorted the buses in which the detainees were brought. Witness K041 also described the beating of detainees, including himself, on their first occasion of going to have a meal, which took place, as he noted, after four days they spent in the Camp. With regard to this beating, the witness noted that at approximately 8 p.m. it was ordered that a group of 30 detainees should get out, that they would go to have a meal in groups and that they had to run to the restaurant, eat and go back in three minutes. These claims of Witness K041 are completely consistent with the statements of other witnesses who described the way the detainees were taken to have a meal in groups of around 30 detainees, as well as the time they had to have a meal. Furthermore, Witness K041 stated that on the critical occasion, while the group of detainees to which he belonged was on its way to have a meal, this group was beaten on their way inside, the people were beaten while they were eating for as long as another group would come to have a meal, as well as that, on their way back when they returned to the rooms, they were forced to kneel and put their heads between their legs, on which occasion they were beaten again. With regard to this event, Witness K041 was explicit in his claims that this group of detainees were beaten by the guards, whom the detainees did not know during the first few days that they spent in the

Camp, however, bearing in mind the fact that this witness was detained in the Camp ever since it was formed until the beginning of August 1992, it is quite certain that during the period he spent in the Camp, over time he was able to recognize the faces of the persons who were guards in the Camp and those who were not.

Witness K042 gave a detailed account of his beating, which, according to the allegations in the Indictment, took place on 4 June 1992 when he was beaten by the guards in the Camp, specifically by whips with balls attached at their ends. The Court has found the above-mentioned event established, since the witness, while describing the details of the beating, provided sufficient data about these circumstances, which the Defense did not bring in question with anything serious. According to the statement of Witness K042, he linked the above-mentioned date to an important event in his life, so that he was absolutely sure that his beating took place precisely on 4 June 1992. The witness noted that on the critical occasion he was taken outside by the guard with the surname Predojević, placed against a wall and ordered to walk up the stairs, on which occasion the guard Paspalj and several more guards were present there along with Predojević. As Witness K042 said, he was ordered to put three fingers on the wall, after which they started beating him, namely with thick cables and a whip with metal balls attached on the top, and this beating lasted for some 20 minutes, after which the guard Predojević said: "Throw the brute outside, so that he would not croak here." Since, based on the statements of witnesses who mentioned that the whip with a metal ball attached at the top was used, the Court has determined that such a whip was regularly used for beating the detainees and not a whip with a leather ball, therefore a correction was made with regard to the devices with which the beating was carried out in terms of the allegations in the Indictment. As for the injuries which Witness K042 received on the critical occasion, the witness said that both sides of his rib cage and his clavicles were broken, that he was not able to move because of the pain and he stressed that he never received any medical assistance and that nobody from the Camp staff ever tried to help him. The statement of Witness K042 was partly corroborated by the statement of witness Fadil Avdagić, who personally knew K042 and who saw the results of his beating. From the statement of witness Fadil Avdagić it stems that he saw that the named person was roll-called and that he was brought back beaten after some time. According to the description of this witness, K042 was brought inside because he could not stand due to the injuries, he was all black and blue from top to toe, with bruises all over his body and he could not talk. The only difference in the contents of the statements of these witnesses is the time K042 was roll-called, since Witness K042 noted that the roll-call took place at 10 a.m., whereas according to the statement of witness Fadil Avdagić he was roll-called at around 2 or 3 a.m. However, bearing in mind the time distance, as well as the weakened ability to remember details, the Court did not find the above-mentioned difference in the statements to be significant, particularly bearing in mind the consistency of the witnesses' statements with regard to the decisive fact of the roll-call, that is, the physical state K042 was in after he returned to the room.

The events that refer to the beating of Emir Beganović were listed in the Indictment in a chronological order one by one with a note that each event took place several days after the previously described one. However, on the occasion of the hearing of witness Emir Beganović during the main trial, when asked by the Prosecutor he precisely presented his position on the sequence of each beating, which was entirely consistent with the statements of other witnesses who were heard about the above-mentioned circumstances

in terms of the time and circumstances in which each referenced event took place. According to the statement of witness Emir Beganović, he was beaten three times, as it was noted in the factual part of the Indictment. He was beaten for the first time when a group of visitors came, including a person called “Dragan”, Nikica Janjić, Šaponja, Zoran Žigić and Duško Knežević a.k.a. Duća, on which occasion the following witnesses were also roll-called together with this witness: K036, Rezak Hukanović, Asaf Kapetanović and Abdulah Brkić. Many witnesses gave their statements about the circumstances of the referenced beating, including those who saw the arrival of the above-mentioned group of visitors to the Camp and the taking away of these detainees to the “white house” and the return of the beaten detainees and the persons who beat them from the “white house”, as well as the witnesses who were in the “white house” and who personally saw, that is, heard the beating itself. All the witnesses who observed the referenced event, from the angle that depended on the part of the Camp in which they were located, linked it with the beating of the above-mentioned four detainees by a group of unknown persons, whom the witnesses claim did not have any real function in the Camp and were just visitors. According to the witnesses’ statement, those persons were Nikica Janjić, a person called “Dragan”, “Šaponja”, Duško Knežević and Zoran Žigić. According to the statement of Witness K027, the event took place two or three days after his arrival at the Camp, which is close to the time that is noted in the Indictment, bearing in mind the fact that this witness was brought to the Omarska Camp on 9 June 1992, while the event took place on or around 10 June 1992. Witness K027, who had a clear view over the pista, the “white house” and the hangar building from the place where he was located, stated that he saw Zoran Žigić, who he claims was not part of the Camp structure, drove to the Camp with some other people in the car, that he howled, shouted and yelled while he was looking for certain people including Emir Beganović and Asaf Kapetanović. Witness K03, who also knew Asaf Kapetanović, Rezak Hukanović, Emir Beganović and K036, saw when the named persons were taken towards the “white house” and this witness also confirmed the connection between the arrival of Žigić, Duća, Šaponja and others at the Camp and the beating of the above-mentioned persons. In addition, according to the statement of witness Azedin Oklopčić, who saw those four detainees when they were taken towards the “white house”, the beating of the above-mentioned detainees was also connected with the arrival of Žigić, Duća and Janjić at the Camp. The statement of witness Asmir Baltić is also consistent in terms of the decisive facts of the circumstances of the referenced event. This witness said that the beating took place in the middle of their stay on the pista, which is consistent with the time noted in the Indictment, namely the period between 10 and 13 June 1992. Just like all the other heard witnesses, witness Asmir Baltić also stated that Žigić and “those four persons” arrived at around 11 o’clock and took Rezak, K036, Began and Asaf towards the “white house”.

In his statement, witness Emir Beganović stated that Nikica Janjić and “Dragan” came to the Camp on the critical occasion at the time when he was in the restaurant. Furthermore, from the statement of Emir Beganović it stems that he was ordered to move towards the “white house”, on which occasion he was hit with batons by “Dragan”. While crossing the pista he saw Rezak, Asaf and K036 behind him. Witness K036 entirely confirmed the statement of witness Emir Beganović about the fact that Asaf Kapetanović, Rezak Hukanović, Emir Beganović and himself were in the group of the detainees who were singled out and taken towards the “white house”. Furthermore, witnesses Emir Beganović and K036 described the events that took place in the “white

house". According to the statement of witness Emir Beganović, after he entered the "white house" he was "thrown inside" the second room on the right side, while the rest of the detainees were thrown inside the second room on the left side, after which Nikica and Dragan entered the room in which he was. Witness Beganović further on noted that they immediately started beating him, namely Dragan with a baton, while Nikica was kicking him, with his boots on. While he was describing the way he was beaten, witness Emir Beganović stated: "It went on for a long time. Dragan forced me to lie on my stomach. I offered physical resistance, screamed, they were beating me...", stressing that in some cases they broke the spines of the detainees. The witness said that during the time he was beaten he heard screams and moans of K036, Asaf and Rezak, but that he did not pay much attention to that, since he expected that Nikica would slit his throat. As he noted, during the questioning Šaponja, Žigić and a third person, whose name he heard was Duško Knežević, entered once or twice, on which occasion Šaponja would kick him. In his statement, Witness K036 stated that after Žigić roll-called him and took him to the "white house" together with Began, Asaf and Rezak, Žigić started beating him in the room on the left side, but that in the "white house" they would be beaten by anyone who would come by, stressing that on this occasion he saw Šaponja, Duća and Nikica. The witness stressed that, besides Žigić, the three above-mentioned persons also beat them, that everybody was there, the victims and the perpetrators and that the detainees were kicked and punched. Based on the consistent statements of these two witnesses it stems that all the persons who were on the critical occasion brought to the "white house" were beaten by Žigić, Duća, Šaponja, Nikica Janjić and Dragan, depending on who entered the rooms and who got to beat them. The Court has also found as established the event included in the Indictment, described in the statement of witness Emir Beganović, whom Nikica Janjić stabbed in the arm. Regarding this incident, Witness Emir Beganović stated that Nikica took a big knife and stabbed him in his arm, he plunged the knife through his arm and pulled the knife out, after which the witness saw that his wrist was broken and that he was covered with blood. These claims of witness Emir Beganović were also confirmed by witness Abdulah Brkić. Although it is true that other witnesses did not mention him in the context of the events that took place in the "white house", this witness provided detailed information about the beating of the above-mentioned group of detainees and himself, so that the Court was completely convinced that he was also present in the "white house" on the critical occasion and that he too was beaten up. The fact that witnesses Emir Beganović and K036 did not mention this witness as a person who was beaten in the "white house" on the critical occasion is justified by the situation in the area of the "white house" at that moment, when everybody was beaten by everybody, so that it was logical that a person in fear of his life due to the things that were happening to him at that point would not be able to notice other detainees who were present there and who exactly was beaten. According to the statement of witness Abdulah Brkić, Žigić threw him inside a room, where he saw how Janjić was beating Beganović and he heard noises from the corridor and he saw K036, who was severely beaten by "Duća's" group. The witness clearly saw when Janjić made a cut, that is, stabbed Beganović's arm, namely his hand. In the view of the beating which witness Abdulah Brkić suffered himself, he noted that he recognized the person who beat him, that it was Duško Knežević, who came in together with Žigić, Sapina (meaning Šaponja) and Timarac. Witness Abdulah Brkić noted with certainty that Knežević was the first man he saw when the door opened and he described him as carrying a baton with a metal ball attached at the top, with which he hit him 5 or 6 times over his head, as well as that he punched and kicked him with his boot.

The events which occurred in the aftermath of the beating of Emir Beganović, Rezak Hukanović, K036 and Asaf Kapetanović, as well as the physical state in which these persons were after they left the “white house”, were described by the witnesses who saw when the above-mentioned group was taken out of the “white house”, as well as by witnesses Emir Beganović and K036. First of all, witness Emir Beganović stated that after the beating everybody went out in front of the “white house” and that Žigić ordered them to drink water like dogs, after which they started drinking water. This witness stated: “Šaponja, Žigić and Duća were together with K036, Asaf and Rezak. When Žigić ordered me to drink water Dragan and Nikica were around, as well as Duća, we were all there. They were standing, we were ‘drinking’ (referring to water from a pool of rain water)”. According to the statement of Witness K036, who said that he was beaten all over his body, the results of his beating were broken teeth and he was all covered with blood, whereby after he got out of the “white house” he washed the blood off his face in a pool of rain water together with Began, Hukanović and Asaf. Witness Azedin Oklopčić described the situation in which the above-mentioned detainees got out of the “white house”, noting that he saw Asaf Kapetanović, Rezak Hukanović, Emir Beganović and K036 coming, while Žigić, Duća and Janjić followed them and that, as soon as they reached the pista, these four detainees lied down in a pool, as well as that they were all covered with blood and beaten and that they washed their faces with the rain water from the pool. The statement of witness Azedin Oklopčić was also confirmed by Witness K03, who said that he saw that Rezak Hukanović, K036, Asaf and Emir were beaten and that these detainees washed themselves in a pool of rain water, while Žigić and Duća were standing beside them. Witness Asmir Baltić also testified about the consequences of the beating of these four detainees, and said that they were beaten, but still alive, whereby while they were bringing them back, the witness heard someone say “There, he is riding either K036 or Rezak.” According to the statement of Witness K027, the detainees who were beaten on the critical occasion were unable to go to have a meal, so that food was brought to them, since they were so beaten that they were unable to walk and only several days after that when they showed up they had visible injuries, they were all black and blue, their heads were swollen and covered with traces of caked blood and they were all mutilated. The fact that Emir Beganović also received head injuries, along with the injuries caused by stabbing with a knife and other injuries all over his body, is also corroborated by the fact that during the second beating he had a piece of cloth tied around his head to protect the injuries sustained, whereby witness Abdulah Brkić stated, while he was describing Beganović after the beating, that he was black and blue all over and covered with blood. In accordance with the substantive results of the witness’s statement, the Court has made a correction with regard to the factual part of the Indictment in the manner that the beating of Slavko Ećimović was omitted, since it was included in the part of the Verdict that refers to the killings in the Omarska Camp.

The second beating of Emir Beganović by the visitors to the Camp, including the visitor “Dragan”, as this witness noted, took place a couple of days after the above described beating, at the time when the witness was already placed in room number 15 in the hangar building. Considering the time fixed in this way by the witness, it clearly follows that the next beating took place in mid June 1992. In his statement witness Emir Beganović noted that he was roll-called, on which occasion other detainees helped him get up and when he reached the door he saw Dragan again and he told him “Why do you



need that, you are not a *hodža*,” since the witness bandaged himself with a piece of cloth the injuries he had sustained on his head during the beating in the “white house” and, after that, the witness was taken to the workshop in which there were 5 or 6 uniformed persons. From the statement of witness Emir Beganović it stems that the beating followed, due to which he fell, they started kicking him and one of the perpetrators grabbed his legs and pulled him along for a couple of meters, after which they put his legs in a wire cable and hanged him and when the witness fell down, Dragan told him “Get up, you are going upstairs.” After he returned to room number 15, the witness fainted. Certain corrections, which were noted in the operative part of the Verdict, were made in terms of this event too, regarding the factual part of the Indictment, whereby the Court was mindful of both the subjective and the objective identities of the Indictment.

Witness Emir Beganović also described in detail the third time he was beaten, which, according to his statement, took place in mid June 1992, namely a couple of days after the second time that he was beaten, and it was carried out again in the “white house” by Nikica Janjić, who passed by the place on the grassy area near the “white house” where the witness was located. From the statement of witness Beganović it stems that Nikica Janjić approached him and told him to go inside the “white house”, after which the witness turned to Čkalja and asked him to prevent his being taken to the “white house” and then Čkalja, who according to the assessment of the Court could certainly see Beganović’s injuries from the previous beatings since they were visible, told him “Get inside, he will not hurt you,” whereas the beating started the moment he entered the house. In his statement witness Emir Beganović stated that it was guard Čkalja, however based on other circumstances about this person, the Court has concluded that it was one of the shift commanders in the Omarska Camp, Momčilo Gruban a.k.a. Čkalja. Momčilo Gruban was the only person in the security of the Omarska Camp with the nickname Čkalja, while the very fact that Beganović turned to him to ask for protection suggests that Čkalja had certain influence and a position compared to other guards, since it is quite certain that he was not the only member of the guard staff who happened to be nearby at that moment. During the further course of the events that followed the entrance of the witness and Nikica Janjić into the “white house”, the witness said that Nikica immediately started beating him by pulling out his *Colt* pistol and started hitting him with it over his head, so that he fell. The blows were so severe that the witness was screaming and moaning and he could be heard all over the Camp area. While he was describing the injuries he sustained during the third time he was beaten, the witness said that his whole head was all holed out and that it was swollen as a ball and that the blood on his head started clotting. In his attempts to describe the number of blows he received on that occasion, as well as during the previous two beatings, the witness stated that his entire body was in pain and that he was all black and blue due to the beating as if he was a black man. During the cross-examination the Defense pointed out the statement of witnesses given in the Kvočka and Tadić cases with regard to the sequence and the time of each beating, however the witness was explicit in his claims that the beatings took place in the manner and at the time described in his statement before this Court, which was accepted in its entirety, since this witness’s statement was consistent in the decisive facts with the statements of other witnesses, especially in terms of the first beating which was noticed by a large number of persons. Therefore, the Court has made a correction with regard to the factual description in the Indictment, being guided by the substantial results which stem from the description of the event given by witness Emir Beganović.

The two beatings of Witness K022, which were described in the operative part of the Verdict, are closely connected with the beating of Bećir Medunjanin to death, which took place in the building of the “white house”. Considering the fact that the above-mentioned beatings took place shortly after the apprehension of Bećir Medunjanin and K022, the Court has determined in a reliable way that it took place in mid June 1992, which stems from the statement of Witness K022, as well as from the statements of witnesses who were in the “white house” during the critical period and who eye-witnessed the events. Just like in the case of the previous event, the Court has made certain corrections with regard to the description given in the Indictment, as it was noted in the operative part of the Verdict, as a result of the contents of the statements of witnesses who were heard about the referenced circumstances. This primarily refers to the number of beatings of K022 by Duško Knežević and Zoran Žigić in the Camp. Namely, the witness stated that he saw the named persons on two separate days in the Omarska, the first time when they beat the detainees who were held in the “white house”, including himself and Bećir Medunjanin, on which occasion Amir Cerić and Avdić were killed, and the second time when Bećir Medunjanin was so beaten that he passed away. In the factual description of the Verdict the Court also omitted the death of Bećir Medunjanin due to the beating, since it was included in the part of the Verdict that refers to the killings. In the view of the beating of K022, the Court has based the conclusion that the referenced event did take place primarily on the statement of Witness K022, who provided a detailed chronological description of the events, starting from the point when he was brought to the Omarska Camp, including the events in the “white house”. Witness K022 said that on the same day following the second interrogation he was beaten up in the “white house.” According to the statement of Witness K022, a group of four soldiers who were wearing camouflage uniforms arrived in the afternoon and they were looking for Bećir Medunjanin, on whom they had a down. From the four above-mentioned persons the witness remembered two, namely Duško Knežević, whom he saw in the military barrack in Prijedor after his apprehension, and Zoran Žigić. While he was describing the beating by Duško Knežević and Zoran Žigić, the witness stated that they beat him using different objects, including chairs, police batons and short batons with springs and a metal ball attached at the top, whereby in terms of the manner the beating was carried out the witness noted: “He knocked me down on my back, sat on my stomach, took a police baton and started hitting me from one ear towards the other, so that he would not miss any millimeter of the tissue,” referring to Duško Knežević. With regard to this, the Court has made a correction in the factual part of the Indictment, as it was noted in the operative part of the Verdict, and omitted the allegations from the Indictment that the beatings were carried out with a wooden baton. In the view of the identity of Duško Knežević, Witness K022 stated that after the first beating he was interested to know who it was, so he learned all the data about Knežević from a person called Samir a.k.a. “Ešefin”, and these data were also confirmed by other detainees who knew the accused Knežević.

As it stems from the statement of Witness K022, he was beaten for the second time shortly after the first beating. The witness connected that event with the summer rain shower and the point when some detainees were transferred from the pista to the “white house”, on which occasion Bećir Medunjanin died of beating. The statement of Witness K022 is in this part completely consistent with the statements of witnesses Azedin Oklopčić and Fadil Avdagić, who belonged to the group of detainees who were taken to

the “white house” because of the summer rain shower. While he was describing the second beating by Duško Knežević and Zoran Žigić, Witness K022 noted that “those two got in,” that Duća beat Bećir Medunjanin, while Zoran Žigić was beating the others, whoever was at his hand, but he beat the witness himself the most. With regard to the injury he sustained, the witness noted that on the critical occasion his nose was shifted to the other side and that even today he can turn it by 180 degrees, that at one point he fainted and that, when he regained consciousness, he was located on a small meadow in front of the “white house”. As far as the injuries the witness sustained on the critical occasion are concerned, the Court has made a correction in the factual part of the Indictment with regard to this part too, in accordance with the contents of this witness’s statement. The statement of Witness K022 that on the above-mentioned occasion Duća Knežević and Zoran Žigić, together with two other visitors, came to the “white house” and beat the detainees, is also corroborated by the statements of witnesses Fadil Avdagić and Azedin Oklopčić, who also mentioned Knežević and Žigić, while witness Azedin Oklopčić also mentioned Željko Timarac, along with those two. From the statement of witness Fadil Avdagić it stems that, after he entered the “white house” he saw Bećir Medunjanin and K022, describing that they were in a horrible state and all beaten up, and that K022 was unable to sit up. According to this witness, the last time he saw them they were in the “white house” and they both looked terrible. The Court has looked into the event regarding the beating of K022 in the context of the statements of witnesses who described the beating of the group of detainees including Emir Beganović, Rezak Hukanović, Asaf Kapetanović, K036 and Abdulah Brkić, since it is obvious that the above-mentioned beatings took place at the same time, when a certain number of persons were killed in the “white house”. All the above-mentioned witnesses gave consistent statements about this, namely that the beating was carried out by a group of visitors, including Dušan Knežević and Zoran Žigić, who were clearly carrying out the referenced beating together, on which occasions they agreed on the role each of them would have with regard to “who would beat whom.” When he mentioned the second time he was beaten, Witness K022 stated that other detainees were also beaten on this occasion, which was also confirmed by witness Fadil Avdagić, who was beaten himself on the critical occasion. With regard to this beating, witness Fadil Avdagić noted that Duća, Žigić and another two uniformed persons beat Dalija Hrnić and another younger man (meaning the young man who was wearing boots, a t-shirt and military trousers), upon whom they particularly pounced, whereby when they stopped beating that young man, they started beating everybody with batons, on which occasion he himself was hit by Duća several times, as a result of which, as he stated, his head and his jaw were broken. Having analyzed the above-mentioned statements of the witnesses, the Court has found this criminal action completely determined, however minor corrections were made with regard to the objects that were used for the beating and the injuries the detainees sustained on this occasion.

The event that refers to the beating of Muhamed Čehajić, according to the Indictment, took place on or around 23 June 1992, when at least one guard in the Camp beat the named person on two occasions, as a result of which he had bruises all over his body. However, during the evidentiary proceedings, based on the evidence presented the Court did not determine in a reliable way that Muhamed Čehajić was severely beaten on two occasions, nor was it determined in what kind of injuries his beating resulted. From the statements of the witnesses who were heard about the above-mentioned circumstances it stems that Muhamed Čehajić, who held the post of the mayor of the Prijedor

Municipality after the first multi-party elections, was a subject of different kinds of humiliations and maltreatment, but the contents of the witnesses' statements suggest that he was beaten only once by at least one guard in the Camp. Witnesses Nusret Sivac, K021 and K041 were heard about the referenced circumstances. Witness K041 described the situation when Čehajić, who was held together with him in the room called the "garage", was forced to take out and wash the bucket in which the detainees relieved themselves, whereby on one occasion he was even ordered to drink water from that bucket, which eventually did not happen. The statement of this witness about the different kinds of humiliating Muhamed Čehajić was also confirmed by witness K021, who saw him in the Omarska Camp and who noted that Čehajić was routinely transferred from one room to another, so that he would be humiliated in different ways and tortured, which was also confirmed by witness Nusret Sivac, who stated: "The guards were very severe towards Čehajić, I had an impression that it was their task to humiliate him." With regard to the roll-call of Muhamed Čehajić by the guards, witnesses Nusret Sivac and K041 gave consistent statements. According to the statement of witness Nusret Sivac, who was apprehended to the Omarska Camp for the second time on 20 June 1992, he found Muhamed Čehajić in the room called the garage and, as he noticed, he was pale and with visible traces of torture. As this witness noted, on one occasion a group of guards showed up at the door and they started provoking the named person, whereby one of them, to whom they referred to as "Žuti", ordered the detainees to sing nationalistic songs. Furthermore, from the statement of witness Nusret Sivac it stems that the guard "Žuti" took Muhamed Čehajić outside, after which screams, moans and beating could be heard, which lead the Court to the conclusion that Muhamed Čehajić was beaten up on this occasion. Witness Nusret Sivac noted that Čehajić then entered the room and said: "Men, they ask me to give him 100 marks, they will kill me if I do not," as well as that he got the money from Ago Sadiković and Osman Mahmuljin. With regard to the described event, the statement of witness Nusret Sivac was corroborated by the statement of Witness K041, who noted that Čehajić was roll-called from the "garage" and that after he returned he was all pale with ruffled hair, which also suggests that Čehajić was beaten in front of the room, although this witness said that from the garage he could not hear what was going on outside. According to the statements of witnesses K041 too, Muhamed Čehajić told the other detainees that they asked him for money and threatened to kill him. As far as the time when the referenced event took place is concerned, the Court determined that it happened during the period that was noted in the factual description of the Indictment, that is, on or around 23 June 1992. Namely, from Nusret Sivac's statement it stems that he was brought to the Omarska Camp on 20 June 1992 and that he was put in the "garage" on the same day, so that it is quite certain that Muhamed Čehajić was not beaten before that date, but directly after Nusret Sivac arrived at the room called the "garage", as the witness himself stated.

Based on the evidence presented during the main trial, the Court has undoubtedly determined that around 120 detainees were transferred from the Keraterm Camp to the Omarska Camp on 4 July 1992. Four witnesses who were on the above-mentioned occasion brought to Omarska from Keraterm were heard before this Court, and those were the following witnesses: Ante Tomić, Izet Đešević, K09 and K015, from whose statements it stems that a group of around 120 detainees were transferred from the Keraterm Camp to the Omarska Camp. Witnesses Anto Tomić, K09 and K015 consistently stated that it took place on 4 July 1992, whereas with regard to the number

of detainees the Court has accepted the approximate number is 120 detainees, also bearing in mind the statements of the above-mentioned witnesses about that fact. Namely, witness Anto Tomić noted in his statement that 115 detainees were on the list, but he allowed the possibility that there could have been up to 120 people, witness Izet Đešević mentioned over 150 people, witness K09 noted that between 100 and 105 people were transferred, while Witness K015 mentioned between 110 and 120 people, which approximately represents the number of 120 detainees. Based on the contents of the statements of the above-mentioned witnesses the Court was not able to determine in a reliable manner that all the detainees who were on the critical occasion transferred from the Keraterm Camp to the Omarska Camp were beaten up, as it was noted in the factual part of the Indictment. Considering the fact that witnesses Anto Tomić and K09 did not mention at all that they were beaten upon their arrival at the Omarska Camp, a correction was made in the manner that it was noted that some of the above-mentioned approximate number of the detainees who arrived were beaten up. Witness K015 who arrived at the Omarska Camp by a bus on the critical occasion described in detail the events that followed his getting off the bus, noting that the detainees were brought there at around noon or in the afternoon, that they were ordered to lean against a wall with three fingers raised in the air, that they kicked them and asked them for money and wrist-watches and that they wrote down their names and then directed them towards the garage. Although he did not say anything about him being beaten upon the arrival, witness Anto Tomić also noted that a list of names was made and that the newly-arrived detainees had to stand by the wall and put their hands up with 3 fingers raised in the air. Witness Izet Đešević also confirmed the statement of Witness K015 about the beating of the newly-arrived detainees. In his statement he noted that two buses arrived full of detainees, that the buses stopped in front of the hangar building, namely the “garage”, and that, when the detainees from the first bus got out, they were told to squat down and go to the wall, turn their heads towards the wall and put their hands up with three fingers raised in the air. Furthermore, witness Izet Đešević, who observed the referenced event from the bus, stated that a group of around 15 people came by, including Milorad Tadić Brko, whom the witness knew well from before, and that they started beating the detainees, stressing that this was done by the guards wearing camouflage and police uniforms, the persons who were already in the Camp, that they beat the detainees with batons, kicked and punched them and that the beating went on for approximately 10 minutes. This witness did not mention that his group was beaten, only the group of detainees from the first bus, which leads to the conclusion that not all the detainees who were brought to the Omarska Camp on the critical occasion were beaten up. With regard to this event, the Court has made a correction in terms of the factual part of the Indictment, as it was noted in the operative part of the Verdict, in the manner that it omitted sticks as objects with which the beating was carried out, since none of the witnesses mentioned sticks, whereby witness Izet Đešević noted that the beating was, among others, carried out with batons.

In the factual description of the Indictment it was noted that either before the holiday called “St Peter’s Day” or in the night of that holiday the guards in the Camp severely beat detainees using sticks, batons and knives, while they forced them to walk around fire, and that they forced a former football player known as Durat to get into the fire or smoldering cinders. The orthodox religious holiday called “St Peter’s Day” is celebrated on 12 July, when fires are built. With regard to the date, the Prosecution charges the accused persons with the event that took place in the night of “St Peter’s Day” in the

above-described manner. With regard to these circumstances, many Prosecution witnesses were heard and based on their statements it was determined beyond any reasonable doubt that on the critical night that took place in mid July 1992, that is on 12 July when “St Peter’s Day” holiday is celebrated, the guards built an open-air fire in the Camp-yard, which was followed by the beating of detainees, forcing them to walk around the fire. Some of them were even forced to step into the fire, and the smoldering cinders. Witnesses K041, Ermin Striković, K015, K035, Saud Bešić and K027, who gave their statements about the events that took place in the night of “St Peter’s Day”, consistently stated that a fire was built during that night. According to the statements of Witness K041, tires were set on fire, whereas witness Ermin Striković, who was held in room number 15 above the hangar, noted that he wanted to know about the setting of car tires on fire in front of the “white house”, the noises, shooting, moans and screams, so that he observed the referenced event through a small window and he saw people running around the fire and they were beaten and pushed towards the fire. Consistent with the statement of witness Ermin Striković that the detainees were forced to run around the fire that night and that they were beaten and pushed into the fire, is also the statement of Witness K035, who stated that tires were set on fire that night in front of the “white house” and that this caused smoke and suffocation, as well as that from one room he saw when the flame shed light on a man’s body, that is, legs in a tire, which is also partly confirmed by Witness K015 who did not observe the referenced event, but he heard terrible cries and felt the smell of burning and he saw the light of a fire. Since some of the detainees from the room in which K015 was held were looking outside to see what was going on, the witness heard from the detainees that people were pushed into the fire, whereby he concluded it himself based on the cries that were coming from the outside, stressing that the cries could be heard for a long time. In his statement which is consistent with the statements of the previous witnesses, witness Saud Bešić also noted that, on the critical occasion, the room in which he was held was flooded with light, because a fire was built in front of the window, whereby the witness was easily able to notice this since he was held in the “white house” in front of which the fire was built. The witness also noted that he heard moans of the people who were beaten outside and that the moans went on for an hour or an hour and a half, which is consistent with the statements of other witnesses, who estimated that the referenced event lasted for a long period of time. Witness K027 confirmed the statements of all previous witnesses, noting that he saw the guards set tires on fire on “St Peter’s Day”, that he personally saw the fire and that a terrible shooting took place. In addition, from the statement of witness Sakib Jakupović it stems that he remembered the night of “St Peter’s Day” as a bad one, since, as he noted, he heard terrible cries and screams, he saw the killing, and also confirmed the claims from his previous statement given in 2000, which states that during the night cries and singing could be heard, a huge fire was built in front of the “white house”, there was black smoke and tires were burnt. Therefore, on the critical occasion all the above-mentioned witnesses, who were held in different rooms in the Omarska Camp, saw and some of them heard that the guards built a fire by burning tires, on which occasion they beat detainees and made them run around the fire, which was noted by witness Ermin Striković and that some of the detainees were pushed into the fire, as stems from the statements of witnesses Ermin Striković, K035 and K027, who eye-witnessed the event, as well as from the statement of Witness K015, who heard what was going on by himself and also from the persons who observed the referenced event through a window. The cries and moans which the witnesses heard that night confirm their claims that the detainees were severely beaten and forced to walk around

the fire. Since, based on the contents of the statements given by the above-mentioned witnesses, the Court was unable to determine with certainty with which objects the guards beat the detainees on that night, a correction was made with regard to the factual part of the Indictment, as it was noted in the operative part of the Verdict, that is, it was omitted that sticks, batons and knives were used, which basically does not change the essence of the relevant circumstances regarding the referenced event. While he was describing the morning after the night of “St Peter’s Day”, Witness K015 stated that he saw the remains of burnt tires as a result of the events that took place the night before, Witness K041 stated that on the following days he saw detainees Mujo and Burho taking a young man, who was wearing a t-shirt with the inscription FK “Rudar” and who was all black from the soot, to wash him. During the cross-examination, this witness noted that the young man who was led by Mujo and Burho washed himself from the tap in front of *Mujina soba*, while he was some 10 meters away from the above-mentioned spot, so that, according to the assessment of the Court, the witness was able to notice the young man’s appearance from the referenced distance, as any average person. The statement of Witness K041 was also corroborated by witness Asmir Baltić, who was present when the young man was taken away and he identified him as goal-keeper Durat Duratović. According to the statement of witness Asmir Baltić, he saw when Durat came in all black and beaten, after which they washed him up while he was crying. The statement of this witness given during the cross-examination about the fact that Durat was all stained with oil or the dirt from the tires suggests that the witness indirectly connected Durat Duratović’s appearance with the dirt from tires and this, in the context of all other pieces of evidence presented, leads to the conclusion that Durat was all black because of the burnt tires which the guards set on fire for “St Peter’s Day” holiday.

According to the allegations in the Indictment, Mustafa Puškar was beaten on or around 17 or 18 July 1992, when this detainee was, as noted in the Indictment, severely beaten by the guards in the Camp with an iron bar. With regard to this beating, the Court has undoubtedly determined that it did take place, however certain corrections were made in accordance with the contents of the statement of Mustafa Puškar, who was heard about the referenced circumstances. Namely, in his statement Mustafa Puškar noted that on one occasion on around 20 July 1992, which is consistent with the approximate time stated in the Indictment, he was beaten by the Camp guards while he was in the toilet. Witness Puškar stressed that a guard with the nickname “Žučo” and another guard got inside the toilet, that he fell and the guards started beating him with a threaded clamp bar, that the blow was strong and by the time he was knocked down for the second time he fainted, that is, he was half-conscious, after which he was again hit in his stomach. The Court did not find it determined that on the critical occasions the guards dragged Mustafa Puškar, therefore a correction was made with regard to the factual part of the Indictment, which was noted in the operational part of the Verdict. The fact that the named person was severely beaten stems from the fact that he was beaten with an object, that is, with some kind of an iron bar, due to which he fainted. It is true that only witness Mustafa Puškar, who was beaten on the critical occasion, was heard with regard to this event, however considering the fact that the beating took place in the toilet, where it was not likely that other detainees were present, it is realistic to expect that only the injured party could testify about these circumstances.

With regard to the circumstances of the beating of K017, who was, according to the Indictment, beaten on or around 20 July 1992 by one of the Camp guards with a police baton, the Court has also determined beyond any reasonable doubt that this event did take place. However, just like in the previous cases, a correction was made with regard to the factual part of the Indictment, in accordance with the statement of a witness who testified about the referenced circumstances, as noted in the operative part of the Verdict, on which occasion the subjective and objective identity of the filed Indictment was taken into consideration, so that the parts of the Indictment in which it was noted that the named person was punched and kicked were omitted, as well as that he subsequently fell into a coma, which was substituted with the words “he lost consciousness.” In his statement Witness K017 noted that he was beaten in the toilet, where a guard beat him with a police baton, and that he grabbed his hair, put his head into a basin and beat him from behind his back over his head and his neck, his right ear and the right side of his back, that is, over the kidney region. According to the statement of Witness K017, while he was protecting his head, the guard beat him over his back, with a police baton to be specific, and after he broke away from him and started running away, the guard hit him twice from behind his back, due to which he fell and then he got up again, after which he fled. As Witness K017 noted, he felt very bad after he returned to the room in which he was held, since he was already exhausted because of dysentery from which he suffered during that period, and another detainee told him that he was lying down during the following two days in some kind of a coma, or more precisely that he was drifting in and out of consciousness. The Court has entirely accepted these claims of Witness K017, regardless of the fact that no other evidence was presented about the referenced circumstances, except for the hearing of the injured party himself, since this witness’s statement given about the circumstances of the killing and beating of other detainees was assessed as reliable and credible, whereby the very fact that K017 was beaten with a police baton over his head led to the logical conclusion that he quite certainly lost consciousness due to the blows. As far as the date of the above-mentioned beating is concerned, the Court has determined that it took place approximately around the date noted in the Indictment, since the witness, who was considerably resolute with regard to other events in terms of time and dates, stated that this beating took place between 15 and 20 July 1992.

During the evidentiary proceedings, the Court determined in an undisputable way that during the relevant time period in the Omarska Camp rape and other forms of sexual abuse were committed against the detainees in the Camp by the persons over whom the accused Željko Mejačić had effective control, which were committed, just like the above-mentioned killings and beatings, in the furtherance of the Camp system of abuse and persecution in which he himself participated. With regard to Witness K019 it was determined beyond any reasonable doubt that she was sexually abused by the guards in the Camp on several occasions. The Court based this conclusion primarily on the statement of Witness K019 herself, in connection with the contents of the statements of other detainees who were heard about the referenced circumstances. It stems from the statement of Witness K019 that she was apprehended on 14 July 1992. After she was brought to the Omarska Camp a guard would often take her out and he would rape her every time, and she noted that it took place approximately seven times during night and two times during daytime. While she was describing her being taken out, Witness K019 noted that she would be taken to the room at the end of the corridor on the first floor of the administration building and that, along with the guard who would regularly take her



out, other men would come too, according to her estimation two or three or more of them, who would, as she stated: “come in one by one, do their thing and leave.” Witness K019 stated that the period of the day in which she would be roll-called was during night, more precisely after midnight, which was also confirmed by witnesses K040 and Zlata Cikota, who consistently stated that K019 was routinely roll-called during the night. According to the statement of witness Zlata Cikota, she was roll-called often. With regard to the multiple rapes which were committed by several guards during the night, Witness K019 could not precisely say who were the guards, since it was dark and she could not recognize anyone, except for the guard who used to come to get her regularly. The same guard, as the witness noted, raped her twice during the daytime, on which occasions he was alone, in the manner that he would come to the restaurant to get her and take her to the room that was located on the ground floor. During the evidentiary proceedings, the Defense, during the cross-examination, pointed out to the witness her earlier statement in which she did not mention rape. In terms of the differences between the statements, the witness gave an explanation noting that she was afraid at that time, that she was in a shock due to the traumas she went through, as a result of which she omitted the rape. The Court accepted these arguments, bearing in mind the fact that the referenced statement was given in May 1993, meaning less than a year after the critical events, at which point the witness was quite possibly still in a state of shock and in fear of everything she went through in the Omarska Camp. Along with this, the Court bore in mind the above-mentioned statements of witnesses Zlata Cikota and K040 about the fact that K019 was regularly taken out and raped, namely by the guard called “Lugar”, which suggests that she was raped by the guards in the Camp on several occasions. With regard to the identity of the persons who regularly sexually abused witness K019, the Court could not determine beyond any reasonable doubt that this was committed by the guards Pavlić and Lugar, as noted in the Indictment, considering the fact that insufficient reliable evidence was presented to suggest such a conclusion. Namely, witness Zlata Cikota, who was held in the same room as Witness K019, stated that the named person was regularly taken outside by the guard “Lugar”, whereas, while testifying about the taking out of Witness K019, Witness K040, who was held in the room next to that, noted that “Lugar” did not roll-called women from her room, which leads to the conclusion that “Lugar” roll-called women from another room. The very statement of K040 about how a woman from the room next to the one in which she was held used to sit alone and cry, leads to the conclusion that K019 used to be taken out during night, because of which she behaved like that in the restaurant during daytime. However, while she was determining the identity of the person who raped her on a regular basis, Witness K019 noted that this person might have had the surname Pavlić, whereas some other women used to call him *Poštar* (*Mailman*) too, but she categorically claimed that his nickname was not “Lugar” and that “Lugar” was another person. Bearing in mind the above-mentioned differences in the contents of these witnesses’ statements regarding the identity of the person who raped Witness K019, the Court could not with certainty determine if Witness K019 was raped by the guard Pavlić or Lugar or both of them, but it is quite certain that it was a guard in the Omarska Camp.

In her statement, Witness K019 noted that she was not the only one who was roll-called and that she remembered that one woman was roll-called each evening, which was also confirmed by witness Zlata Cikota, as well as witness K027, who noted that several women were roll-called during night, that it would happen very often and a guard would usually roll-called them, whereby the women were worried and absent-minded. The

statements of these witnesses suggest that rape in the Omarska Camp was not an isolated case, but that detainees were regularly sexually abused, by the guards in the Camp. During her testimony, Witness K027 described the incident when she was sexually abused by one of the shift commanders in the Omarska Camp, Mlađo Radić, also known by the nickname of Krkan. With regard to another incident involving Nedeljko Grabovac, which took place in July 1992, Witness K027 noted that he did not hold any post in the Camp, that he used to come there from time to time and that he was wearing a military uniform. The incident took place in the same room in which she was abused by Krkan after she was invited to make him some coffee. While she was testifying in the case against the accused Miroslav Kvočka and others before the Hague Tribunal, Witness K027 gave a detailed description of the events which took place when she was sexually abused by Mlađo Radić a.k.a. Krkan and Nedeljko Grabovica. Part of the transcript from the above-mentioned trial, which refers to the referenced incidents, was listed as Prosecution evidence under the ordinal number 194. From the statement of Witness K027 it stems that on one occasion Mlađo Radić a.k.a. Krkan grabbed her breasts and her buttocks and put his hand between her legs, after which she tried to break away, begging him to let her go. While she was describing the behavior of the person called Krkan, the witness noted that he tried to have a sexual intercourse with her and he almost did, however he gave up on that because the witness had her period. As the witness stated, Krkan let her go then and he told her that she should come to him as soon as her period is over, whereas, according to the claims of the witness, on this occasion she got bruises over her breasts and between her legs. Witness K027 stressed that the person with the nickname Krkan used to call her, grab her breasts and her buttocks on other occasions too, but that that occasion was the worst she remembers. With regard to the incident involving Nedeljko Grabovac, in her statement given before the Hague Tribunal Witness K027 noted that on one occasion when she was called to make him a coffee and when she was alone with him, he told her that he liked her and he started kissing her all over her face, pulling her t-shirt and squeezing her breasts. On this occasion too the Witness tried to break away, telling her attacker that she was not feeling well, at which he bit her cheek, grabbed her t-shirt and her breast, pulled up her skirt and took off her underpants and he tried to have a sexual intercourse with her, which eventually he did not manage to do. According to the statement of Witness K027, Nedeljko Grabovac told her that she should not even try to run away from him, showing her his weapon that was put aside in the room. Just like on the previous occasion, the Witness noted that after she was sexually molested by Grabovac, she had as a consequence bruises over her breasts and the inner side of her thighs.

