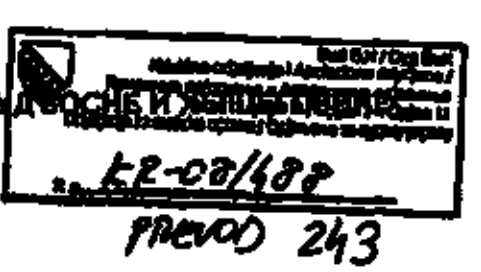
SUD BOSNE I HERCEGOVINE

Number: X-KR-08/488
Sarajevo, 10 July 2008



PREVOD 243

IN THE NAME OF BOSNIA AND HERZEGOVINA

The Court of Bosnia and Herzegovina, Section I for War Crimes, in the panel of judges presided by Judge Minka Krehe, and judges Marjan Pogačnik and Tihomir Lukes as the panel members, with the participation of Jelena Simić Skoko as the record-keeper, in the criminal case against the accused Ivica Vrdoljak for the criminal offense of *War Crimes against Civilians* in violation of Article 173 (1) c) of the Criminal Code of Bosnia and Herzegovina, upon the indictment of the Prosecutor's Office of Bosnia and Herzegovina number: KT-RZ-8/08 of 20 February 2008, confirmed on 21 February 2008, following the main and public trial attended by the Accused Ivica Vrdoljak and his Defense Counsel, Attorney Krešimir Zubak, and the Prosecutor of the Prosecutor's Office of BiH, Mirsad Strika, on 10 July 2008 in the presence of the Accused and his Defense Counsel, as well as the Prosecutor of the Prosecutor's Office of BiH, rendered and publicly announced the following

V E R D I C T

The accused

IVICA VRDOLJAK, aka „Gezo", son of Jozo and Kata, née Tipura, born on 1 August 1968 in Derventa, residing at 116 Podvežička Street, Zagreb-Dubrava, the Republic of Croatia, Croat, citizen of the Republic of Croatia and Bosnia and Herzegovina, Personal Identification Number: 0108968121583 and 0108968330115, pensioner, single, no children, literate, completed secondary school education (lathe operator), served in the army in 1990/91 in Belgrade, squad commander, no decorations, indigent, no prior convictions, not subject of any other ongoing criminal proceedings, placed in custody pursuant to the Decision of the District Court in Doboj No. 013-0-Kpp-07-808-038 dated 29 November 2007 and the Decision of the Court of Bosnia and Herzegovina number: X-KRN-08/488 dated 25 January 2008

IS GUILTY

Because he:

During war in Bosnia and Herzegovina and acting contrary to the International Humanitarian Law, namely, provisions stipulated under Article 3 (1) a) and c) of the IV Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949, during the period between late June and late July 1992, in the facility of "Silos" in Polje, Derventa municipality and in the warehouse of the department store "Beograd" in Tolek settlement in Bosanski Brod, where imprisoned civilians and

prisoners of war of Serb ethnicity from the territory of Derventa municipality were placed, as a member of the 103rd Derventa Brigade of the Croat Defense Council(HVO), inhumanely treated prisoners, inflicting bodily injuries upon them, in as much as he:

1. by the end of June 1992, in the Silos facility in Poljc, ordered all prisoners to stand straight and hold their hands crossed behind their necks and persons who did not comply, he took to the other room on the floor of that facility and on an undetermined date in June 1992, he took Momir Lazić, Risto Petković, Slobodan Vukičević and Radojica Garić, whereupon, together with other persons, he beat them with hands, feet with military boots on and batons,

2. in July 1992, at the warehouse of the department store Beograd, in Tulek settlement in Bosanski Brod, in the evening hours and on several occasions, he took out prisoners among whom were Radoslav Stojaković, Čedo Prodić, Luka Petković, Momir Lazić and Radojica Garić, to an unlit room, whereupon, together with other persons, he beat them with hands, feet with military boots on and batons,

Therefore, during war in Bosnia and Herzegovina, violating rules of International Humanitarian Law, he inhumanely treated prisoners, mentally and physically abusing them, inflicting great physical and mental suffering upon them,

whereby he committed the criminal offence of *War Crimes against Civilians* in violation of Article 173 (1) e) of the Criminal Code of Bosnia and Herzegovina, in conjunction with Article 29 and Article 180 (1) all of the Criminal Code of BiH.

Therefore, applying the aforementioned legal regulations and Articles 39, 42, 48 and 49 and 50, item a) all of the Criminal Code of Bosnia and Herzegovina, the Court

SENTENCES HIM

TO 5 (FIVE) YEARS OF IMPRISONMENT

Pursuant to Article 56 of the Criminal Code of Bosnia and Herzegovina, the time the Accused spent in custody, from 29 November 2007 onwards, that is, until he is committed to serve his sentence, shall be credited towards the pronounced sentence of imprisonment.

II

Pursuant to Article 188 (4) of the