With regard to the sexual abuse of witness K040 by the guard called “Lugar”, the Court has also undoubtedly determined that it did take place, whereby this conclusion is based primarily on the statement of the witness herself, which was also partly corroborated by the statement of the accused Željko Mejakić given as a witness. Namely, in her statement Witness K040 described in detail two situations in which she was sexually abused, stressing that the guard called “Lugar” did it. According to the claims from the statement of Witness K040, “Lugar”, whom she met in the Omarska Camp and who worked as a guard in the restaurant securing the female detainees, ordered her on one occasion to come with him out of the restaurant and he took her to a room on the right side on the ground floor, after which he told her to take off her clothes. Since she started crying and told him that she cannot because she had her period, he told her “when that is over, I want you to sleep with me.” The second event when Witness K040 was sexually

abused by the guard “Lugar”, according to her statement, also took place during a day when he took her out threatening to kill her, however, based on her statement it stems that she again managed to resist the assault by the named person, who told her again on that occasion: “Make sure to get in touch with me again, I want to sleep with you.” The witness also mentioned the third time when the guard “Lugar” talked to her in the same context, which happened upon the departure of the inspectors from the Camp, on which occasion he told her: “Tonight I will come to your room.” Although based on the statement of Witness K040 it stems that she was not raped in the critical situations, it is quite certain that the very attempts of the guard to force Witness K040 to have sexual intercourse with him can be treated as sexual harassment, especially bearing in mind the circumstances under which they took place and the helpless position of the victim in the above-mentioned situation. This is particularly true for the reason that the above-mentioned guard used his position of superiority in the referenced situation while he was trying to force Witness K040 to have sexual intercourse, since he threatened to kill the witness if she would not comply and come with him, and even that he would kill her if she told anyone what happened. The statement of Witness K040 about how she informed Željko Mejakić about the referenced event and that he told her that he would dismiss “Lugar” from “that guard post” suggests that he was a regular guard in the Omarska Camp, as confirmed by the Accused himself in his statement given as a Defense witness, since he noted that he tried to identify that guard, that is, that he asked other guards in the Camp who he was, however he did not manage to identify the guard.

With regard to the accused Momčilo Gruban, according to the allegations in the Indictment, primarily listed were the events, which were marked as killings of detainees committed either directly and personally by the persons during the time Momčilo Gruban’s shift was on duty and over whom he had effective control, which were committed in furtherance of the system of abuse and persecution in the Camp in which he himself participated. The first event refers to the taking away of Burhanudin Kapetanović and a person called Badnjević (corrected with regard to the factual part in the Indictment), which took part in July 1992. As noted above, the Court had found the referenced event determined based on the evidence presented, whereas the Court has based the conclusion that it took place during the shift of Momčilo Gruban a.k.a. Čkalja primarily on the statement of witness Enes Kapetanović, who was roll-called on the critical occasion together with Burhanudin Kapetanović and Badnjević. Witness Enes Kapetanović particularly referred to the situation when Momčilo Gruban met him after the roll-call and brought him back to the room, offering him even a meal and telling him “it would be a pity if such a fellow were gone.” Witness Senad Kapetanović also confirmed these claims and described in an identical way the referenced event when his brother was roll-called and taken away and then brought back by Momčilo Gruban. In addition, both witnesses consistently stated that their mutual friend told them that on one occasion he met Gruban, who told him that he had saved one of the Kapetanovićs from certain death, referring to Enes Kapetanović.

With regard to the event regarding the taking away of Emsud Baltić and several men with the surname of Mešić in July 1992, when at least seven detainees disappeared (corrected with regard to the factual part in the Indictment), the Court has found that the Prosecutor’s Office of BiH did not offer sufficient evidence that would beyond any reasonable doubt suggest that this was committed while Momčilo Gruban’s shift was on duty. Namely, with regard to this event, which the Court found determined, evidence

was presented by hearing the witness Asmir Baltić, whose brother was taken away in the group of the above-mentioned detainees. During his testimony this witness noted that his brother was taken away on 24 or 25 July 1992, however he expressed his dilemma about which shift was on duty in the critical period, noting that it took place either at the end of Krle's or Čkalja's shift. One more time during the direct examination the witness repeated: "When my brother was roll-called and when I last saw him I think Čkalja's shift was on duty." Therefore, the witness suspected that Čkalja's shift was on duty at that time, however he was not certain about his claims. In addition, the Prosecutor's Office failed to offer a single piece of evidence that would resolve the doubt in terms of whose shift was on duty in the night when Emsud Baltić and other men were taken away, so that the Court did not find it determined that the event took place during Momčilo Gruban's shift so it was classified in the group of killings of detainees that were committed either directly and personally by the persons who were not on Momčilo Gruban's shift in the furtherance of the system of abuse and persecution in the Camp in which he participated.

Contrary to this, with regard to the event that refers to the killing of a large number of unidentified persons, including at least 50 inhabitants of the Hambarine village, which took place in late July 1992, during the main trial evidence was presented leading to the conclusion that this event took place while Momčilo Gruban's shift was on duty. The Court has found the basis for this conclusion in the statement of witness Izet Đešević, who, as he noted, knew Momčilo Gruban from before and with whom he on one occasion sat together in the "Galeb" café bar in Orlovci. With regard to the referenced event the witness noted: "It was Čkalja's shift. I am surprised that this happened during Čkalja's shift. I have never seen him kill anyone. That is what pushed me the most to think that it was Čkalja's shift, since I was surprised how come that this happened during his shift." The reasons given by this witness about determining which shift was on duty on the critical occasion are in the Court's opinion quite logical and justified, since, as it was noted by the witness himself, there was a prevailing and generally-known opinion among the detainees that Čkalja's shift was the most peaceful. The Court's determination that the above-mentioned event took place during Momčilo Gruban's shift is based on the fact that the witness had expected that the upcoming night in the Camp would be peaceful, since he expected that Čkalja's shift would be on duty, however the referenced event made him thinking, as he noted himself, about how come that something like that could have happened during Čkalja's shift, which surprised him.

With regard to the beatings and other forms of physical abuse committed against the detainees directly and personally by the persons who were on duty on Momčilo Gruban's shift and over whom he had effective control, with the beatings and abuse having been committed in the furtherance of the system of abuse and persecution in the Camp in which he himself participated, the Indictment includes the event in which detainee Emir Beganović was beaten up. As it has been already noted, in mid June 1992, a visitor to the Camp Nikica Janjić took Emir Beganović to the "white house", where Emir Beganović showed Momčilo Gruban the injuries he sustained during the previous beating by Janjić and others and he asked him to help him, at which Gruban told him to go to the "white house" with Janjić and that Janjić would not abuse him any more, after which Janjić severely beat Beganović again. Based on the operative part and the above-mentioned reasoning part of the Verdict, the Court has found it determined that the referenced event took place, however certain corrections were made with regard to the

factual part of the Indictment, as a result of the contents of the evidence presented. Witness Emir Beganović explicitly claimed that on the critical occasion Čkalja was standing beside the “white house” when Nikica Janjić took the witness towards the “white house” to beat him. The Court has entirely trusted this witness with regard to the above-mentioned, since while he was describing Momčilo Gruban, who was the only member of the Camp staff with the nickname Čkalja and who was known among the detainees as Čkalja, the witness noted that Čkalja was tall and that he was wearing short trousers, which is completely consistent with the description of the named person provided by other witnesses. Furthermore, in his statement witness Emir Beganović noted that he had no problems with Čkalja except for the situation in which he let him go with Janjić to the “white house”, which is a fact that is also based on other presented evidence of subjective nature, since all the heard witnesses assessed that Čkalja was not a kind of person who was prone to violence. Along with the fact that the witness referred to Momčilo Gruban as one of the guards, from the statement of this witness it stems that he did not basically know who the shift leaders were, except for the Krkan’s shift, so that the witness did not know anything about Gruban’s role in the Omarska Camp. However, ample evidence, to which the Court will refer later on, leads to the conclusion that Momčilo Gruban a.k.a. Čkalja, whom witness Emir Beganović mentioned as a guard, was a leader of one of the three shifts in the Camp.

The Court has also undoubtedly determined that the bringing in of a group of around 120 detainees from the Keraterm Camp to the Omarska Camp took place on 4 July 1992, on which occasion some of them were beaten, as elaborated on in the part of the Verdict that refers to the referenced event. The fact that Momčilo Gruban’s shift was on duty at the time the referenced event took place stems from the statement of witness Izet Đešević, who was brought there as part of a group of detainees and who noted that he remembered that Gruban’s shift was on duty at that point. Although when he was asked by the Prosecutor about the shift, the witness did not with certainty state that it was Čkalja’s shift, when he noted the first time he saw Čkalja, the witness said that it was on the same day when they were brought in there, and that he saw him before 7 p.m. and that the detainee called Vlado, who was brought together with him and who used to work with Čkalja, told him that Čkalja would come and bring food and coffee. Considering the fact that these witnesses were brought between noon and 2 p.m., as confirmed by witness Izet Đešević, Anto Tomić and K015, and that it follows from the statement of all the heard witnesses that the guards changed their shifts at 7 a.m. and 7 p.m., it can be quite clearly concluded that Momčilo Gruban’s shift was on duty when these detainees were brought in, since witness Izet Đešević saw him on the same day they were brought in, before 7 p.m., which means before the shifts changed. The conclusion that on the occasion of the arrival of the detainees from the Keraterm Camp in the Omarska Camp Čkalja’s shift was on duty was also corroborated by the statement of Witness K015, who was also brought in that day and who noted in his statement that it was none other than Čkalja who wrote down the names of the newly-arrived detainees and that he heard about him later on, since he did not know him from before.

In addition, the Court has also undoubtedly determined that the beating of Mustafa Puškar took place at the time and in the manner described in the first part of the reasoning of the Verdict. The Court has found the fact that the above-mentioned beating took place on Momčilo Gruban Čkalja’s shift based on the statement of witness Mustafa Puškar, who said that he was beaten by the guard “Žučo” and another guard and that he

was beaten on Čkalja's shift, since he knew that "Žučo" and the other guard, who was plump and short, were guards on the shift whose leader was Momčilo Gruban. Furthermore, witness Mustafa Puškar noted that during the time he was beaten and when the guards took him, they said: "There is Krivaja," whereby the witness personally saw Stanko Krivaja, who was going towards the exit of the garage and whom he connected with Gruban's shift. These claims of witness Mustafa Puškar were also additionally in part corroborated by the claims of the accused Željko Mejakić, who gave his statement as a witness and who stated during the cross-examination, when asked by the Prosecutor who was on Momčilo Gruban's shift, that Stanko Krivaja was there among the others.

The Court has also determined the circumstances of the event that refers to the beating of K017 for the reason noted in the part of the reasoning of the Verdict in which the referenced event is described. In addition, according to the assessment of the Court this event also took place during the shift of Momčilo Gruban a.k.a. Čkalja, since the witness explicitly claimed that he was beaten by a guard who belonged to Gruban's shift, noting: "That guard was on Čkalja's shift, I used to see him on Čkalja's shift." It is quite certain that the detainees, although they did not know each guard by his name and surname, connected them with certain shifts, that is, to a certain shift leader. Since the referenced event took place in late July 1992, whereas Witness K017 was brought to the Omarska Camp in late May 1992, it can be undoubtedly concluded that the witness was clearly able to recognize which guards were on duty on which shift by the time he was beaten and therefore to whose shift the guard who beat him actually belonged.

As for the event that took place on the occasion of "St Peter's Day", the Court did not find it determined that Momčilo Gruban's shift was on duty at that point, since the Prosecutor's Office of BiH did not offer a single piece of reliable evidence regarding this and since none of the witnesses stated that the event which took place on "St Peter's Day" happened on the shift of Momčilo Gruban a.k.a. Čkalja. Witnesses Ermin Striković and K015 who were asked during the direct examination by the Prosecutor during whose shift the referenced event took place noted that they did not remember which shift was on duty on the critical night. Therefore, this event was included in the group of the beatings and other forms of physical abuse committed against the detainees directly and personally by the persons who were not on Momčilo Gruban's shift in the furtherance of the system of abuse and persecution in the Camp in which he himself participated. The same thing applies to the rape and other forms of sexual abuse that refer to the sexual abuse of witnesses K019 and K040, bearing in mind that the Court did not find it determined that they were committed directly and personally by the persons on the shift of Momčilo Gruban and over whom he had effective control. The reason for this is that the Court could not reliably determine which guards in the Omarska Camp sexually abused Witness K019, and it was not determined with certainty to which shift the guard "Lugar" who sexually abused Witness K040 actually belonged.

Other events noted in the factual description of the Indictment and in the operative part of the Verdict, which refer to the killings, beatings and other forms of physical violence and which were committed directly and personally by the persons who were not on Momčilo Gruban's shift in the furtherance of the system of abuse and persecution in the Camp in which he participated, were described and elaborated on in the previous part of the Verdict. As far as the accused Momčilo Gruban is concerned, with regard to the

factual part of the Indictment and in view of the individual events of killings and beatings, the Court has omitted the killing of Ahil Dedić, which took place on or around 28 May 1992 (as well as with regard to the accused Željko Mejakić), and the killing of Asaf and Avdo Muranović, which took place on or around 30 May 1992, as well as the beating of K041, which took place on the night of 29 or 30 May 1992, since it was not determined if the referenced events took place at the time Momčilo Gruban took over the command of one of the three shifts in the Omarska Camp. Namely, from the contents of all the evidence presented it stems that the mass bringing of detainees to the Camp took place during the day and night of 30 May 1992, in the aftermath of the armed conflicts in the town of Prijedor, when the majority of detainees were brought to the Camp. Having considered the possibility that there were only two shifts during the first days of the functioning of the Camp and that the accused Gruban was not one of the commanders, the Court has found that, following the mass bringing of the detainees to the Camp, there was a need to form the third shift in order to facilitate the guarding of the large number of the newly-arrived detainees, as well as that the guarding was organized in two shifts for only a couple of days until the number of the detainees in the Camp changed drastically. In addition, all the Prosecution witnesses who were brought to the Camp starting from 30 May 1992 consistently confirmed that Momčilo Gruban was one of the leaders of the three shifts in the Camp and all the witnesses connected the name of this Accused with the leader of one of the shifts from the very beginning of their stay in the Camp. The only witness who noted that Momčilo Gruban was a regular guard was Emir Beganović, however, from the statement of this witness it follows that he did not know who were the shift leaders, so that the Court did not assess his statement as relevant. In addition, in his statement witness Mustafa Puškar noted that the accused Momčilo Gruban came to the post of the shift leader only after Miroslav Kvočka left the Camp, which took place in the second half of June 1992. The Court also did not accept these claims by witness Mustafa Puškar, since his statement was in that part obviously contradictory to the statements of numerous Prosecution witnesses, who connected the accused Gruban as the shift leader with the entire period of their stay in the Camp. Except for witness Mustafa Puškar, none of the witnesses who were already detained in the Omarska Camp as of 1 June 1992, stated that Gruban was a regular guard from the beginning of their stay in the Camp and that he was appointed as a shift leader only subsequently. All the witnesses testified about Momčilo Gruban only as a leader of one of the three shifts, pointing out his presence in the Camp on the post of a shift leader since their very arrival at the Camp, which leads to the conclusion that Momčilo Gruban's role of a shift leader is connected to the period in which the number of the detainees in the Camp was enormously increased. In their statements, a series of Prosecution witnesses noted that there were three shifts in the Omarska Camp and that Momčilo Gruban was the leader of one of the three shifts, which stems from the statement of witness Asmir Baltić, who noted that Momčilo Gruban was in the Camp from the very beginning, as well as the witnesses K041, K017, Senad Kapetanović, Zlata Cikota, K03, K09, K042, Nusret Sivac, K035, Azedin Oklopčić, K027 and others. The statements by the Prosecution witnesses were also confirmed by the Defense witness Branko Starčević, from whose statement it stems that he was engaged in the Omarska Camp as a guard from the very beginning of the Camp operation, and who said that there were three shifts in the Camp, as well as witness Živko Piljić, who was also a former guard in the Omarska Camp, who said that he heard about the Camp in late May 1992, when he started working in the Camp as a guard, that at the beginning the security in the Camp was organized in two shifts and that the third shift of guards was organized

already after a couple of days and it included guards from the village of Marička, which is in fact consistent with the very beginning of June 1992. With regard to this, the Court did not accept the statements of Defense witnesses who denied the participation of the accused Momčilo Gruban in the leadership of one of the three shifts, since, in accordance with the concept of Momčilo Gruban's Defense, these witnesses generally claimed that there were no shift leaders in the Omarska Camp at all, which is completely contradictory to the statements of the Prosecution witnesses, who identified the accused Gruban as one of the shift leaders in the Camp. Therefore, during the evidentiary proceedings the Defense tried to portray the accused Momčilo Gruban as an ordinary guard in one of the three shifts in the Omarska Camp, as well as that there were in fact no shift leaders in the Camp. However, based on the evidence presented by both the Prosecution and partly the Defense, it stems that three shifts were organized in the Omarska Camp and that the accused Momčilo Gruban, whom the guards and the detainees called by the nickname of Čkalja, was the leader of one of the three shifts, whereas Milojica Kos and Mlađo Radić, who according to the claims of witnesses had the nicknames of Krle and Krkan, were leaders of the other two shifts. The above-mentioned fact stems from the statements of the following witnesses: Asmir Baltić, K041, K017, Senad Kapetanović, Zlata Cikota, Mustafa Puškar, K03, K09, K042, Nusret Sivac, K035, Azedin Oklopčić, K027 and others. Contrary to a large number of Prosecution witnesses, who consistently claimed that Momčilo Gruban was a commander of one of the shifts, the Defense witnesses noted in their statements that no particular persons were appointed as shift leaders within the organization of the three shifts in the Camp, whereas Defense Witness K052, a former detainee of the Omarska Camp, explicitly claimed that Gruban was not a shift leader and that he was not a chief in relation to any guard in the Camp. During his testimony, this witness compared the name of "Gruban's shift" with the name of the room called *Mujina soba* in which detainees were held and which, according to the witness, was called like that after the room orderly called Mujo, who was in charge of the referenced room, by which his statement is contradictory with regard to these relevant circumstances. The reasoning of the facts based on which the Court reached the conclusion that the accused Momčilo Gruban was the leader of one of the three shifts in the Omarska Camp, as well as of the concrete situation that leads to such conclusion, was given in the part of the Verdict that refers to the command responsibility of the accused.

With regard to the individual events in which the accused Duško Knežević a.k.a. Duća took part, which were described in the operative part of the Verdict, the Court has provided a more detailed reasoning in the first part of the Verdict. Furthermore, based on the evidence presented regarding the circumstances of each individual event, the Court has determined that the accused Duško Knežević committed the above-mentioned criminal actions, that is, that he took part in the killing of detainees that were committed personally and directly by himself or in his presence, with a discriminatory intent, namely the killing of Amir Cerić and a man with the surname of Avdić, which took place in the "white house" in mid June 1992, the killing of Dalija Hrnić, committed in the "white house" in June 1992, the killing of Bećir Medunjanin, committed in mid June 1992, the killing of Slavko Ećimović a.k.a. "Ribar" committed on or around 10 June 1992, as well as the killing of Emir Ramić a.k.a. "Hanki" or "Hankin", committed in mid June 1992. The other killings that were committed directly and personally by other persons, in which the accused Knežević did not take part and which were not committed in his presence, and which were committed in the furtherance of the system of abuse and



persecution in the Camp in which the Accused too participated, were also elaborated on in the first part of the Verdict.

With regard to the beatings and other forms of physical violence over the detainees that were committed directly and personally by the accused Duško Knežević or in his direct presence with a discriminatory intent, based on the evidence presented the Court has undoubtedly determined, as it has been elaborated above, that the accused Knežević undoubtedly took part in the following beatings: the beating of Emir Beganović, K036, Rezak Hukanović, Asaf Kapetanović and Abdulah Brkić, which took part on or around 10 June 1992, as well as the beating of K022 and Fadil Avdagić, which took part in mid June 1992 in the “white house” building. With regard to the other beatings and other forms of physical abuse of the detainees, which were committed by other persons and in which the accused Knežević did not personally take part, but which were committed in the furtherance of the system of the abuse and persecution at the Camp in which he participated, just like in the case of the killings, the Court has given a more detailed reasoning in the first part of the Verdict.

## **THE KERATERM CAMP**

In the opinion of the Prosecution and the Defense, it is beyond dispute that the Keraterm camp was located in the compound of the ceramic tile factory in Čirkin Polje (fact No. 253), on the outskirts of Prijedor, in which the detainees were held in four separate rooms known as rooms 1, 2, 3, and 4 in line next to one another (fact No. 258). It is also indisputable that a concrete area known as "pista" was in front of the said rooms where the detainees were held. The layout of the facilities within the camp compound was established on the basis of witness testimonies, corroborated by the material evidence in the case file, that is, the photographs of the Keraterm camp tendered as the Prosecution evidence in the course of the evidentiary proceedings. According to the facts in the Indictment, the approximate timeframe of the Keraterm camp operation was from 24 May to 30 August 1992. In accordance with the testimonies of the witnesses who were detained in this camp, the Court made corrections to these allegations in the Indictment by determining the time when the last detainees left the camp. It can be concluded from the evidence of the examined witnesses that, following the arrest of Bosnian Muslim and Croat civilians, which started as early as 24 May 1992, some of the captives were first taken to the Keraterm camp, where they would stay briefly, and were thereupon transferred to the Omarska camp. The testimonies of witnesses K023, Ermin Striković and Fadil Avdagić, who were in the first group of the Omarska camp detainees brought from the Keraterm camp, lead to this conclusion.

According to the testimonies of all the examined witnesses, Bosnian Muslims, Croats and other non-Serbs were detained in the camp, except for one person whose name was Jovo Radočaj, who was brought to the camp because he was a member of the SDA, that is, voted for that party, according to witnesses Edin Ganić and Ante Tomić. The other detainees in the camp were Bosnian Muslims, Croats or persons declaring themselves as Bosnians. The witnesses who testified before this Court at the main trial and who were detainees of the Keraterm camp stated at the beginning of their evidence that they

declared themselves as Bosniaks or Muslims, witness Anto Tomić as a Bosnian, and witness K013 as a Croat.

The concordant statements of the witnesses lead to the conclusion that the conditions in the Keraterm camp were brutal and degrading and followed by an atmosphere of terror, as the detainees were being kept in the camp without the basic necessities of life, such as adequate food, drinking water, medicines and medical care, and that the rooms they were held in were cramped and that the conditions in the camp were unhygienic in general. It is beyond dispute for both the Prosecution and the Defense that the food given to the detainees was not being prepared in the camp, but was delivered once a day in barrels and distributed to the detainees. The testimonies of witnesses K013, K08, K029, K09 and K015 lead to this conclusion. With respect to the status of the detainees, special treatment was reserved for the detainees who were held in one period in room 3 and who were the inhabitants of the villages belonging to the so-called Brdo region. Witness Enes Crljenković, who was held in room 3 for one period, said in his evidence that there were no meals "for [room] 3" and that only two crates with bread were thrown in one evening, so that each detainee got a thin slice of bread, as there were around 400 detainees in the room, in his estimate. The statement of witness Enes Crljenković was confirmed by witness K07, who was also detained in room 3 at the same time and who said in his testimony that he did not eat anything for 10 days. Witnesses K016 and K010 also corroborated these witnesses' statements stressing that the detainees who were held in room 3 did not receive food at all and could not get out, either. Witness K010 said he personally heard these detainees calling the other detainees pleading with them to bring them bread and water.

In addition to the fact that the camp inmates received one meal a day, it also follows from the witnesses' testimonies that the quality of the food received by the detainees was very poor and that the quantities were not adequate. The detainees would sometimes not get a meal for days, as witness K044 stated, since he received his first meal only on his sixth day in the camp, and witness K010 ate only on the tenth day of his detention. According to witness K016, there was not enough food for one meal a day given that, in his estimate, there were around 1,000-1,300 detainees in the camp, while lunch was being brought for 650 detainees, so that quantity had to be distributed in order for every detainee to get at least some kind of meal. Witness K05 stated that sometimes food was distributed once in two days. As for the meals contents and food quality, which was obviously poor, witnesses K044 and K015 stated that hot water with one cabbage leaf and two thin bread slices were being distributed, which is also confirmed by witness K014, who stated that two thin bread slices and some soup were distributed for meal, the soup actually being the ordinary heated water. Witness K05 described the meal as two bread slices with beans. According to witness K044, only a couple of times did he receive small parcels with food that his father was bringing regularly every day, also confirmed by witness K015, who stated that they were not receiving the parcels sent to the detainees by their families. Witness K09 stressed that a detainee could get a parcel provided he gave a certain amount of money to a guard. As witness K014 said, the guards used to take the food brought to the detainees by their families and would throw away the rest, which all indicates that the access to the food sent to the detainees by their families or friends primarily depended on the guards' good will.

Like in the Omarska camp, the poor quality and quantity of the food in the Keraterm camp also resulted in a drastic difference in the detainees' weight prior to the detention and upon leaving the camp. According to all the witnesses, on average the Keraterm camp detainees lost between 15-30 kg of weight. Thus witness K044 said that he lost 16 kg in the Keraterm camp, witness K014 15-17 kg, witness K05 had 92-93 kg prior to the detention and 61 kg after the camp, witness K08 lost 20 kg, witness K013 25 kg, while witness K010 had 130 kg prior to the Keraterm camp and was weighed in the Trnopolje camp after leaving Keraterm and the scales showed 66 kg. In addition to the fact that the food in the camp was of poor quality and insufficient, it can also be concluded from the witnesses' evidence that the detainees were not given enough time for the meal. Witness K013 stated that they had to finish the meal in 20 seconds, while it follows from the statement of witness K044 that the detainees were allowed only 2-3 seconds for a meal during certain shifts in the camp. Describing a lunch in the Keraterm camp, witness K044 stated that the guards ordered the detainees not to eat before a guard signaled it and when the guard said "enough", the detainees had to put down their spoons and end the meal, otherwise, they would be punched. Witness K05, describing the guards' conduct with the detainees during lunch, said that the detainees were under threat to finish the meal as fast as possible, since during lunch they were being punched by the guards in order to finish the meal as fast as possible, while the remainder of the food was thrown away. Witnesses K015 and K08 also stated that the meal time was limited, and, according to witness K08, when some detainee did not manage to eat his meal in time he had to throw away the remainder. The statements of witnesses K044 and K05 that going to lunch and eating the lunch itself were followed by punching and mistreatment of the detainees were also confirmed by witness K013 and witness K08, who stated that the detainees had to sing during meals, as well as witness K015, whose statement indicates that the detainees were being beaten while having lunch.

The detainees also did not have sufficient access to drinking water, especially given the huge number of detainees and high summer temperatures during the period concerned, while some detainees did not have water at their disposal at all. According to witness K044, access to water depended on the shift on duty at a given time, and, to his recollection, water tanks came to the camp bringing water only twice throughout his entire detention. This witness described an event concerning detainee Zejro Čaušević, who asked for water after a beating, but did not get it, so he was forced to urinate in a bottle and drink the urine. According to this witness, the detainees who asked for water would be beaten, so many did not even go to the toilet out of fear. Witness K015 stated that the detainees could obtain water from the toilet and hydrant, but that that water was polluted, while some detainees did not have any opportunity whatsoever to get water, primarily the detainees from the Brdo region, held in room 3. According to witness Enes Crljenković, who, as indicated earlier, was detained in room 3 for a while, the detainees had not-for-drink water at their disposal, while witness K07, who was detained in the same room, stated explicitly that the detainees did not have access to water and that he personally did not drink water for six days during his detention in room 3. The only time the detainees in room 3 got water, according to witnesses Enes Crljenković and K07, was when a barrel of water was put in their room. According to both witnesses, the water was poisoned and the poison made the detainees' eyes water and caused diarrhea. As witnesses K07 and Enes Crljenković stated, the inserted poison affected the nerves, as all the detainees who had drunk the water from the barrel started acting insane-like and taking their clothes off. These witnesses' assertions that the detainees in room 3 did

not have drinking water at their disposal were also confirmed by witness K010, who stated that the room 3 detainees were locked in without access to food and water and were calling the other detainees to give them water and bread, as well as by witness K043, who said that a barrel of water was put in room 3 for the detainees from the Brdo region and that banging on the door could be heard throughout the night as they started suffocating from that water. A small number of witnesses said during the evidentiary proceedings that, to their recollection, water from the tanks was at the detainees' disposal. However, it is obvious that there was not enough water in the camp, given the huge number of detainees and high summer temperatures, and many witnesses stated that the limited quantity of water that the detainees did have access to was not drinkable.

The hygienic conditions in the Keraterm camp were bad, as follows from the witnesses' testimonies. The time for detainees to relieve themselves was limited or denied completely, and beatings also occurred on the detainees' way to and from the toilet, due to which the detainees were forced to relieve themselves in the rooms they were staying in. According to witness K044, the detainees' access to the toilet depended on the shift on duty, so, despite the toilet, located between rooms 2 and 3, the detainees were forced to relieve themselves into bottles and plastic bags, which was also confirmed by witness K010. Witness K05 said that detainees held in all four rooms used a single toilet, so the hygienic conditions were very bad and sometimes their going to the toilet was restricted. According to witness K015, the toilet was often non-operational as it was clogged, and the detainees could go to the toilet only when permitted. The aforementioned witnesses' assertions that the detainees could not freely relieve themselves were also corroborated by the evidence of witness K013, who stated that a single toilet was used by more than 1,000 people so the toilets became clogged, and stressed that there were cases that the detainees were being beaten while on their way to the toilet. Witness K013's declaration on the beating of the detainees on their way to the toilet were corroborated by a specific case that witness K044 testified about describing the beating of a person whose last name was Katlak, whom the guards beat up on his way to the toilet.

With the impossibility of access to a sufficient quantity of water and high summer temperatures that during the said period ranged between 30° and 40° C, according to the witnesses, additionally aggravating were the conditions in the rooms where the detainees were held. According to detainees K09 and K013, more than 1,000 people were held in the Keraterm camp who, as stated earlier, were held in four rooms, while witness K016 said that the number was actually as many as 1,300 detainees. Generally speaking, all rooms in the camp were overcrowded, without sufficient air and room for sleeping. Witness K015 said that the living conditions in the Keraterm camp were so bad that the detainees would sit on wooden pallets provided there was room and that it was stuffy and hot. This witness, who was brought to the Keraterm camp on 17 July 1992 where a huge number of detainees had already been held in the camp, described these people's physical appearance as horrible, stating that their hair and beards had overgrown, that they were sun-burnt, and many had bruises, fractures and torn clothes. Witness K033 compared the detainees' position in the camp to the conditions animals lived in. Witnesses K029, K044, K05 and K013, who were held in room 1, said the living conditions in it were very difficult, as the detainees slept on the cement and the wooden pallets, since it was overcrowded, and witness K044 said that the detainees could not lie down but just sit in such an overcrowded room. As this witness stated, 200-250 people were held in room 1, while witnesses K05 and K013 estimate that there were

300-400 detainees there. Judging by the statements of the examined witnesses, the living conditions were no better in the other rooms, either. According to witness K044, who spent a certain period of time in room 2, 350-400 detainees were held in it and there was not enough room to lie, so the detainees squatted. According to K014, there were 400-500 people in room 2, while witness K010 stated that as many as 512 people were held in room 2 at any one time, since a list of detainees was made so the exact number was known. Comparing the conditions in room 3 with the conditions in the Omarska camp, witness Izet Đešević said that the conditions were unbearable, although he described the situation in Omarska to be somewhat more difficult. Witness K08, who was held in room 3 during one period, stated that approximately 250-300 people were held in the said room, that the room was full and that it was impossible to sit, and that he stayed in that room until it was said that it should be vacated for the detainees from the Brdo region. Judging by the testimonies of witnesses K016 and K09, the conditions in room 4, in which they were held, did not differ from the conditions in the other rooms. This room was overcrowded, too, and, according to witness K09, 300-400 people were held in it, they were sitting on the concrete floor, and since the windows in the room were narrow and placed high, it was difficult to air the room. The situation most certainly was most difficult in room 3 at the time the detainees from the Brdo region were held in it. In the estimate of witness Enes Crljenković, around 400 people were held in it, while witness K07, who was also detained in that room, stated that the room was so crowded that the detainees would stand on one foot, could not lie and sleep and the room door could hardly close, due to the room being so overcrowded.

The detainees of the Keraterm camp practically had no medical care, not even when they sought medical assistance. Witness K044 stated that detainee Zejro Čaušević, who was severely injured, did not get medical assistance although the witness personally asked for it to be administered to Zejro Čaušević on three occasions, hence detainee Čaušević had open wounds for 7-8 days. Witness K08 also stated that there was no regular medical aid, except that on one or two occasions some detainees were taken to hospital. This witness stated that the male medical attendant Kobas visited the camp once and brought the flea and lice powder, but did not administer aid to anyone, which was also confirmed by witness K015. It also follows clearly from the testimony of witness K016 that the detainees were not administered medical aid, even when they would ask for it several times, but were only distributed lice powder. Witness K09 testified about the taking of the detainees to hospital and also said that those detainees who stayed in the camp and who needed aid, did not get one. However, the detainees who were taken to hospital were not treated there, but would even be beaten during the stay in the hospital while they were trying to recover. Thus witness K013, who had an opportunity to go to the hospital after having been beaten heavily, stated that he did not get medical aid in the hospital, but that his arm was just put in a cast instead, with the explanation that the fracture would heal. Even while in hospital, he was being beaten by the visiting guards. Witness K08 corroborates witness K013's statement that the detainees were not administered medical aid in the hospital, quoting the example of a man who had stomach problems and who was transported to the hospital, but to whom aid was not administered, while witness K05 described the case of detainee Emsud Bahunjić, who was taken to the hospital because of beating, but instead of returning cured, he returned with a "4S" insignia carved on his chest and forehead.

Like in the Omarska camp, the detainees in the Keraterm camp were also interrogated in a room that, according to the witnesses, was located on the floor above the dormitories and the interrogations were conducted by interrogators from Prijedor and Banja Luka. It can be inferred from the witnesses' testimonies that the questions concerned the detainees' personal conditions, their activity in the army and politics prior to the war conflict and weapon possession. The witnesses did not sign their statements and no proceedings whatsoever were instituted against them. Some detainees were beaten during the interrogation, as is the case with witness K05, while some other detainees were being beaten while being taken to and from interrogation, as witness K033 described.

In the part dealing with the individual events that took place in the Keraterm camp, numerous killings and beatings that the Keraterm camp detainees were exposed to have been described. Based on the testimonies of the witnesses examined on the circumstances surrounding individual events, the Court is satisfied that the camp inmates were exposed to daily beating on all occasions, from getting out of the buses that had brought them to the camp, going to meals, interrogations, going to the toilet, which follows from the situations described above, as well as during the stay in the concrete area called the pista, where the detainees were forced to sit or lie motionless for hours. The beatings of the detainees when they would arrive in the camp were described by witnesses K044, K05, K08, K07, K043 and others. According to witness K044, on arrival the detainees were forced to raise three fingers as the Serb salute and were being beaten on the way. Witness K05 described in his statement a gauntlet he had to run together with other detainees upon his arrival in the camp, on which occasion the detainees were beaten with different objects. A group of detainees that arrived in the camp on 14 June 1992, including witness K08, was also beaten when getting out of the buses, as was a group that arrived in July 1992, of which witness K07 testified. Describing his arrival in the Keraterm camp on 3 June 1992, witness K043 stated that the guards ordered his brother to get out of the bus upon the arrival in Keraterm and cursed his mother. They also beat a group of detainees and ordered them to put their penises into each other's mouths and to sit with their anuses pressed against a glass bottleneck. Witness K013 also described the situation in the Keraterm camp stating that the beatings happened during the daytime and nighttime alike, that the guards beat the detainees on a daily basis, during lunch, in the corridors and rooms, while it follows from the testimony of witness K029 that the beatings happened more at nighttime. Witness K015 confirmed that the detainees feared the camp staff and said that he dared not tell the camp administration that he had been beaten up, as he was in a camp where killings were a daily occurrence. According to this witness, one detainee who sought medical help dared not say that he had been beaten up, but explained that his injuries were a result of fall. All the aforementioned events, as well as the events described in the part of the Verdict concerning the individual incidents, lead to the conclusion that the beating of the detainees occurred on a daily basis and on all occasions, and that some of the beatings resulted in deaths as a consequence of the severity of the beating and the lack of adequate medical help. Therefore, the Court, taking into consideration these cases, as well as the cases of killings of the detainees from firearms, was satisfied that it was established that dozens of detainees were killed or died as a result of the conditions described above in the Keraterm camp during the relevant period. With respect to the number of the killed and deceased detainees, the Court made a correction in relation to the facts in the Indictment, as stated in the operative part of the Verdict, guided by the

results of the evidentiary proceedings, primarily the testimonies of the examined Prosecution witnesses.

### **Individual incidents**

With respect to the individual incidents related to the Keraterm camp, the Indictment first referred to the said killings of the detainees personally and directly committed by the Accused Duško Knežević or in his immediate presence with discriminatory intent. Thus the Indictment charged the Accused Duško Knežević that, during the period from late May to 19 June 1992, together with the camp guard Predrag Banović, Zoran Žigić, and others, he repeatedly and severely beat Emsud Bahonjić, a.k.a. "Singapurac" and "Snajperista", at one point over seven or eight consecutive days, using a baseball bat, thick electrical cable, rifle butts, and various implements, and on or about 19 June 1992 this detainee died as a result of the beatings. The Court made certain corrections with respect to the facts in the Indictment concerning this incident, in accordance with the statements of the witnesses who testified about the beating and the death of Emsud Bahonjić. It is indisputable that Emsud Bahonjić was detained in the Keraterm camp for a certain period, which was confirmed in unison by witnesses K016, Anto Tomić, K08, K033, K014 and K05. In addition to this, all these witnesses agreed that Emsud Bahonjić died as a result of the beatings he was exposed to in the Keraterm camp. Furthermore, the Court established beyond any reasonable doubt that the beatings of Emsud Bahonjić, to which he succumbed, were committed by the Accused Duško Knežević, a.k.a. "Duća", together with Zoran Žigić and camp guard Predrag Banović, which follows from the testimonies of the aforementioned witnesses. Thus witness K016 explicitly stated that Emsud Bahonjić, whom he had known well before, was being beaten up every day, that he died a few days later, and that he was being beaten for four or five consecutive days by Duća and Žigić. According to witness K016, Duća (reference to Duško Knežević) would come and automatically start beating Emsud Bahonjić, and this witness saw when Emsud Bahonjić died from the beating as he was the last person with whom the victim talked. The beating to death of Emsud Bahonjić was also confirmed by witness Anto Tomić, who described Duća's visits to the camp in that context, stating that on one occasion when Duća came he entered room 2 and said: "I will not beat the ones in the front today, but the ones in the back." Witness Anto Tomić also stated that Duća was looking for the person nicknamed "Snajperista", who was lying half-dead from the previous beatings in one part of the room. The witness described the beating of the person nicknamed "Snajperista" as follows: "They kicked Snajperista because he was lying helpless, they also beat another couple of people for 10-15 minutes, I saw it all with my own eyes." This witness also stated that the person nicknamed "Snajperista" died after a couple of days and that his body was taken out behind room 4. Witness K014, who described the beating of Emsud Bahonjić in detail and who also confirmed that Bahonjić died as a result of the beating, said that he knew Emsud Bahonjić, that he saw Bahonjić 6-7 days upon the arrival in the camp, that Bahonjić's nose was broken and that he had big black circles under his eyes. Witness K014 confirmed the statement of witness K016 that Emsud Bahonjić was being beaten on a daily basis by Duško Knežević, Zoran Žigić and Predrag Banović, only the latter having been a guard in the camp, while Knežević and Žigić were visitors from the outside. This witness claimed that Duća participated in every beating of Emsud Bahonjić and that he did not discriminate between the implements to beat him with, as

he used bats, feet, and rifle. The witness even said that he saw on Emsud's forehead scars from extinguished cigarettes and a carved cross, which leads to the conclusion that a sharp instrument was used during Emsud Bahonjić's mistreatment. As witness K014 stated, Dušan Knežević and Zoran Žigić always beat Emsud Bahonjić together. Describing one of his beatings by Predrag Banović, the witness said: "I remember when we were going for a meal, everybody went out and Emsud was not able to walk. Predrag Banović entered with a rubber hose. I did not see him beating Emsud, but when I returned, Emsud had scars". It follows from this witness' testimony that the persons who used to beat up Emsud Bahonjić on a daily basis did so with the goal of beating him to death, as Bahonjić told him on one occasion that should Duća come to Keraterm, he [Bahonjić] would be dead. When the witness saw Bahonjić the last time around, Bahonjić asked him to take care of his children, which also indicates that Emsud Bahonjić was aware of the intentions of the persons who beat him. Like the other witnesses, so did witness K014 see Emsud Bahonjić's body in the Keraterm camp, and the last time saw Bahonjić alive was two hours before Bahonjić died in room 2, whereby he confirmed the statement of witness K016, who was present in room 2 when Bahonjić died. Witness K05 also confirmed the statements of the aforementioned witnesses, as he also saw Emsud Bahonjić in the Keraterm camp and claimed that Bahonjić was being beaten up every day by Žigić and the guards, including Predrag Banović, a.k.a. "Čupo". According to witness K05, the one who beat Emsud Bahonjić the most was Duća, that is, Duško Knežević, and it happened often, even twice a day. It follows from the statement of witness K05 that Emsud Bahonjić died as a result of the beatings by the Accused Knežević. Witness K05, just like the other witnesses, also saw Emsud Bahonjić's body and added that the body was thrown to the garbage dump. Therefore, on the basis of the statements of the aforementioned witnesses, the Court established beyond doubt that Emsud Bahonjić was beaten up brutally several times and that the perpetrators were Zoran Žigić, Predrag Banović, and in particular Duško Knežević, using different implements. Based on the description of Emsud Bahonjić's condition, the Court also finds it established that he succumbed due to the consequences of the beatings. As for the time of Emsud Bahonjić's death, the Court established beyond doubt that the death occurred in the second half of June 1992, especially given the statement of witness K05, who linked the said event to a certain important family date. The time of death was also confirmed by witness Anto Tomić, who was brought to the Keraterm camp on 14 June 1992 and who said that the person nicknamed "Snajperista" died a couple of days later. The death of Emsud Bahonjić and his condition before the death were also confirmed by witness K08, who was also brought to the camp on 14 June 1992 and who saw Emsud Bahonjić in a very bad shape a couple of days later, and on the following day or in a couple of days he saw Bahonjić being taken out on a pallet in front of the hall and claimed that he was dead. This witness also heard that Emsud Bahonjić was being beaten, as did witness K033, who, upon the transfer from the Keraterm camp to the Omarska camp, heard that Emsud had died. Witnesses K016, K05 and Anto Tomić confirmed that the person concerned was Emsud Bahonjić, nicknamed "Snajperista" and "Singapurac". Anto Tomić did not know the victim's real name, but remembered him by these nicknames that the other witnesses also knew him by. Emsud Bahonjić's death was also confirmed by the documentary evidence in the case file, tendered by the Prosecution, that is, Nicolas Sébire's Additional Report of 28 August 2002, indicating that Emsud Bahonjić was discovered in the Pašinac pit and identified (PC-44-001B).



With respect to the beating of Drago Tokmadžić, who, according to the Indictment, was beaten by the camp guard Predrag Banović and camp visitors Duško Knežević and Zoran Žigić, to which beatings this detainee succumbed in late June 1992, the Court examined witnesses K08, K044, Anto Tomić, K016, K09, K015 and Edin Ganić. The majority of the examined witnesses linked the beating of this detainee to the beating of Esad Eso Islamović and some of the witnesses were in the group of detainees who were beaten up on that same occasion, such as witness Edin Ganić. According to witness K015, he heard one evening "Drago" being called out, and Esad Islamović was called out on the same occasion, too. The witness claimed that he personally heard the beating and that, after they were brought in, Drago asked for water, whereupon he died. The testimony of witness K015 indicates that Drago died a couple of minutes after having been brought into the room and his body was taken out the following morning. The beating of Drago Tokmadžić was also confirmed by witness Edin Ganić, who was also taken out of the room on the occasion concerned and beaten up. Describing the beating of Drago Tokmadžić and Esad Islamović, witness Edin Ganić said that on that occasion Zoran Žigić told him "Be careful what you do, Edin, or you will end up like that swine," uttering Drago Tokmadžić's full name. The persons who beat up Drago Tokmadžić were identified by witness Edin Ganić as Zoran Žigić, Duća, whose last name, in the witness' opinion, is Knežević, Goran Laić, the Banović brothers, and several other guards from Banović's shift. The witness understood that these persons had the intention of killing Drago Tokmadžić, because he heard Žigić saying "Finish it", which was a message to the other perpetrators that Drago Tokmadžić should be killed. Witness K09 also confirmed the statements of the preceding witnesses that several persons participated in the beating of Drago Tokmadžić, stating that he thought that the Banović brothers participated in the beating, among others. According to the witness, this incident happened in the evening of 24 June 1992, which the witness connects to the time of his arrival in the Keraterm camp, that is, the second or the third day of his detention. According to witness K09, the beating of Drago Tokmadžić happened in front of the door of the room where the witness was held, so he could clearly hear the blows and yelling, as well as curses and insults, which was unpleasant for him to listen to. This witness also links the beating of Drago Tokmadžić with the beating of Esad Islamović, stressing that these two persons were brought into the room together after the incident. As for Drago Tokmadžić's death, witness K09 stated that Drago was unconscious and that he died, and gave a precise time of death. The witness also confirmed that Tokmadžić's body was taken out in front of the door the following day, whereupon it was taken behind the building. The witness said that Žigić and Duća were the perpetrators of the said beating and stressed that the detainees knew that these two men were coming to the camp and carried out beatings. Witness K016 confirmed that Drago Tokmadžić was beaten to death, whereupon he was literally thrown into the room, and that he died the same night. This witness personally took out Drago Tokmadžić's body the following morning to the dump where the dead people were being disposed of. The witness identified Banović and Goran Laić among many persons as the perpetrators of the beating, which corroborates the statement of Edin Ganić, the eyewitness to the beating, who also mentioned these persons that made up the group that beat Drago Tokmadžić to death. Witness Anto Tomić also testified about the beating of Drago Tokmadžić and it was on his testimony that the Court also based its conclusion that Tokmadžić was beaten up by a group of perpetrators, including Duća and Žigić. This witness stated that he was present when Tokmadžić and Islamović were called out and he also heard Duća and Žigić counting the blows, which sounded very painful to him.

Witness Anto Tomić confirmed the statements of the preceding witnesses that Drago Tokmadžić died very quickly after the beating. The allegations in the Indictment regarding the killing of Drago Tokmadžić were also confirmed by the statement of witness K08, who saw Tokmadžić's body being thrown to the garbage dump and who heard that Tokmadžić had been beaten up, and witness K044, who also saw Tokmadžić's body being loaded onto a cart and who heard that he was killed. The Court fully accepted the timeframe of Drago Tokmadžić's death set out in the Indictment, taking into account the time indicated by witness K09, who heard Tokmadžić being called out on 24 June 1992, two-three days upon his own arrival. The Court is also satisfied that the allegations in the Indictment that Drago Tokmadžić was beaten by several persons, including guard Predrag Banović and outsiders Duško Knežević and Zoran Žigić, have been established, in particular taking into account the statements of witness Edin Ganić, who personally saw the perpetrators as he was also beaten up on the same occasion, as well as of witnesses K016 and Anto Tomić, who recognized the voices of Banović, that is, Duća and Žigić. The Court is satisfied that on the basis of the voices the witnesses could easily determine who of the perpetrators was present, as their testimonies indicate that the said persons visited the camp on a regular basis, and Predrag Banović was a guard, so these were the voices that the witnesses had the opportunity to hear every day. The death of detainee Drago Tokmadžić is also confirmed by Nicolas Sébire's Additional Report of 28 August 2002, indicating that the said person was declared officially dead by a decision of the Municipal Court in Sanski Most.

The Court also established beyond doubt the beating of Sead Jusufović, a.k.a. "Car", which, as the Indictment reads, was committed by Duško Knežević, Zoran Žigić and others, due to which this person died in June 1992. A number of eye-witnesses to this person's beating and death were examined about this event. The part in which the Court made corrections with respect to the Indictment concerns the number of the beatings of detainee Sead Jusufović, a.k.a. "Car". That is to say, it follows from the evidence of the majority of the witnesses examined about this incident that Sead Jusufović died as a result of one beating, whereas only one witness claimed that beating happened several times. Witnesses K014, K043, K016 and K044 linked the incident when Sead Jusufović "Car" was beaten up with the incident when he was forced to assemble and disassemble a heavy machine gun, that is, when he was ordered to run with the heavy machine gun in the open area in front of the rooms where the detainees were held. According to witness K016, who knew Sead Jusufović "Car" by his full name, "Car" was forced to run carrying the machine gun while Duća and Žigić beat him relentlessly. The two of them played the main role in the beating in which other persons also took part. According to this witness, "Car", who had not been in the camp for a long time, died from the beating and his body was taken away. Witness K044 confirms witness K016's statement that Duća and Žigić forced "Car" to run carrying a heavy machine gun while Duća was hitting him with a baton against his head, due to which he would fall. Witness K044, who had known "Car" by his nickname before, was an eyewitness to his death, as "Car" was thrown into the room where the witness was held upon the beating. According to witness K044, after "Car" had died, Dr. Jelenko pronounced him dead and Duća and Žigić ordered the body to be taken to the dump. Witness K014 also described the incident in which the detainee nicknamed "Car" was beaten up. This witness also stated that "Car" was ordered to run carrying a heavy machine gun that he had to disassemble and assemble. Witness K014 stated that "Car" was called out by Žigić, who

was in the Accused Knežević's company, whereupon they beat him with different implements. The witness also saw "Car's" dead body on the dump. Witness K05 also confirmed the statements of the preceding witnesses, stating that "Car" was given a heavy machine gun to crawl with it across the pista, which was ordered by Duća and Žigić. This witness stated, as all the other preceding witnesses, that "Car" died. Finally, witness K043 also described the incident when Žigić gave "Car" a heavy machine gun to assemble and disassemble and run in circles carrying it and, when he got tired, they started beating him, whereupon "Car" died and his body ended up on the dump. It is a fact that witness K043 did not mention Duško Knežević by his full name as a person who took part in the beating of "Car", but, when mentioning Zoran Žigić in his evidence, the witness used plural, clearly indicating that Žigić was not alone. Since it follows from the testimonies of all the preceding witnesses that on the relevant occasion Zoran Žigić and Duško Knežević came to the camp together and beat up the detainees, as in the majority of the other cases, everything clearly leads to the conclusion that Knežević was with Žigić on the relevant occasion, too, irrespective of the fact that this witness did not state it explicitly. Witnesses K016 and K014 stated in agreement that the beating and the killing of Sead Jusufović "Car" happened in June 1992, whereby they confirmed the allegations in the Indictment concerning the time of his death. The death of detainee Sead Jusufović "Car" is also confirmed by Nicolas Sébire's Additional Report of 28 August 2002, indicating that Sead Jusufović was found in the Pašinac pit and identified (PC-37-001B).

With respect to the killing of Besim Hergić, in the evidentiary proceedings the Prosecutor's Office of B-H succeeded in proving that it happened in the Keraterm camp. However, the Court did not find it established that detainee Besim Hergić was killed by Duško Knežević, since not a single witness mentioned the Accused Knežević in the context of this detainee's killing. That is why this event was classified in the group of the killings of detainees committed directly and personally by other persons, not Duško Knežević, with the aim of improving the system of abuse and persecution in the camp in which he took part. Witnesses K044 and K010 were examined about the said incident. The witnesses had known Besim Hergić from before and saw him in the Keraterm camp, and witness K010 was placed on the same pallet in the room with him. Witness K010's statement indicates that Besim Hergić was called out together with other 9-10 detainees who were forced to kneel on the pista while being beaten. Witness K010 personally brought Besim Hergić into the room at the order of guard Kondić and Hergić was still alive when he was brought in, according to the witness, and told them: "Brothers, leave me alone, do not touch my body." This leads to the conclusion that Besim Hergić was severely beaten on the said occasion. The witness claimed that Besim Hergić died that night, specifying that the killing happened on 27 July 1992. The statement of witness K010 on Besim Hergić's killing, although he did not see the beating, was confirmed by witness K044, who saw Hergić dead, heard from a friend that he had been killed and saw his sports-shoes worn by another person. Describing Besim Hergić's dead body, witness K044 stated that Besim's legs were contorted and that he was holding his hands in front of his face. The witness stated that the killing of Besim Hergić happened in late June or early July 1992, and since the Court could not establish with certainty whether the killing took place in June or July 1992, it left room for a possibility that it was either month, hence the relevant correction was made with respect to the allegations in the Indictment.

With respect to the killings committed directly and personally by persons other than Duško Knežević but with the aim of improving the system of abuse and persecution in the camp in which the Accused took part too, the first incident described in the operative part of the Verdict is the killing of Jovo Radočaj, the only Serb detainee in the Keraterm camp. According to the Indictment, the said killing happened on or about 23 June 1992 and it was committed by Predrag Banović, by beating with a baseball bat. The Court also found this incident established but with certain corrections with respect to the facts in the Indictment. Witnesses Anto Tomić, K015, K09, K016 and Edin Ganić were examined about the beating and death of Jovo Radočaj and they stated in accord that Jovo Radočaj was an ethnic Serb and a detainee of the Keraterm camp. According to witness Anto Tomić, Jovo Radočaj was taken out and killed one night, and, as the witness was held in the same room with Radočaj, he heard someone calling Radočaj out: "Jovo, get out." Jovo Radočaj said: "It's over", having a presentiment that he would be killed. The witness stated that he personally saw Jovo Radočaj's dead body the following day in front of room 4 where dead bodies used to be laid down. Witness K015, who arrived in the Keraterm camp on 19 June 1992, said about the beating of Jovo Radočaj that, in the evening when Radočaj was brought, someone came in front of the door and said: "Come on, Serb, get out." The witness recognized the voice of Kajin, one of the shift leaders, after which they started beating Radočaj. Witness K015 said he heard a sound as if a wet ball was hitting against a wall, and when Jovo Radočaj was thrown into the room, he spoke incomprehensibly, according to the witness. The following day the witness saw a bloody imprint at the height of one meter, based on which he concluded that the stain was a result of the victim hitting the wall with his head. With respect to the identity of the persons who beat Jovo Radočaj, the witness could not say with certainty which of the guards was present on that occasion, except that he recognized Kajin's voice, but he said that there was more than one person. The beating to death of Jovo Radočaj was also described by witness K09, who arrived in the camp on 23 June 1992 and who heard on his first night the call-out when Jovo Radočaj was taken away. The witness said that he heard yells, noise, shouts and blows and his estimate is that the beating lasted for 30-45 minutes. This witness also confirmed that several persons participated in the beating of Jovo Radočaj, which he concluded from the number of voices, of which he afterward recognized the voice of one Banović brother. Since witness K09 was held in the same room into which Jovo Radočaj was thrown after the beating, he heard him yelling and complaining of pain, and he was also present when Jovo Radočaj died the following morning, whereupon his body was taken out. The death of Jovo Radočaj was also confirmed by witness K016, whose testimony indicates that he saw only the consequences of the beating, as he stated that Jovo Radočaj was thrown into room 4, that he was stabbed with a knife and that he died as a result of it. This witness also saw Jovo Radočaj's body that, according to him, was taken out of room 4 to the garbage dump where the dead bodies were being laid down. Edin Ganić also witnessed the beating of Jovo Radočaj and said that he heard him being called out and then heard blows and screams, and that in the morning he saw Jovo Radočaj's body, hence this witness also fully confirmed the statements of the aforementioned witnesses that Jovo Radočaj was beaten to death. The Court could not establish beyond any reasonable doubt that the guard Predrag Banović committed the relevant killing, given the fact that no witness identified him explicitly as the perpetrator of Jovo Radočaj's beating. One witness said that he heard Kajin's voice, whereas another mentioned the Banović brothers, hence it was not established with certainty which of the guards participated in the incident. Likewise, the Court was not able to establish from

the adduced evidence with which implements Jovo Radočaj was beaten up, that is, whether a baseball bat was used on that occasion, as the factual part of the Indictment reads. Therefore, a correction was made with respect to the perpetrator and the implements used in the beating. The Court left a possibility that the relevant event happened on 23 June 1992, as witness K09 said, and made a correction with respect to the time too, hence it is stated in the operative part of the Verdict that Jovo Radočaj was beaten up in the second half of June 1992, which was confirmed by witness Edin Ganić, who closely linked the calling out of Jovo Radočaj time-wise with the beating up of Drago Tokmadžić.

A number of witnesses testified about the beating of an ethnic Albanian named Jasmin "Zvezdaš", as they either saw or heard the beating and some were eyewitnesses to the consequences of the beating, that is, this detainee's death. According to witness Anto Tomić, when Drago Tokmadžić was being beaten up, "Zvezdaš", a pastry-shop worker from Prijedor, and some other Albanians who were called out on that occasion were also beaten up. Witnesses K09 and K015 also mentioned the calling up and beating up of a group of Albanian men, and witness K015 confirmed the assertions of witness Anto Tomić that "Zvezdaš" was among the called ones and that they beat him up after it had been ordered: "All Šiptari\*, get out". It also follows from the statements of witnesses K016 and K043 that the worker of the "Zvijezda" pastry shop in Prijedor named Jasmin was beaten to death. According to witness K043, "Zvezdaš" was held with him in the same room, room 4, so the witness saw when Jasmin was taken back to the room. Witness K043 also saw in the morning that Jasmin vomited some yellow substance, whereupon one detainee, who was a medical worker, said that his bile ruptured and that he would not survive, which, according to the witness, happened indeed since Jasmin died and his body was taken out to the dump. Witnesses K09 and K015 also saw the consequences of the beating of Jasmin, the Albanian, as they were held in the same room, and they confirmed witness K043's statement that Jasmin was bedridden for two-three days having been beaten up, that he vomited something yellow and that he passed away. This was also indicated by the testimony of witness K08, who had known Jasmin, the Albanian, son of the "Zvezdaš" pastry shop owner. This witness stated that he personally saw Jasmin lying physically impaired and beaten up and that he died. Witness K08 also saw Jasmin's body and he personally laid it down into a tin coffin, whereupon a vehicle came and drove the victim's body. Based on the evidence given by the aforementioned witnesses, the Court established beyond doubt that Albanian Jasmin, nicknamed "Zvezdaš", was beaten up in the Keraterm camp and that he died as a result thereof. However, as for the identity of the perpetrators of the beating, the Court could not consider it established that the beating was perpetrated by Predrag Banović. That is to say, the factual part of the Indictment reads that Jasmin "Zvezdaš" was beaten up by Predrag Banović and others, which leaves room for a possibility that the guards and outsiders alike participated in the killing. Therefore, a correction was made with respect to the relevant allegations in the Indictment, as stated in the operative part of the Verdict, as Predrag Banović's name was omitted since no witness mentioned him as a participant in this event. With respect to the time of the relevant event, the Court accepts the assertions that it happened in late June or early July 1992 when, according to the witnesses, the major part of the beating happened, especially given the statement of witness Anto Tomić, who said that the beating happened at the time of Drago

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\* Derogatory name for Albanians; translator's note

Tokmadžić's beating, and that of witness K016, who linked the said event time-wise with the beating of Jovo Radočaj and other detainees.

According to the facts in the Indictment, in July 1992, Džemal Mešić was beaten to death having been taken out of the room by camp guard Predrag Banović. According to the presented evidence, that is, testimonies of witnesses K010 and K029, who had known Džemal Mešić from the village of Ćela, he was called out one evening. According to witness K029, who was a roommate of detainee Džemal Mešić, Mešić was called out, whereupon he stood up and went out and after a certain period of time he returned or was thrown into the room. The witness did not see the beating, but saw Džemal Mešić's condition when he was returned to the room, and stated that Mešić could not speak, that he lay down saying "Oh, mother, I am done with", whereupon he no longer showed any signs of life and ceased breathing, that is, died. Witness K010 also confirmed the taking away of Džemal Mešić, as, having been placed next to the door, he heard Mešić's name being called out. On the following day, the witness saw Džemal Mešić dead, stressing that he saw Mešić's body in front of room 1 when it was being laid in a coffin. Although the witnesses did not see the beating of Džemal Mešić, which is logical given that it was night and that all detainees were held in their rooms, and as the beating took place outside, the Court considers it established that Mešić was beaten up the relevant night, given the fact that the witnesses heard him being called out and witness K029 saw him going out, that is, returning in bad condition. After that, the witness also saw the very moment of Džemal Mešić's death, which is also confirmed by the statement of witness K010, who saw Mešić's lifeless body the following day. In accordance with the results of the adduced evidence, the Court made a correction with respect to the allegations in the Indictment concerning the name of the person who called Džemal Mešić out. In other words, witness K029 stated that Džemal Mešić was called out by Banović, and as two Banović brothers were guards in the camp, and as the witness did not specify the name, the Court allowed for a possibility that it could be either one of the Banović brothers. In addition to this, it was not established with certainty in the course of the evidentiary proceedings whether Džemal Mešić was killed in July 1992, as the Indictment reads, so a correction to the time of the killing was made, indicating that the event could happen either in June or in July 1992. The death of detainee Džemal Mešić is also confirmed by Nicolas Sébire's Additional Report of 28 August 2002, indicating that Džemal Mešić was found in the Pašinac pit and identified (PC-17-001B).

A huge number of witnesses were examined about the circumstances surrounding the event that took place on or about 25 July 1992 when approximately 20 men, including Ismet Bajrić, Behzad Behlić, a person named Šolaja, Mesud Karupović, Ismet Karupović, Azir Hopovac, Serbo Musić, Adim Habibović, and the three Žerić brothers, were called out, taken away and shot dead. On the basis of the witnesses' testimonies, the Court concluded beyond any reasonable doubt that on the relevant occasion approximately 20 men, including Ismet Bajrić, Behzad Behlić and a person named Šolaja, were taken out and killed. This follows from the examined witnesses' statements, as they mentioned the number of the detainees killed on this occasion, but only Ismet Bajrić, Behzad Behlić and the man named Šolaja were identified by their names as having been among the 20 killed detainees. Since none of the witnesses said that Mesud Karupović, Ismet Karupović, Azir Hopovac, Serbo Musić, Adim Habibović and three Žerić brothers were in the group of the men taken out, the Court made a correction with

respect to the facts in the Indictment and omitted the names of the said persons from the operative part of the Verdict. The Court based its belief that approximately 20 men were taken out on the occasion concerned, including the three persons mentioned above, and that they were shot dead afterward, primarily on the testimony of witness Enes Crljenković, who was held in the same room with the said men and who saw them being taken away. According to witness Enes Crljenković, the camp staff members entered the room and ordered Ismet Bajrić to select 20 men telling him: "Damn you, balija\*", what are you waiting for?" After that, they took them out and killed them. According to the witness, 19 more people were taken out in addition to Ismet Bajrić, Bajrić being the last detainee who was taken out of the room. After these persons were taken out, witness Enes Crljenković heard a burst of gunfire which lasted 5 minutes, to his estimate. He stressed that he did not see anything, which is logical given the fact that the door of room 3 was always locked. However, the witness was categorical that the men taken out were killed, as he saw them being taken out, and shooting began 5 minutes later, after which he never saw these men again. The court fully accepts these assertions by Enes Crljenković considering the logical sequence of events from the moment of taking out the said persons and the shooting that was heard, moreover as it follows from the witnesses' statements that the men were taken out because of the alleged escape of some persons from the camp, which could be related to some kind of retaliation for escape. According to witness Enes Crljenković, in addition to Ismet Bajrić, also being taken out and killed were Behzad Behlić and the man named Šolaja. The Court accepts this witness' assertions, because the witness saw the persons' whom he knew by name or last name being taken out. Witness K013 also said that in the night of 25 July 1992 he heard shooting, both individual shots and bursts, and that he saw dead bodies the following morning loaded onto a truck and taken in an unknown direction. The witness stated that, prior to the loading, the bodies were scattered across the pista and that noise and cries for help were heard during the shooting at night. This witness estimated that there were between 30-50 bodies, which the other detainees could only guess about, as the witness himself said. Therefore, the Court accepted the statement of witness Enes Crljenković that there were 20 men, because this witness was the only eyewitness to the taking out of the detainees. Witness K016 also mentioned the shooting on the night concerned and stated that there were around 25 bodies, to his knowledge. The differences in these three witnesses' respective testimonies concern the kind of shooting that the witnesses heard during the night, since witness K016 heard individual shots, witness K013 heard automatic rifle bursts, while witness Enes Crljenković heard bursts from a heavy machine gun. In the opinion of the Court, the inconsistency in the witnesses' respective testimonies in this part did not call into question their statements regarding the decisive fact that the killings indeed happened. In this respect, different perceptions of each witness should be borne in mind, as should also be the great distance in time, since the witnesses described the event that had taken place 16 years ago. For the same reason, the Court did not find the differences concerning the number of the killed persons or the time the bodies were taken away to be serious. Witnesses Enes Crljenković and K013 stated in unison that the bodies were loaded onto a truck and taken away, and it is irrelevant for the case at hand whether it happened immediately after the shooting started or in the morning. The Court established beyond doubt that the relevant event happened on or about 25 July 1992, considering the fact that on that occasion people

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\* Derogatory name for B-H Muslims; translator's note

from room 3, who had been brought in late July 1992, were killed. Witness K013 was precise about the time, stating that the date of the event was 25 July 1992.

The following incident quoted in the Indictment by the Prosecutor's Office of B-H concerns the beating to death of Avdić ("Cacko") by Predrag Banović and others. According to the Indictment, the beating happened between 9 June and 24 July 1992. With respect to this event, the Court made certain corrections to the allegations in the Indictment, as stated in the operative part of the Verdict, which is a result of the contents of the evidence from the witnesses who testified about the circumstances surrounding the said incident. In other words, when testifying about the killing of the person whose last name was Avdić, witnesses K013, K010 and K043 stated that he was beaten up and killed, but did not say who killed him, which is why the operative part of the Verdict states that he was beaten up and killed, but not by whom. The Court accepted the period from 9 June to 24 July 1992, as indicated in the Indictment, taking into consideration that it covered a wide period within which the majority of the beatings took place, and especially taking into consideration the fact that witness K013, who testified about the relevant event, was brought to the camp on 12 June 1992 and that it follows from the statements of all the witnesses who were detained in the Keraterm camp that after 24-25 July 1992 there were no individual beatings to death in the camp. Although the Indictment does not state the first name of the person whose last name was Avdić and who was killed on the relevant occasion, which is mirrored in the operative part of the Verdict as well, the testimonies of witnesses K013, K010 and K043 indicate that it was Fikret Avdić, a.k.a. "Cacko", who was a waiter, which was confirmed by witnesses K010 and K043. All the aforementioned witnesses knew this person and stated that they saw him in the Keraterm camp. Witness K043 remembered this person's full name and nickname, while witness K013, asked by the Prosecutor whether he knew Fikret Avdić, answered yes, while witness K010 stated that, as far as he could remember, that person's name was Samir Avdić but allowed that he might be mistaken about the first name. According to all examined witnesses, Avdić was killed in the Keraterm camp, and witness K010, who shared the room with him, saw when Avdić was brought to room 2 following a beating, whereupon he died. This witness claimed that Avdić's body was taken out of the room afterward, which leads to the conclusion that he actually saw it. Avdić's killing was also corroborated by the testimonies of the other two witnesses, as witness K013 said that he personally saw his dead body thrown out in front of room 2, which confirms the statement of witness K010 that Avdić was held in room 2. Witness K043 also personally saw Avdić's dead body when he was brought in room 2, stating that Avdić had first been called out and that in the morning, before dawn, he was brought dead in a blanket. The difference between the respective statements of this witness and witness K010 is that witness K010's statement indicates that Avdić died in the room. However, in the Court's opinion, the said discrepancy between the two witnesses' statements is not relevant to the decisive fact that the victim died, particularly as detainee Avdić must have been in a very bad condition following the beating, moreover as he died very soon afterward, hence it is possible that witness K043 gained an impression that Avdić was brought dead. The death of detainee Avdić is also confirmed by Nicolas Sébire's Additional Report of 28 August 2002, indicating that the said person was declared dead officially by a decision of the Municipal Court in Sanski Most.



According to the Indictment, in July 1992, Dževad Karabegović was beaten up, having been called out by guard Predrag Banović, as a result of which he died. The Court established beyond any reasonable doubt that this incident also happened at the time and in the manner described in the factual part of the Indictment, which follows from the testimonies of the examined witnesses K044 and Ismet Dizdarević. According to witness K044, Dževad Karabegović was called out one night by Banović, who told him to go with him, and 45 minutes later the witness saw the door opening and "something collapsing". Having been told that it was Dževad Karabegović, the witness took him and brought him to his pallet. Witness K044, who was by Dževad Karabegović's side after the beating, said that he saw under the light of a cigarette lighter that Karabegović's back was black as coal and, since he felt blood on his hands, he tried to find a wound on Karabegović's body and ultimately found out that Karabegović was slit below his elbow. This witness said that he personally saw when Dževad Karabegović died one hour later. The beating and death of Dževad Karabegović was also confirmed by witness Ismet Dizdarević in his statements before the Hague Tribunal on 4 November 1995 and 2 February 2002. Upon the motion of the Prosecutor's Office of B-H and pursuant to Article 273(2) of the Criminal Procedure Code of B-H, these statements were admitted as exhibits at the main trial under No. 206, since the Death certificate No. 04-202-1-6920/2007 of 29 November 2007, issued by the Registry Office of the Prijedor Municipality, indicates that Ismet Dizdarević died on 6 June 2005, so it was not possible to examine this witness before this Court. In his statement of 4 November 1995, witness Ismet Dizdarević confirmed the statement of witness K044 that Banović called out Dževad Karabegović, while in the statement of 2 February 2002, he specified that it was Čupo Banović, which leads to the conclusion that it was Predrag Banović, a.k.a. "Čupo", because it follows from the testimonies of all examined witnesses that the witnesses referred to him by the nickname of Čupo. This witness also confirmed Dževad Karabegović's physical condition after he was returned to the room, stating that he was black and blue from the blows, that he bled from his mouth and nose and that he could not speak. Witness Ismet Dizdarević also confirmed the assertion of witness K044 that Dževad Karabegović died after a short while and the Court accepted this assertion given the fact that both witnesses were in the immediate proximity of Karabegović when he died. Therefore, the Court based the conclusion that Dževad Karabegović, having been called out by Predrag Banović, was taken out and beaten up, which resulted in his death, on the evidence of the said two witnesses who were present when Karabegović was called out by Banović, that is, by Čupo Banović, according to witness Ismet Dizdarević. This witness, although saying he did not see anything, stressed in his 2002 statement that he heard Dževad Karabegović's moaning, whereupon Karabegović was taken back to the room in the condition described previously by both witnesses and then died. That Karabegović was beaten up having been taken out can also be concluded from the fact that the Banović brothers returned to the room "after a completed job" and asked for two volunteers to bring Karabegović into the room, which also confirms that Dževad Karabegović was beaten up to the extent that he could not move on his own but had to be brought in. Although no witness could see the beating, the Court finds that it can be clearly concluded that Karabegović was beaten to death based on the fact that, following the call-out, the victim walked out on his own feet but that he was later returned in a difficult physical condition and with bruises all over his body and that he succumbed to the injuries shortly afterward. The Court finds it established that the killing of Dževad Karabegović happened in July 1992, primarily considering the statements of witness Ismet Dizdarević, who specified that the event took place in early July 1992, which is

also confirmed by witness K044, whose evidence indicates that Karabegović was killed 8-9 days upon his arrival in the camp. Witness K044 saw the bringing of Dževad Karabegović into the camp and claimed that it happened approximately one month into his detention in the Keraterm camp. Given the fact that this witness stated that he was brought there on 31 May 1992, it follows that Dževad Karabegović was brought to the camp in late June or early July and that he was killed in the early or the first half of July 1992.

The beating of detainee K05 is also classified in the group of the beatings and other forms of physical violence against the detainees committed directly and personally by the Accused Duško Knežević or in his immediate presence with discriminatory intention. According to the Indictment, Duško Knežević, Zoran Žigić, Predrag Banović and a person called "Sahadžija" were the perpetrators of the several instances of beating with a metal rod, fists and feet in the period from 30 May to 5 August 1992. Witness K05, the victim of the said beating, was examined and gave a detailed statement on the said events. It ensues from his statement that he was brought to the Keraterm camp on 30 May 1992, when, upon getting off the bus, he and the other detainees ran a gauntlet made up of the guards, during which they were beaten with different implements. The beatings relevant to the Indictment took place, according to witness K05, prior to the arrival of a group of inmates on 14 June 1992, during which period a group of nine detainees, including the witness, was taken out and mistreated every day. This witness' testimony indicates that the group of nine detainees was being taken out regularly by Dušan Knežević and Žigić. In addition to these persons, the witness also identified Čupo as a person who beat him, this nickname being linked to guard Predrag Banović, and a person called "Sahadžija". Describing the beatings and mistreatment that, according to witness K05, were a daily occurrence, the witness said: "We were being abused every day, we would be taken outside, beaten, mistreated, called derogatory names, there is hardly a method that they did not use on us." The witness said that the perpetrators used rubber sticks, rods and feet for the beating. In accordance with the witness' statement, a correction was made to the allegations in the Indictment in that respect, as stated in the operative part of the Verdict. The witness also described the incident when the aforementioned group of detainees was forced to take off their underwear and sit on glass bottles placed on the pista. The Court considered this witness' statement to be true and credible and it found that it was fully established that the relevant event happened in the afore-described manner, as the Indictment reads, too, irrespective of the fact that only the said witness testified about it, as the Court considered that, given the large number of described killings and beatings, all the detainees could not see each individual event. However, it follows clearly from the totality of their testimonies that such events happened on a daily basis.

A large number of witnesses were also examined concerning the beating of detainee Fajzo Mujkanović, as they were eye-witnesses to his beating by Duško Knežević, whereupon Knežević cut this witness' neck with a knife, due to which the witness had to go to hospital. The Court made a correction with respect to the factual description of this event in the Indictment, specifically with respect to the time of the event and the duration of the beating, so, in accordance with the witness' statement, June or July 1992 is indicated as the time of the beating in the operative part of the Verdict, while the allegation from the Indictment that the beating lasted for three consecutive days is left out. The evidence of witness K016 indicates that, upon being brought to the camp,

"Fajzo" was mistreated by Duća, who requested from him to admit the killing of his brother, that Duća beat him and cut his neck with a knife and that Duća was the only one who mistreated him. Witness K05 also described the incident when Duško cut Fajzo Mujkanović's neck with a knife asking him if it hurt him and Mujkanović answered: "You just do your job." Witness K043 fully confirmed the previous two witnesses' statements as he, too, said that Fajzo's neck was cut with a knife, as did witness Abdulah Brkić, who stated that he saw the moment when Duća came to the camp and asked where Fajzo was, whereupon Fajzo was taken out. Since the rooms' doors were open, this witness saw Fajzo being pushed to the ground, Duća taking a knife out and making an incision across Fajzo's neck requesting from Fajzo to tell him who had killed his brother. Therefore, all examined witnesses stated in agreement that Duća, that is, the Accused Duško Knežević made an incision with a knife in Fajzo Mujkanović's neck on the relevant occasion, and witness K016 also saw Duća beating Fajzo, which the Court finds to be completely established as it was daytime and the room's doors were not closed, so the witness could see what was going on. There is only one witness who identified Zoran Žigić as the perpetrator of the aforesaid injuring instead of the Accused Duško Knežević, but all the other witnesses confirmed positively and in accord that it was done by Knežević, and some of them connected the event to Knežević's brother's death. Witnesses K05 and K043 confirmed in accord that Fajzo Mujkanović was taken to hospital following the said incident and said that they saw a bandage afterward, that is, a plaster strip on his injury, that is, that he was taken to hospital. Witness K05 said that Fajzo was taken to hospital together with Emsud Bahunjić. The Court made a correction with respect to the time indicated in the Indictment, setting the event timeframe to June or July 1992. It is more realistic that the beating of Fajzo Mujkanović took place in June 1992 since, according to witness K05, he saw Fajzo for the first time in the camp on 14 June 1992 and said that he was taken to Omarska on 20 June 1992, while witness K016 stated that the incident with Fajzo happened 4-5 days following the killing of "Car", which was established having taken place in June 1992.

With respect to the beating of K039, Mehmed Jakupović and Muhamed Elkazović by Duško Knežević and Zoran Žigić, which, according to the Indictment, happened on or about 14 June 1992, the Prosecutor's Office of B-H did not present a single piece of evidence in the course of the evidentiary proceedings concerning the said incident. Therefore, the Court did not find it proven that the incident happened at all, which the Prosecutor also stated in the closing argument. Accordingly, the incident is omitted from the operative part of the Verdict.

As the Indictment reads, on or about 16 June 1992, Duško Knežević, together with Zoran Žigić, beat up detainees Ilijaz Jakupović and K033 so hard that their faces became swollen and bloody, and witness K033 was beaten up by Duško Knežević 10 more times after that. The Prosecutor's Office of B-H offered the exhibits confirming that the incident happened indeed, but, in accordance with the results of the evidentiary proceedings, the Court made corrections with respect to the allegations in the Indictment, as stated in the operative part of the Verdict, primarily concerning the consequences of the beating and the number of the instances of beating of witness K033 by Duško Knežević. Witness K033 was examined before this Court during the evidentiary proceedings and he testified in detail about his and the beating of Ilijaz Jakupović by Duško Knežević. The testimony of witness K033 indicates that he was taken to the Keraterm camp mid-June 1992, that he had been detained in the Trnopolje

camp for some 15 days prior to it, having been arrested in late May 1992. Describing his first day in Keraterm, the witness said that Duća came, lined up the detainees, including the witness, and kicked them and beat them with various implements and ordered them to kneel whereupon he beat them. With respect to Duća's visits and beating of K033 and Ilijaz Jakupović, the witness stressed that Zoran Žigić perpetrated the beatings together with Duća, that he and Duća practically took turns, and that the witness had an impression that these persons were in charge of the beating. The witness stressed that, in addition to him, Ilijaz Jakupović would also be beaten, as he would be taken out together with the witness and also beaten by Duća. According to witness K033, Duća beat him 7-8 times in a group of 8-10 detainees and that, among other things, he forced the detainees to beat themselves and he once personally hit him with a pistol, so the witness' face started bleeding. The witness also stated that Duća used to push a pistol into people's mouths, and, to his recollection, he would beat them with rubber sticks, rods, feet and hands, mostly with sticks behind a truck parked at the camp entrance. Such detailed account of witness K033 of his own and the beating of Ilijaz Jakupović by the Accused Duško Knežević and Zoran Žigić confirms the allegations in the Indictment concerning the relevant event, except that the Court indicated in the operative part of the Verdict that the beating happened several times, instead of 10 times, since the witness indicated in his evidence that he was beaten 7-8 times. The statements of witness K033 were corroborated by the statement of witness K016, who indicated that K033 and his brother were being taken out together with Emsud Bahunjić, that they were beaten up every time and then returned into the room, and who stressed that sometimes he would see the very beating and sometimes the consequences of the beating.

With respect to the beating of K015, which, according to the Indictment, happened in late June 1992 by Duško Knežević, who beat this detainee with a stick against his head and body, the Court based its conclusion that this beating also happened at the time and in the manner described in the factual part of the Indictment primarily on the evidence of witness K015. In the opinion of the Court, witness K015 gave a sufficiently convincing statement on the basis of which the aforementioned conclusion was made. According to this witness' testimony, the beating of K015 is linked time-wise with the killing of Drago Tokmadžić, which happened in late June 1992, and the beating of Esad Islamović when, as witness K015 stated, he personally was ordered to take the beaten Drago Tokmadžić and Esad Islamović inside, which is also confirmed by witness K09, who said that K015 went out in order to bring Drago and Eso in. Witness K015 was explicit that Duško Knežević, a.k.a. Duća, who had no official role in the camp, beat him up on that occasion. This witness saw him again in the camp two days later. According to witness K015, he was beaten up by a soldier who had worked in Tomašica before the war and he heard his name from the other camp inmates, who said that he was a professional butcher and that he was coming often with his gang to Keraterm. Witness K015 used to see the Accused Knežević in Keraterm and recognized him as the person who beat him, which the Court fully accepted, moreover as, according to the witness, it was daytime and he could remember that soldier's face. Describing the beating that he was subjected to on the relevant occasion, witness K015 stated that he received a punch to his temple, when others approached and started punching him, while the person, who he later learned was called Duško Knežević, a.k.a. Duća, beat him with a stick. According to the witness, he received such a strong blow that his nose cracked, while the others kicked him in his kidneys, with Duća saying "100 more times ". He started feeling dizzy from the blows, so when he lay down on the pallet, he either lost

consciousness or fell asleep. The Court fully believed witness K015 in this respect too, as it could realistically be expected that the witness lost consciousness given the description of the blows he received to his head. The foregoing is completely confirmed by witness K016, too, who stated in his evidence that K015 was called out after Eso Islamović and that he was all beaten up when he returned to the room.

As has already been stated, the beating of K015 is connected time-wise with the beating of Esad Islamović and Drago Tokmadžić, when Drago Tokmadžić died as a result of the injuries he sustained. Given the fact that it is one and the same event, the witnesses who testified about the beating and death of Drago Tokmadžić also testified about the brutal beating of Esad Islamović which, as the Indictment reads, happened in June 1992. The Court made a correction with respect to the allegation in the Indictment concerning the identity of the persons who beat up Esad Islamović, since it established with certainty that the beating was committed by the Accused Duško Knežević and that there were other co-perpetrators with him on that occasion, but it did not establish that the witness was also beaten by Predrag Banović. That is why the name of Predrag Banović is omitted, as was the case with the beating to death of Drago Tokmadžić, referred to in the section of the operative part of the Verdict dealing with the killings in the Keraterm camp committed by Duško Knežević. Witnesses K015, Edin Ganić, K09, K016, Anto Tomić and K044 stated in accord that Esad Islamović, whom the witnesses referred to by the nickname of Eso, was beaten up together with Drago Tokmadžić. Having in mind the fact that the Court, as explained above, established that the beating of Drago Tokmadžić took place in late June 1992, it was accepted that the beating of Esad Islamović happened in June 1992, as stated in the Indictment, the timing being set broader than that of the beating of the other persons beaten up on that occasion. Witness K015 stated in his testimony that one evening he heard Drago Tokmadžić being called out, when a group of people was heard and came and told Drago to get out, whereupon Esad Islamović was also called out. Witness K015 heard the beating of Esad Islamović, whereupon he heard the order that four men should get out and bring Drago Tokmadžić and Esad Islamović inside, which was done. Witness K09 also links the beating of Esad Islamović with the beating of Drago Tokmadžić, and, just like witness K015, he also heard the order that four detainees should bring inside the two beaten detainees. In the Court's assessment, these assertions by the witnesses undoubtedly lead to the conclusion that Esad Islamović was so severely beaten that he was not able to return to the room on his own, but had to be carried in by someone else. Finally, the description of Esad Islamović by witness K09, who saw him following the beating, confirms the allegations in the Indictment that the beating was severe, since this witness claimed that Esad Islamović was black-and-blue and that his fingers were broken. Witness K016, in accord with the preceding witnesses' statements, described the beating of Esad Islamović and Drago Tokmadžić as a single event and also stated that Drago and Eso were literally thrown into room 4, whereupon Drago died. According to witness Anto Tomić, who was brought to the Keraterm camp on 14 June 1992, one night Esad Islamović and Drago Tokmadžić were called out, taken out and beaten in such a way that the perpetrators counted blows: "20 more, 50 more, 50 more". This witness, in addition to confirming that Drago Tokmadžić died as a result of the sustained injuries, also stated that Esad Islamović could not be recognized from the beating, that his nose was broken, that he was swollen and black-and-blue all over his body and around the eyes, which also indicates the severity of the beating he was exposed to. Witness Edin Ganić, who was also beaten on that occasion, confirmed the preceding witnesses' statements on Esad

Islamović's beating. This witness was the only one present when the beating took place, but he did not give a detailed account of Esad Islamović's beating, which is logical given the fact that he, too, was a victim of beating at the same time. In addition to the testimony of this witness, who saw Esad Islamović, the testimonies of the witnesses who testified about the calling out of Esad Islamović and his condition after being thrown into the room, also lead to the conclusion that Esad Islamović was severely beaten on the relevant occasion, despite the fact that many witnesses did not see the very act of beating. Witness Edin Ganić, who was being beaten at the same time, stated that the beating was perpetrated by a group comprising Duća, Zoran Žigić, Vokić, Laić and the Banović brothers, while the participation of the Accused Knežević in this beating was also confirmed by witness Anto Tomić, who heard Duća and Žigić counting the blows together and beating people. The participation of the Accused Knežević in the beating of Esad Islamović was also confirmed by witness K015, who described his own beating by Duško Knežević, as these were obviously the beatings that occurred simultaneously when a group of perpetrators beat up several detainees. Since it follows from the examined witnesses' evidence that several persons participated in the beating, including the Accused Knežević with a group of outsiders, and some of the guards, such as the Banović brothers, and considering the statements of witnesses Edin Ganić and K016, the Court made a correction to the allegations in the Indictment in that respect by omitting the name of Predrag Banović, since no witness identified him as a person who beat up Esad Islamović.

It follows from the evidence of witness Edin Ganić, who described the beating of Drago Tokmadžić and Esad Islamović, that the witness was beaten up on the same occasion when these two detainees were beaten up. In the factual part of the Indictment, the Accused Duško Knežević is charged with beating up Edin Ganić, together with Zoran Žigić, using a baseball bat and smashing both his knees in late June 1992. As has been indicated earlier, Edin Ganić stated in his evidence that he was beaten up at the same time as Drago Tokmadžić, for whom it was established that he succumbed to the injuries of the beating in late June 1992. That is why the Court has found it established that the beating of Edin Ganić also happened in late June 1992, given all the aforementioned circumstances leading to the conclusion that these beatings happened simultaneously. In his statement before the Hague Tribunal, Edin Ganić described the relevant event stating that he was called by Predrag Banović while Zoran Žigić and Duća were waiting outside, whereupon Zoran Žigić ordered him to sit "the Turkish way". According to witness Ganić, Zoran Vokić, Laić and the Banović brothers were also present there. Žigić asked the witness about the motorbike and some other belongings, the witness having told him he had no money, and then started kicking and hitting him with a stick all over his body. According to the witness, no spot on his body was spared from Žigić's blows, while one person from the group of perpetrators hit him on his head, and the witness remembered having fainted from the blows a few times. Witness Edin Ganić described the participation of the Accused Duško Knežević in the beating as follows: "Duća came; Dušan Knežević is his real name. He had a baseball bat and he broke my leg with it." Testifying further, witness Ganić said that his every bone was broken from that strong blow and that his lower jaw was fractured at several places. The witness then said that Zoran Vokić took him to room 1, where the other detainees administered aid to him by putting wooden slabs around his broken leg, and that afterwards he was taken to the hospital. Witness K029, who was held in room 1 like Edin Ganić, did not personally see the beating of this detainee, but heard Žigić calling

him whereupon he heard blows and voices. On the basis of that, witness K029 concluded that Žigić was not alone on that occasion, whereby he confirmed witness Edin Ganić's assertion that several persons did the beating. The statement of witness K029 also fully confirmed the statements of witness Ganić about his own condition after he was returned to room 1, as this witness also stated that Ganić's leg was broken and he personally saw that Ganić had no knee joint, that a part of his leg was hanging on a piece of skin and that his knee was broken. Witness K029 also confirmed witness Edin Ganić's statement that he was taken to the hospital over the sustained injuries, which is fully in accord with the statement of witness K013. That is to say, witness K013 stated that Edin Ganić was taken to the hospital together with him and he described Ganić's injuries as a broken knee and other bodily injuries, stressing that the group comprising Žigić, Duća, Vokić and others inflicted these injuries on Ganić. Since witness Edin Ganić was resolute in his testimony that Zoran Žigić and Dušan Knežević beat him on the relevant occasion, which is fully confirmed by witness K013 and partially also by the other witnesses, the Court considers established the allegations in the Indictment regarding the identity of the perpetrators who beat up and inflicted injuries to Edin Ganić, especially the injuries to his knee inflicted with a stick by Knežević, as well as the injuries to his body and head. Accordingly, the Court made the relevant corrections, as stated in the operative part of the Verdict.

The Indictment also charged the Accused Duško Knežević with the beating of Jasmin Ramadanović, who was beaten up several times by Duško Knežević, Zoran Žigić and Predrag Banović in June or July 1992 and who had to be hospitalized due to the injuries sustained. Witnesses K014 and K016 confirmed in their testimonies that Jasmin Ramadanović was beaten up several times. Witness K016 stating that Jasmin Bajramović "Šengin" was called out together with Emsud Bahunjić and the Ališić brothers. Witness K016 obviously made a mistake in the last name of Jasmin Ramadanović saying that his last name was Bajramović. However, it is clear that it was Jasmin Ramadanović, given that witness K014, who had known him well before the war, identified him as Jasmin Ramadanović, giving the identical nickname for him as witness K016, that is, "Šengin". Witness K014 also stated that Žigić called out Jasmin Ramadanović and beat him against his head and that he was also beaten by Predrag Banović and Dušan Knežević. The witness confirmed the allegations in the Indictment that Ramadanović was then taken to the hospital, stressing that it happened 5-6 days later. The witness also stated that Jasmin was beaten several times by Žigić and Knežević, whom the witness called Dušan, not Duško Knežević, as witnesses K015 and Edin Ganić also called him. However, it is clear from the testimonies of the other witnesses who testified about the beatings by the Accused Knežević that he was Duško, not Dušan Knežević, which indicates that the witnesses called the Accused Dušan, obviously because of the similarity of the said two names. Witness K043 also stated that Jasmin, nicknamed "Šengin", was beaten up by Duća, and the witness also heard that Duća was accusing Jasmin of having killed his brother. Given the fact that witness K016 connected Jasmin Ramadanović's beating time-wise with the beating of Emsud Bahunjić and the Ališić brothers, it is clear that this beating also happened in late June 1992, which corresponds to the timeframe set in the Indictment of the Prosecutor's Office of B-H which reads "in June or July 1992".

According to the Indictment, in late June or July 1992, Duško Knežević beat up detainees Amir Karačić, Josip Pavlović, Dijaz Sivac and several other unknown

detainees, due to which they had bruises all over their bodies. The Court examined witness K08 on the beating of the said persons, as the witness knew all the persons named above and personally saw the beating incident. According to witness K08, he was brought to the Keraterm camp on 14 June 1992 and the beating of Amir Karačić, Josip Pavlović and Dijaz Sivac happened two or three days upon his arrival, that is, in the second half of June 1992. In accordance with this, the Court made a correction to the allegations in the Indictment concerning the time of the relevant incident. The witness personally saw Duća Knežević, who entered room 3 where the above-named persons and the witness were held, and heard when Knežević started asking each detainee about their respective belongings, particularly targeting Amir Karačić, Josip Pavlović and Dijaz Sivac. Witness K08 also personally saw when Knežević started beating them, since the beating started already in front of the other detainees, while the witness did not see the continuation of the beating, but heard the developments outside. As in the majority of the other situations in which the detainees were being beaten outside, the other detainees could not see it as they were in their rooms, so the Court did not find the witnesses' assertions on the beating of the detainees to be disputable in this case, just as it did not in the other previous cases, irrespective of the fact that the witness did not personally see the beating. The fact that this witness saw the call-out and the beating of the aforementioned detainees prior to their being taken out, the sounds he heard during the beating and the physical condition of the beaten detainees upon their return to the room are sufficiently reliable for the Court, which leads to the undeniable conclusion that the detainees were beaten outside by the Accused Duško Knežević. This is particularly so because the witness saw when Knežević called them out and started beating them in front of the other detainees and because he heard the sounds coming from the outside "Kill, beat, slaughter, strangle" and the moaning of the beaten detainees. Finally, the witness described absolutely convincingly these persons' condition when they returned to the room, stating that they were in a very difficult physical condition, that the other detainees had to carry them to their respective places, and that they saw their eyes only the following day, at daylight, the eyes being closed and black-and-blue from the injuries and their backs black, which leads to the conclusion that the beaten detainees had bruises all over their bodies, as the Indictment of the Prosecutor's Office of B-H reads. With respect to the facts in the Indictment, the Court omitted the assertions that several other unknown detainees were also beaten up on the same occasion, since witness K08 did not give any information about it, except stating that Duća once hit Amir's brother Hasan. This witness also called the Accused Duško Knežević by the name of Dušan, but he also mentioned the nickname of "Duća", by which the Accused was better known with the detainees, from which it follows beyond doubt that it was actually a reference to the Accused Duško Knežević.

With respect to the beating of Ahmet Dizdarević, which, according to the Indictment, was perpetrated by Duško Knežević in June or July 1992, the Prosecutor's Office of B-H did not provide a single piece of evidence, which the Prosecutor also indicated in his closing argument, hence this incident is omitted from the operative part of the Verdict.

As for the beating of witness K013, committed by the Accused Duško Knežević, Zoran Žigić and three soldiers known as "Vokić", "Timarac" and "Karlica", the Court, on the basis of the examined witnesses' testimonies, primarily witness K013, established beyond any reasonable doubt that the said group of perpetrators beat up detainee K013, but it made a correction with respect to the Indictment of the Prosecutor's Office of B-H



in the part concerning the implements with which the beating was conducted, in accordance with the testimony of witness K013. Witness K013 said that he was beaten up around 5 July 1992, connecting that date to an important date in his life. Taking into account the statement of witness K013 concerning the time of his beating, the Court accepted the timeframe indicated in the Indictment for the beating, on or about 5 July 1992, which allows for a possibility that witness K013 was beaten up in the period from late June to early July 1992. Testifying about the said event in the Keraterm camp, witness K013 was resolute as to which persons participated in his beating, stating even who inflicted a particular bodily injury to him. The witness said that the perpetrators of the beating were Žigić and Knežević, as well as Timarac, Vokić and Karlica, stressing that Žigić called him out whereupon he was beaten, by Duća with a baseball bat, by Žigić with a police baton, and by the other three persons with automatic weapons. According to the witness, the result of the beating was a broken arm, broken by the Accused Knežević, broken nose, the injury inflicted by Zoran Žigić, while the other bodily injuries and bleeding from his mouth were the result of the beatings by all the perpetrators. This witness' testimony was corroborated by the testimonies of witnesses K029 and K016, who saw the said person being called out and confirmed that he was beaten up. Although the witnesses did not see the beating, just like in the preceding cases the Court believed the examined witnesses, since they heard voices and sounds coming from the outside during the beating, while witness K029 described K013 following the beating, stating that he was black and blue, beaten up and unable to move one arm, so he assumed it was broken, which corroborates the assertion of witness K013 that Duća broke his arm. Witness Edin Ganić also confirmed the statements of the previous witnesses, stressing that K013 was called out by Zoran Žigić, beaten up and that his right arm was broken, but this witness did not see who beat up K013.

With respect to the beating of Uzeir "Zeiro" Čaušević by Predrag Banović in the presence of Zoran Žigić and Duško Knežević, the Court, on the basis of the presented evidence, could not establish reliably that Predrag Banović beat up Uzeir Čaušević in the presence of Zoran Žigić and Duško Knežević. Accordingly, the said incident is omitted from this section of the operative part of the Verdict. In other words, witnesses K044, K05, K016, K043 and K013, who mentioned the beating of Uzeir Čaušević, did not state that he was ever beaten up in the presence of Duško Knežević and Zoran Žigić. Since the presented evidence confirm that Uzeir Čaušević was beaten up during his detention in the Keraterm camp under different circumstances, the beating up of this detainee was mentioned in the section of the operative part of the Verdict listing the beatings and other forms of physical violence against the detainees committed personally and directly by other persons, except Duško Knežević, but with the goal of improving the system of abuse and persecution in the camp in which he also participated.

Under the Indictment, the combination of the beatings and other forms of physical violence against the detainees committed personally and directly by other persons, except Duško Knežević, but with the goal of improving the system of abuse and persecution in the camp in which he also participated, primarily includes the beatings of Zeiro Čaušević, Katlak, Ismet Kljajić and Mesud Terarić, which happened during the period from 24 May to 6 August 1992 in the Keraterm camp, when these persons were brutally beaten by the camp guards, including a man called "Tomica". The Indictment reads that Zeiro Čaušević was exposed to multiple beatings, the consequences of which

were injuries to his head and body that became infested with worms due to lack of medical care. In the course of the evidentiary proceedings, the Court examined witnesses K013, K044, K05, K016 and K043 about the said incidents, and their respective testimonies indicate that these were separate incidents. It was also established that only detainee Zejro Čaušević, who was beaten up a couple of times, was once beaten up by a camp guard called "Tomica". In accordance with the said results of the evidentiary proceedings, the Court made a correction with respect to the Indictment, as stated in the operative part of the Verdict. Since the timeframe of the said beatings given in the Indictment was very broad, that is, extended from 24 May to 6 August 1992, which practically coincides with the period in which the Keraterm camp was operational, in the Court's opinion, there is no doubt that the relevant incidents happened indeed during the indicated period. With respect to the beating of detainee Zejro Čaušević, the Court based its conclusion that he was beaten up several times, out of which once by guard Tomica, on the testimonies of witnesses K044, K05, K016, K043 and K013. According to witness K044, he saw Zejro Čaušević in the Keraterm camp and claimed that Zejro was held in room 2 when he was once called out by a camp guard called Tomica, whereupon Zejro got out. Witness K044 stated that he did not personally see the beating, but saw the results thereof, since Zejro Čaušević entered his room after the beating, which was absolutely sufficient for the Court, just like in the previous cases, to establish that the beating happened indeed, particularly as the witness saw detainee Zejro Čaušević being called out and then his physical condition upon being returned to the room. Moreover, it follows from this witness' statement that Zejro Čaušević personally told him what they had beaten him with, stating that they used a board full of attached nails during the beating. Witness K044's statement was also corroborated by the witness' description of Zejro Čaušević, whose injuries he saw the following day, stressing that Zejro was full of holes and that in the night of the beating, when the witness could not see the injuries because of the dark, he noticed that Zejro could not stand on his feet and that he was bleeding. Witness K044 explicitly claimed that the wounds that Zejro Čaušević sustained in the beating meanwhile became poisoned and worm-infested. Zejro Čaušević's difficult physical condition caused by the beating was also confirmed by witness K016, who had known Čaušević before and who saw that Zejro was in a very bad shape, beaten up and covered in wounds that became infested with worms. This was also confirmed by witness K043, who stated that Zejro Čaušević was heavily beaten and that he heard that some parts of his body started becoming worm-infested. In agreement with the statements of the preceding witnesses, witness K013 also stated that Zejro Čaušević, whom he personally got to know in room 1, was beaten up and that he personally saw the consequences of the beating, manifested as poisoned and worm-infested wounds. This witness stated that Zejro Čaušević was beaten up a couple of times. Finally, the statements of the witnesses who described Zejro Čaušević's post-beating physical condition were also corroborated by the statement of witness K05, who confirmed that Zejro Čaušević was taken to the kiosk between the camp and the road and then beaten up by guard Predrag Banović, a.k.a. Čupo. This witness identified the guard Predrag Banović as the perpetrator of Zejro Čaušević's beating that happened in the afternoon, while witness K044 testified about the beating of Zejro Čaušević after he was called out by guard Tomica, which happened at the time when it already became dark, so the statements of these witnesses lead to the conclusion that detainee Zejro Čaušević was beaten up a couple of times at least, as these were obviously two separate beatings. Witness K05 also confirmed the preceding witnesses' statements that a part of Zejro Čaušević's body became infested with worms,

and, according to this witness, that part was his leg. Witness K044 confirmed that medical care was not provided to Zejro Čaušević. Zejro Čaušević personally asked this witness to ask for medical assistance for him and the witness requested it three times, but it was never administered. The Court also finds the foregoing to be established beyond doubt, since this witness was by Zejro's side for eight days after the beating, so he must have been aware of Zejro Čaušević's health condition during the said period.

Witness K044 testified about the beating of a person called Katlak. The witness stressed that he did not see the person who beat up Katlak and did not see the beating either, but Katlak, this being that person's last name, according to the witness, personally told him: "They beat me up, I was off to the toilet." Witness K044 saw him before he got out of the room and warned him not to go out at that moment, which indicates that the witness, having evaluated certain circumstances in the camp at that moment, sensed that Katlak might be beaten up, should he decide to get out of the room. Finally, in addition to having been told by Katlak personally that he had been beaten, the witness also saw the consequences of the beating, since Katlak was covered in blood when he returned to the room and his eyes could not be seen from the blood.

Witness K044 also testified about the beating of detainee Ismet Kljajić, whom he knew personally. He explained in detail the events surrounding the call-out of Kljajić and Kljajić's condition after the beating. This witness' statement indicates that Ismet Kljajić was called out around midnight one night, that he was ordered to take off all of his clothes, to lie down and roll around, whereupon the witness heard beating by batons. The further course of witness K044' testimony indicates beyond doubt that Ismet Kljajić was beaten up during the mentioned call-out. According to the witness, one acquaintance told him the following day, referring to Ismet Kljajić: "They kicked the hell out of Kljaja". The witness then personally saw it as he saw him in bad shape. Describing Ismet Kljajić's condition, witness K044 stated that Kljajić's head was swollen, that he sighed, and when a detainee called Adil turned him around, the witness saw that Kljajić's skin was cracked from the blows. Witness K016 also confirmed witness K044's statement that Ismet Kljajić was beaten up, linking the time of his beating to the time of the beating of Drago Tokmadžić and Esad Islamović.

With respect to the beating of detainee Mesud Terarić, as in the majority of the previous cases, witness K044, who stated in his evidence that Terarić was beaten up, did not see the beating itself, but confirmed that the said detainee was called out, whereupon he returned all bloody and beaten up. Therefore, the Court finds the said beating to be established. In the cases when the witnesses testified on individual instances of beating without describing the very act of beating, but describing the call-out and then the consequences of the beating, the Court found the witnesses' testimonies to be credible and convincing, given the chronology of the events described in the testimonies. The impartiality of the testimonies stems from the fact that the witnesses in such situations were not describing the events they actually had not seen, which leads to the conclusion that their intention when giving evidence was not to blow a certain event out of proportion or accuse someone without grounds. Given the consequences of the beating of the aforementioned detainees, described by the witnesses who saw the detainees following the beating, the Court concluded beyond doubt that these detainees were beaten brutally indeed.

The Indictment of the Prosecutor's Office of B-H reads that on or about 13 June 1992, detainees K05, Ziko Krivdić and Suad Bajrić were beaten up, and that detainee Suad Bajrić was also wounded by a bayonet. As the Indictment reads, these detainees were beaten up immediately upon arriving from Kozarac by the Keraterm camp staff that used cables for the beating to inflict severe bodily injuries on the detainees. Certain facts in the Indictment related to the relevant incident have been corrected in accordance with the testimony of witness K05, who, in addition to having been beaten up on that occasion, also saw the beating of Ziko Krivdić and Suad Bajrić. The Court primarily omitted the allegations from the Indictment that the aforementioned detainees sustained severe bodily injuries on the relevant occasion, considering the fact that it was a legal name of a certain criminal offense whose existence must be proved by an appropriate expertise, which was not done in the case at hand. In addition to this, also omitted are the allegations from the Indictment that K05, Zijad Krivdić and Suad Bajrić were beaten up together immediately upon their arrival in the Keraterm camp from Kozarac, as it follows from the testimony of witness K05 that he personally had been brought to the Keraterm camp earlier, not on or about 13 June 1992, as the Indictment reads. According to witness K05, on whose testimony the Court based its conclusion that the event concerned indeed happened, Suad Bajrić and Zijad Krivdić were brought to the Keraterm camp on 14 June 1992 from the village of Sivci (a village close to the place of Kozarac), which corresponds to the time indicated in the Indictment of the Prosecutor's Office of B-H. Furthermore, it follows from the evidence of this witness that Suad Bajrić and Zijad Krivdić were "capped" with a cable with a screw on top of it. Since all detainees who were within the perpetrators' reach were beaten by the cable, according to the witness, he also received a blow to his head. Witness K05 also claimed that the wound on his head became worm-infested from the unwashed blood and he afterward also saw that Ziko Krivdić had a worm-infested wound as a result of the beating. With respect to detainee Suad Bajrić, the witness saw when Bajrić's feet were pierced by a bayonet. Since witness K05 was 4 meters away from Suad Bajrić and Zijad Krivdić, it is absolutely beyond doubt that he could see the said beating and inflicting of injuries on Suad Bajrić by a bayonet, since it is a distance at which every man of average eye-sight would be able to see such an event. The Indictment reads that one of the detainees beaten on that occasion was called Ziko Krivdić and witness K05 called him Zijad and Ziko Krivdić, which indicates that he referred to one and the same man, as it is obvious that the incident concerns Zijad Krivdić.

Also, according to the Indictment, on or about 14 June 1992, Predrag Banović and others beat up new detainees who arrived that day from the village of Sivci. The Court has found that this event was also established beyond any reasonable doubt, given the fact that witness K08 was examined about the said circumstances as he was in the group of captives, so he described the events following their bringing to the Keraterm camp. This witness stated that he was arrested on 14 June 1992 and brought to the Keraterm camp, which is also confirmed by the statement of witness K05. Witness K05 testified about the beating of Suad Bajrić and Ziko Krivdić and stated that on 14 June 1992 three buses of people from Sivci arrived, which indicates that he was referring to the same group of detainees. As it follows from witness K08's testimony, the said group of detainees was met by persons in military uniforms and reserve police uniforms. The witness claimed that the said persons were the camp guards who then pushed them out of the buses, beat individuals and took their personal belongings. Describing the said event, the witness said that the guards searched and beat certain detainees, that is, that

every guard would beat whomever he could get hold of. The statement of witness K08 was corroborated by the statement of witness K05, who described the arrival of the detainees from the village of Sivci, stressing that the members of the shift on duty on that occasion made a gauntlet and beat the detainees when they were getting out of the buses. Witness K08 also described the first night of the detention in the Keraterm camp, stating that, in addition to having been beaten upon his arrival, these detainees, himself included, were also beaten in the evening, having been placed in their respective rooms. The witness said that the perpetrator of these beatings was a person nicknamed "Čupo", which points to the guard Predrag Banović, who, according to the witness, came in that evening and beat the people up asking them: "Has anyone harmed you?" When the detainees answered in the negative, Čupo cursed their mother and told them: "You'll see what will happen to you here." According to this witness, Čupo then beat up 3-4 detainees from the room where the witness was held, whereupon he went from one room to another and beat the detainees. Since the witness was in the group of persons brought to the camp on the said occasion, and having in mind that his evidence indicates that he saw some detainees from his room being beaten the first night upon the arrival, the Court did not find this witness' statement to be disputable regarding the described event, since he practically was in the immediate proximity of the scene and could clearly see what was going on.

It ensues from the facts in the Indictment and the testimony of witness K010 that he was beaten up a couple of times during his detention in the Keraterm camp. The first beating, indicated in the Indictment, happened on the night of 16-17 June 1992, when Dragan Kondić beat witness K010 with a pistol against his chest and then continued beating him with others at a different location. According to witness K010, he was brought to the Keraterm camp on 11 June 1992 and was interrogated on 16 June or July 1992. Since the witness linked his first beating to the day of his interrogation, saying that the beating happened in the evening of the same day, the Court, in accordance with this witness' statement, made a correction to the allegations in the Indictment with respect to the time, stating that the event concerned happened on 16 June or July 1992. Describing further the event, the witness stated that he was called up by guard Kondić who started beating him with a stick in front of the room. Given the fact that the witness did not mention that Kondić beat him with a pistol against his chest, but by a stick, the Court made a correction to the relevant allegation in the Indictment, as indicated in the operative part of the Verdict. In addition to this, according to witness K010, Kondić continued beating him at a different location, that is, in room 5, with several other persons, which makes the relevant allegations in the Indictment established. Although the witness could not state who else, in addition to Kondić, participated in his beating, he explicitly stated that several persons participated in the beating and that he was beaten up in room 5 and that, on that occasion, the beating of his body, notably the back and the kidneys, continued, whereupon he was thrown out of the room. Describing the consequences of the beating, witness K010 stated that he was black-and-blue, that he could not move, that he even lost consciousness, and that he was only able to walk the second day after the beating.

With respect to the beating of detainee K016, which, according to the Indictment, happened mid-June 1992, when two men, one being a military policeman from Sarajevo, clubbed and kicked him in the presence of Dušan Fuštar, the Court found this event to be established beyond any reasonable doubt and made certain corrections,

which were a result of the evidentiary proceedings, with respect to the Indictment of the Prosecutor's Office of B-H, as stated in the operative part of the Verdict. In addition to this, a correction was made as to the time of the relevant beating, since the Court could not establish with certainty from the testimony of witness K016 whether the witness was beaten up mid-June 1992, but the testimony of witness K016 indicates that the beating certainly happened in June 1992. As witness K016 stated, he was beaten up by the military policeman from Sarajevo and one other person, after he failed to give them the names of two "extremists" among the detainees, which is when the military policeman told him: "If you do not want to find them, I will beat you." Witness K016 described the beating in the following way: the military policeman beat him with a stick, while the other person who the witness said was shorter kicked him in his stomach, and both of them beat him against his back and head, from which he got bruises over his back. On the basis of witness K016's statement, the Court established that two persons beat him on the said occasion, one being a military policeman from Sarajevo, who introduced himself to the witness as a military policeman from Sarajevo, and they both used sticks, while the other person also kicked the detainee. The witness' statement also corroborated the allegations in the Indictment that Dušan Fuštar, too, was present during the beating and that he watched the beating all the time just saying: "Don't beat him in the head."

With respect to the beating of Hamed Karabašić, Zijad Krivdić and his son Suad nicknamed "Mitraljezac", which, according to the Indictment, happened on 24 June 1992, the Prosecutor's Office of B-H did not offer a single piece of evidence in the course of the evidentiary proceedings to corroborate these allegations, which the Prosecution stressed in its closing argument anyway. The Court, therefore, omitted this event in the operative part of the Verdict, as it inferred that the Prosecution did not prove it.

The Court based its belief that in June or July 1992, detainee Faruk Hrnčić was brutally beaten and kicked by Predrag Banović and his brother Nenad Banović, on the statement of witness Ismet Dizdarević given to the Office of the Prosecutor of the ICTY on 2 February 2002. Since witness Ismet Dizdarević meanwhile died, which is obvious from the aforementioned Death Certificate, the Court, pursuant to Article 273(2) of the Criminal Procedure Code of B-H, admitted this witness' statement as an exhibit at the main trial, given the fact that this witness' attendance and testimony about this event before this Court were impossible due to his death. Witness Ismet Dizdarević said in the statement that he remembered well when "Čupo", referring to the guard Predrag Banović, called out Faruk Hrnčić from room 2 and took him between two parked trucks where the other Banović was waiting, according to the witness. This statement of witness Ismet Dizdarević leads to the conclusion that brothers Predrag and Nenad Banović, whom all the detainees identified as the Banović brothers, took part in Faruk Hrnčić's beating. The witness personally heard the Banović brothers beating detainee Faruk Hrnčić, who was moaning in pain, which is a fact that led the Court to conclude that the beating was brutal, given that the detainee's moaning was heard although the scene of the beating was around 4-5 meters away from the rooms, according to the witness. Witness Ismet Dizdarević also stated that he did not see the beating, since it was taking place between two trucks, but that he clearly heard what was going on. However, when Faruk Hrnčić fell, the witness stressed that he saw both Banović brothers kicking him, and the Court finds this statement to be true and convincing as it

finds that the witness could see beneath the truck Faruk Hrnčić lying on the ground while being kicked by the persons whom the witness had earlier identified as the Banović brothers. The very fact that Faruk Hrnčić was returned to room 2 after some 15 minutes by Čupo, who had called him out, also leads to the conclusion that Predrag Čupo Banović participated in Hrnčić's beating. The factual part of the Indictment reads that Faruk Hrnčić was beaten up in June 1992, which realistically is an accurate timeframe, as witness Ismet Dizdarević mentioned the beatings during the first 15 to 20 days of the detention, which indicates that the witness was referring to the month of June 1992. Since the witness did not give the exact time of Faruk Hrnčić's beating, the Court, nevertheless, corrected the time of the beating and allowed for a possibility that it could happen in July 1992 as well, given the fact that all the killings and beatings of the detainees happened during these two months.

According to the Indictment, the following incident happened in late June 1992 and it concerns the beating of the three Ališić brothers, Armin, Edo and the third one whose nickname was "Jama", with a baseball bat by Predrag Banović. Witnesses Edin Ganić, K09 and K029 testified about the beating of the three Ališić brothers. The fact that the relevant event happened in late June 1992 primarily arises from the testimony of witness Edin Ganić, who stated that he was called out on the same day as the Ališić brothers. It was established earlier that this witness was called out and beaten up in late June 1992. Witness Edin Ganić stated that the names of the Ališić brothers, who were detained in the Keraterm camp and beaten up on the relevant occasion, were Edin, Armin and Fehim. At the moment when he was being taken out to the beating, he personally saw the said persons beaten up next to the wall at the end of the Keraterm camp compound, stating that they were lying or sitting on the concrete floor, that they were beaten up and that they were crying, that is, making strange sounds. Witnesses K09 and K029, who heard the three Ališić brothers being called out, confirmed witness Edin Ganić's statement. According to witness K09, firstly one of the Ališić brothers was called out, and, as nobody responded, it was ordered that all the Ališić brothers should go out. However, it follows from the testimony of witness K029, who stated that three of the four Ališić brothers were in the Keraterm camp, namely Armin, Edin and Fehka (which could be a nickname for Fehim), that the three Ališić brothers were called out as "Jama's brothers". The statements of witnesses Edin Ganić and K029 lead to the conclusion that the three Ališić brothers, that is, Armin, Edin-Edo and Fehim-Fehka, were detained in the Keraterm camp and beaten up on the occasion concerned. It also follows from the evidence of witness K029, who had known the Ališić family before, that the fourth Ališić brother was known by the nickname of "Jama" and that he was not detained in the camp. In that respect, an alteration was made with respect to the factual description in the Indictment concerning the relevant event, where it reads that one of the Ališić brothers nicknamed "Jama" was called out and beaten up. The Court did not establish this from the presented evidence, hence the operative part of the Verdict reads "the three Ališić brothers", as it is absolutely certain that there were three brothers. The beating of the Ališić brothers was also described by witness K09, who, admittedly, only heard what was going on outside, describing that he could hear the noise and shouting, the voices of the guards saying: "He's so huge, I can't hit him in the head" and "Hit him in the knees." Witness K029 also heard the three Ališić brothers being called out, but he did not see the beating. However, the following day this witness saw the injuries which the three Ališić brothers had sustained in the beating, that is, he saw open wounds on their heads and that they had been beaten up. According to this witness, he personally

talked with Armin, one of the Ališić brothers, who described to him the manner of the beating saying they were ordered to kneel and bow their heads whereupon they were beaten by sticks. Despite the fact that witnesses K029 and K09 did not see the beating of the Ališić brothers, the Court, having evaluated the statements of these witnesses who heard, that is, saw the consequences of the beating, and correlating them to the testimony of witness Edin Ganić, who saw the Ališić brothers outside beaten up, established beyond doubt that these three brothers were beaten up after having been called out. The Court particularly took into account the statement of witness K029, who directly heard the details of the beating from one of the Ališić brothers. With respect to the persons who beat up the Ališić brothers, the Court could not establish beyond any reasonable doubt that it was done by Predrag Banović, given the fact that only witness K09 identified him as the perpetrator. Hence, alterations were made with respect to the Indictment allowing for a possibility that it was done by any of the guards or outsiders visiting the camp, even the Accused Duško Knežević himself, whom witness K029 pointed to. Considering the beating of Edin Ganić, when the Ališić brothers were also beaten up, it is absolutely certain that guards, including Predrag Banović, as well as the outsiders, including the Accused Duško Knežević and Zoran Žigić, were also present on the occasion concerned. It follows from the Prosecutor's closing argument that he classified the relevant event in the group of beatings committed by the Accused Duško Knežević, but the Prosecutor did not specify the charge pursuant to Article 275 of the CPC B-H, instead he only classified this beating as being perpetrated by the Accused Knežević.

According to the Indictment, Enes Crljenković was beaten up several times between 20 and 24 July 1992, namely, in the night of his arrival in the camp on 20 July 1992 by camp guards, then the following morning when, together with other detainees, he was beaten up by the guards, including Predrag Banović, Nenad Banović and Dragan Kondić, at the time they were lying on a 30-meter-long concrete path called the pista, and the morning after that, when he was forced again to lie on the pista and when he was beaten up by the guards, including Dragan Kondić, who beat him with a stick. The Court made a correction to the allegations in the Indictment with respect to this incident, too, given the presented evidence, primarily the testimony of witness Enes Crljenković, who described in detail the events upon his bringing to the Keraterm camp and during his detention. According to witness Enes Crljenković's testimony, he was arrested in the village of Rakovčani and brought to the Keraterm camp on 20 July 1992, together with the other villagers from the region of Brdo, to which the village where the witness lived belongs as well. Witness K08 confirmed witness Enes Crljenković's statement in general terms, witness K08 having been brought to the camp earlier, but leaving room 3 between 20 and 25 July 1992 together with the other detainees, to which the inhabitants of the Brdo region were then brought. According to witness Enes Crljenković, immediately upon being brought to the camp, the detainees were beaten by the guards and the first day, a Monday to the witness' recollection, the detainees were forced to lie prone with hands raised above their necks on the "pista". The witness stated that if any of the detainees moved or changed position, he would be beaten by the guards, including Predrag Banović, Nenad Banović, and a person called Faca. With respect to these allegations in the Indictment, the Court finds it completely established that Enes Crljenković was beaten up on 20 July 1992, when he was brought to the camp, as the Indictment reads, at the time while he was lying on the "pista". With respect to the identities of the persons who beat him, the Court fully believed this witness, as the



witness was resolute when naming them, moreover as he had known Predrag and Nenad Banović since before, and considering the other witnesses' statements, which indicate that the Banović brothers were generally inclined to beating the detainees. The Court omitted Dušan Fuštar, who was also identified as a person who beat up the newly-arrived detainees on the said occasion, having been guided by the Agreement on the admission of guilt that this Accused entered with the Prosecutor's Office of B-H, as well as by the amended Indictment. The Court also omitted the allegations from the Indictment that Enes Crljenković was beaten up in the night upon his arrival in the camp, since it follows from this witness' testimony that he was not beaten then. That is to say, Enes Crljenković testified about certain call-outs and beatings of the detainees from the Brdo region the first night upon their arrival, but did not say that he was personally taken out and beaten up, so the Court is of the opinion that these allegations from the Indictment have not been proven. Describing the following days of his detention in the Keraterm camp, witness Enes Crljenković stated that the detainees who were held in room 3 were taken out to the "pista" every following day and forced to lie there. The testimony of witness Crljenković, the other witnesses' testimonies and the photographs of the Keraterm camp attached as exhibits in the case file indicate that the "pista" was a concrete strip in front of the building with the rooms. However, the Court did not find it established from the presented evidence that the concrete strip was 30-meter long, hence a correction was made with respect to this, that is, these allegations were omitted from the operative part of the Verdict. In the part of the testimony where the witness was describing the incidents when he was forced to lie on the sun together with other detainees on the "pista" in the following days, he stated: "We were being beaten up every day. They beat us with arms, butts, sticks, pistols against our legs, arms and heads." This statement leads to the conclusion that, in addition to witness Enes Crljenković, the other detainees were also beaten up on the occasion concerned, as the facts in the Indictment indicate. In addition to this, it follows from this witness' statement that he was beaten up on the first day, when he was forced to lie on the "pista", but the witness did not state that the beating was conducted by guard Dragan Kondić on that occasion. Witness Enes Crljenković mentioned guard Kondić only in reference to the beatings that followed in the coming days, mentioning him in the group with the Banović brothers and Željko Radinović, which was indicated in the factual part of the Indictment. According to witness Enes Crljenković, he was not particularly beaten by a certain guard, but he described a situation in which all the detainees were being beaten arbitrarily by the present guards, in which respect the Court also made an alteration to the allegations in the Indictment, as stated in the operative part of the Verdict. The Prosecution tried to prove that the witness was deliberately beaten up by the guards, guard Dragan Kondić included, which, in the opinion of the Court, the witness' statement did not confirm. The Defense pointed to the witness in the cross-examination that, in addition to Dragan Kondić, there was also a Dušan Kondić and a Milivoje Kondić, or that it was the same person with a different name, but the witness was clear in the direct examination that it was guard Dragan Kondić, who was also mentioned in reference to the beating of detainee K010. That the said beatings lasted from 20 July 1992 to 24 July 1992 also follows from the testimony of witness Enes Crljenković, who stated that he was being taken out from Monday, 20 July 1992, through Friday, 24 July 1992, when a massacre in room 3 took place.

The beating of Besim Fazlić, Mehmed Avdić, Muharem Sivac and Mirsad Crljenković, who were beaten up between 20 and 24 July 1992, was also established beyond doubt in

the evidentiary proceedings, in the opinion of the Court, but a certain alteration was made to the description of facts in the Indictment as was with the previously described incidents. The Court established the beating of the said persons on the basis of the testimony of witness Enes Crljenković, who provided a complete account of the events that followed in the night after the bringing of the detainees from the Brdo region. Witnesses K08, K043, K044 and K016 stated in accord that the detainees from the villages in the Brdo region, having been brought in, were detained in room 3 after the room had been vacated. The same is also confirmed by witnesses Enes Crljenković and K07, who were in the group of detainees who were placed in room 3. Witness Enes Crljenković described the event that happened in the night following their arrival when a group of detainees were taken out and beaten up. According to him, the group was made up by Ismet Bajrić and Nurija Crljenković. The witness saw them being called out and then followed the events outside the room and on that occasion he heard blows and moans and finally saw the condition of these detainees following their return to the room. He said that they were in a very bad shape and had bruises all over. Asked by the Prosecutor, witness Enes Crljenković stated that on the first night, he referred to the night of 20/21 July 1992, the following detainees were also taken out and beaten up: Besim Fazlić, Mehmed Avdić, Muharem Sivac and Mirsad Crljenković. The Court fully believed this witness, exactly because he was in the same room with the persons who were called out the relevant night, and, as the witness had known all the said detainees well since they had lived in a territorially connected part of the Prijedor outskirts called Brda, it was established beyond doubt that the witness could not make a mistake as to the identity of the called detainees. In addition to this, witness stated that Mirsad Crljenković, who was taken out the same night, was his cousin, which is an additional circumstance indicating that the witness quite certainly saw him being taken out. The time of the beating of the said persons completely corresponds to the timeframe cited in the factual description provided in the Indictment, given that witness Enes Crljenković's testimony, on which the Court based its conclusion that the relevant event indeed happened, indicated that the said persons were taken out and beaten up on the night of 20/21 July 1992. Since the Court could not establish in a reliable way which of the guards called out and beat up Besim Fazlić, Mehmed Avdić, Muharem Sivac and Mirsad Crljenković, it made the relevant correction with respect to the facts given in the Indictment. Also omitted is the description of the injuries that the said persons sustained on the occasion, as the witness did not testify about it. Also omitted from the operative part of the Verdict are the charges from the Indictment that the said persons were beaten up several times, since it follows from witness Enes Crljenković's evidence that they were taken out and beaten up only once, not several times, in the night of 20/21 July 1992, as explained above.

The Court omitted from the operative part of the Verdict the beating that, according to the Indictment, took place on or about 25 July 1992, when detainees Mirsad Crljenković, Nurija Crljenković and eight others were taken out of room 3 and beaten up, the detainees not been able to walk afterward as a result of the beating, since no presented evidence led to the conclusion that this incident really happened, which the Prosecutor also stressed in his closing argument.

It follows from the facts in the Indictment that during his detention in the Keraterm camp, witness K010 was beaten up several times by Dragan Kondić, that is, in the night after the day when this detainee was interrogated by an interrogator, this beating having

been described earlier; on 12 July 1992, when he was beaten up again by Dragan Kondić; on 20 July 1992, when he was beaten up by Zoran Žigić and Dragan Kondić, and, finally, on 23 July, when he was beaten up by Zoran Žigić. However, on the basis of witness K010's testimony, the Court established beyond any reasonable doubt that this witness was actually beaten up twice, in addition to receiving one blow when being taken to interrogation, which incident was not included in the Indictment. The first beating, which the Court established happened on the night of 16/17 June or July 1992, when witness K010 was beaten up by Dragan Kondić and then on another location and by other persons who joined Kondić in the beating, is described in the part of the Verdict pertaining to the said incident. In addition, the Court did not find in the presented evidence, primarily witness K010's testimony, the grounds to conclude that the witness was beaten up again by Kondić only, since the contents of his testimony indicated that he was beaten by Kondić and Zoran Žigić together on that occasion. Finally, the Prosecutor's Office of B-H did not offer a single piece of evidence in the evidentiary proceedings to corroborate the allegations in the Indictment that Zoran Žigić alone beat up witness K010 on 23 July 1992, which the Prosecutor himself also stated in his closing argument. As follows from the foregoing, in addition to the beating of the night of 16/17 June or July 1992, this witness was also beaten up by Dragan Kondić and Zoran Žigić on another occasion, hence the Court accordingly made an alteration to the allegations in the Indictment, as stated in the operative part of the Verdict. The other incident when witness K010 was beaten up happened, according to the witness, on 23 July 1992. However, the witness himself expressed reservations about the date during his testimony stating: "It was 23 July, I think." In view of the foregoing, the Court indicated in the operative part of the Verdict that the incident concerned happened in the second half of July 1992. In making this conclusion, the Court was led by the fact that the motive for the second beating of witness K010 was an event related to the detainees in room 3, who were locked in there without food and water, which the witness described in his evidence and which indicates that these were the detainees brought from the Brdo region around 20 July 1992. The witness described in a way clear and convincing for the Court the event when, asked by the detainees in room 3, he collected bread together with other detainees and threw it through the window into room 3. According to witness K010, this gesture of his served as a pretext to Kondić to beat him up as he saw or heard from someone that bread was thrown through the window of room 3, whereupon K010 was beaten up. The witness stated in his evidence: "Then I was beaten up by Kondić. I was also beaten by Žigić. This happened at daytime. On that occasion Žigić was kicking me and Kondić beat me with his hands and a stick. The beating took place in front of rooms 2 and 3." As this witness described in detail the events surrounding his beating on that occasion, and given the fact that his testimony was not seriously called into question, the Court found it established that the said event happened in the above-described way and made the corrections in accordance with it, as explained already.

The beating of Ismet Bajrić, mentioned in the context of testimony of witness Enes Crljenković, happened, as stated in the Indictment, on or about 20 July 1992, after Bajrić was brought to the Keraterm camp. When establishing the time of the event, the Court fully accepted the testimony of witness Enes Crljenković, who was also brought to the camp on 20 July 1992 and according to whom Ismet Bajrić was called out the same night together with Nurija Crljenković, which is practically linked to the calling out and beating of Besim Fazlić, Mehmed Avdić, Muharem Sivac and Mirsad

Crljenković. The witness was specific as to the time when the said persons were taken out, stressing that they were beaten from 22.30 to 02.00 hrs, during which the witness heard screams but could see nothing, which is logical given the fact that the door of room 3, where he was held, was locked. Finally, the fact that the witness saw the condition of these persons when they were returned from the beating, describing that they had bruises over their bodies and were in a bad condition, clearly leads to the conclusion that they were beaten up during their absence from the room from 23.00 to 02.00 hrs. Contrary to this, the Court did not find it established beyond any reasonable doubt that Nenad and Predrag Banović kicked and beat up the said person with fists, rifles and karate chops, and especially that the beating took place after the victim arrived in the camp by bus. In other words, it follows beyond doubt from Enes Crljenković's statement that the said person was beaten up in the night upon his arrival, but the witness did not testify about the circumstances and the manner of the beating itself, since he was not an eyewitness to it.

The bringing of the detainees from the Brdo region to the Keraterm camp, which happened on or about 20 July 1992, and their beating by the guards and their keeping without food and toilet facilities, have already been partially described in the previously quoted incidents. First of all, witness Enes Crljenković testified about the relevant incident, the witness belonging to the said group of detainees, as established earlier, and explained that all detainees were being beaten by the guards on arrival in the camp, on which occasion his father and brother were also beaten up. Witness K07, who was brought in the group of people from the Brdo region, described the incident when they arrived in the Keraterm camp stating that, when they were getting out of the buses, they were all being kicked and beaten with sticks, riffle butts, cables and wire cables, whereby he fully confirmed witness Enes Crljenković's statement about the beating upon the arrival. As witness K07 stated, he was beaten up on the occasion concerned, when he was hit on his back, head and legs. Witness K043 also described the beating of the newcomers from Brdo and remembered their arrival in the camp. He said that, upon the arrival of the buses, when the detainees started getting off, some 10 detainees were singled out and ordered to slap themselves, which the witness saw personally. Witness K043 claimed that the detainees from Brdo were beaten by the regular guards, and, as it follows from all the witnesses' testimonies that the event happened during the day, it is absolutely certain that this witness could see the said beating and identify the guards as the perpetrators of the beating, given the fact that the witness had been held in the camp for a certain period and could distinguish between the camp guards and the visitors. According to witness K043, the bringing and beating of the detainees from the Brdo region took place 15-20 days prior to his departure from the camp, which generally corresponds with the time indicated in the Indictment, given the fact that the detainees from the Keraterm camp were taken out on 5 or 6 August 1992. The testimonies of the aforementioned witnesses were also corroborated by the testimony of witness K044, who saw the buses with the detainees from the Brdo region arriving. These detainees were then forced to pray the Muslim way with prostrations and were simultaneously being searched and beaten with rifles, rifle butts, sticks and cables. This witness also confirmed that the said detainees were beaten and abused sadistically by the regular guards of the Keraterm camp. Finally, witness K08 also confirmed that the people from the Brdo region were searched, beaten and forced to kneel having been brought to the camp. His assertions are in complete agreement with the statements of the aforementioned witnesses. The timeframe of these detainees' arrival given by witness

K08 corresponds to the timeframe indicated in the Indictment, since the group of detainees in which he was a part of had to leave room 3 and move to room 2 in order for the detainees from the Brdo region to be held in room 3, which happened between 20 and 24 July 1992. The statements of the aforementioned witnesses also corroborate the allegations in the Indictment that the detainees from the Brdo region were held for some three days without food and access to toilet facilities. That is to say, witness Enes Crljenković said in his testimony that he, as well as the other inhabitants of the Brdo region, was detained in room 3, which is also confirmed by witness K016 and witness K07, who was personally held in this room, then witness K044 and witness K08. As has been established above, the said detainees were brought to the Keraterm camp on or about 20 July 1992. The Court based its conclusion that the detainees from Brdo were held in room 3 for around three days without food and access to toilet facilities primarily on the testimony of witness Enes Crljenković, who determined the detention as lasting from the arrival on 20 July 1992 until the night of a massacre in which a huge number of detainees were killed, that is, until 24-25 July 1992. The other witnesses also indicate that the detention of the detainees from Brdo in room 3 lasted from their arrival until the massacre in the night of 24-25 July 1992, which is indicated by the statements of witnesses K08, K044, K043, as well as the other detainees who confirmed that the massacre happened in the night of 24/25 July 1992. Witness Enes Crljenković testified in detail about the conditions in which these detainees were held in room 3. His testimony indicates that the detainees were locked up and that "there were no meals for [room] 3", except that some bread was "thrown in" Friday evening. This witness' statement was also confirmed by witness K016, who stressed that the detainees from this room enjoyed special treatment, that they did not go to lunch and that they were closed all the time, that is, that they could not go out and that only once two "small tubs" of bread were brought to them. Witness K044 also testified about the conditions in which the detainees in room 3 were held and said that these detainees were not allowed to go out and that the door was even closed, and that they did not get food or water, except once when the other detainees brought them three bottles of water. The statement of witness K08, who said that the other detainees did not have contact with the detainees in room 3, also leads to the conclusion that these detainees were not allowed to go out and that they enjoyed a particularly unfavorable treatment in the Keraterm camp. The statements of the aforementioned witnesses, which indicate that the detainees in room 3 were held without food and were not allowed to leave the room, lead the Court to the conclusion that they were equally forbidden from going to the toilet, especially since they were locked up all the time so they could not get out. Finally, witness K010 also confirmed the foregoing when describing his second beating, since he stressed that he was beaten up because he threw bread through the window to the detainees in room 3 having heard them pleading for some water and bread. According to witness K010, this event took place around 23 July 1992, which roughly corresponds to the period in which these detainees were held in room 3. Witness K07 also testified about the difficult conditions in room 3, as he was held in it, too. He stated that the room was so full that everybody had to stand on one foot, that it was like being in a gas chamber and that the detainees did not have access to water. Only the statement of witness K08 is partially contrary to the statements of all the aforementioned witnesses, as this witness said that he thought that these detainees perhaps went to the toilet and that they were given bread only at the door. However, in the opinion of the Court, the statement of witness K08 did not call into question the assertions of all the other witnesses, who described an extremely difficult position of the said detainees. That is to say, the Court believes that

this witness might have thought that the detainees were receiving bread on a regular basis because he saw bread being brought to them on one occasion only, since it can be concluded beyond doubt from the other witnesses' testimonies that the detainees were held without food in general and that the bread was brought to them only once, which was an exception. With respect to this event, the Court made some corrections, as indicated in the operative part of the Verdict, given the evidence presented on the said circumstances.

With respect to the incident related to detainee Meho Kapetanović, the Court also found it established that he, too, was beaten up during his detention in the Keraterm camp. According to the Indictment, the beating happened in the period from 31 May 1992 to 5 August 1992, the timeframe within which the camp was operational. The Court fully accepts such a broad timeframe, since it is a period in which all the beatings and killings of the detainees took place, so the timeframe is not called into question in any serious way. The Court based the conclusion that the said beating happened indeed on the testimony of witness K044, from which it primarily follows that this witness had known Meho Kapetanović before and that he saw him in the camp. According to witness K044, Meho Kapetanović was beaten up by the guard Banović, who was once telling him, while beating him with a shovel: "Professor, this is for that old fail grade?" As the witness stated, Banović also beat a *hodja* who was close by. Since witness K044 did not state in his evidence whether Meho Kapetanović was beaten by Predrag or Nenad Banović, the Court could not establish reliably which of these two guards perpetrated the relevant beating, hence the Court accordingly made a correction to the allegations in the Indictment by omitting the name Predrag in the operative part of the Verdict and identifying guard Banović as the perpetrator.

With respect to the beating of Enver "Žuti" Modronja, which, according to the Indictment, happened in the period from 3 June to 5 August 1992, when this detainee was beaten on several occasions by Predrag Banović and others, and when Predrag Banović once forced him to lie on the ground and beat him on his head with a baseball bat, the Court also made a correction to the allegations in the Indictment, as indicated in the operative part of the Verdict, in accordance with the testimony of the witness who testified about the said circumstances. The Court indicated in the operative part of the Verdict the decisive facts concerning the beating of Enver Modronja, stating also the time of the beating and the perpetrator, while omitting more detailed circumstances surrounding the beating (forced him to lie on the ground and beat him on his head), which did not affect the determining whether or not the event took place. Witness K043, who testified about the beating of Enver Modronja, stated that he knew the man and that he knew his nickname "Žuti"<sup>\*</sup>. According to the witness, Enver Modronja was called out by Banović who said: "Let the blond waiter get out," after which Modronja was beaten up. The witness actually saw the moment when detainee Enver Modronja was called out, as well as his condition when he returned to the room where they were held. Describing Enver Modronja's injuries, witness K043 stated that Modronja struck him as being dead, that he was beaten up and that blood leaked from his head. According to the witness, he personally heard from Enver Modronja what happened outside, as Modronja told him: "That guy Čupo stomped on my neck and hit me with a stick upon my head, I am now feeling dizzy." When, in addition to the foregoing, one also takes into account

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\* The blond one; translator's note

the fact that, following the calling of this detainee, the witness heard noise from the outside, all the circumstances lead beyond doubt to the conclusion that Enver Modronja was beaten with a stick upon his head by Predrag Čupo Banović on the said occasion, as witness K043 stated. In the operative part of the Verdict, the Court omitted the allegations from the Indictment that Enver Modronja was beaten up several times by Predrag Banović, since witness K043 described one instance of beating only, and it also omitted the allegations that others, in addition to Predrag Banović, beat him up, since Enver Modronja mentioned to the witness only the person nicknamed "Čupo". For the same reasons mentioned in the previous case, the Court here also found it established that Enver Modronja was beaten up in the period from 3 June to 5 August 1992, which is the period when the majority of the beatings took place.

The next event described in the Indictment of the Prosecutor's Office of B-H concerns the beating of detainee Šaban Elezović by Predrag Banović and others, which happened during the period from 9 June 1992 to 5 August 1992. The beating was done in such a way that his one arm was broken or dislocated. Witness K08 testified about this event in the evidentiary proceedings and it is on that testimony that the Court based its belief that detainee Šaban Elezović was beaten up at the time and in the manner described in the operative part of the Verdict. It follows clearly from the testimony of witness K08 that the said beating happened in the indicated period, as the witness said that it happened approximately around 15 July 1992. Witness K08 stated that he remembered the incident when Šaban Elezović, whom he had known before, was beaten up. The witness said that Elezović was beaten heavily, that his arm was dislocated, and that he was told to find money, otherwise they would kill him. As the witness described, Šaban Elezović went from one hall to another asking for money. Witness K08 personally saw detainee Šaban Elezović's arm hanging, on the basis of which the Court concluded beyond doubt that when he was being beaten, his arm was either broken or dislocated, which is also indicated by the witness' testimony that Šaban Elezović was transported to the hospital the following day and that his injured arm was placed in a cast. The Court also found the allegations in the Indictment that Šaban Elezović's beating was perpetrated by Predrag Banović and others to be established, since witness K08 stressed that the voices of the perpetrators could be heard, primarily the voice of "Čupo", which points to guard Predrag Banović, and that by the voices the witness gained an impression that there were several perpetrators of this beating, that is, four or five in his estimate.

The beating of Mirsad Karagić which, according to the Indictment, took place in the period from 18 June to 5 August 1992, when this detainee was beaten up by a police baton, follows from the testimony of witness K029, who personally saw the said event. However, given the fact that when describing the beating, witness K029 stated that a guard Banović beat up Mirsad Karagić, without specifying that it was Predrag Banović, the Court made a correction with respect to the relevant allegations in the Indictment. According to this witness, a guard Banović called out Mirsad Karagić and took him to a weigh station within the camp compound, whereupon the witness watched the guard beating the detainee with a police baton, which lasted for about 15-20 minutes, in his estimate. Describing further developments, the witness stated that shift leader Kajin came and yelled at Banović, whereupon Mirsad Karagić was released and taken back to the room. As it stems from the testimony of witness K029, the beating of Mirsad Karagić happened at daytime and he was within the camp compound, which are the circumstances that lead the Court to the conclusion that the witness could see the

beating as well as the perpetrator, that is, the implement with which the beating was carried out. Finally, when showed the Keraterm camp photographs, the witness pointed at the room in which he was held, as well as the spot within the camp compound where Mirsad Karagić was taken and beaten, that is, the weigh station and the booth, the photographs being tendered as the Prosecution exhibits Nos. 13A, 13B and 13C.

The Indictment of the Prosecutor's Office of B-H reads that in late June 1992, Predrag Banović severely beat a person whose last name was Mešić. The Court did not find this allegation to be proven, since no evidence was presented in that respect, that is, no witness testified about it. Given also the Prosecution's closing argument, stating that there was no evidence of this event, the Court omitted this allegation in the operative part of the Verdict.

The following event described in the Indictment of the Prosecutor's Office of B-H concerns the beating of Suad Halvadžić, who, as stated, was brutally beaten several times during a night in July 1992 by Predrag Banović and others who broke his ribs, while Predrag Banović also tried to cut off Suad Halvadžić's left ear. Corrections were also made with respect to the allegations in the Indictment concerning this event, too, primarily regarding the time of the event. In other words, the Court could not establish with certainty that Suad Halvadžić's beating happened in July 1992. Witness K029, who described the event, stressed that Suad Halvadžić was called out a couple of days after Džemal Mešić. As it was established that Džemal Mešić was beaten to death in June or July 1992, the time of the calling and beating of detainee Suad Halvadžić was indicated in accordance with it. According to witness K029, Suad Halvadžić was called out during the night and this witness heard the call and saw detainee Halvadžić leaving. Witness K029 also described the events upon Suad Halvadžić's return to the room, when Halvadžić said that he was beaten by several persons and that, after they had stopped beating him, Čupo Banović noticed that there was no blood, saying: "Look, the damn *balija* hasn't started bleeding." He then took out a knife and cut off a piece of Suad Halvadžić's ear. In addition to this, witness K029 stressed that Suad Halvadžić complained of pain in his chest for days after the incident and that his ribs were probably broken. Therefore, the witness heard about Suad Halvadžić's beating, followed by Predrag Banović tearing off a piece of his ear, from Halvadžić himself, and he saw it directly as he saw him being covered in blood and missing a piece of his ear. The foregoing leads the Court to conclude that the detainee Suad Halvadžić was first beaten by Predrag Banović and others, whereupon a piece of his ear was torn off by Predrag Banović, of which the fact that Suad Halvadžić complained of chest pain for days afterward is another indication. With respect to the circumstances of this event, the Court made a correction by omitting the allegation that Suad Halvadžić was beaten up several times, since witness K029 described one beating only, which, in his estimate, lasted for half an hour. Also omitted are the allegations in the Indictment that Suad Halvadžić had his ribs broken on the said occasion, since the Prosecutor's Office of B-H did not offer a single reliable and corroborating piece of evidence in that respect. Also omitted from the operative part of the Verdict is the name of Nenad Banović as a perpetrator of this beating, since witness K029 did not mention him in his testimony, while it was established with certainty that several persons, guard Predrag Banović included, participated in the incident.



The last event described in the factual part of the Indictment regarding the Keraterm camp concerns Uzeir Zejro Čaušević, whom, as the Indictment reads, on or about 21 July 1992, Predrag Banović shot in the leg, whereupon the detainee was taken out of the camp in a military truck as of when he has been unaccounted for. The Court based its belief that the incident really occurred primarily on the testimony of witness K05, who personally saw what happened on that occasion. According to witness K05, Zejro Čaušević was brought to the Keraterm camp together with the other detainees from the Brdo region around Prijedor. The Court based its belief that the said event happened about 21 July 1992 on the said witness' statement. Witness K05 was an eyewitness when Zejro Čaušević was singled out by camp guard Predrag Banović, a.k.a. "Čupo", and taken to the kiosk between the camp and the road, whereupon he was beaten up by the said guard who, according to the witness, "took a pistol and fired putting a bullet through his leg." Witness K05 also stated that he personally saw this incident and that Zejro was driven away in a truck, whereupon he did not return nor did the witness see him ever again. The taking of Zejro Čaušević was also confirmed by witnesses K013, K044, K016 and K043. The Court fully believed witness K05, as it considered his testimony to be impartial and convincing and in agreement with the other witnesses' statements with respect to certain facts. That is to say, the statement of witness K016 that Zejro Čaušević wore a bloodied pair of long johns at the time he was loaded onto the truck and driven away, additionally leads to the conclusion that he had injuries to his leg originating in the aforesaid manner. Witness K013 also confirmed the assertions of witnesses K05 and K016 that Zejro Čaušević was taken in an unknown direction, as well as of witness K044, who stated that Zejro Čaušević was taken in a truck with the other injured detainees and that he never returned. The Court made a correction concerning this event by omitting in the operative part of the Verdict the allegations that Zejro Čaušević was shot in the lower part of his leg, since witness K05, who described the event, said in his testimony "in his leg". In addition to this, also omitted are the allegations that Čaušević was taken in a military truck, since no other witness, except witness K05, stated that it was a military truck, which is, anyway, irrelevant to the said incident. The witnesses called Uzeir Zejro Čaušević in their testimonies by the nickname Zejro, which is a logical nickname for the name of Uzeir, so it is absolutely clear to the Court that it was a reference to the aforementioned person.

### **Identity of the accused Duško Knežević**

The defence for the third accused Duško Knežević attempted to challenge the identity of the third accused both in the course of evidentiary proceedings and in its closing submissions, indicating that the third accused Duško Knežević, as indicated in the Indictment of the Prosecutor's Office of BiH, is not the person who visited the Omarska and Keraterm camps where he committed killings and beatings as presented in the foregoing section of the Reasoning of the Verdict. The beatings and killings in the Omarska camp charged against the third accused in the Indictment of the Prosecutor's Office of BiH, as described above, were committed by a person named Duško Knežević aka Duća whom all the witnesses, on whose testimonies the Court based its finding with reference to the commission of the aforesaid criminal actions, identified with a high degree of certainty as Duća or Duća Knežević, that is, Duško Knežević aka Duća. The witnesses who used to see the named afore during their detention in the Keraterm Camp also used this name to refer to the third accused. Thus, witness Abdulah Brkić, a former

detainee of both Keraterm Camp and Omarska Camp, identified this person as Duća Knežević, the man who visited the camp together with Zoran Žigić, which was corroborated by other witnesses who, depending on what camp they were detained in, testified that they used to see Duća both in Omarska and Keraterm. Besides, a number of witnesses confirmed that Duća Knežević visited the camps together with Zoran Žigić, which entirely supports Abdulah Brkić's evidence with reference to this section of the Verdict.

A number of arguments stemming from the presented evidence both by the prosecution and defence indisputably lead to the Court's conclusion that Duća Knežević, whom the witnesses referred to in their testimonies as the person who visited the Omarska and Keraterm camps, is exactly the third accused Duško Knežević. Witness K022, who testified in the evidentiary proceedings about the killings and beatings committed in the White House by Duća Knežević, indicated in his testimony that a group of three–four camouflage-clad soldiers visited the White House, of whom the witness recalls two, including Duća Knežević whom he had previously seen in the barracks in Prijedor, where the witness had been taken to after his arrest, and Zoran Žigić. Witness K022 who, as he indicates in his testimony, was particularly intrigued by the person named Duća, given his cruel treatment of the detainees in the White House, so from the detainee named Samir "Ešefin" who knew Duća very well since before the war, this witness learned that this person is Duća Knežević from Orlovci, that his father's name is Milan and that he was born in 1967. The Court assesses that the witness had a strong enough motive to memorize the personal information of the person who visited and beat the detainees given that Duća Knežević killed his close relative in one of the beatings, including the detainee Samir, who gave him the information about Knežević, begging him to memorize as much as he is able to as he sensed that he would not survive his detention in the camp. Another witness who described the events in the White House is Emir Beganović who also identified the same group of soldiers as the perpetrators who had no official function in the Omarska Camp, including Nikica Janjić, Šaponja, Zoran Žigić, Dragan and Duća who the witness confirmed wore a camouflage uniform, which corroborated Witness K022's testimony. Witness Azedin Oklopčić also testified that Duća, whom he knew by the last name Knežević, visited the White House and committed the killings and beatings in the aforesaid manner. Witness Azedin Oklopčić closely connects Duća's visit to the camp to the visits of Zoran Žigić and Timarac who, according to the witness's testimony as well as the testimony of Emir Beganović, had no official function in the camp. The Court found further corroboration of the fact that the accused visited the Omarska Camp on the evidence submitted by witnesses K03, Fadil Avdagić, Izet Đešević, K036 and K042. According to witness Izet Đešević, he knew the accused Knežević from before, pointing out that everybody referred to him as Duća, that he used to work as a waiter, that he resided in the Orlovci village and that his father was Mile. Witness K042 in his testimony also mentions the person named Duća Knežević, indicating that he knew him from before, and that he used to see him in Omarska where he would come with a group of persons who also were not camp guards, including Zoran Žigić. Witness Fadil Avdagić also stated that he saw Duća in the Omarska camp, and he later heard his last name was Knežević. This witness, as well as a number of other witnesses, refers to this person as Dušan Knežević, however numerous other pieces of evidence indicate that this in fact refers to Duško, not Dušan Knežević. Therefore, the Court finds that the very resemblance of these two names can create a dilemma on the part of the witness as to whether the person is Duško or Dušan,

which does not substantially change the confirmation of the identity of the accused, particularly given the fact that the accused was better known among the detainees by the name of Duća than by his full first name. Witness K036 fully corroborated the previous witnesses' claims that he saw Duća (whose first name he learned from other detainees and whose last name Knežević he learned following his release from the camp) in the camp together with Zoran Žigić. This witness also indicated that Nikica and Šaponja were also in Duća's company on the said occasion, which is further corroborated by Witness K03 who stated that Duća was in the group of persons who were beating the detainees, including Zoran Žigić, Nikica and Šaponja. Witness K03 heard from other camp detainees that this was Duća whose last name was Knežević. The witnesses who were former detainees of the Keraterm Camp also mentioned Duća in their testimonies and some of them stated that this was the person named Duća Knežević. As previously indicated, witness Abdulah Brkić refers to the named above by his nickname Duća, with the last name Knežević, which witness Edin Ganić also confirms, allowing the possibility that the person's name is either Duško or Dušan, as well as witness K015 who heard from other detainees that the person's name was Duća Knežević, then witness Anto Tomić, who in his testimony mentions a person named Duća, then witness K013 according to whom the person was mostly referred to as Duća and the witness pointed out that the person's last name was Knežević, then witness K044 who saw the person nicknamed Duća in Keraterm together with Zoran Žigić, and witness K029 who also mentioned a person named Duća. Witness K016 said he had heard about Duća Knežević (whom he had not known from before) in the Keraterm Camp. This witness confirmed the testimonies of the previous witnesses that the person was mostly called by his nickname Duća, adding that this was how both the guards and Zoran Žigić called him. The person nicknamed Duća who visited the Keraterm Camp is also mentioned by witness K043 and Witness K033, then K014 who supports the evidence of witness K016 that both Zoran Žigić and the guards called him by the nickname of Duća, and that the person in question was Duća Knežević, and witness K05 who had known Duća Knežević from before. Finally, witness K08 identified the said person as Duća Knežević, stating that his full first name was Dušan, which, for the foregoing reasons, did not shake the Court's belief that this person in fact is Duško, not Dušan Knežević. None of the witnesses who referred to the accused solely by the nickname of Duća and not by some other nickname expressed even a slightest suspicion that there may have been more than one person called Duća Knežević who visited the Omarska and Keraterm camps, which clearly indicates that there was only one Duća Knežević who visited both camps, which also results from Abdulah Brkić's testimony who was a detainee in both camps and who saw Duća Knežević in both places. Some of the witnesses who had been detained in Omarska and Keraterm camps even knew Duća Knežević from before and some even knew him personally and/or by sight. This is how witness Izet Đešević saw the aforesaid person when he went to the shop where Duća had worked, then witness K042 who was a patron of the café that Duća also frequented, as well as witness K055 who played football together with Duća. All of these witnesses unanimously confirmed that this Duća Knežević whom they had known from before visited the Omarska Camp. Witnesses K05, K013, K044 and K056, who had been detained in the Keraterm Camp and who had known Duća Knežević from before unanimously stated that this person visited the Keraterm Camp. Witness K056 stated that he used to see Duća Knežević in the Keraterm Camp together with Zoran Žigić and he had known him before the war as he regularly saw him on the bus he commuted to work on. Witness K044 had also known Duća from before and he used to see him in the

Keraterm Camp, in the company of Zoran Žigić and other persons, as well as witness no. K013 who recognized in the Keraterm Camp some people whom he had known by sight, including Duća Knežević whose name he learned in the camp, then witness K05 who knew that the person was Duća Knežević. Therefore, all the witnesses mention a person nicknamed Duća, relating him to the surname Knežević, which indisputably indicates that they are referring to Duća Knežević. For the aforesaid reasons, the Court did not accept the assertions of the defence witness Boško Matijaš who points out in his statement that Duško Knežević's nickname was Čučo. To be precise, this witness's statement given in Slavica Bajić's law firm in Prijedor on 14 Feb 2003, which was admitted as prosecution exhibit no. 202 indicates that the witness himself referred to the person by the nickname Duća, not by the nickname Čučo, on several occasions, so it is not objectively possible that there were so many typographical errors in recording the statement, all with reference to the nickname. Besides, the witness stated in the said statement that he was 10 years older than Duško Knežević whom he spent time with as friends. As the witness was born in 1957, and Duško Knežević in 1967, the age of the accused closely matches the age, as estimated by the witnesses, of the person who visited the camps.

As for the position of the accused Duško Knežević in the Omarska and Keraterm Camps, the Court indisputably concluded that the above named had no function in the camps, that is to say, that he had no official position there and that he visited the camp as an outsider. The testimonies of the witnesses given with respect to the aforesaid events that the accused took part in indicate that he visited the camp exclusively to beat the prisoners, which is supported by the witnesses who stated that the camp detainees would be in great fear when they heard or saw that Duća Knežević was coming, such as, for example, K042 who stayed in the Omarska Camp and who testified that the camp detainees were in a state of great fear and that they did not dare even look when they heard that Duća and Žigić were coming. This was also supported by witness K029 who was a Keraterm Camp detainee and who testified that people would run to their dorms when Duća visited, pointing out that Duća would come and beat people and that people tended to remember such persons. According to witness K029, when Duća would come the detainees would be saying "Duća's coming, let's run!" which meant that the arrival of the accused in both camps was followed by the detainees' fear for their life and safety. These witnesses' claims were further corroborated by witness Anto Tomić who used to see Duća in the Keraterm Camp and who saw Duća the first day upon his arrival in the camp, when other detainees said "Duća's coming" and ran inside. Witness K03's testimony supports the assertion from the Indictment that Duća held no position in the camp who also stated that Duća, together with Žigić and Šaponja, visited the camp from time to time, which witness K042's testimony also supports. This witness stated that Duća Knežević was not a guard and that he visited the camp with his group, as well as witness Emir Beganović who indicated that Duća was not a camp guard and that he visited Omarska from time to time. Furthermore, witness Azedin Oklopčić, whose testimony reveals that he saw Duća in the camp on 5 or 6 occasions, pointed out that the guards particularly enjoyed the times when Duća visited the camp together with Žigić as they knew that the detainees were not going to fare well. All the cited witness testimonies also lead one to conclude that the accused Knežević visited the Omarska Camp only to beat the detainees. The witnesses who were the Keraterm Camp detainees who mentioned Duško Knežević in their testimonies unanimously stated that he had not been employed in the Keraterm Camp as a guard or any other official, and the very

accounts of the events indicate that the accused visited the Keraterm Camp exclusively to beat up the detainees. This is how Witness K014 stated in his testimony that Duća and Žigić visited the Keraterm Camp at will and Witness K08 stated that Duća visited the Keraterm Camp a number of times, which leads one to infer that he was not a camp guard. Witness K044 indicated in his testimony that Duća visited the Keraterm Camp in order to beat people whereupon he would leave the camp; when he was coming, the word would spread among the detainees: “Duća’s coming!” which also supports the claims that Knežević had no position in the camp and that the sole purpose of his visits to the camp was to beat the detainees. Testifying about the beatings that occurred in the Keraterm Camp and indicating that these beatings were committed by Žigić, Knežević, Timarac and others, the Witness K013 stated that the persons visiting the camp would come and beat the detainees and that Duća held no position in the camp. This further corroborates the claim from the Indictment that the accused Knežević was not assigned to the camp as a guard and that the sole purpose of his visits to the camp was to beat the detainees, which witness K015 confirms, as well as witness K016 who stated that Duća Knežević did not work in the camp as a guard at all but that he visited the camp in order to beat the detainees. All witnesses who mentioned the accused Duća Knežević in their testimonies stated that he only visited the camp, but was not a guard, whereas most of the witnesses draw a connection between the visits of the accused and those of Zoran Žigić. In the defense witness’s capacity, the accused Željko Mejakić also stated in his testimony that there was a group of individuals from Prijedor, including Zoran Žigić, who visited the Omarska Camp, to beat up and kill detainees, which happened frequently, stating: “Once they come, it is too late”, as it was difficult to intervene. So, the accused Mejakić in his testimony confirmed prosecution witnesses’ testimonies as to the fatal consequences of the Prijedor group’s visits for the detainees whose members the guards in effect never prevented from doing their evil deeds. Željko Mejakić did not mention the accused Knežević as a member of the group, but testimonies of the aforesaid witnesses – detainees of the Omarska Camp and Keraterm Camp clearly indicate that Zoran Žigić was in the company of Duško Knežević, which leads the Court to conclude that the accused Knežević was a member of the group that visited the camp and beat the detainees, in which direction the afore described incidents in which these persons participated also point to.

The characteristics of the accused stemming from the testimonies of the witnesses who were heard in court lead to the conclusion that Duško Knežević aka Duća is exactly the person who visited Omarska Camp and Keraterm Camp where he used to beat the detainees. It is undisputable that the accused Duško Knežević was born in 1967 in the village of Orlovci. A great number of witnesses who were heard in court stated that Duća Knežević who visited the camps was a native of the Orlovci village, near Prijedor, or a village that is a neighbouring village of Orlovci but not from the Prijedor proper or any other place. The most specific information with reference to the accused was given by Witness K022 who stated that he made inquiries about the identity of Duća who used to visit the White House and beat him and other detainees, which was understandable, as previously indicated, as this witness lost a close relative in the camp who was beaten to death by none other than Duća Knežević. This witness indicated in his testimony that this was Duća Knežević, born in 1967 in the Orlovci village. This personal information about the accused was confirmed by witnesses Izet Đešević and K055. A number of witnesses who were detained in the Keraterm Camp also supported the previous witnesses’ claims that Duća Knežević who visited the Keraterm Camp was a native of

Orlovci village or one of the villages of the Prijedor municipality which are near Orlovci. So, witnesses K08 and K056 unanimously stated that the named above was from Orlovci, witnesses K014 and K015 that he was from Čirkin Polje which is next to Orlovci and witnesses K013 and K016 that he was from Orlovača which is another village next to Orlovci. All of the afore specified witnesses' claims are fully unanimous with reference to the fact that this person was Duća Knežević, that is, Duško or Dušan Knežević from the village of Orlovci or one of the surrounding villages such as Čirkin Polje or Orlovača, whereas the witnesses never mentioned in their testimonies that he was from any other place or Prijedor proper nor did they ever mentioned any other name.

As for the age of the accused, as one of the elements to be used to confirm his identity, the Court finds that the Prosecutor's Office of BiH offered sufficient evidence to that effect to prove that this person is Duško Knežević born in 1967, which is a fact that primarily results from the personal information and documents of the accused. Furthermore, most of the witnesses, in describing the physical appearance of the accused, stated that at the time of the events, the accused was 20 to 30 years old, and only a small number of them claimed that he was over 30. Witness K022 indicated that he knew the exact year of birth of the accused for the aforesaid reasons, indicating that Duća Knežević was born in 1967, whereas witness K055 who was born in 1968 stated that Duća was one or two years his senior. Bearing in mind the fact that the witnesses were unable to precisely establish the age of the accused as the ability to guess one's age varies from person to person and depends on different circumstances, it indisputably follows from the witnesses testimonies that the witnesses gave sufficiently reliable information to conclude that Duško Knežević was around 25 or 26 years old. Witness Izet Đešević who was 42 years old in 1992, stated that the accused Knežević was 10 to 15 years younger than him, which means that the accused, in this witness's estimate, could have been anywhere between 27 and 32 years old, which generally matches the information provided by witnesses K022 and K055. Also, witness K016 confirmed the evidence of previous witnesses claiming that Duća was 25 years old at the time, while according to witness K013, Knežević was approx. 27 – 28 years old, which again generally corresponds to the actual age of the accused, as well as witnesses Azedin Oklopčić and Fadil Avdagić who indicated that Duća was around 30 years old. Truth be told, few witnesses stated that Knežević was over 30, but this categorization can be attributed to a general impression that the accused appeared older than his actual age due to his strong built, which the witnesses indicated in his physical description. It is also clear that most of the witness testimonies lead one to conclude that at the critical time the accused Duško Knežević was neither very young nor middle-aged but somewhere in between. As objective evidence indicates that at the relevant time the accused was 25 years old, the Court fully admits the witness claims who judged him to be between 26 and 30 years old, given that this age span matches the actual age of the accused. Another indisputable confirmation of the accused Duško Knežević's identity comes from his occupation and the fact that before the war he played football for a local football club, to which both prosecution and defence witnesses testified in court. According to the unanimous testimonies of witness Izet Đešević and K055, who both knew the accused Knežević before the war, Duća Knežević was a bar tender/waiter which is another relevant factor in the accused Knežević's identification, particularly given the fact that both of the witnesses used to see Knežević at the time when he worked as a waiter. Although a number of witnesses, that is, K015, K014, K016 and

K044 stated that Duća Knežević was a butcher by occupation, the court deems that these witness testimonies did not shake the testimonies of witness Izet Đešević and K055 to a considerable degree, even more so considering that witnesses K015, K014, K016 and K044 stated that they had only heard from others that Knežević was a butcher, whereas witnesses Izet Đešević and K055, who claim that he was a waiter, which corresponds to the actual profession of the accused, directly knew this, instead of having learned this from somebody else. The defence for the accused Duško Knežević tendered as an objective piece of evidence the Employment Booklet of the accused, which reads that in 1990, that is, until 6 April 1992, the accused worked in Hidrogradnja d.d. Sarajevo Company, which is supported by the evidence given by witness Boško Matijaš from 2003 which was admitted as prosecution documentary evidence. The aforesaid statement indicates that Duško Knežević worked in Iraq with Hidrogradnja until August 1990 when he returned to the Prijedor Municipality. Given that prosecution witnesses Izet Đešević and K055 used to see Duško Knežević from Orlovci immediately before the war broke out, it is clear that this was sometime during the time period from August 1990 to May 1992, which is the time after the accused had returned from Iraq, which leads to the conclusion that this is the same Duško Knežević aka Duća whom the witnesses later saw in the Omarska Camp. Besides, the fact that witnesses Boško Matijaš and K055, who knew Duško Knežević well from before the war unanimously stated that before the war Knežević used to be a goalkeeper in the local football club, which constitutes another important element leading to the conclusion that this is one and the same person i.e. the accused Duško Knežević. Further on, objective documentation indicates that the accused Duško Knežević had a brother named Igor who was killed early in the war, as the Death Certificate no. 04-202-7899/2006 dated 29 Dec 2006 shows. The documents lists 30 May 1992 as the date when Igor (Milan) Knežević from Orlovci died, whereas the personal data of the deceased i.e. father's name and place of residence indicate that this is the accused Duško Knežević's brother. Defence witness Boško Matijaš stated in his testimony that Duško Knežević attempted to find out the name of the person who killed his brother and that a person surnamed either Mujkanović or Crnić was under suspicion. These witness claims were supported by prosecution witness Abdulah Brkić, who was an eye-witness of the event when Duća Knežević, during one of his visits to the Keraterm Camp, cut detainee Fajzo Mujkanović's throat insisting that he tell him who killed his brother, as confirmed by witness K016 who, while giving his account of the incident concerning detainee Fajzo, said that Duća Knežević demanded that he confess to him that he had killed his brother. From witness K043's testimony it results that Duća who visited the Keraterm Camp had had a brother who was killed as this witness stated this in relation to an incident concerning a person named Jasmin. The assertions of witness K043 do not match the testimonies of witnesses K016 and Abdulah Brkić with reference to the name of the person that Duća Knežević "accused" of having been involved in his brother's killing, which does not cast a lot of doubt on the two previous witness's evidence, given that the testimonies of all three witnesses unequivocally indicate that the accused Duško Knežević had a brother who was killed and for whose death he sought the culprit among the detainees. Finally, this is also corroborated by Witness K055 who was detained in the Omarska Camp and who was an eye-witness to the incident when the detainee whose last name was Mujkanović was taken out and beaten by Duća. The Panel deems that the fact that Duško Knežević beat the members of the Mujkanović family both in the Keraterm Camp and in Omarska Camp is not a coincidence but attests to the fact

that Duško Knežević wanted to locate among the members of this family the person who killed his brother.

As previously stated, witness Abdulah Brkić saw the accused Duško Knežević also in the Omarska Camp, that is, in the White House, when he was beating Bećir Medunjanin to death, as well as in the Keraterm Camp, when he stabbed the detainee Fajzo Mujkanović in the neck. This witness claimed that this was one and the same Duća Knežević, excluding the possibility of there being more visitors to the camp with that same name. Independently from witness Abdulah Brkić's evidence, Witness K022 also mentioned Duća Knežević as the person who beat up Bećir Medunjanin in the White House, listing all the personal information for this person which corresponds to the actual personal data of the accused, primarily the fact that he was born in 1966 or 1967, that he is a native of Orlovci or its environs and that his father's name is Milan. Besides, witnesses Fadil Avdagić, Azedin Oklopčić and Emir Beganović who testified about Bećir Medunjanin's being beaten to death in the White House, unanimously stated that this beating, as described above, was committed by Duća Knežević. In addition to these witnesses, Witness K036 and witness Asmir Baltić also testified about the White House beatings by Duća Knežević. If we add the fact that all witnesses to the beatings by Duća Knežević relate these beatings to the group of people who, the same as the named above, were not camp guards, including Zoran Žigić, Željko Timarac, Šaponja and Nikica Janjić, describing these beatings as extremely brutal, with the use of different implements, such as, batons, or a bat with a metal ball attached, it is clear that the aforesaid beatings in both camps (which would sometime result in detainees death) were committed by the same person, that is, Duško Duća Knežević, born in 1966 or 1967, from Orlovci, whose father's name is Milan and who lost a brother before the events in the camps, and that this is one and the same person, not more persons with the same first and last name. Another element indicating that this person is the accused Duško Knežević is that Knežević was a member of the army, which results from the statements of witnesses who confirmed that Duća wore a uniform. This is how witness Emir Beganović stated that the above named wore a military uniform, Witness K055 stated that Duća wore a uniform, witnesses Fadil Avdagić and K022 stated that he wore a camouflage uniform, and witness K042 stated that he wore an olive-drab uniform. The witnesses who were detained in the Keraterm Camp during the relevant events also stated that Duća wore a uniform when he visited the camp. According to Witness K015, Duća wore an army uniform, which Witness K043 also confirms, whereas Witness K016 stated that Duća wore an army blouse; witness K014 stated that Duća wore a camouflage uniform, whereas, according to Witness K013, Duća wore different uniforms. Witness Anto Tomić pointed out that Duća wore a military olive-drab uniform. Therefore, it results from all the aforementioned witness testimonies that the accused Duško Knežević wore an olive-drab or camouflage or military uniform during his visits to the Omarska Camp and Keraterm Camp, which supports the prosecution claims that the named above was in the army. The said prosecution claim is supported by witness K022 who had previously seen the accused Knežević both in the barracks and in Prijedor, as well as Witness K014 and K05 who had heard directly from the detainee Emsud Bahonjić that Knežević visited the barracks in the camp where he beat this detainee. Documentary evidence fully support these claims i.e. Personnel Records of the 43<sup>rd</sup> Motorized Brigade from Prijedor wherefrom it results that the accused Duško Knežević was a member of the said brigade (the only person of this name and age) which corresponds to the person who visited the camps and beat the prisoners. Finally,



testimonies of witnesses K043 and Boško Matijaš indicate that Duća Knežević was in a military unit under Zoran Karlica's command, which additionally supports the claim that Knežević was in the army.

The description of the person who visited both camps in the said period of time, in addition to the person's age, which the witnesses indicated in general terms, indisputable points to the conclusion that this person is the accused Duško Knežević aka Duća. All witnesses who mentioned the accused unanimously described a person of dark complexion, which is indicated in the evidence of witness Izet Đešević, then witnesses K055 and K056, Abdulah Brkić, Fadil Avdagić, Mustafa Puškar and Witness K044. Besides, the witnesses who testified consistently stated that Duća Knežević whom they described was of strong physical built and "stocky", as indicated in the testimonies of witnesses K036, K03, Azedin Oklopčić, K042, Fadil Avdagić, Mustafa Puškar, K055, Abdulah Brkić, K013, K014, K08. According to these witnesses, Duća was sort of chubby. Witness K029 stated that Duća was corpulent, witness K015 said that he was stout, while witness Anto Tomić said that Duća was big and strong; Witness K016 according to whom the named above was rather big, and according to Witness K044 and K056, who describes him as a big man "like a boxer". Further on, a number of witnesses stated that Duća Knežević was of average or median height, which is also indicated by testimonies of witness Emir Beganović who says that the accused was as tall as he is, saying that he was 181 or 182 cm tall, then witness Azedin Oklopčić who stated that Duća was between 175 and 180 cm tall, which witness Anto Tomić also confirms, then witness Mustafa Puškar and witness Abdulah Brkić. Witness K029 stated that Duća was around 170 cm tall as well as Witness K08 according to whom Duća was between 170 and 180 cm tall, or witness K016 who when describing the accused person's height stated that he was "neither tall nor short" and witness Izet Đešević who says that he was of average height. Furthermore, none of the witnesses who had been detained in either Omarska Camp or Keraterm Camp stated that Duća Knežević was fair-skinned or that he was extremely tall or short, or that he was thin. Instead, all witnesses fully agree in describing him as a person of dark-complexion, strong built and medium height.

Both in the course of evidentiary proceedings and in the presentation of closing arguments, the defence tried to impose the conclusion that the accused Duško Knežević is actually not the Duća Knežević who visited the Omarska Camp and Keraterm Camp where he used to beat up detainees, indicating that this was done by a different person with the same first and last name. The defence particularly reflected upon a person named Duško Knežević, son of Stevo, born in 1967. Challenging the defence claims in this part, the Prosecutor's Office of BiH moved the Court to hear as a witness Borislav Knežević, the only brother of Duško Knežević's, son of Stevo, born in 1967. This witness testimony indicates that Duško Knežević, son of Stevo, used to live in Prijedor proper instead in one of the villages around Prijedor (Orlovci, Orlovača, Čirkin Polje), that he passed away on 1 July 1993, that he was called Duško or Dule, but not Duća, that he was unemployed i.e. he did not work as a waiter and that he was a soldier in a Banja Luka unit, in the Kozara barracks in Banja Luka, in the Supply Unit, but not in the Prijedor Brigade, which is also supported by documentary evidence in the case file, that is, the person's Military Booklet. Besides, Duško Knežević whose brother Borislav Knežević testified before this Court, had only one brother who did not die in 1992, he was a son of Stevo, and not Milan or Mile, as is the case with the person who frequented

the Omarska and Keraterm camps. In fact, no prosecution witness ever stated that Duća Knežević who visited the camps had a father by the name of Stevo or by any other name; instead they all claimed that the name was either Milan or Mile, which is indicated primarily in the testimonies of witnesses K022 and Izet Đešević. Finally, no other person from the territory of Prijedor Municipality named Duško or Dušan Knežević has a father named Milan or Mile, as is the case with the accused, and their identity does not match in any other detail with the identity information of Duća Knežević who visited the camps, such as the year of birth, occupation or place of residence.

The fact that only witness K013 successfully identified the accused Duško Knežević in the courtroom does not diminish the probative value of arguments that the Prosecutor's Office of BiH reached based on the presented evidence in proving their assertion that the accused is the right person. In fact, the lapse of time of 15 - 16 years after the incidents, as well as the inevitable change in physical appearance that such a long time involves constitutes an additional circumstance which makes courtroom identification more difficult. When we add the fact that all the witnesses conducted identification from their witness stand without any movement in the courtroom and that, when giving evidence about these incidents after such a long time they once again had to face their fears and traumas that resulted from these incidents, therefore it is logical that such type of identification cannot be successful. This was also what the witnesses themselves pointed out during the identification process, leaving room for mistakes, as is the case with witnesses Fadil Avdagić, K055 and K056 whereas witness Azedin Oklopčić stated that he did not believe he would recognize the accused, the same as witness Izet Đešević who stated that he was unable to recognize the person. With regard to the fact that he was unable to identify Duća Knežević on the photographs shown to him in September 1998, the witness stated that the photographs were unclear and that it was difficult to make anybody out on these photos, which served as the witness's safeguard from misidentification of the perpetrator. What also needs to be borne in mind is the fact that at the critical time the accused Knežević had hair, which witnesses Azedin Oklopčić, K014, K015, K016, K055, K056, Boško Matijaš and others corroborate (these are prosecution witnesses, detainees in both camps and one defence witness) whereas now the accused does not have hair, so one cannot realistically expect the witnesses to recognize the accused in the courtroom. The Court attaches more relevance to the fact that all aforesaid witnesses who described the accused gave a unanimous description of his physical appearance from the time when they used to see him in Omarska and Keraterm camps as this is the appearance they remember him by.

Therefore, the issue with witnesses' identification of the accused did not shake the high degree of the Court's conviction, which is that the person in question is without any reasonable doubt the accused Duško Knežević, more so given that all other reliable facts clearly point to the accused. This position is particularly supported by the position of the ICTY that a failed identification of the accused in court does not annihilate any argument which could otherwise be proved in oral evidence, especially in case of the accused person's apparent change of physical appearance, which is the case with the accused Knežević, and that the Court was entitled to rely on the witness testimonies regardless of the failure on the part of those witnesses to identify the accused in court. Besides, the ICTY jurisprudence, the right question that need be asked is whether the

prosecution arguments contain sufficient body of other evidence to indicate that the accused is the person in question, disregarding the failed courtroom identification.

Given the foregoing, the court finds that the failure on the part of prosecution witnesses to identify the accused in the courtroom, with the exception of Witness K013 does not diminish the relevance of other circumstances resulting from the presented evidence which establishes a connection between the accused and visits to the Omarska and Keraterm camps, that is, prisoner beatings in these camps. All the foregoing circumstances, as indicated above, indisputably lead one to conclude that this person is Duško Knežević, son of Milan, born on 1967, from the village of Orlovci, waiter by profession, who used to play football in a local club; this person had a nickname Duća, not any other nickname derived from the first name Duško, who lost a brother early in the war, who at the critical time was a member of the army, more specifically, a Prijedor army unit, and, finally, that there was no other Duško Knežević with these same characteristics. It is true that there were more persons named Dušan or Duško Knežević, however other characteristics that witnesses testified about in court and the information regarding other persons who had the same surname or with a similar name exclude the possibility that the person in question was some other Duško or Dušan Knežević. Witness K055's testimony especially needs to be borne in mind as he personally knew the accused Duško Knežević before the war. He claimed that Knežević was from Orlovci, that everybody called him Duća, that he was a waiter and that they played football together and that Duća was a goalie. This witness, who was born in 1968, claimed with certainty that Duća was a year or two his senior. Finally, the witness personally saw the very same Duća Knežević beating the prisoners in the Omarska camp, on which occasion the witness greeted him by referring to him as Duća after which the accused recognized the witness and refrained from hitting him.

Challenging the assertions from the Indictment with reference to the role of the accused in certain events, specifically speaking the killings of Sead Jusufović "Car" and Drago Tokmadžić, the defence offered objective evidence i.e. Official Note no. 33-6-92 dated 7 June 1992 and Official Note no. 125-6-92 dated 21 June 1992 where it was not indicated that the accused was one of the assailants. Witness K054, however, who authored the said official notes, stated in his oral evidence that he personally did not witness these killings and did not even conduct an investigation in that respect, that is, that he never heard any detainee or a camp guard as a witness, nor interviewed the suspects. The assertions of the Prosecutor's Office of BiH correctly imply that this was unreliable evidence given how the Notes were made, whereby no direct evidence was collected, but information was obtained indirectly. The witness who compiled these notes stated in his statement that he subsequently learnt that Željko Timarac was another perpetrator in these incidents although he was not mentioned in the Notes, also there is no mention in the Notes of Zoran Žigić who was factually involved in these incidents. Therefore the Court's position is that the contents of these Notes is unreliable, particularly given the fact that they contradict many prosecution witnesses' evidence given in court, which indisputably indicates that the accused took part in the beatings and killing of the two aforesaid detainees.

As previously indicated, the Court fully admitted all aforesaid prosecution witness evidence as truthful and credible as the witnesses observed certain events each from his own perspective and described the events in the manner that they gave their account and

personal observations with reference to this evidence. Besides the fact that some testimonies are discordant with reference to some information, such as the date and place of incidents, it is obvious that the witnesses are unanimous regarding decisive facts related to a person's beatings or death, for instance. Certain discrepancies in witness testimonies with reference to a certain event are understandable given the time distance, that is, the time span that passed between when the incident occurred and the date of testimony, as well as a person's individual ability to place a certain event in a certain timeframe, as well as the ability to perceive and memorize the details of secondary importance that are related to a specific event. A number of events in the Omarska and Keraterm Camps occurred on a daily basis, especially in the Omarska Camp, where a number of detainees were detained in several facilities in the camp, so one could not realistically expect every detainee or more of them to see each particular beating and murder, as is the case with the beatings that occurred in many detainee's plain sight, e.g. the killing of Rizah Hadžalić's or that of Mirsad Crnalić. Analogue to that, the beatings and killings that occurred in the Keraterm Camp which occurred in an open space in front of the dorm were the focus of attention of a number of detainees, e.g. Sead Jusufović aka Car's killing, or the abuse of detainees from Brdo upon their arrival at the camp. In evaluating each witness evidence, both in isolation and in their mutual connection, the Court primarily had in mind the probative value of each particular witness, not the number of witnesses who testified about an incident. The Court thus considered as proven even those facts on the incidents charged in the Indictment that only one witness testified about. In all that, the Court evaluated the contents of a witness's testimony and its credibility, bearing in mind that witness's testimony with reference to some other event that other witnesses testified about, and the congruence of decisive facts in that witness testimony with other witness testimonies with reference to the same events. If a witness testimony is congruent in decisive facts with other witness testimonies with reference to the same event, the Court had no realistic reason not to give credence to the witness testimony in those cases when the witness testified about an event as a sole eye witness of the event. This is particularly true in case of those events that occurred in locations where there could not have been more than one person at the same time such as e.g. beatings during visits to the sanitary facilities or during interrogations. The witnesses presented so many specific details with reference to some events which indicate that these persons were truly the eye witnesses of these events, which lead the Court to conclude that it was simply impossible that a great number of witnesses who testified in court and who live in different parts of the world colluded to give corresponding testimonies. The Court was under the impression that all witnesses truly gave an objective account of what they saw or heard in their testimonies presented in a fair manner during the main trial, without attempting to lay blame on the accused without any grounds or to base their testimonies on the information they learnt about in the ICTY proceedings, as the defence tried to present. Testimonies of all the witnesses who testified in court are congruent (with minor deviations) and they support one another in decisive facts such as, e.g. evidence about the bodies they used to see around the White House, accused Mejakić's and Gruban's roles in the camp, beatings during lunchtime etc. on which the Court bases its conviction on the credibility and authenticity of their contents. The Court finds the discrepancies in the witness testimonies understandable and insignificant, especially in those instances when several witnesses testified about one and the same incident, which does not impact a particular witness's authenticity. Besides, some of the witnesses showed their appreciation of some of the accused for the help they offered them during their camp

detention and some witnesses who saw their relatives being taken away only stated that Omarska was the last place where they were seen, without asserting that they were killed in the camp. This is another indicator of the witness's objectivity and the veracity of their testimonies in the presentation of their knowledge of certain facts. Finally, the prosecution witnesses also testified in this Court about the events that did not concern the ICTY criminal proceedings before the ICTY, so they could not have learnt anything about these events from the proceedings held before the ICTY. Multiple congruous testimonies of the prosecution witnesses, whose entirety paints a realistic picture of the living conditions in the Omarska Camp, as well as the events that occurred during the time of their detention, were not seriously shaken by the defence evidence, especially not by the defence witnesses, even those witness testimonies who themselves were camp detainees, such as Witness K050 and K051. The defence witnesses gave a diametrically different account of the events pertaining to a number of killings in the camp. Contrary to a great number of prosecution witnesses who testified about killings and bodies they used to see in the camp on a daily basis, especially around the White House, the defence witnesses stated that they saw neither killings nor dead bodies in the camp, that is, that they saw only a small number of bodies of killed detainees such as, for example, the testimony of Stevo Petoš, a former camp guard, who stated that he saw only one killing, that is, he saw only one body lying on the grass and that he saw no beatings or killings. Witness K050, a former camp detainee, stated that he was unaware of the killings of a great number of people who had been brought to the camp from Brda, with an explanation that he would have known about this had this truly happened, which also clearly contradicts the testimonies of a number of prosecution witnesses who testified about the said event. Witness K052 stated that there was medical aid in the Omarska Camp that one could ask for if needed, contrary to the prosecution witness testimonies who unanimously stated that they did not even dare seek aid for fear of ill fate that would befall them. Besides, witness Branko Starčević indicated that he used to see beaten, injured and bloodied detainees only during the first days of the camp's existence, that is, during the presence of the Banja Luka Special Unit men, and that, following these Special Unit's departure (who stayed in the Camp only for 15 days) no violence occurred over the detainees and that he never heard moans and screams, asserting that the detainees were never beaten after the Special Unit left. Such drastic contradiction between the testimonies of defence and the authentic and credible accounts of testimonies of prosecution witnesses with reference to all the events and occurrences in the Omarska Camp leads the Court to conclude that the defence witnesses did not portray the situation in the Omarska Camp in a realistic and reliable manner. What is also symptomatic is the fact that defence witnesses refer to only a small number of fatalities which the defence does not challenge, for example, the murder of Mehmedalija Nasić, the death of Ismet Hodžić and others.

In its closing arguments and in the course of the proceedings, the Defence drew attention to some events, pointing out that the accused Željko Mejakić was absent when a particular event occurred. It is however indisputable that somebody who visited the Omarska Camp on a regular basis, such as the accused Željko Mejakić, as he confirms in his testimony, had to be aware of the widespread beatings and killings in the camp, and he had to be aware of the consequences of those beatings and killings. Even if it were so that the accused had not been an eyewitness to the killings or beatings, that is, even if he had been absent at the time of a particular event, he could have seen the consequences of such events in a great number of bodies that lay on a daily basis in the

open view in the camp compound, beaten and injured detainees, their exhaustion and poor shape, traces of blood and consequences of beatings.

The defence also attempted to dispute the credibility of prosecution witnesses, indicating the discrepancies between their testimonies in the main trial and their previous statements. The Court however believes that such a position of the defence is ill-founded, as it clearly results both from witnesses' previous statements and their trial testimonies that their testimonies were directed at particular events that were the subject matter of their examinations given that the witnesses mostly responded to the questions put to them so they did not have an opportunity to present everything they knew about the events that occurred during their stay in the camp. Besides, the statements given during the time of war, immediately following the detainees' release from the camp, are mostly general in nature and do not comprise accounts of many events that the witnesses had an opportunity to testify about before this Court. Furthermore, the defence arguments indicating that there were no eyewitnesses to some incidents also proved to be unfounded as every incident was described by at least one witness who was a direct witness of that incident, having either seen or heard about the course of event, having recognized the perpetrators' voices, wherefrom one can clearly conclude that the event truly happened.

The Court could not sustain the defence's objection with reference to the incident in which a large group of Brdo residents was killed as one could not expect the witnesses to recognize one of the persons at night, but the witnesses did see the people falling and they heard their cries. Besides, the Indictment did not include the names of the persons who were killed on the critical night, given that it refers to them as "a great number of unidentified detainees," the same as with the St. Peter's Day's incident. The defence tried to portray Emir Beganović's beating as a consequence of unresolved relationship from the past between this detainee and Nikica Janjić, who beat him up. However, from the testimonies of the witnesses who gave evidence in court with reference to this incident, it stems that on the critical night Emir Beganović was not beaten up alone but in a group of other detainees, and the very state of helplessness that the detainee was in and his position in the camp was only an additional motive for the perpetrator to beat him. Besides, Nikica Janjić was not the only person who beat the detainee Beganović, nor was Janjić present at every beating. Allegations of the accused Željko Mejakić's defence alleging that Emir Beganović had not seen Hankin in the camp at all although they had known each other very well was also declared inadmissible by the Court as the said fact cannot cast shadow on the fact that Emir Ramić was killed in the camp, given the fact that a great number of detainees was kept in the Omarska Camp at the time so it was not very likely for all the detainees to meet one another during their stay in the camp, particularly given the fact that they were kept in separate rooms and taken to have their meals in separate groups. The defence assertions seeking to prove that Safet Ramadanović Ćifut's and Mehmedalija Sarajlić's deaths were not the consequences of beatings and abuse, given the fact that the Court had reliable evidence wherefrom it established that the named above were beaten to death, which was also confirmed in the case of Azur Jakupović's beating who was subsequently killed, as presented evidence relevantly and reliably showed. In case of Abdulah Puškar's being beaten to death, the Court also heard reliable and substantial evidence indicating that the same thing

happened here as in the case of beating Silvije Sarić, whereas witness Mustafa Puškar who had neither heard nor seen the said beating stated that he had not seen his cousin Abdulah Puškar after the night when he was called out and taken away. The Court does not admit the assertions that Miroslav Šolaja went missing, as the presented evidence pertaining to the killing of the name above clearly shows that the witnesses saw his dead body in the camp after he was beaten up. Further on, the defence's claim that Muhamed Čehajić was detained in Banja Luka following his detention in Omarska does not refute the witness testimonies referring to this witness being beaten and abused by the camp guards. In the foregoing Reasoning of the Verdict, the Court provided detailed reasons as to whether and why it finds a particular incident proven or not, therefore the objections that the defence filed with reference to certain events were deemed unconvincing and ungrounded.

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### **Applicable Law**

The Court had in mind arguments according to which the application of the CC BiH would constitute a breach of fundamental legal principles. Specifically, the Defense for all the accused alleged that a conviction on the basis of Article 172 CC BiH would be in breach of the principles of *nullum crimen sine lege* and that a sentence exceeding the maximum prison term provided for by the CC SFRY in force at the time the crimes were committed would also violate the *lex mitior* principle. The Defense relied on Articles 3 and 4 of the CC BiH proper for their arguments, claiming that Crimes against Humanity were unknown in SFRY law and that after the abolition of the death penalty, the old Yugoslav law provided for a more lenient sentence than the new CC BiH.<sup>1</sup>

The Prosecution opposed these arguments throughout the proceedings, stating that Crimes against Humanity were recognized under international law as well as – in its essence – in the CC SFRY by the time relevant to the indictment.<sup>2</sup> Also, with regard to the *lex mitior* principle, the Prosecution is of the opinion that the CC BiH appears to be the more lenient law if compared with the CC SFRY which until recently provided for the application of the death.<sup>29</sup>

The Appellate Panel of the Court of BiH, in its first War Crimes case against Abduladhim Maktouf, confirmed the CC BiH being the applicable law, and stated that its application was in line with the legal principle of *nullum crimen sine lege*, while the principle of *lex mitior* was to be disregarded in connection with acts that were contrary to general rules of international law.<sup>30</sup> This conclusion of the Court of BiH was upheld by the Decision of the Constitutional Court of BiH in the case of Abduladhim Maktouf, according to which the application of the CC BiH in cases dealing with crimes against humanity and values protected under international law is in line with the European

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<sup>1</sup> See *inter alia*: Joint Preliminary Objections against the Form of the Indictment, raised by the Defense for Željko Mejačić and Dušan Fuštar, 24 August 2006, section II.

<sup>2</sup> Prosecution Response to Defense Joint Preliminary Motion, 7 September 2006, paragraphs 19-23.

<sup>29</sup> Prosecution Response to Defense Joint Preliminary Motion, 7 September 2006, paragraph 9.

<sup>30</sup> *Maktouf* Court of BiH Appeal Judgment (KPŽ-32/45), 4 April 2006, pages 17-18 (pages 20-21 in BCS version).

Convention on Human Rights and Fundamental Freedoms (ECHR) as well as with the Constitution of BiH.<sup>31</sup>

The question concerning the applicability of the criminal offense of Crimes against Humanity pursuant Article 172 CC BiH which as such was not expressively provided for in the CC SFRY was decided by the Court of BiH in the Trial Judgment against Dragoje Paunović, which was confirmed on appeal.<sup>32</sup> The Panel agrees with the established case law of the Court of BiH.

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### **The Elements of Crimes against Humanity**

The Court, through the evidentiary procedure, found all the Elements of Crimes against Humanity as being fulfilled.

As Article 172 CC BiH was copied from the provision for Crimes against Humanity in the Statute of the International Criminal Court (ICC), the Panel, after analyzing the legal provisions within the Bosnian law itself and its interpretation by the case law of the Court of BiH, will turn to the legal definitions elaborated in ICC documents, before turning to the analysis of ICTY case law on the issues in question.

### **Existence of a Widespread or Systematic Attack against the Civilian Population**

The following so-called chapeau, or general, elements of Crimes against Humanity need to be established first, namely:

- 1) the existence of an attack directed against a civilian population;
- 2) the attack was either widespread or systematic;
- 3) the acts of the Accused formed part of the attack, and the Accused knew about this link.<sup>33</sup>

As regards the definition of these general prerequisites for the criminal offense of Crimes against Humanity, this Panel relies on the reasoning of the Court of BiH first instance verdict in the Nikola Kovačević case, which is based on the analysis of the relevant ICTY case law.<sup>34</sup> Thus, this Panel accepts the following:

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<sup>31</sup> Constitutional Court of Bosnia and Herzegovina Decision on Admissibility and Merits in the case of *Abduladhim Maktouf* (AP 1785/06), 30 March 2007, see paragraphs 11, 60-79 and 80-89.

<sup>32</sup> First instance Verdict in the case against *Dragoje Paunović*, Ref. number: X-KR-05/16, dated 26 May 2006, pgs. 22-26 (pgs 19-23 in BCS version); Second instance Verdict, Ref. number: X-KRŽ-05/16, dated 27 October 2006, pgs. 7-9 (pgs. 8-10 in BCS version).

<sup>33</sup> See also the recently rendered *Todović and Rašević* Court of BiH Trial Judgment (X-KR-06/275), 28 February 2008, pages 39-42 (pages 37-42 in BCS version).

<sup>34</sup> *Kovačević* Court of BiH Trial Judgment (X-KR-05/40), 3 November 2006, pgs. 22-23 (pgs. 20-21 in BCS version), upheld by the Appeal Judgment (X-KRŽ-05/40), 22 June 2007, pgs. 5-6 (pgs. 5-6 in BCS version).



- (a) That an attack, which is generally understood as conduct during which violence occurs, need not necessarily take place as part of an armed conflict;
- (b) That as factors of the widespread character of the attack the following should be taken into consideration: the consequences of the attack on the targeted population, the number of victims, the nature of the acts and the cumulative effect of a series of inhumane acts or the single effect of one act of a large scale;
- (c) As indicators for a systematic attack the following facts should be taken into consideration: regular repetition of the offense which is not accidentally similar in character, or mutual organization of a series of acts and small probability that the perpetration of those acts was random;
- (d) Article 172 (2) (a) of the CC BiH names the additional element, not required by ICTY case law, that the attack be committed “pursuant to or in furtherance of a state or organizational policy”, which can be interpreted as an additional differentiation between the actions of individuals and the actions undertaken as part of a larger organizational unit, only as such gaining the security significance which requires a specific criminalization at the international level and within Chapter XVII of the CC BiH;
- (e) As regards the issue of determining the character of the group which would be targeted by such an attack, the Court accepts the position expressed, inter alia in the ICTY Trial Judgment in the Radoslav Brđanin case, according to which it is not required that every single member of that targeted group be a civilian, but sufficient if the group is predominantly civilian in nature, including individuals hors de combat.<sup>35</sup>

As regards the existence of a “widespread or systematic attack”, the Panel was guided by the facts that had already been established in the ICTY judgments in the cases against Duško Tadić, Miroslav Kvočka et al, Milomir Stakić and Radoslav Brđanin, which facts, following the Prosecutor’s Office of BiH Motion, were partially accepted by this Court.<sup>36</sup> In addition to that, in the introductory sections of their testimonies, most of the examined witnesses provided the Panel with a fairly broad picture and overview of the events in the Prijedor Municipality at the time period covered by the amended Indictment.

The examined witnesses unanimously stated that, with the take-over of power in Prijedor Municipality by the Serb Democratic Party on 30 April 1992, the conditions of life of the non-Serb population began to change. Following the outbreak of the armed conflicts in certain parts of the Prijedor Municipality in late May 1992, the situation worsened in terms of freedom of movement<sup>37</sup>, dismissals from companies and public institutions<sup>38</sup>, and the security situation of the non-Serb population<sup>39</sup>. The said situation,

<sup>35</sup> *Brđanin* ICTY Trial Judgment (IT-99-36-T), 1 September 2004, paragraph 134.

<sup>36</sup> See: *Decision on Established Facts*, number: X-KR-06/200, 22 August 2007, accepted facts number: 41-47, 49-54, 66-101, 103-132 and 135-137.

<sup>37</sup> See for example: Testimony of witnesses K041 who pointed out that already in May 1992 families that tried to leave the Prijedor area by bus were returned. Witness Said Bešić testified that Serb checkpoints were erected in Prijedor municipality. Witness Fadil Avdagić said in his evidence that from 19 May 1992 on he was prevented from driving to work from Kozarac to Prijedor and sent back at a checkpoint as was witness Zlata Cikota. Witness K09 also testified about restrictions for movement and special necessary documents in order to pass checkpoints.

<sup>38</sup> Witness Kerim Mešanović was sent home at the end of April, as were his six other Muslim colleagues and one woman married to a Muslim. As his skills as a computer specialist were needed, he was given a special laissez-passez by the Serb authorities in order to get back to work until he was arrested and brought to Omarska. Witness K027 was fired immediately after the Serb takeover. Witness Azedin

eventually, culminated in artillery and infantry attacks, which has been established by accepted facts included in the Court Decision of 22 August 2008, and by testimonies of examined witnesses survivors of those attacks, followed by organized mass-arrests of the non-Serb population and their imprisonment in several locations including the Omarska and Keraterm camps.<sup>40</sup> In addition to that, the subjective and objective evidence in the case file shows that the non-Serb population was imprisoned also in the Trnopolje Camp that had been set up. The testimony of Witness K033 shows that, after the attack on the place where he lived, together with his family, he was taken first to the Trnopolje Camp, wherefrom he was later transferred to the Keraterm Camp, while K017 stated in his testimony that some members of his family too had been placed in the Trnopolje Camp, which leads to the conclusion that the Trnopolje Camp existed already at the time of the first arrests of civilians in the Prijedor Municipality. Finally, according to their testimonies, some of the prisoners from the Omarska and Keraterm camps were transferred from these camps to the Trnopolje Camp in early August 1992, for example those are witnesses Asmir Baltić, K023, K03, K014, K042, Nusret Sivac, K037, K013, K010, K029 and others. The existence of the Trnopolje Camp is also clear from the Decision on Established Facts of 22 August 2007 (fact No. 140, and facts No. 291 – 299, 301 – 304, 306 – 310). The existence of this Camp is supported by a body of objective evidence in the case file that mention the Camp together with the Omarska and Keraterm camps, including the Prijedor PSS Dispatch No. 11-12-2169 dated 1 August 1992, also Prijedor Public Security Station Information Paper No. Strictly Confidential 11-12-38 dated 4 August 1992 sent to the Banja Luka Security Services Centre (Exhibit No. 23), Prijedor Public Security Station Report (Exhibit No. 26), and Banja Luka Security Services Centre Report (Exhibit No. 27). The above objective documentation from the case file indisputably leads to the conclusion that the Omarska, Keraterm and Trnopolje camps were established by the Crisis Staff of the Prijedor Municipality, which issued directives for their operation. This is primarily shown by the Prijedor PSS Report (Exhibit No. 26), and the Report on the situation and issues concerning prisoners, collection centers, resettlement and the role of the Public Security Service and the connection with these activities (Exhibit No. 27). Based on everything described above, it was concluded that the first three of the previously described prerequisites for a situation to be characterized as a widespread or systematic attack were met.

The treatment of the non-Serb population as described above was established and organized by the Serb authorities, more precisely the Crisis Staff of the Prijedor Municipality, established by the Prijedor Municipal Assembly at the session held on 20 May 1992 (Exhibit No. 35), whose decisions were subsequently verified by the Prijedor Municipal Assembly on 24 July 1992 (Exhibit No. 80). The established Crisis Staff issued orders and administrative directives to the administration, police forces and also

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Oklopčić testified that only one of his Muslim colleagues and two Croat colleagues that were married to Serbs managed to keep their positions as elementary school teachers.

<sup>39</sup> Witness Emir Beganović said to have sent his family to Croatia after the Serb takeover of Prijedor as the situation became dangerous. Witness K041 also testified to have sent his family abroad once the political battle became more and more hostile. Witness K023 pointed out that in 1991 the tensions in Prijedor increased after the multi-party-elections, as there was no compromise possible around the partition of power. The war in near Croatia and the presence of soldiers fighting on that battlefield caused further tensions. Witness K037 also testified to have sent his family away as he was feeling changes in Prijedor.

<sup>40</sup> See *Decision on Established Facts*, accepted facts number: 15-26 and 29-36.

directly to the citizens of Prijedor<sup>41</sup>, cooperated with the command of the Army and the Territorial Defense in connection with the operations described above<sup>42</sup>, and harmonized its policy with the Banja Luka regional leadership<sup>43</sup>. All these facts confirmed that the attack was carried out in furtherance of a policy adopted by the Serb authorities in that area.

Although a certain number of former camp inmates, who testified in this case, confirmed that, prior to their arrest, they were members of the Territorial Defense, or professional or reserve police, the statements of all witnesses show that the Serb forces, having rounded up the population in certain locations in the Prijedor town, only separated men from women, children and the elderly, then taking the entire group of non-Serb men to camps without further checking on their possible involvement in combat activities. So, mainly the prisoners who obviously exclusively had the civilian status, such as groups of intellectuals, business and political leaders as well as wealthy citizens from the Prijedor Municipality including doctor Osman Mahmuljin, doctor Eniz Begić, doctor Esad Sadiković, doctor Jusuf Pašić, Abdulah Puškar, Ermin Striković, Fadil Avdagić, Zlata Cikota, K027, Esad Mehmedagić, Zijad Mahmuljin, Ago Sadiković, Zlatan Beširević, also political leaders such as Muhamed Čehajić and Silvije Sarić, and successful businessmen and wealthy citizens Rezak Hukanović, Asaf Kapetanović, Emir Beganović, K036, the Kapetanović brothers and others were imprisoned in camps. Evidence in the case file indicates that about 7,000 non-Serb civilians from the Prijedor Municipality area were at some point held in the Omarska, Keraterm and Trnopolje camps. The Court bases this conclusion on the fact that approximately 3,000 civilians were detained in the Omarska Camp, and according to the data from the objective documentation the number is 3,334 individuals, then between 1,000 and 1,500 civilians in the Keraterm camp, and also a large number of civilians in the Trnopolje Camp including women and children (the established fact No. 292 states that there were thousands of prisoners in the Trnopolje Camp, mainly the elderly, women and children). The report on the operations of the Prijedor SJB during the last nine months of 1992, written in January 1993 (Exhibit No. 32) shows that several thousand people were at some point held in the Omarska, Keraterm and Trnopolje camps, and that approximately 6,000 interviews were conducted with them. Since an undetermined number of women, children and the elderly were detained in the Trnopolje Camp, for whom there is no information showing that they were interviewed, and also since there were prisoners in the Omarska and Keraterm camps too who did not give any statements to the investigating authorities (for example individuals who were killed after they were brought to the camp), then, bearing in mind the 6,000 conducted interviews, the number of approximately 7,000 prisoners in these three camps is, in the Court's opinion, perfectly realistic and objective. Camp inmates were classified into three groups following their interrogation, the first group being considered dangerous because they allegedly took part in armed resistance against the Serb power, or because they were leading figures of the Muslim or Croat communities, a second group which for some other reason was unsuitable, and a third group which was considered security-

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<sup>41</sup> See: Crisis Staff Order to terminate employment with all workers who (...) are currently detained in Omarska and Keraterm, of 02 July 1992, Documentary Evidence No. 19.

<sup>42</sup> See: Decision on the organization and work of Prijedor Municipal Crisis Staff, of 20 May 1992, Article 9, Documentary Evidence No. 35.

<sup>43</sup> Decision on Established Facts, accepted facts number: 38, 132 and 140.

wise uninteresting, the latter enjoying a milder treatment.<sup>44</sup> This differentiation in the treatment indicates that the camp staff was also aware of the fact that the majority of those persons had in no way been involved in military activities or political challenge of Serb supremacy in the region. Everything described above lead the Court to conclude that an attack on the non-Serb civilian population was carried out in a way as stated in the introduction of the operative part of this judgment.

The witnesses are also unanimous concerning the fact that throughout the entire period of the existence of the Keraterm and Omarska camps, new individuals were brought in as inmates. To the Panel's mind this proves that the attack against the non-Serb civilian population was ongoing not only through the situation at the camps itself but also through the steady stream of new arrests of non-Serb citizens, which ceased only when the non-Serb families finally left the Prijedor area. Namely, testimonies of all Prosecution witnesses that have been examined, and those are non-Serb citizens of the Prijedor Municipality area, show that, following their release from the Camp, they left their pre-war places of residence, or in other words that, after they left the Camp, none of them went on living in the area of this municipality; the testimonies even show that they signed statements leaving their property to the Serb Republic, and these statements were not voluntary in nature. Permanent exodus of Croat and Muslim population from the Prijedor Municipality area during 1992 is also described by objective evidence presented by the Prosecution, primarily the Prijedor PSS Report prepared following a request of the Banja Luka Security Services Centre dated 14 August 1992 (Exhibit No. 26), and the Banja Luka Security Services Centre Overview regarding the citizens who have moved out and into the area covered by the Banja Luka Sector (Exhibit No. 43).

Based on the facts mentioned above, the Court found that, at the relevant time, there was a widespread or systematic attack against the non-Serb civilian population of the Prijedor Municipality.

With regard to the legal qualification of the single incidents listed in the above factual part of this judgment, the Court concluded the following:

### **Murder**

The act of Murder has been defined equally by the case-law of the Court of BiH and the ICTY as:

- (1) An act or omission; by which the
- (2) Perpetrator intentionally causes; the
- (3) Death of the victim.<sup>45</sup>

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<sup>44</sup> Some of these detainees were placed into the so-called glass house inside the administrative building where the living conditions were considerably better. Witness K017 testified that some detainees that previously fought together with Serbs on the frontline in Croatia were placed there. Witness Kerim Mešanović confirmed this information and stated that he was told by Brk, the Driver of Mejakić at one point in time that "a good horse would cost 100.000,- German Marks. The witness inferred from this that he was offered to pay for staying alive. See also, Report of the Commission in charge of visiting municipalities and PSS Prijedor, Bosanski Novi and Sanski Most dated 18 August 1992 (Exhibit No. 27).

<sup>45</sup> *Jelisić* ICTY Trial Judgment, 14 December 1999, para. 35; see also: *Todović and Rašević* Court of BiH Trial Judgment (X-KR-06/275), of 28 February 2008, page 61 (page 64 in BCS version).

As to the level of intent necessary, further ICTY case law states that it is sufficient if the perpetrator had “intention (...) to kill, or inflict serious injury in reckless disregard of human life”<sup>46</sup>, which corresponds with the level of intent required by Article 35 paragraph 3 CC BiH.

With regard to the Omarska camp, the above described factual situations concerning victims: Asaf Muranović and Avdo Muranović; Abdulah Puškar and Silvije Sarić; Emir (“Hanki” or “Hankin”) Ramić; Mehmedalija Nasić; Safet (“Čifut”) Ramadanović; Bećir Medunjanin; “Dalija” Hrnić; Slavko (“Ribar”) Ećimović; Mehmedalija Sarajlić; Velid Badnjević; Amir Cerić and another man named Avdić; Mirsad (“Mirso”, “Asim”, “Kera”) Crnalić; Husein Crnkić; Rizah (“Riza” or “Rizo”) Hadžalić; Jasmin (“Jasko”) Hrnić, Enver (“Eno”) Alić, and Emir Karabašić; Miroslav Šolaja; Azur Jakupović and Edvin Dautović; Gordan Kardum; a large number of unidentified detainees including at a minimum 50 detained villagers of the Hambarine village; and Ismet (“Ico”) Hodžić all correspond with this legal definition of murder, as all the victims of these incidents were actually killed by the respective perpetrators.

The incidents concerning the death of victim Ahil Dedić was left out by the Panel due to the lack of evidence concerning the involvement of any of the accused, as already described in the factual part of the judgement.

With regard to the incident involving a number of about 12 victims with the surname Garibović, the Court was not convinced beyond reasonable doubt that this evidence proved the murder of these detainees at the camp. Therefore, in a strict application of the principle *in dubio pro reo*, as indicated in the above factual part of the judgment, the Court changed the factual description of this incident in the way that it describes these persons to have disappeared from the camp at a certain point in time.

Already the indictment lists the following detainees as having disappeared from the Omarska camp: Dr. Osman Mahmuljin, Dr. Eniz Begić, Zijad Mahmuljin and Ago Sadiković; Esad (“Eso”) Mehmedagić; Nedžad Šerić; Burhanudin Kapetanović and a person by the last name of Badnjević; and at least 7 detainees including Emsud Baltić and several men surnamed Mešić. With regard to cases in which the indictment itself alleged the disappearance of detainees from either of the two camps, the Court holds that the formal scope of the indictment with regard to these incidents bars the Panel from concluding that the victims were actually killed in or in the vicinity of the camp with the participation or the knowledge of the accused, even if the evidence presented in trial could lead to such a conclusion. The Court is bound by the scope of the indictment and can only legally interpret the facts within this scope. Therefore, the incidents concerning the detainees named above are not legally qualified as murder, but will be dealt with under other paragraphs of the legal reasoning.

The Court remarks that the criminal conduct of causing the “enforced disappearance of persons” as specified under item i), para. 1 of Article 172 CC BiH is not applicable due

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<sup>46</sup> *Mucić et al.* (also known as the *Čelebići*-case) ICTY Trial Judgment (IT-96-21), 16 November 1998, para. 439.

to the different value protected by this provision, and therefore cannot serve as a fallback option.<sup>47</sup>

With regard to the Keraterm camp, the Court legally qualified as murder the above described factual situations concerning victims: Emsud (“Singapurac” and “Snajperista”) Bahonjić; Drago Tokmadžić; Sead (“Car”) Jusufović; Jovo Radočaj; Jasmin (“Zvezdaš”); Džemal Mešić; approximately twenty men including Ismet Bajić, Behzad Behlić and a person called Šolaja; a man called Avdić (“Cacko”); Dževad Karabegović; Besim Hergić.

With regard to the subjective elements of the criminal offenses, there is no evidence in any of the single incidents accepted under the legal qualification of murder that would cast doubt on inferring the existence of the necessary intent with each of the direct perpetrators, other than the accused themselves, from the factual circumstances described in the respective part of this judgment. The issue of the intent on the part of the accused themselves shall be separately evaluated in the second part of the legal analysis.

### **Imprisonment**

Imprisonment is described according to Article 172 paragraph 1 item e) CC BiH as:

- (1) A severe deprivation of physical liberty; which is
- (2) In violation of fundamental rules of international law.

The ICTY case law asks for the deprivation of liberty to be “(...) imposed arbitrarily, meaning that no legal basis for the justification of this deprivation of liberty can be invoked (...)”.<sup>48</sup>

With regard to the necessary intent, the same ICTY case law requests that:

- (3) The act depriving the victim of liberty must be done with the intent to deprive that person arbitrarily of physical liberty, or in the reasonable knowledge that the act is likely to cause arbitrary deprivation of physical liberty.

In order to determine if an act of “imprisonment” constitutes a violation of fundamental rules of international law, the specific regulations of the Fourth Geneva Convention, especially its Articles 42 and 43, have to be taken into account. Even if these Conventions relate to War Crimes, the prerequisite of “unlawful confinement” within

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<sup>47</sup> The crime of “enforced disappearance of persons” according to the legal definition given in Article 172 para. 2, item h) CC BiH “means the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, *with an aim of removing them from the protection of the law* for a prolonged period of time” (emphasis added).

<sup>48</sup> *Krnjelac* ICTY Trial Judgment (IT-97-25), 15 March 2002, para. 115; see also: *Todović and Rašević* Court of BiH Trial Judgment (X-KR-06/275), 28 February 2008, page 66 (pages 70-71 in BCS version).

the enumerated criminal acts of War Crimes corresponds largely with the ones of “imprisonment” under the regime of Crimes against Humanity.<sup>49</sup>

International humanitarian law, as expressed in the Fourth Geneva Convention, recognizes that the detention of civilians may be necessary during time of war, but places strict substantive and procedural limitations on such confinement of civilians. Article 42 provides that protected persons may only be detained or interned where “the security of the Detaining Power makes it absolutely necessary”. Article 43 details the minimum procedural guarantees such protected persons are entitled to if detained: “Any protected person who has been interned or placed in assigned residence shall be entitled to have such action reconsidered as soon as possible by an appropriate court or administrative board designated by the Detaining Power for that purpose. If the internment or placing in assigned residence is maintained, the court or administrative board shall periodically, and at least twice yearly, give consideration to his or her case, with a view to the favorable amendment of the initial decision, if circumstances permit.”

The fact that the mass arrests and detentions actually started with the break out of armed hostilities between Non-Serb forces and the RS army in the municipality of Prijedor, first in the Brdo-region from 22 May 1992 onwards and then on 30 May 1992 in the town of Prijedor itself, could lead to the conclusion that the temporary detention of the non-Serb male population was initially justified by security concerns of the Serb political and military leaders. The camps also seem to have initially been set up to serve for a limited amount of time until those persons among the detainees who could constitute a security threat to the Serb power would have been identified. The statements of camp guards and superiors among themselves and towards the detainees according to which the detention would last only for 10 days or so confirms this view<sup>50</sup>, as does the initial order of 31 May 1992 in which Simo Drljača asks for interrogations to be carried out in the Omarska camp around the clock according to a 24-hour-schedule.

However, the indiscriminate mass detention of civilians just on the basis of ethnicity and gender are not a basis to make the actions lawful.<sup>51</sup> At the camp itself, even detainees which were categorized into the so-called group 3 and thereby regarded as not being of any security interest, were not released immediately but kept in confinement until the closure of the camps in August 1992. Those detainees who were released at the beginning of the existence of the camps shortly after their interrogation were then often re-arrested and brought back to the camps.<sup>52</sup>

Already the cruel manner in which these interrogations were generally carried out precludes any possibility to regard them as a due process designed to preserve the rights of the detainees in accordance with Article 43 Fourth Geneva Convention. Only in single cases, legal procedures were initiated against specific detainees, but these

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<sup>49</sup> *Kordić and Čerkez* ICTY Appeals Judgment (IT-95-14/2-A), 17 December 2004, paras. 114-115, noting that the existence of an international armed conflict is not required for „imprisonment“ as a Crime against Humanity.

<sup>50</sup> Mejakić, Trial Testimony of 28 January 2008.

<sup>51</sup> See: *Mucić et al. (Čelebići)* ICTY Appeals Judgment (IT-96-21-A), 20 February 2001, para. 327.

<sup>52</sup> See for example Trial Testimony of witnesses Senad Kapetanović and Nusret Sivac.

procedures did not appear to lead to any legal conclusion as to the guilt of the person in question.<sup>53</sup>

With regard to the required intent it can be pointed out that by “deprivation of liberty” not only the actual arrest of the person is covered but also the ongoing detention. Therefore, the argument raised by the Defense in this regard is without merit. Equally, the intent to keep the camp inmates in detention has to be differentiated from any motive that the perpetrators might have had for their actions or omissions. The fact that the camp personnel might not have had the formal power to release detainees which were arrested and brought to the camp by others, does not have any impact on the question of intent.

Therefore, the acts of mass-detention of civilians, as described above in the paragraphs dealing with the overall situation at the Omarska and Keraterm camps, fulfill the elements of the underlying offence of “imprisonment” as a Crime against Humanity. The Court would like to stress that also the imprisonment the detainees had to endure which later disappeared from the Omarska camp was taken into consideration under this legal qualification.

The Court notes that the act of “imprisonment”, as stated in the above definition, only encompasses the deprivation of the physical liberty of a person as such. It will also have to be elaborated in the further course of this judgment if the conditions under which this imprisonment actually took place constituted another criminal act under Crimes against Humanity.

## **Torture**

The act of “Torture” is legally defined in Article 172 paragraph 2 item e) as:

- (1) The intentional infliction; of
- (2) Severe pain or suffering, whether physical or mental;
- (3) Upon a person in the custody or under the control of the Accused.

The case-law of the ICTY adds a fourth requirement to these elements according to which:

- (4) “(T)he act or omission must aim at obtaining information or a confession, or at punishing, intimidating or coercing the victim or a third person, or at discriminating, on any grounds, against the victim or a third person”.<sup>54</sup>

According to the ICTY interpretation, this requirement was forming part of customary international law with regard to the act of torture at the time the crimes in question were perpetrated.<sup>55</sup> The requirement of a prohibited purpose was then left out in the Statute of

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<sup>53</sup> See documentary evidence No. E-43, 44, 45, 46, 47, 48, 49 and 50, in relation to the criminal proceedings launched against the former Head of Municipality Muhamed Čehajić and four other Muslim residents.

<sup>54</sup> *Kunarac et al.* ICTY Appeal Judgment (IT-96-23/1), 12 June 2002, para. 142.

<sup>55</sup> The ICTY thereby accepted the *United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (Torture Convention) of 1984, 1465 U.N.T.S. 85, which entered



the International Criminal Court (ICC) that the Article 172 CC BiH is copied from. The case law of the Court of BiH adds this requirement to the list of elements, thus accepting the ICTY findings with regard to the applicable customary international law at the time relevant to the indictment.<sup>56</sup>

According to the definition above, the consequences caused by the prohibited act need to meet a certain level of severity in order to constitute an act of torture. The case law of the ICTY indicates that the decision has to be taken on a case-by-case basis, taking into account all circumstances of the case such as “the nature and the context of the infliction of pain, the premeditation and institutionalization of the ill-treatment, the physical condition of the victim, the manner and method used, and the position of inferiority of the victim”<sup>57</sup>. A mistreatment over a prolonged period of time is also a factor that can indicate the existence of the act of torture according to the same case-law.

After a legal analysis of the above factual descriptions, the incidents concerning victims Durat Duratović, Emir Beganović, K017, K022 and K042 with regard to Omarska camp and victims Suad Bajrić, Enes Crljenković (and the other detainees from the Brdo region), Šaban Elezović, Edin Ganić, Suad Halvadžić, Fajzo Mujkanović, Jasmin Ramadanović, K010, K013, K015, K033 with regard to Keraterm camp, have been considered by the Panel as meeting the level of severity that makes them an act of torture. Out of these acts, the acts against victims Emir Beganović Enes Crljenković (and the other detainees from the Brdo region), Jasmin Ramadanović, K010, K022, K033, have been deemed to constitute torture due to the repetition of the maltreatment the victims had to endure. The incidents involving victims Suad Bajrić, Durat Duratović, Suad Halvadžić, Fajzo Mujkanović have been considered as acts of torture due to the particularly cruel methods used for inflicting severe pain on the victims. With regard to the incidents concerning victims Šaban Elezović, Edin Ganić, K013, K015, K017, K042, the Panel concluded from the grave consequences the acts of maltreatment had for these victims, that it was in fact an act of torture that was perpetrated.

The prohibited-purpose element, in any event, has been fulfilled in the present case as the maltreatments amounting to torture all were carried out with the aim to intimidate the victims and the other camp inmates as well as with the aim to obtain confessions during the brutal interrogations, to punish them and to discriminate against them. These conclusions the Panel drew from the fact that the maltreatments were usually carried out in a way that other camp detainees could see or at least hear everything that was happening to their fellow inmates. Even if there are witness statements to the effect that detainees were not allowed to watch the maltreatments, the evidence is overwhelming that they were carried out in a manner that, as pointed out in most of the witness evidence analyzed in the factual part of this judgment, a large number of detainees were

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into force on 26 June 1987, as presenting the standard of customary international law at the time the crimes in Former Yugoslavia were perpetrated.

<sup>56</sup> *Goran and Zoran Damjanović* Court of BiH Trial Verdict (X-KR-5/107), 18 June 2007, pages 15-16; *Gojko Janković* Court of BiH Trial Verdict (X-KR-05/161), 16 February 2007, pages 53, 59; see also the analysis in: *Todović and Rašević* Court of BiH Trial Judgment (X-KR-06/275), 28 February 2008, pages 47-49 (pages 47-51 in BCS version).

<sup>57</sup> *Krnojelac* ICTY Trial Judgment (IT-97-25), 15 March 2002, para. 179. For a list of treatments that have to be qualified as torture, see: *Report of the UN Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, E/CN.4/1986/15, 19 February 1986, para. 35. These examples can be used as a guideline in order to determine if an act is of such gravity that the legal definition of torture applies.

actually forced to at least listen to the noises. The interrogations of detainees were sometimes followed by the signing of “confessions” by the camp detainees as to their involvement in actions against the Serb authorities.<sup>58</sup> With regard to the aim to punish and to discriminate against the detainees through the maltreatments, the Court found these prohibited purposes as applicable to the case because apart from the fact that nearly all camp inmates already were detained according to their ethnicity or political affiliation, most of the detainees that were subjected to maltreatments amounting to torture were chosen on the basis of either their alleged role in the armed uprising against the Serb supremacy in the region,<sup>59</sup> or because of their leading positions in the non-Serb communities of Prijedor municipality.<sup>60</sup>

The Panel also considered the living conditions itself in some of the camp premises as amounting to torture; the factual description is illustrating the detainee’s suffering:

Specifically, the conditions in the so-called “Garage” in the Omarska camp, into which the detainees were crammed in a manner that did not allow them even to sit, let alone to lay down and in which the temperatures reached such a degree that according to a witness’ testimony, “the color was dripping from the walls”,<sup>61</sup> so that detainees frequently fainted as a result of the conditions in this premise.<sup>62</sup> In addition, the detainees from this premise were not allowed out of their room during daytime, and therefore could not catch fresh air or fill up their water supplies themselves, but completely relied on the goodwill of their immediate guards who often asked them to sing Serb nationalistic songs in exchange for a bottle of water.<sup>63</sup>

At Keraterm camp, the situation was similar with regard to “room 3” at the point in time when the group of detainees from the Brdo region was detained there preceding their mass-execution in late July 1992. Here as well, the detainees were not given any food or water over a number of days and the water that finally was provided did not have drinking quality but caused reactions of poisoning with the detainees that drank from it.<sup>64</sup> Other detainees in the camp were prevented from helping this particular group locked up in room.<sup>65</sup>

The prohibited purpose with regard to these specific detention rooms can be established by the fact that it was a group of detainees that was regarded as “extremists” which were placed there or as a population stemming from a particularly rebellious part of Prijedor municipality. The specifically cruel treatment of these detainees, not only through frequent maltreatments, call outs and psychological abuses as already elaborated in the

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<sup>58</sup> See testimony of witnesses Sakib Jakupović and K018.

<sup>59</sup> See for example the detainees from the Brdo region like Enes Crljenković, or witnesses K041 and Fadil Avdagić who were regarded as “extremists” and therefore placed into the Omarska garage, or witness K022.

<sup>60</sup> See for example witness Emir Beganović who was one of the wealthy citizens of Prijedor, witnesses Senad and Enes Kapetanović stemming from a well known Muslim family, or witness K027, holding an important office.

<sup>61</sup> Statement of witness K041, already elaborated in the factual analysis of this judgment.

<sup>62</sup> See above, statement of Witnesses Fadil Avdagić, Emir Beganović and K034.

<sup>63</sup> Statement of witness K041.

<sup>64</sup> Statements of witnesses Enes Crljenković, K010, K016, K07.

<sup>65</sup> Witness K010 testified to have been maltreated after the guards saw him throwing bread through a window in room 3.

factual part of this judgment, but also by the mere conditions in which they were kept in the “garage” and “room 3” can only be explained against the background of their categorization as specifically dangerous or problematic for the Serb supremacy. Thereby, their treatment can be concluded to have served as a punishment of these specific groups of detainees for their alleged military or political activities against the Serbs, and also as a means to intimidate them and the other inmates that were witnessing their fate. Finally, again, the Court is convinced that all the detainees held in these particularly harsh living conditions were treated in this way with the aim to discriminate against them.

There is also no doubt about the existence of the subjective elements for the specific perpetrators of maltreatments as also for the detention conditions amounting to torture. The issue of the intent on the part of the accused themselves shall be separately evaluated in the second part of the legal analysis.

### **Rape / Sexual Violence**

The act of rape is described in Article 172 paragraph 1 item g) CC BiH as:

- (1) Coercion “by force or threat (...);
- (2) To sexual intercourse or an equivalent sexual act (...).”

The ICTY case law describes the required intent as:

- (3) “The intention to effect the sexual penetration, and the knowledge that it occurs without the consent of the victim”.<sup>66</sup>

In the same provision of Article 172 CC BiH, examples for other acts of sexual violence are given, naming “sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization or another act of sexual violence of comparable gravity”.

Case law of the Court of BiH confirms these legal definitions.<sup>67</sup> The relevant ICTY jurisprudence cites the definition found by the Rwanda-Tribunal in the Akayesu case, describing rape and sexual violence as “a physical invasion of a sexual nature, committed on a person under circumstances which are coercive. (...) Sexual violence is broader than rape and includes such crimes as sexual slavery or molestation”.<sup>68</sup>

The Court found in accordance with these definitions that acts of rape were perpetrated in the above factual descriptions concerning victim K019 while it saw the incidents concerning victims K027 and K040 as constituting sexual violence. The severity of the acts of sexual violence is established by the specific circumstances of coercion and helplessness experienced by the victims in the camp situation as well as by the level of harassment they had to endure.

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<sup>66</sup> *Kunarac et al.* ICTY Appeals Judgment (IT-96-23/1), paras. 127-129.

<sup>67</sup> See: *Samardžić* Court of BiH Trial Judgment (X-KRN-05/49), 07 April 2006, page 21 (pages 16-17 in BCS version).

<sup>68</sup> *Kvočka et al.* ICTY Trial Judgment (IT-98-30/1), 02 November 2001, paras. 175, 180, citing: *Akayesu* ICTR Trial Judgment (ICTR-96-4), 02 September 1998. para. 688.

Also the subjective requirement also for these offences has been met. The Court is convinced beyond reasonable doubt that each of the perpetrators intended the action he took aware of its coercive character.

### **Other Inhumane Acts**

Article 172(1)(k) of the CC of BiH defines “Other inhumane acts” as a crime against humanity as: “Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to physical or mental health.” There is no clear definition of the notion of “other inhumane acts” as it would be contrary to the catch-all-character of this provision. The requirements that are legally defined in item k) of Article 172 paragraph 2 CC BiH are that:

- (1) The action is of a character similar to the ones’ described in items a) to j); and that
- (2) Great suffering or serious injury to body, physical or mental health is caused; by the
- (3) Intentional perpetration of these acts.

In the present case, the provision covers those acts described above as not fulfilling the necessary legal elements for torture. It also includes a legal assessment of the general conditions of detention in the two camps. As pointed out in the definition, also the acts under this item need to reach a certain level of severity either concerning the manner of perpetration or the results caused. The Court notes that beatings and other acts of violence have been determined to be acts of sufficient gravity to constitute a crime of “other inhumane acts” under customary international law at the relevant time.<sup>69</sup> Confinement in inhumane conditions has similarly been determined to be an act of sufficient gravity under customary international law.<sup>70</sup>

Based on the corresponding incidents from the factual part of the judgment, the Court found that the incidents concerning the maltreatments of all victims in Omarska and in Keraterm camp, which were not qualified as acts of torture in the respective section above, meet the requirements for constituting “other inhumane acts”. Equally, the confinement at the two camps in the conditions as described in the introductory part of the judgment, constitute “other inhuman acts” as far as they do not amount even to torture as elaborated above. Again, the Court would like to stress that also the inhuman living conditions the detainees had to endure which later disappeared from the Omarska camp was taken into consideration under this legal qualification.

As in the previous cases, the Court has no doubt about the existence of the required level of intent on the part of the direct perpetrators of individual incidents of maltreatment, and about the knowledge of all camp personnel and visitors about the living conditions and the presence of the necessary intent in this regard. The issue of the

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<sup>69</sup> See, e.g.: *Krnjelac* ICTY Trial Judgment (IT-97-25), 15 March 2002, para. 176; *Kvočka et al.* ICTY Trial Judgment (IT-98-30/1), 02 November 2001, paras. 208, 209; *Tadić* ICTY Trial Judgment (IT-94-1-T), 07 May 1997, para. 730.

<sup>70</sup> *Krnjelac* ICTY Trial Judgment (IT-97-25), 15 March 2002, para. 133; *Kvočka et al.* ICTY Trial Judgment (IT-98-30/1), 02 November 2001, paras. 190-192.

intent on the part of the accused themselves shall be separately evaluated in the second part of the Legal Reasoning.

### **Persecution**

Article 172 (2) (g) CC BiH clarifies that “persecutions” means “the intentional and severe deprivation of fundamental rights, contrary to international law, by reason of the identity of a group or collectivity.”

Taking this legal definition of the term “persecution” into account, the elements of the criminal offense pursuant to Article 172 (1) (h) CC BiH are identifiable as:

- (1) An intentional and severe deprivation of fundamental rights;
- (2) Contrary to international law;
- (3) Against any identifiable group or collectivity;
- (4) On political, racial, national, ethnic, cultural, religious or sexual gender or other grounds that are universally recognized as impermissible under international law;
- (5) In connection with any offence listed in this paragraph of this Code, any offence listed in this Code or any offence falling under the competence of the Court of BiH.

As recognizable from these elements, the intent required for this crime includes a special element – the so-called specific discriminatory intent. The perpetrator need to have not only the intent to commit the act described under element no. (5) itself, but also has to show the specific intent under no. (4) to commit this act against a group or a collectivity of victims due to their distinct character based on political, racial, national, ethnic, cultural, religious or sexual gender or other grounds that are universally recognized as impermissible under international law.

The Panel interprets the crime of persecution as standing in line with the acts of murder, imprisonment, torture, rape and sexual violence and the “other inhumane acts”. Instead of forming a legal umbrella under which all other crimes are to be grouped if committed with the specific intent described above, the Panel, for the sake of simplicity, regards persecution as being on the same level as those other acts constituting the underlying offenses of Crimes against Humanity. However, the offenses of murder, imprisonment, torture, rape and sexual violence and the “other inhumane acts” described in the previous parts of this judgment as being elevated to acts of persecution if committed with the specific discriminatory intent described above. As the specific discriminatory intent needs to be present with each of the Accused in question, the assessment concerning this specific intent will be made within the following chapter dealing with each Accused’ personal criminal responsibility.

### **Criminal Responsibility of the Accused**

According to the Panel, each of the Accused is to be charged with the criminal offenses mentioned above in the factual analysis, based on different forms of criminal responsibility.

## A) Željko Mejakić

### I) Liability as a Direct Perpetrator

First, the liability of the Accused Željko Mejakić with regard to his own direct involvement in criminal acts is to be analyzed. In this regard, Article 180 paragraph 1 and Article 21 paragraph 1 CC BiH have to be taken into account.

Article 180 (1) CC BiH states:

A person who planned, instigated, ordered, perpetrated or otherwise aided and abetted in the planning, preparation or execution of a criminal offence referred to in Article 171 (Genocide), 172 (Crimes against Humanity), (...) of this Code, shall be personally responsible for the criminal offence. (...)

Article 21 (1) CC BiH prescribes:

A criminal offence can be perpetrated by an act or an omission to act.

Pursuant to Articles 180 (1) and 21 (1) CC BiH, the Panel holds an accused liable, based on his responsibility as direct perpetrator, with the criminal acts he was personally actively involved in. In the case of Željko Mejakić this is related to one act of active involvement in the maltreatment of the detainee Saud Bešić during his interrogation.

The Court was convinced beyond reasonable doubt that the alleged maltreatment of this victim happened as described in the part of the Verdict dealing with the analysis of individual cases and did not hesitate to infer the necessary intent for the action itself from these factual circumstances. The fact that the Accused was already present during the interrogation and maltreatment of witness Bešić by the investigators and that the Accused threatened the witness to make his confessions quickly, in the eyes of the Court do not leave any other explanation but that the Accused had the necessary intent when carrying out this maltreatment himself.

### II) Command Responsibility

The second ground for criminal responsibility for the Accused Željko Mejakić was established by the Court based on his role in the Omarska camp. Namely, based on the presented evidence, the Panel established that the accused held a certain position at the Omarska camp and had certain authority over and supervised the actions of subordinates based on which his criminal responsibility as a superior is established pursuant Article 180 (2) as read with Article 21 (2) CC BiH, which prescribes as punishable a superior's failure to act in case of the commission of criminal offenses by his subordinates.

Article 180 (2) CC BiH reads:

The fact that any of the criminal offences referred to in Article 171 through 175 and Article 177 through 179 of this Code was perpetrated by a subordinate does not relieve his superior of criminal responsibility if he knew or had reason to know that the subordinate was about to commit such acts or had done so and the superior failed to take

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

Article 21 (2) CC BiH stipulates:

A criminal offence is perpetrated by omission when the perpetrator, who is legally obliged to avert the consequence of a criminal offence defined by law, fails to do so, and such failure to act is tantamount in its effect and significance to the perpetration of such an offence by an act.

As established in detail by recent case-law of the Court of BiH, the concept of Command Responsibility was deeply rooted in customary international Law at the time the crimes in question have been perpetrated.<sup>71</sup>

Additionally, this Panel deems it worth noting that the obligation of a superior, primarily to prevent crimes being committed by his subordinates, to a large extent can also be seen as having been part of the Yugoslav legal system at the relevant time. The provision of Article 21 (2) CC BiH, as cited above, has the same ratio as Article 30 (2) CC SFRY, which was in force in 1992<sup>72</sup>, providing for criminal liability on the basis of omissive behavior. The obligation to act, which would have to be disregarded in order to prompt criminal liability, could arise from a legal duty to act or from a contractual take-over of responsibility. Also, the Yugoslav legal system accepted the obligation to act due to previous personal behavior creating the danger that materialized afterwards.<sup>73</sup>

Based on Article 180 (2) CC BiH, which was copied from Article 7 (3) of the ICTY Statute, and the interpretation of the provision by the relevant ICTY case-law, the following prerequisites for criminal liability on the basis of Command Responsibility have been elaborated<sup>74</sup>:

- 1) A criminal act of the type incurring jurisdiction of the relevant court needs to have been perpetrated.
- 2) A superior-subordinate relationship between the Accused and the perpetrators who carried out the criminal act must exist.
- 3) The superior knew or had reason to know that the subordinate was about to commit the crime, or that the subordinate had committed the crime.
- 4) The superior failed to take reasonable and necessary measures to prevent the crime, or to punish the perpetrator of the crime.

In the interpretation of this Panel, the concept of Command Responsibility is to be understood in a broader sense, including not only those acts that were perpetrated by

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<sup>71</sup> *Todović and Rašević* Court of BiH Trial Judgment (X-KR-06/275), 28 February 2008, pages 146-159 (pages 167-184 in BCS version). See also *Čelebići* ICTY Trial Judgment, (IT-96-21), 16 November 1998, first elaborating in detail the concept of Command Responsibility, paras. 333-343, confirmed on Appeal (IT-96-21-A), 20 February 2001, paras.186-314.

<sup>72</sup> Criminal Code of the Socialist Federal Republic of Yugoslavia, Official Gazette of the SFRY No. 35/92.

<sup>73</sup> Commentary on the Criminal Code of the Socialist Federative Republic of Yugoslavia, *Savremena administracija*, Novi Sad 1978, *Bačić/Bavcon/Dorđević and others*, Novi Sad 1978, pp. 159-161.

<sup>74</sup> ICTY Trial Judgment in the *Čelebići case* (IT-96-21), 16 November 1998, paragraph 333-343.

subordinates of the Accused, but as encompassing all omissive behavior from the Accused' side, leading to crimes being committed by subordinates and also by other perpetrators he could have stopped by using his authority over the camp security service in an effective manner. The Panel deems this approach being the more appropriate one as it wants to stress the principal guilt of the superior arising from his intentional neglect of duty and the omission to use the powers conferred to him in order to prevent crimes and to improve the conditions. The Panel regards the superior's guilt for his active participation in the camp system, often only recognizable through his mere presence at the camp, as being secondary.

Based on material and subjective evidence, the Panel established beyond reasonable doubt that Željko Mejakić held the formal position of the Chief of Security at Omarska camp and that he de-facto acted as the camp commander. His formal position made him the highest ranking person present at the camp at any time of day and night, or who would come to the Camp whenever this proved to be necessary. This permanent state of duty at Omarska camp distinguishes the Accused Željko Mejakić from other persons who held the same or even higher positions, but who, like for example the interrogators from various security services, stayed at the camp only during working hours and restricted themselves to specific areas inside the camp.

As proof of the position held by Željko Mejakić, the Panel had at its disposal numerous material evidence tendered by both the Prosecution and the Defense, which included the Order of the Chief of Prijedor Public Security Station, Simo Drljača, for the establishment of the Omarska Camp<sup>75</sup>, the Security Plan Proposal for the organization of the Omarska Camp drafted by the Accused Mejakić<sup>76</sup>, documents which indicate the position held by Željko Mejakić in the Omarska police unit which unit was given the primary duty to provide for the camp security<sup>77</sup>, and video footages which show the Accused answering questions from the media about the Omarska camp<sup>78</sup>.

In addition to that, the witnesses who testified at the main hearing described the Accused Željko Mejakić as a person holding a high position in Omarska camp, which they concluded based on their own observations during their detention in the camp, through various situations and incidents that occurred during the relevant period. The witnesses stated inter alia, that the Accused behaved like an authority figure who supervised the work of the guards walking around the entire camp area without any clear guarding position being assigned to him<sup>79</sup>, who the guards referred to as the commander, boss or warden<sup>80</sup> and who issued them orders and instructions<sup>81</sup>, or who

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<sup>75</sup> In this order, the Camp's Chief of Security is not named, but it follows from the order that there is only one single person with this title, Documentary Evidence no. 17.

<sup>76</sup> Documentary Evidence no. E-127.

<sup>77</sup> *List of workers providing security for the Omarska Collection Centre who need to be issued special passes*, dated 21 June 1992, signed by Željko Mejakić in the capacity of the Commander of the War-time Police Station Omarska, Documentary Evidence no. 18; Recommendation by Simo Drljača of Željko Mejakić for Promotion to the Rank of Lieutenant, stating that Mejakić exercised the role of Commander of war-time Police Station Omarska from April 1992 until July 1993, dated 23 October 1995, Documentary Evidence no. 66.

<sup>78</sup> Documentary Evidence no. 82A and 82B, 86A and 86B, and 89.

<sup>79</sup> See testimonies of witnesses Asmir Baltić, Nusret Sivac, Ermin Striković, and K041.

<sup>80</sup> Witnesses Kerim Mešanović, Zlata Cikota, K034, K035, and K027.

<sup>81</sup> Witness K017, K035, and K040.



directed the work of the guards and was respected by them as their superior<sup>82</sup>. All witnesses who mentioned the accused Željko Mejakić and his role in the Omarska Camp in their statements did not leave any possibility of somebody else holding that position. Some of the witnesses based their knowledge about that on the information they obtained from other prisoners, for example witnesses K022, Anto Tomić, K019 and others, but most of the witnesses formed their inference on the role of the accused Mejakić based on specific situations when they were in a position to observe the behavior of the accused. Mejakić would also often be present upon the arrival in and the departure of detainees from the camp, personally controlling these movements and reception or release of the prisoners, when he had lists of prisoners with him.<sup>83</sup> Finally, the Court had an opportunity to hear the evidence of some witnesses who stated at the main hearing that, in some situations, they went to Željko Mejakić just because they considered him the Camp Commander.<sup>84</sup> Witness K015, who supports the allegations of other witnesses according to which Mejakić was the Camp Commander, said in his testimony that it was easy to conclude so based on his conduct and the orders he issued. Witness Zlata Cikota based her belief that Mejakić was the Camp Commander on the fact that Mejakić was in the Camp both day and night, that he was the one with the most responsibility and left an impression of someone who was a manager, also that he was able to transfer prisoners from one room to another, which she saw for herself when, following her request, the accused transferred her husband Sead from a room called “hangar” to the “garage”, where other prisoners from Prijedor were detained. That the accused Željko Mejakić had authorizations to independently decide about the accommodation of prisoners, which represents one of the indicators of his managerial position, is also confirmed by Witness K040, whose husband was also, on her request, transferred from one room to another following Željko Mejakić’s order, and the witness stated that she had decided to ask the accused for that favor because she thought he was the Camp Commander. Witness Nusret Sivac described an occasion when the prisoner Omer Kerenović had addressed Mejakić and said: “Commander, sir, may I speak with you?”, and this witness drew his inference that Željko Mejakić was the Camp Commander from the conduct of the accused and stated that there were numerous situations from which it was possible to conclude that Mejakić was superior to everyone. According to this witness, the accused Mejakić controlled the guard shifts, coordinated the work of the guards and the guards addressed him as a person with authority.

Testimonies of witnesses Kerim Mešanović and K017 are explicit with regard to the display of authority by the Accused Željko Mejakić. The clearest example indicating the leading position held by the accused is the situation with prisoner Kerim Mešanović, who had certain family ties with the Accused. According to this witness, he learned from a camp guard called Bajo that Mejakić was “the boss at the camp”, and that same guard told him: “Come on, the boss wants to see you”. The communication between Kerim Mešanović and Željko Mejakić, when they met in the office of the accused on the first floor of the administration building, leads to the conclusion that the accused himself, without any particular reserves, behaved as the Commander of the entire camp. Namely, having seen the signs of beating on Kerim Mešanović, Mejakić asked him who had done that to him and when he told him that he had been beaten at the Prijedor

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<sup>82</sup> Witness K027.

<sup>83</sup> Witnesses Sakib Jakupović, K023, K037.

<sup>84</sup> Witnesses Nusret Sivac, Zlata Cikota, K034, K040.

Secretariat of Internal Affairs, the accused said: “So, it wasn’t my men”. Mejakić then personally and without approval by any other person transferred prisoner Kerim Mešanović from the “White House” to the area in the administrative building called the “Glasshouse” and told him to address one of the three other persons who used that same office on the first floor of the administrative building in case something would happen to him and Mejakić himself would not be present at the camp. As another example, witness K017 saw the Accused giving the order to camp guards to immediately transfer a minor detainee from Omarska to Trnopolje camp, which order was carried out. The witnesses who were imprisoned in the Omarska Camp at the relevant time period and who saw the accused in the Camp every day at all times were, thus, based on specific situations, able to conclude that the accused held the position of the Camp Commander. Witness Saud Bešić testified before the Court that Željko Mejakić was in charge of the Camp, that others complied with his instructions and that they were afraid of him, and according to witness Azedin Oklopčić, Željko Mejakić had power in the Camp and everybody listened to what he said. The fact that the accused had his own office and especially that he had a security guard with him, also led the witnesses to conclude that the accused held the position of the Commander of Omarska Camp. Witness testimonies show that the accused used the office on the first floor of the administrative building, which was stated by witness Kerim Mešanović and witness Sifeta Sušić, who was taken by the accused to his office for an interview and there she heard the guards addressing him as a commander, then also witness Zlata Cikota, witness K035, and witness K027. In addition to that, witnesses stated that the accused Željko Mejakić had his driver and security guard, and their statements show no one else from the management of the Camp, except Mejakić, had their personal drivers. According to witness Zlata Cikota, the accused Mejakić, who according to her observations left an impression of a manager, which was not the case with other staff, had a driver who went by the nickname of “Brk”. This is also supported by witnesses K041, Azedin Oklopčić and K027. So, the belief of the prisoners about Željko Mejakić being the head of the Camp comes from different situations when Mejakić acted as a commander. According to Witness K017, the accused supervised his interview with the journalists who visited the Camp in August 1992, while Witness K037 described a situation when he saw Željko Mejakić taking over prisoners brought to the Camp and assigning guards and making arrangements with guards, while witness Sakib Jakupović was present when Željko Mejakić addressed the inhabitants of the Kevljani village following their arrest – all these situations lead to the conclusion about the role of the accused Mejakić in the Omarska Camp.

In addition to these examples, in situations when political delegations<sup>85</sup> and foreign media<sup>86</sup> would visit the camp, it would be the Accused Mejakić who would take them around, who would explain the situation, and who would present the camp to them. There was an event that the prisoners remember clearly and it undoubtedly shows the leadership role of the accused in the Camp: the visit of a political delegation to the Omarska Camp, which, according to witness Kerim Mešanović, comprised politicians from Banja Luka, and according to the witness, the Camp Commander, Željko Mejakić, took them around the Camp. The visit of the political delegation to the Camp was also described by witness Nusret Sivac in his testimony, who stated that it was Željko

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<sup>85</sup> Witnesses Kerim Mešanović, K027, Nusret Sivac, and Zlata Cikota.

<sup>86</sup> See video evidence and transcripts above, see also testimony of witness K017.

Mejakić himself who briefed the members of the delegation; this was also described by Witness K027, who pointed out that Željko Mejakić welcomed the members of the delegation and saluted them on that occasion, which the witness was able to see because she was in the restaurant, wherefrom she had an unobstructed view of this event.

The testimony of the Accused Željko Mejakić confirmed the view the Court gained through the Prosecution case. Although the Accused pictured himself as a person lacking most of the alleged authority inside the camp, one particularly striking example conveyed in direct examination proved the opposite. The Accused told the Court about an escape incident during which only Prcać was at the camp as a senior staff. When guards at the camp and also the soldiers belonging to the second line of security started shooting, Prcać called Mejakić via radio-communication. The Accused jumped into his car, drove to the camp, was given a short report by Prcać and then calmed down the situation as within the camp, so also regarding the military who he informed about the incident.<sup>87</sup>

Based on the presented Prosecution and Defense evidence, the Panel concluded that the Accused Željko Mejakić held a position of high authority inside the Omarska camp. The attempts by the accused himself and the Defense witnesses<sup>88</sup> to describe his position as a role that did not offer significant possibilities to influence the operation and functioning of the Camp were not sufficient to persuade the Court of the insignificant role of the accused in the Camp. So, for example, in direct examination, Nada Markovski first denied that she was familiar with the role Mejakić had had in the Omarska Branch Police Station, whereas, in cross-examination, she confirmed that in her previous testimonies before the ICTY she had testified about his role as a Commander of that Branch Police Station and the chief of security in the Omarska Camp. Witness Pero Rendić worked in the kitchen, which was about 2 kilometers away from the Camp itself, so he was unable to testify about the events taking place in the Camp, but only about the circumstances surrounding the quantity and quality of food that had been shipped to the Camp. The only thing witness Mirko Kobas could say about the issue of commanding officers in the Camp was that he himself had been sent to the Camp by Simo Drljača and that during his rare visits he did not see the accused Mejakić in the Camp. Witness Željko Grabovica, who worked as a guard in the Camp and who mentioned Simo Drljača by name as the most important person in the Camp, at the same time said that he had not heard of a person by the name of Gruban or Čkalja in the Camp and that he did not see prisoners with visible signs of maltreatment, which, according to the Court's opinion, represented a sufficient reason to doubt the credibility of his testimony.

The examples given above and throughout the factual part of the judgment enabled the Court to also conclude that the Accused had effective control over the work and conduct of all guards at the Omarska camp proper, regardless of whether they were active or reserve police officers or members of the Territorial Defense. The Panel inferred that the Accused in his capacity had the ability to prevent unauthorized persons from visiting the camp and committing criminal offenses.

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<sup>87</sup> Testimony given by the Accused Mejakić on 29 January 2008.

<sup>88</sup> See testimonies of Defense witnesses Boro Vučenović, Rajko Marmat, Milorad Stupar, Pero Rendić, Mirko Kobas, Radovan Kečan, Nada Markovski and Željko Grabovica.

Despite his knowledge of the situation in the Omarska camp, which regularly culminated in severe violence and killings, the Accused failed to take the necessary and reasonable measures to prevent the perpetration of the criminal offenses by his subordinates or by unofficial visitors whom he could have banned from coming to the Omarska camp had he used his guards adequately. The Court had ample evidence at its disposal on the basis of which it could determine that the Accused Mejakić was well aware of the high level of violence dominating the lives of the detainees at the Omarska camp. Apart from the Accused' frequent presence at the Omarska camp, during which he must have seen<sup>89</sup>, heard<sup>90</sup> and smelled<sup>91</sup> the situation surrounding him, there are also examples for Mejakić having directly having witnessed maltreatments or the results thereof.<sup>92</sup>

As regards groups of interrogators who would stay at the camp during working hours and conduct interrogations during which criminal offenses would also be committed, the Panel has not been able to establish a relationship of superiority on the part of Željko Mejakić. Also, the group of soldiers or police officers who exclusively assisted the interrogators and who, on the orders of the interrogators, would maltreat the persons who were being interrogated was not under the authority of the Accused. Finally, the Panel does not see the Accused having had effective control neither over the so called “Special Forces from Banja Luka” who were stationed at the camp during the first period of its existence, nor over the maintenance staff who worked at the Omarska Mine. The crimes which were committed by unknown perpetrators inside the camp are also not included through this form of criminal responsibility. It is also to note, that based on this form of criminal responsibility, the Accused is not charged with the inhumane living conditions in the Omarska Camp, resulting from lack of space, food, water, sanitary conditions and medical care in general.

### **III) Liability as Member of a “Joint Criminal Enterprise”**

As a third form of liability applicable in this case, the Court identified the criminal responsibility of the Accused Željko Mejakić as a participant in a “Joint Criminal Enterprise”.

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<sup>89</sup> See the above witness evidence about the constant movements of the Accused Mejakić through the whole camp.

<sup>90</sup> See the extensive evidence of heavy maltreatments happening during interrogations which took part in the offices right next to the one of the Accused Mejakić on the first floor of the administrative building.

<sup>91</sup> See for example the testimony of Defense witness Mičo Kobas.

<sup>92</sup> Witness K027 testified to have seen Mejakić and the shift leaders walking pass the dead bodies at the camp. Witness K042 testified about an incident where Mejakić and other senior camp personnel made fun of two visibly maltreated detainees that they knew personally, asking them about how they were feeling. K034 gave evidence with regard to dead prisoners being taken out of the garage, Mejakić being present in the near surrounding of the scene. See also the multiple witness evidence concerning the order to lay on the Pista for hours in the plain summer sun, see *inter alia* testimonies of witnesses Asmir Baltić, Sakib Jakupović and Mustafa Puškar.

## Legal Definition of the System at Omarska and Keraterm Camps as a “Joint Criminal Enterprise”

The Court accepts the concept of “Joint Criminal Enterprise” as a mode of criminal responsibility included in the provisions of Articles 180 (1) and 29 CC BiH, according to which the entire situation in the Omarska Camp can be legally defined as a system of organized co-perpetration that lasted throughout the entire existence of the camp.<sup>93</sup> Such an organized (or systemic) form of co-perpetration within a detention camp is a variation of the basic form of co-perpetration, called “Joint Criminal Enterprise” in the ICTY terminology.<sup>94</sup>

However, the Panel considers this form of responsibility to be third in order, only applicable in case neither the direct criminal responsibility nor command responsibility is established. In this way, double-jeopardy is avoided, that is the danger of punishing the Accused twice for the same criminal behavior.

The systemic variant of the “Joint Criminal Enterprise” or the co-perpetration within detention camps, is recognized as a mode of criminal responsibility by international jurisprudence since the processing of the crimes committed in the Nazi concentration camps before and during the Second World War.<sup>95</sup> In these early judgments, the tribunals had to find an answer to specific issues related to the establishment of personal responsibility of individuals in situations of mass-crimes perpetrated in concentration camps.<sup>96</sup>

These judgments established that any support to the functioning of a camp, which exists for the purpose of the commission of mass- criminal offenses, entails criminal responsibility. When a camp is established for the purpose of unlawful detention, maltreatment and killing of people, none of the camp staff can use for their defense the argument that they were “just performing their duty”.<sup>97</sup>

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<sup>93</sup> ICTY decisions refer to this mode of co-perpetration or “Joint Criminal Enterprise” as “JCE 2” or “Second Category JCE”.

<sup>94</sup> ICTY decisions refer to the basic form of co-perpetration as „JCE 1“, or First Category JCE“. The ICTY system also uses a third category of the “Joint Criminal Enterprise” (“JCE 3” or “Third Category JCE”), where a participant in the “Joint Criminal Enterprise” can also be held responsible for the excess criminal offenses of other participants of the enterprise, if such offenses which are outside the scope of the joint enterprise were foreseeable to the accused. In this Verdict, the Court does not go into the discussion on the applicability of this third category of the “Joint Criminal Enterprise” in the BiH legal system.

<sup>95</sup> See judgments and information on crimes committed in the concentration camps Auschwitz, Bergen-Belsen, Dachau and Mauthausen, collected by the official rapporteurs for the *United Nations Law Reports* during the trials in English language, archived by the UN, on the website: <http://www.ess.uwe.ac.uk/WCC>.

<sup>96</sup> See description of situations which had to then and have to now be considered when processing cases of war crimes in the context of the provision of Article 180 of the CC of BiH, *Commentary to the Criminal Code of SFRY*, Savremena Administracija, Novi Sad 1978, Bačić/Bavcon/Dorđević *et al.*, pgs. 593-594.

<sup>97</sup> This conclusion, according to which *actus reus* is met by the mere fact that the accused intensified the criminal plan, is supported by the fact that in a system of co-perpetration of a larger scale, such as for example the functioning of a concentration camp, it is impossible to establish whether the contribution of an individual was decisive in terms of *condicio sine qua non*. On the other hand, it is perfectly clear that only through the joint action of co-perpetrators is it possible to maintain the functioning of a concentration camp in a designated manner. The organization of a camp depends on day to day performance of duties

This is the foundation in international customary law on which the ICTY bases its legal interpretation relative to the incorporation of “Joint Criminal Enterprise” into Article 7 (1) ICTY Statute which regulates the modes of personal criminal responsibility. Following the ratification of the Geneva Conventions and the Protocols thereof in 1977, international customary law as laid down in these legal bodies, also became part of the legal system of the former SFRY and continued to be in effect after the proclamation of the independence of Bosnia and Herzegovina.<sup>98</sup>

Article 180 (1) CC BiH represents a verbatim copy of Article 7 (1) ICTY Statute, which the legislator incorporated into national law bearing in mind the interpretation of this provision as including “Joint Criminal Enterprise” as already established by the ICTY jurisprudence. Based on this fact, the Panel is satisfied that the BiH legislator had the intention to also make the ICTY interpretation of Article 7 (1) ICTY Statute applicable to war crimes cases processed before the Court of BiH.<sup>99</sup>

The Court finds an additional argument for the application of “Joint Criminal Enterprise” in Article 26 of the former Criminal Code of the SFRY that was in effect at the time of the commission of the respective criminal offenses.<sup>100</sup> Article 26 CC SFRY prescribes criminal responsibility of anybody „(...) creating or making use of an organization for the purpose of committing criminal acts (...), responsible for all criminal acts resulting from the criminal design of these associations and shall be punished as if he himself has committed them (...)“. Contrary to the argumentation presented by the Defense already at the preliminary motions stage,<sup>101</sup> the Court does not see Article 26 CC SFRY as an example of an inchoate criminal offense, since the cited text of this provision clearly implies that the organizer is criminally responsible for the offenses committed within the group established by him, and that his responsibility does not incur with the mere establishment of the group.<sup>102</sup> Therefore, the Court finds that Article 26 of the CC SFRY does not represent a mode of criminal responsibility that could be compared with the concept of “conspiracy”, according to which the establishment of a criminal group, or the planning of criminal offenses is penalized. The existence of special provisions in Articles 136, 145 and 254 CC SFRY which criminalize conspiracy against the national security (Article 136), for the purpose of

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on various positions within the system of the camp, see: *Kvočka et al* ICTY Appeals Judgment (IT-98-30/1-A), 28 February 2005, paragraph 80.

<sup>98</sup> The Geneva Conventions themselves do not include the modes of criminal responsibility, but the so called *Martens Clause*, for example Article 2 of the Protocol I Additional to the Convention prescribes that international customary law shall be integrated in the legal system of the ratifying state in case significant humanitarian law issues are left unresolved by the Conventions.

<sup>99</sup> According to the principles of the international law, when it is incorporated into the national law, national courts must take into consideration the provisions of the international law based on which the national law was created and their interpretation by the international courts, *Principles of International Criminal Law*, Gerhard Werle, Asser Press 2005, pg. 80.

<sup>100</sup> See a detailed analysis of the issue of the applicable national law in BiH during the war in the first instance Verdict of the Court of BiH in the case against *Momčilo Mandić* (X-KR-05/58), 18 July 2007, pgs 162-163 (pgs 155-156 in BCS version).

<sup>101</sup> *Joint Defense Preliminary Motion Challenging the Form of the Indictment*, 24 August 2006, paragraph 51.

<sup>102</sup> This interpretation was also supported in the commentary on Article 26 of the CC SFRY, *Commentary to the Criminal Code of SFRY*, Savremena Administracija, Novi Sad 1978, *Bačić/Bavcon/Dorđević et al.*, pgs. 143-144.

instigating the commission of genocide and war crimes (Article 145), or for the purpose of committing criminal acts carrying a penalty of five years imprisonment or more (Article 254), indicates the correctness of the position taken by the Panel with respect to the interpretation of Article 26 CC SFRY. It can therefore be considered that a concept of co-perpetration, close to the one of “Joint Criminal Enterprise” was recognized in Yugoslav pre-war legislation.

The common knowledge about the Nazi crimes committed in concentration camps during World War II and the evolution of the International Customary Law as a reaction thereof on one hand and the existence of the aforementioned provisions in the CC SFRY on the other, show that the principle of legality under Article 3 (2) of the CC BiH is not violated by the application of this concept of personal criminal responsibility. Co-perpetration in the form of “Joint Criminal Enterprise” is objectively established through the International Customary Law and the cited provisions of the CC SFRY, and subjectively the perpetrators of criminal offenses within a “Joint Criminal Enterprise” such as the Omarska or Keraterm Camp, could foresee that their conduct entailed personal criminal responsibility.

Previous case law of the Court of BiH with respect to the issue of applicability of the concept of “Joint Criminal Enterprise” supports this position taken by the Panel.<sup>103</sup> Thus, the requirements for establishing personal criminal responsibility on the basis of „Joint Criminal Enterprise“ in its systemic form are:

- (1) The existence of an organized system to ill-treat the detainees and commit the various crimes alleged;
- (2) The Accused’s awareness of the nature of the system; and
- (3) The fact that the accused in some way actively participated in enforcing the system, i.e., encouraged, aided and abetted or in any case participated in the realization of the common criminal design.<sup>104</sup>

The ICTY Appeals Chamber elaborated with regard to the intent that “(...) there is no specific legal requirement that the accused make a substantial contribution to the joint criminal enterprise.” But then stating that: “(...) the significance of the Accused’s contribution will be relevant to demonstrating that the accused shared the intent to pursue the common purpose”.<sup>105</sup> Thus,

- (4) a significant contribution to the system of ill-treatment by virtue of the Accused' rank within the system, the undertaking of increased responsibilities within the system after its criminal purpose has become obvious, the length of time an Accused remains a part of the system, the importance of his tasks to maintaining the system, the efficiency with which he carries out his tasks, verbal expressions regarding the system, or any direct participation in the *actus reus* of the

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<sup>103</sup> Trial Judgment in the *Todović & Rašević* case (X-KR-06/275), dated 28.02.2008, pp. 118-148. (pp. 116-144. in English translation); *orbiter dictum* in the Trial Judgment in the *Momčilo Mandić* case, (X-KR-05/58), dated 18.07.2007, p. 155. (p. 162. in English translation).

<sup>104</sup> *Tadić* ICTY Appeal Judgment (IT-94-1-A), 15 July 1999, para. 202, citing the summing up of the Judge Advocate in the World War II *Belsen case*, of the adopted the three requirements identified by the Prosecution as necessary to establish guilt in each case.

<sup>105</sup> *Kvočka et al.* ICTY Appeal Judgment (IT-98-30/1-A), 28 February 2005, para. 97.

underlying crimes, needs to be established in order to prove the existence of shared intent.<sup>106</sup>

### **The Accused' Participation in the "Joint Criminal Enterprise"**

The Court agrees with the argumentation according to which the knowing participation of Željko Mejakić in the mere maintenance of the functioning of the Omarska Camp, an organizational unit which is to be legally qualified as a "Joint Criminal Enterprise", implies his criminal responsibility with respect to all criminal offenses committed as part of this criminal plan. As has already been mentioned, based on this form of criminal responsibility, the Accused is charged only with those criminal offenses with which he has not been already charged based on direct personal criminal responsibility or command responsibility.

As already elaborated above through the paragraphs dealing with Command Responsibility as a form of criminal liability, the Accused Željko Mejakić had the position of chief of security, which is the head of the guard service at Omarska Camp, and was the de-facto commander of the camp, being present or on call for 24 hours, around the clock. As also elaborated above, he exercised this role through a wide range of organizational and supervisory functions and demonstrated his authority towards the guards, the guard shift leaders and visitors to the camp in a visible manner.

Although the majority of witnesses stated that the Accused Željko Mejakić was not seen to have personally maltreated any of the detainees or that he committed killings, most of the witnesses accused him of not using his authority as the chief of security in order to stop maltreatments and killings, but to have approved the abuses through his behavior.

As the Panel considers this form of responsibility to only be applicable in case the incidents described in the operative part of the verdict can be qualified neither as the direct criminal responsibility nor command responsibility, Željko Mejakić, based on his contribution to the maintenance of the criminal system of the Omarska Camp, is charged only with the criminal offenses committed by the interrogators and their assistants, the so called "Special Forces from Banja Luka", the staff of the Omarska Mine, and for the cases in which the specific perpetrators, committing crimes inside the camp, could not be identified as belonging to one of the specific groups due to a lack of evidence in this regard. In addition to that, the general inhumane living conditions at the Camp also have to be included in the criminal responsibility of the Accused Mejakić on the basis of his participation in the "Joint Criminal Enterprise."

### **Subjective Elements of the Criminal Offense**

The evidence presented to the Panel also indicates that, at the critical time, the Accused's behavior displayed the presence of all subjective elements of the criminal offense enumerated above as Crimes against Humanity applicable to this case:

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<sup>106</sup> See: *Kvočka et al.* ICTY Appeal Judgment (IT-98-30/1-A), 28 February 2005, para. 243; *Kvočka* Trial Judgment (IT-98-30/1-T), 02 November 2001, para. 311.



Željko Mejakić was aware of the existence of a widespread or systematic attack against the non-Serb civilian population of the Prijedor Municipality as listed in the operative part of the judgment and in the analysis of the umbrella elements of Crimes against Humanity. The Accused confirmed his knowledge of the general situation of non-Serbs in Prijedor municipality in his own testimony.<sup>107</sup>

He was equally aware that the system of Omarska Camp represented an integral part of this widespread and systematic attack. The citizens that were arrested in the course of the attack on the non-Serb population were often directly brought to the camp, often showing the signs of prior maltreatments.<sup>108</sup>

Mejakić also knew about the discriminatory character of the attack as such and more specifically the camp system, detaining nearly exclusively non-Serb citizens because of their ethnicity. The vast majority of which had never actively fought or even politically agitated against the Serb rule in Prijedor.<sup>109</sup> He also must have witnessed the guards' constant curses and insults of the detainees' ethnicity,<sup>110</sup> the maltreatments that frequently occurred if detainees would not show the Serbian three-finger salute,<sup>111</sup> and detainees being forced to sing Serbian nationalistic songs.<sup>112</sup>

With regard to the incident of direct personal involvement in the maltreating of Saud Bešić, the Court was convinced beyond reasonable doubt that the alleged maltreatment of this victim happened as described in the factual analysis and did not hesitate to infer the necessary discriminatory intent for the action itself from these factual circumstances.

Being the chief of the guard service at the camp, the Accused was in a position of trust in relation of the detainees and his duty was to use all his authority and influence in order to protect the inmates. He had sufficient power stop maltreatments from the side of his own guards or unofficial visitors to the camp, either by intervening personally or by instructing his guards in an appropriate way. Being aware of all these circumstances but not preventing the above described crimes from being perpetrated leaves no doubt about the existence of the necessary intent on the part of the Accused.

The Accused was also aware of the fact that by exercising his role at Omarska Camp he contributed to the continuation of its functioning, but regardless of his knowledge of the entire situation, he decided to remain on his position in the camp and thereby knowingly furthered the organized system of ill-treatment. The Accused played a senior role in the functioning of the camp system, so that his contribution must be described as significant, establishing his shared intent to further the "Joint Criminal Enterprise" at Omarska camp.

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<sup>107</sup> See testimony of Željko Mejakić in Direct examination on 29 January 2008.

<sup>108</sup> See for example the evidence provided by witness K022.

<sup>109</sup> Željko Mejakić, testimony on 29 January 2008.

<sup>110</sup> Testimony *inter alia* of witnesses Ermin Striković, K015, and K022.

<sup>111</sup> See testimony of witnesses K044 and K034.

<sup>112</sup> Witnesses Nusret Sivac and K027.

## **B) Momčilo Gruban**

The general legal analysis elaborated in the section related to the Accused Željko Mejakić concerning the different modes of liability equally applies to the two other Accused, Momčilo Gruban and Duško Knežević.

### **I) Liability as a Direct Perpetrator**

As the Accused Momčilo Gruban did not personally and actively take part in the perpetration of an actus reus of any of the specific underlying offences, this basis for criminal liability needs no further analysis.

## **II) Command Responsibility**

As regards the Accused Momčilo Gruban, criminal responsibility as a superior at Omarska Camp under Article 180 (2) CC BiH is established only after he took over the role of the leader of one of the shifts at Omarska Camp in early June 1992.

The Panel bases or rather emphasizes its conclusion that the Accused Gruban held the position of a shift leader on the fact that a large number of witnesses, who spent a certain period of time in the camp, stated that everyone had referred to this particular shift as “Čkalja's shift“, which is the nickname that Momčilo Gruban goes by, which is why they considered him the Shift Leader.<sup>113</sup> The other two shift leaders were Mlado Radić a/k/a Krkan and Milojica Kos a/k/a Krle. The Prosecution provided a number of arguments showing that the camp security was organized in three guard shifts, and that one of the shift leaders was Momčilo Gruban a/k/a Čkalja. The shifts rotated and were approximately 12 hours long, so normally one shift would arrive between 6 and 8 a.m., spend 12 hours on duty and would be relieved sometime between 6 and 8 p.m. One of the arguments based on which the Court infers that there were three guard shifts and that one of them was led by the accused Momčilo Gruban is a fact that, during guard change, shift leaders would perform some sort of guard-change ceremony. Some of the witnesses stated that they had eye-witnessed the guard change, or more precisely the moment when one shift would relieve the other. So the testimony of witness Senad Kapetanović shows that he was able to observe the guard change while he was on the “pista”, then also Nusret Sivac, who in his testimony confirmed that there had been a small guard-change ceremony; his allegations are also supported by the testimonies of witness Azedin Oklopčić, who stated that the guards would line up in front of the flag pole when they arrived and when they left, and Witness K042, who personally saw Čkalja lining up the guards, which is also confirmed by witness Izet Đešević. Describing Momčilo Gruban's role as a shift leader, Witness K015 stated that he had seen Čkalja talking to the guards, after which the guards would leave and based on that the witness concluded that Čkalja had issued them assignments. The Accused Momčilo Gruban, according to witnesses, would move freely around the Omarska Camp, while the other guards had fixed posts next to certain premises or buildings in the camp.<sup>114</sup> The fact that Momčilo Gruban did not have a fixed guard post like other guards in the

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<sup>113</sup> See testimonies *inter alia* of witnesses Asmir Baltić, Enes Kapetanović, Kerim Mešanović and Mustafa Puškar.

<sup>114</sup> Testimony of witnesses Asmir Baltić, K017, K042 and K035. Confirmed by Defense witnesses Sveto Petoš, K051, and K052.

camp also leads to the conclusion that his position was different from the position of the other guards. Witnesses who spent more than two months in the camp, during that period certainly had an opportunity to observe who of the members of the camp staff moved around the camp compound freely and who was present on a specifically designated guard post all the time. According to witness Asmir Baltić, Čkalja was free and moved around the camp and based on that the witness concluded that he was the leader of one of the guard shifts. These allegations made by witness Asmir Baltić are also confirmed by Witness K017, whose testimony shows that shift leaders, including Čkalja as well, did not have their guard posts, instead they walked around and performed roll-calls, while according to witness Mustafa Puškar, Čkalja was giving assignments to the guards, and this witness observed that Čkalja was always on the move. According to Witness K027, guards in the camp addressed Čkalja with “boss”, he would show them things around the camp, issue them instructions, assign them to posts in the camp, which led this witness to conclude that Čkalja was the shift leader. Defense witnesses also in this part confirm the testimonies of the Prosecution witnesses, who stated that Momčilo Gruban was not tied to one particular guard post, but instead freely moved around the camp, like for example, witness Sveto Petoš, who stated that Gruban had more free time than other members of the security; and Witness K052, who stated that he had seen Gruban talking to prisoners, while walking down the “pista”. In addition to that, the accused Momčilo Gruban used one of the offices on the first floor of the “administrative” building in the camp, which, besides him, was used by the two Shift Leaders mentioned above. According to one of the witnesses-inmates, he was told by Željko Mejakić, whom he knew from before, that in case of any problems he should go to the persons in this room.<sup>115</sup> There are numerous situations when the witnesses addressed the accused Gruban with a plea for some sort of help, which also leads to the conclusion about him acting as a shift leader in the camp and being a person who, to a certain extent, had power to help the prisoners. One witness supported this position when he stated that the guards would go to Gruban, Krle or Krkan when Mejakić was not there and said that based on how Gruban treated the guards the witness concluded that Čkalja was the person to go to.<sup>116</sup> Witnesses Senad Kapetanović, who claimed that Momčilo Gruban was referred to as “Sergeant”, and Enes Kapetanović were also convinced that Čkalja was the leader of one of the shifts in the Camp and that people went to him to ask for certain help, with requests to transfer them to a room called the “Cloakroom” and he did so. The described event, as well as other similar events when Momčilo Gruban made some concessions to the prisoners clearly show his authority and power to help in a certain situation. In that regard, Witness K051 stated that Čkalja had helped him and his brother, who used to work with Momčilo Gruban before the war, to be placed in the same room, which is also confirmed by witness Izet Đešević, who stated that K051 had gone to Čkalja with a request to get his brother out of the “White House” and he had done that. In addition to that, according to Witness K09, prisoners from Ljubija also used their previous acquaintance with Gruban and asked him for some favors regarding accommodation, which Gruban granted. Another situation showing the authority of the accused Gruban is clear from the events described by witness Azedin Oklopčić. According to this witness, on one occasion when prisoners were being picked to go and take out the beaten prisoners, Čkalja showed up, whom according to the witness he had gotten to know very well in the camp, who said that “Učo” (referring to

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<sup>115</sup> Witness Kerim Mešanović.

<sup>116</sup> Witness K035.

Azedin Oklopčić) would not go, and that someone else should be taken, while on another occasion, when 5 people were singled out, who remain unaccounted for, Čkalja again said that “Učo” would stay on the “pista”, and he did, so the witness was not taken on that occasion. Even witness Emir Beganović, who called Čkalja an ordinary guard, had gone to Čkalja himself when he had been taken to the “White House” by Nikica Janjić, which indicates that this witness too considered Čkalja’s position different from the position of other guards and addressed him hoping that he would help him. In addition to that, according to witnesses, Momčilo Gruban registered new detainees upon their arrival to the camp.<sup>117</sup>

The logical necessity for some level of structure and hierarchy in a system of such proportion as the Omarska Camp is also supported by material evidence, such as a document of 21 June 1992, titled „List of workers providing security for Omarska camp (...)“, which indicates in its last paragraph the organization of the guard service into three shifts and that the guards would only be allowed to enter the camp in an organized manner after a completed roll-call.<sup>118</sup>

In relation to the position held by Momčilo Gruban, the Panel specifically notes that most of the witnesses pointed out that the guards' shift supervised by the Accused was the best one for the detainees.<sup>119</sup> In addition to that, Prosecution witnesses even thanked Momčilo Gruban in the courtroom for the fair treatment they had received from him during their detention.<sup>120</sup> As regards the comparison of the situation on the different shifts, according to witnesses, the shift of Momčilo Gruban was the best for the detainees at Omarska camp. In terms of improvement of conditions in the camp, he did much more than the other shift leaders. He made more use of his authority in order to prevent guards and visitors from maltreating detainees; he gave the detainees greater freedom of movement both outside and inside the rooms and allowed them more frequent access to the toilets. In Momčilo Gruban's shift the singling out and the beatings during the nighttime were less frequent and the detainees could eat their meals mostly undisturbed, without physical and psychological provocations.<sup>121</sup> However, individual incidents, for which it has been established that they occurred on Čkalja’s shift, show that killings, beatings and the taking of people occurred on all three shifts, although this witness labeled Krkan’s shift as the worst one. The testimony of Witness K034 shows that none of the shifts in the camp was absolutely free of incidents, but this witness indicated Krkan’s shift as the worst one. In addition, for witnesses Ermin Striković, Nusret Sivac, K041, K017, K037 and other numerous witnesses, Krkan’s shift was the worst one, while witnesses including K037, Azedin Oklopčić, Senad Kapetanović, Zlata Cikota and others characterized Čkalja’s shift as the best one, which is also supported by the Defense witness K053, former camp inmate, whose testimony shows that, when Čkalja’s shift was on duty, the prisoners had more rights, and witness K050, who stated that Čkalja had made it possible for the prisoners to get food. So, all the Prosecution witnesses, and partly Defense witnesses too, mentioned Čkalja's, Krkan's and Krle's shifts, and Prosecution witnesses classified these shifts saying that

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<sup>117</sup> Witness K015.

<sup>118</sup> Documentary Evidence no. 18.

<sup>119</sup> See *inter alia* testimony of Prosecution witnesses Asmir Baltić, Enes Kapetanović, Senad Kapetanović, Zlata Cikota and Azedin Oklopčić.

<sup>120</sup> Witness K017.

<sup>121</sup> See *inter alia* witnesses K037, Azedin Oklopčić, Senad Kapetanović and Zlata Cikota.

Krkan's shift, led by Mlađo Radić a/k/a Krkan, was the worst for them personally, because that is when most of the violence took place, and that Čkalja's shift was the best, the safest and calmest. Based on the presented evidence the Court has found that the accused Momčilo Gruban was not a violent man, nor was he directly involved in the maltreatment of prisoners, but instead he displayed fairness and in a way attempted to improve their situation. The above inference is not disputed by the Prosecution either, so the Court did not find it necessary to give a special elaboration on these circumstances.

The Panel finds that the correlation between Momčilo Gruban's personal attitude towards the detainees in the camp and the conduct of the entire shift of guards who were on duty at the same time, clearly shows the authority he had in directing his subordinate guards. Based on all these indices, the Panel concludes that the Accused Momčilo Gruban had effective control over the guards on his shift, whether police officers or members of the Territorial Defense, and that, based on his position, he had the possibility to prevent the perpetration of criminal offenses by the guards, which occurred on his shift too, as well as to ban all unofficial violent visitors from entering the camp and from committing criminal offenses.

Contrary to that, Defense witnesses, who in their attempts to convince the Court that Gruban had not been a shift leader, obviously attempted to help the accused by their testimonies, which is why the Court could not consider those testimonies reliable and objective. Finally, the accused Željko Mejakić confirmed in his testimony that Momčilo Gruban (like Krkan and Kos) had spent more time walking around the camp, visiting members of security and communicating with them, and that Gruban briefed him on some information when he would be absent, which also partly supports the allegations of the Prosecution witnesses on the role the accused Momčilo Gruban played in the organization of the camp security and on his superior position in relation to the guards on that particular shift. Although he entirely denied the allegations of the Prosecution that Gruban was one of the shift leaders, the accused Željko Mejakić stated in his testimony that Gruban had enjoyed respect of both prisoners and guards in the camp.

The Accused Momčilo Gruban too, despite his knowledge of the situation at the Omarska Camp, failed to take reasonable measures to first of all prevent the commission of criminal offenses by his subordinates or by unofficial visitors to the camp on his shift. Apart from the evidence to this effect already cited in connection with the Accused Mejakić but valid for everybody working at Omarska camp, Momčilo Gruban personally witnessed the injuries Emir Beganović had already sustained before being called into the White House for another beating, he saved Enes Kapetanović as he knew about the fate of the detainees that were called out on this occasion, he also used the office next to the interrogator's rooms and must therefore have heard the constant maltreatments, and he frequently spoke to detainees, passed on food-packages sent by their relatives and could thereby observe first hand their hunger, fear and desperation.

As regards the interrogators and their assistants, the group of "Special Forces from Banja Luka" and the staff of the Omarska Mine, the Accused Momčilo Gruban did not have effective control, as has already been elaborated for the accused Željko Mejakić. In addition to that, the accused Gruban had no authority over the guards that were on the other shifts at Omarska Camp. Whenever the actual perpetrators of the crimes could not be qualified in the factual part of this judgment as members of a particular group, the

Accused Gruban, as in the case of Željko Mejakić is not held responsible under this mode of liability. Finally, Momčilo Gruban was not found as being in control of the generally inhumane camp conditions.

### **III) Liability as Member of a “Joint Criminal Enterprise”**

As elaborated above in connection with the accused Željko Mejakić, the knowing participation in the mere maintenance of the functioning of Omarska Camp triggers the criminal responsibility also of the Accused Momčilo Gruban with respect to all criminal offenses committed as part of the „Joint Criminal Enterprise“. According to the Panel's interpretation, based on this form of criminal responsibility, the Accused is liable only for those criminal offenses which he has not been already based on his criminal responsibility as a command, that is as a shift leader.

As elaborated in the paragraphs dealing with his responsibility as a superior, the Accused Momčilo Gruban held the position of a shift leader at Omarska Camp, in charge of a 12-hour guard shift that took turns with two other shifts. As concluded above, he exercised this role through a range of supervisory functions and demonstrated his authority towards the guards and visitors to the camp in a visible manner.

Momčilo Gruban, based on his contribution to the maintenance of the criminal system of the Omarska Camp, is liable only for the criminal offenses committed by the interrogators and their assistants, the co-called “Special Forces from Banja Luka”, the staff of the Omarska Mine, and the crimes that were perpetrated during the two other shifts he was not in charge of. Also, the crimes perpetrated by unidentified perpetrators within the Omarska camp fall under this mode of liability. In addition to that, the general inhumane living conditions at the Camp also have to be included in the criminal responsibility of the Accused on the basis of his participation in the “Joint Criminal Enterprise.” Since this mode of criminal liability requires that the co-perpetrator holds a senior position in the camp, whereby he could make a significant contribution to the maintenance of the system of the Joint Criminal Enterprise and thus show the existence of the necessary intent, the accused Momčilo Gruban can be charged with participation in the Joint Criminal Enterprise only after his promotion to the position of a shift leader. In his capacity as an ordinary guard without any specific role in the camp and without direct involvement in the commission of the criminal offenses, he could not have made a significant contribution to the strengthening of the camp system that could serve as proof of his intent to maintain the camp system.

### **Subjective Elements of the Criminal Offenses**

The evidence indicates that, at the critical time, the Accused met all subjective elements of the criminal offense enumerated above as Crimes against Humanity.

Momčilo Gruban was aware of the existence of a widespread or systematic attack against the non-Serb civilian population of the Prijedor Municipality. The escalation of the overall situation was the reason for him to be mobilized as a reserve police officer. As the Accused Mejakić, he was also aware that the system of Omarska camp represented an integral part of this widespread and systematic attack, and he also must

have realized the discriminatory character of the attack as such and more specifically the camp system.

Being the leader of one of the three guard shifts at the camp, the Accused had sufficient authority to stop maltreatments from the side of guards that were on his shift or unofficial visitors coming to the camp during his duty. Being aware of these circumstances but not preventing the above described crimes from being perpetrated proves the existence of the necessary intent on the part of the Accused.

The Accused Momčilo Gruban was also aware of the fact that, by acting according to his role as a guard shift leader at Omarska Camp, he contributed to the continuation and of its functioning, but regardless of his knowledge of the entire situation, he decided to remain on his position in the camp. The Accused thereby, from the time on he became a shift leader, played a senior role in the functioning of the camp system, so that his contribution must be described as significant. In this way the existence of his shared intent to further the “Joint Criminal Enterprise” within Omarska camp is established. The Panel deems worth noting that the necessary intent is different from the motive the accused might have for his behavior. The latter is legally irrelevant as “shared criminal intent does not require the co-perpetrator’s personal satisfaction or enthusiasm or his personal initiative in the contribution to the joint enterprise”.<sup>122</sup>

### **C) Duško Knežević**

#### **I) Liability as a Direct Perpetrator**

Pursuant to Articles 180 (1) and 21 (1) CC BiH, the Panel holds the Accused Duško Knežević liable primarily based on his responsibility as a direct perpetrator. This form of criminal responsibility is reflected in a series of criminal acts of murder and maltreatment the Accused was personally involved in.

As elaborated first in the factual description with regard to the situation in Omarska Camp and then also in the legal analysis of this judgment, the Accused Duško Knežević under this mode of liability has to be held liable for his direct participation in the murders of Amir Cerić and a man called Avdić, „Dalija“ Hrnić, Bećir Medunjanin, Slavko „Ribar“ Ećimović, and Emir „Hankin“ Ramić.

Apart from this, he has also been a direct participant in the maltreatments, legally qualified as torture and “other inhumane acts” of victims Emir Beganović, witness K036, Rezak Hukanović, Asaf Kapetanović, Abdulaha Brkića, witness K022, and Fadil Avdagić.

With regard to the crimes committed in the Keraterm Camp elaborated in the factual part of the judgment, the Accused Duško Knežević has to be held liable as a direct perpetrator or co-perpetrator for the murders of Emsud „Singapurac“ Bahunjić, Drago Tokmadžić, and Sead „Car“ Jusufović. He has also been a direct participant in the maltreatments of witness K05, Fajzo Mujkanović, Ilijaz Jakupović, witnesses K033, K015, Esad Islamović, Edin Ganić, Jasmin Ramadanović, Amir Karačić, Josip Pavlović, Dijaz Sivac and witness K013.

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<sup>122</sup> *Kvočka et al.* ICTY Appeal Judgment (IT-98-30/1-A), 28 February 2005, paras. 105-106.

## II) Command Responsibility

Duško Knežević did not hold any official role neither in the Omarska camp nor in the Keraterm camp. As the Court also did not establish that he exercised any de-facto authority towards the camp guards or other un-official camp visitors, the question of Command Responsibility with regard to this Accused needs not to be discussed any further.

## III) Liability as Member of a “Joint Criminal Enterprise”

Regardless of the fact that Duško Knežević he had no official role either in the Omarska or in the Keraterm camp, the Court found that the notoriety of his violent behavior in both camps make him a member in both “Joint Criminal Enterprises”.

The ICTY case law requests in the case of so-called “opportunistic visitors” who use the situation at a detention camp for the maltreatment of inmates, that their contribution to the system of ill-treatment be a “substantial” one in order to make them a member of the “Joint Criminal Enterprise”.<sup>123</sup> The reason for the differentiation between such visitors who only through the substantive nature of their contribution become members of the “Joint Criminal Enterprise” and the camp staff in which case the level of contribution just serves as indicia for their intent, can be seen in the nature of the systemic form of “Joint Criminal Enterprise” liability; the official role of a person inside the camp-system makes this person automatically a member of the “Joint Criminal Enterprise” while an outsider needs to “prove” his membership in the Joint Criminal Enterprise through a substantial furtherance of the system he is not an official part of.

The visits<sup>124</sup> of the accused Duško Knežević to the Omarska and Keraterm camps and the cruel acts he committed on these occasions created such an atmosphere in the camps that the very information of him coming to the camp was sufficient to create fear and panic among the camp inmates.<sup>125</sup> His violent behaviour was welcomed by the camp guards who knew that something bad would befall the inmates whenever Knežević was around.<sup>126</sup> His perpetuated violence against the detainees prompted one witness to assume that it was some kind of duty for Duško Knežević to maltreat detainees; it was as if he was “in charge of the beatings”.<sup>127</sup>

This Panel is satisfied that a person, although without any official role in a camp system, who as direct perpetrator stands out in a way that his name becomes a synonym for the suffering of the detainees, as was the case with the name Duća for the inmates at the Omarska and Keraterm camps, did make significant contribution to the maintenance of the “Joint Criminal Enterprise”. For that reason the accused Knežević is to be held responsible for the entire system of the two camps and thereby for all the crimes committed in them, based on this mode of individual criminal responsibility. Based on the presented evidence, it has been established beyond doubt that the accused Duško

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<sup>123</sup> *Kvočka et al.* ICTY Appeal Judgment (IT-98-30/1-A), 28 February 2005, para. 599.

<sup>124</sup> Witnesses Anto Tomić, Azedin Oklopčić, K05, K08, K09, K013, K014, K016, K029, K033, K042 and K044.

<sup>125</sup> Testimony of witnesses Anto Tomić, K016, and K042.

<sup>126</sup> Witness Azedin Oklopčić.

<sup>127</sup> Witness K033.



Knežević did visit the Omarska and Keraterm camps in order to maltreat the prisoners. Those camps functioned as a joint criminal enterprise and the accused played a significant role within that enterprise.

### **Subjective Elements of the Criminal Offenses**

Again, the evidence indicates that also the Accused Knežević met all subjective elements of the criminal offense enumerated above as Crimes against Humanity.

Duško Knežević was aware of the existence of a widespread or systematic attack against the non-Serb civilian population of the Prijedor Municipality and he was also aware that the system at the Omarska Camp represented an integral part of this widespread and systematic attack. He knew about the discriminatory character of the attack as such and more specifically of the camp system, as he was himself an integral part of the system, maltreating and killing the mostly non-Serb detainees on a regular basis, keeping the level of fear and helplessness felt not only by his immediate victims but by all detainees on a high level.

With regard to the numerous cases of direct personal involvement in the maltreating and killing of detainees by the accused Duško Knežević, the Court did not have any difficulty to infer the necessary intent to commit the crimes from these factual circumstances.

Duško Knežević was aware of the fact that by visiting the camps and perpetrating numerous violent acts against the detainees, he contributed to the continuation and intensification of the camp system of ill-treatment, by keeping the inmates under a constant fear for their lives. Regardless of the fact that he was familiar with the entire situation, he decided to carry on with his visits to both of the camps. His contribution must be clearly described as significant, establishing first his membership in the “Joint Criminal Enterprise” at both camps and second also his intent to further the system.

The Court is convinced beyond reasonable doubt that the Accused himself had the requisite intent to discriminate against the non-Serb detainees and their few Serb co-inmates. His acts speak for themselves. He committed crimes characterized by grave physical and psychological violence against the non-Serb detainees in the camp, aware of the fact that those were mainly individuals who had been detained in the camp on the basis of their religion, their political affiliations or their ethnicity. Specific evidence in this regard can, for example, be seen in Knežević’s particularly cruel treatment of detainees who played important roles in different walks of life in the Prijedor Municipality area.

### **Sentencing**

In terms of the criminal offence per se, namely the commission of crimes against humanity as described in the reasoning above, one should bear in mind Article 2 CC BiH which provides that the types and the range of criminal sanctions shall be based upon the necessity for criminal justice compulsion and its proportionality with the degree and nature of the danger against personal liberties, human rights and other basic values which determines the purpose of criminal justice, namely the protection of

certain individual and general values, and defining the ways of achieving that protection. In that context one should take under consideration the elements relative to this purpose, in other words, the suffering of direct and indirect victims of the instant criminal offences, that is, the detainees of the Omarska and Keraterm camps, their families and members of their community, as well as the participation of the accused persons in the commission of these criminal offences.

The general purpose of prescribing and imposing criminal sanctions, which is to suppress unlawful conduct violating or endangering fundamental general or individual values, is reflected in preventative influence upon others so that they obey the legal system. At the same time it deters the perpetrator himself from committing criminal offences and encourages his re-education, in accordance with the provisions of the Law providing for the special purpose, or in this case the purpose of punishment under Article 39 CC BiH. According to Article 39 CC BiH, the purpose of punishment is to express the community's condemnation of a perpetrated criminal offence; to deter the perpetrator from perpetrating criminal offences in the future; to deter others from perpetrating criminal offences; and to increase the consciousness of citizens of the danger of criminal offences and of the fairness of punishing perpetrators, in order to raise public awareness of the need to abide by the Law. Meting out a punishment to the perpetrator of a specific criminal offence is in connection with the purpose of punishment.

Having in mind the aim of general and specific deterrence, in sentencing the accused persons the Court took under advisement all the circumstances bearing on the type and duration of the criminal sanction within the limits provided by law for the committed criminal offences. The Court had in mind the degree of criminal liability of the perpetrator, the degree of danger or injury to the protected object, the circumstances in which the offence was perpetrated, personal and other circumstances of the perpetrator.

### **Accused Željko Mejakić**

As explained in the reasoning of the Verdict above, the Court is satisfied that the accused Željko Mejakić performed the duty of the chief of security and de facto commander of the Omarska camp, where around 3,000 non-Serb civilians were interred. At least a hundred of them were killed or died, due to the aforementioned conditions in the camp. In that role, the accused Mejakić was responsible for the detainees and their daily treatment. As mentioned already, the conduct of the accused, as described above, shows that he demonstrated determination in furthering the system and functioning of the camp. He participated in the joint criminal enterprise, of which he was aware. He was not an insignificant player in the structure of the camp, but rather a person who was the chief of security responsible for the security of the interred civilians. He was engaged and constantly present in the Omarska camp from its establishment until its closure, which is almost three months in total. All of that leads to the conclusion that the accused Mejakić, throughout the functioning of the camp, supported the crimes that happened in the camp and demonstrated determination and persistence in the commission of the criminal offence, given that he did not decide firmly at any one time to leave the camp, despite his knowledge of the incidents in the camp.

In addition to that, bearing in mind the degree of danger and injury to the protected value, in this case the life and limb of around 3,000 detainees, who were under the jurisdiction of the camp security whose commander was Željko Mejakić during the functioning of the camp, it is indisputable that the detainees were endangered on a daily basis to such an extent that a large number of detainees during their internment in the camp were killed or died. The circumstances of numerous murders, tortures, beatings, mental abuse of the detainees illustrate the helpless position of the detainees and the difficult situation they were in, which the perpetrators of certain criminal acts used to commit the offense. The accused agreed with such conduct without reservations. The accused Mejakić not only supervised the system that involved inhumane living conditions in the camp, but also participated actively as a direct perpetrator (the beating of Saud Bešić) of the criminal offence of which he was found guilty. Before the commission of the offence at issue, the accused Željko Mejakić had an exemplary career in the police force and years of professional experience. That implies that the accused was aware of his duties as a police officer and the chief of security in terms of providing security to the detainees. Therefore, by accepting the function of the chief of security he was obliged to accept special duties to protect the detainees by applying applicable regulations.

In deciding on the type and magnitude of the criminal sanction, pursuant to Article 48 CC BiH, in terms of aggravating factors for the accused Željko Mejakić, the Court has considered the long duration of the difficult position of helplessness and fear of the detainees in the camp where the accused was regularly present; a large number of victims; the circumstances in which the direct perpetrators committed the criminal acts and their cruel treatment of victims abusing their helplessness and fear; extremely serious consequences the detainees and their family members have suffered; the duration of the accused's term in the camp, whereby he demonstrated determination and persistence in the commission of the criminal offence; as previously explained, his earlier experience as a professional police officer due to which he had a special public duty to enforce the law, which he failed to do.

In terms of the mitigating factors for the accused Željko Mejakić, the Court has considered the fact that the accused is a family man, a father of two children and has no prior convictions. The Court has also considered as mitigating that the accused helped certain detainees in a few situations, as well as his proper conduct before the Court.

### **Accused Momčilo Gruban**

In sentencing the accused Momčilo Gruban, the Court has considered the degree of his criminal liability regarding the criminal offences he committed and found that the accused Gruban was aware of all incidents in the Omarska camp and participated actively in the camp system. Likewise, the Court considered the fact that the accused Momčilo Gruban as a guard shift leader in the Omarska camp contributed to and furthered the functioning of the camp, which facilitated further spreading of the crimes. The accused Gruban contributed by his presence in the camp to sustaining the camp's system, performed an important role in its functioning and was engaged in the camp throughout its existence, during which time he had the option to leave, but he did not attempt it. This demonstrates his persistence in the commission of the criminal offence he was found guilty of. As a result of his regular presence at the Omarska camp,

throughout its existence, the accused Momčilo Gruban must have known of the mass crimes committed within the camp compound by the perpetrators who abused the difficult situation and helplessness of the civilians detained in the camp. The accused Momčilo Gruban did not in any way demonstrate his willingness to oppose the crimes committed which were repeated within the Omarska camp over a long period of time, during which a large number of detainees were killed or beaten up, or maltreated in another way.

Therefore, the duration of the presence of the accused Gruban in the Omarska camp and his determination in the commission of the instant criminal offence, his consent to the mass criminal acts committed in the camp and a large number of victims who were helpless and afraid in the camp, subjected to everyday tortures and maltreatments, are, in the opinion of the Court, aggravating factors affecting the sentencing of the accused Momčilo Gruban.

The Court did consider as mitigating the fact that a certain number of witnesses mentioned that the accused had helped some detainees and was not violent towards them. However, the Panel finds that the mentioned circumstances are not of a decisive nature, given that those were sporadic cases, because the help was limited to the detainees the accused was in a way connected to as a friend or work colleague, or the people with whom the accused established a relationship during their internment in the camp. Furthermore, exactly these circumstances indicate that the accused Momčilo Gruban, considering his position in the camp, namely that of a head of one of the three shifts, demonstrated that he could have exerted greater and more important influence on the overall living conditions of the detainees and contributed to making his overall conduct and that of the guards in his shift in line with the applicable regulations.

Quite the contrary, the accused selectively resolved specific situations, either on a personal basis or based on another relationship, knowing that the unlawful treatments in the Omarska camp were numerous and widespread. Thus, he demonstrated determination not to oppose such conduct openly and leave the camp, despite his awareness of the incidents. As for other mitigating factors for Momčilo Gruban, the Court has considered the fact that he has no prior convictions, that he is a family man and a father of two children and that his conduct before the Court was proper.

### **Accused Duško Knežević**

As already explained, the accused Duško Knežević was not a regular employee at the Omarska and Keraterm camps, but visited the camps and entered them freely, exclusively to maltreat the detainees in those camps. In the course of evidentiary proceedings, the Court has found that the accused Knežević committed a number of serious crimes of murders, beatings, torture that resulted in the death of a certain number of people, which indicates a high degree of gravity of the criminal acts the accused Duško Knežević committed. The descriptions of the individual incidents in which the accused Duško Knežević participated illustrate the persistence and determination of the accused in the commission of criminal offences, which was so high that while maltreating the victim, he would not be satisfied until the victim died of beating. There are many examples of Duško Knežević's brutal treatment of detainees, during which the accused together with his perpetrators treated the detainees cruelly, abusing their fear

and helplessness. In addition to that, the accused Duško Knežević's motive for the commission of a rather large number of crimes he was found guilty of was revenge for the death of his brother. A certain number of witnesses testified to that in the course of the main trial (witnesses K016 and Abdulah Brkić). His crimes were coupled with obvious hatred and verbal insults (witnesses Edin Ganić and K015). The aforementioned facts show the degree of criminal liability of the accused. They include in particular the persistence and determination in the commission of the crimes at issue, a large number of beatings resulting in the deaths of victims and the duration of the period over which the accused committed the acts charged in two separate camps, his motives for the crimes as well as the circumstances in which he committed the crimes, treating the victims with utmost violence, abusing their helplessness, as well as the consequences he caused by the commission of criminal acts. Seen as a whole, these circumstances constitute a body of aggravating factors affecting the sentencing of the accused Duško Knežević.

On the other hand, the Court has considered as mitigating for the accused Duško Knežević that he is a family man and a father of one child, has no prior convictions and that his conduct before the Court was proper.

Considering the established state of facts and the consequence that ensued, as well as the causal relationship between them, the Court found the accused persons guilty and sentenced them as follows: accused Željko Mejakić to long term imprisonment of 21 years, accused Momčilo Gruban to the prison sentence of 11 years and the accused Duško Knežević to long term imprisonment of 31 years. In sentencing the accused, the Court has been guided by Article 39 CC BiH and the belief that the sentences imposed are in proportion with the gravity of the criminal offences committed and the degree of criminal liability of the accused persons. As the subject of this case is the severest form of serious criminal offences, committed with intent, the Court imposed long term imprisonment sentences on the accused Željko Mejakić and Duško Knežević. The Court believes that the longest regular prison sentence would not be adequate, given the gravity of the offence and the degree of perpetrator's criminal liability. Furthermore, the Court finds that these sanctions will sufficiently deter all accused persons from committing criminal offences in the future, and that general deterrence will thus be achieved too. Finally, the Court is satisfied that the sentence imposed will influence public awareness of the gravity of criminal offences and fairness of punishing the perpetrator. The Court is also satisfied that the magnitude of sentences imposed will influence the consciousness of citizens of the danger of criminal offences and of the fairness of punishing perpetrators and also achieve the purpose of expressing the community's condemnation of the perpetrated criminal offence.

Pursuant to Article 56 CC BiH, in conjunction with Article 2(4) of the Law on Transfer of Cases from the International Criminal Tribunal for the former Yugoslavia to the Prosecutor's Office of Bosnia and Herzegovina (Law on Transfer of Cases), the accused persons will be credited the time they spent in custody pursuant to the Decision of the International Criminal Tribunal for the former Yugoslavia (ICTY) and Court of BiH, as of 1 July 2003 onwards for the accused Željko Mejakić; from 2 May 2002 until 17 July 2002, and then as of 21 July 2005 onwards for the accused Momčilo Gruban; as of 18 May 2002 onwards for the accused Duško Knežević.

### **Decision on costs of the criminal proceedings**

The decision on costs of the criminal proceedings was rendered pursuant to Article 188 (4) CPC BiH. The accused persons were relieved from the duty to cover the costs of the proceedings, which will be covered from the budget. The Court has relieved the accused persons from the payment of the costs of criminal proceedings bearing in mind that they have been in custody for quite some time already and are indigent, so that the payment of costs would jeopardize the support of the accused and of persons whom the accused are required to support economically.

### **Decision on property law claims**

Since the information obtained in the course of the criminal proceedings does not provide a reliable basis for decision on property law claims, and that the instant criminal proceedings would be substantially prolonged by the determination of the amount of the claims, the injured parties Asmir Baltić, Fadil Avdagić, Emir Beganović, Said Bešić, Saud Bešić, Zlata Cikota, Enes Crljenković, Izet Dešević, Enes Kapetanović, Senad Kapetanović, Kerim Mešanović, Azedin Oklopčić, Mustafa Puškar, Nusret Sivac, Ermin Striković, Anto Tomić, K01, K03, K05, K07, K08, K09, K010, K015, K016, K017, K018, K019, K022, K023, K027, K033, K034, K035, K036, K037, K040, K041, K042, K043 and K044, K055 and K056 are referred to take civil action to pursue their property law claims, pursuant to Article 198 (2) CPC BiH.

**Minutes taker:  
Legal Officer  
Manuel Eising**

**PANEL PRESIDENT  
JUDGE  
Šaban Maksumić**

### **INSTRUCTION ON APPEAL:**

This Verdict may be appealed with the Appellate Panel of the Court of BiH within 15 (fifteen) days as of the day of receipt of the written Verdict.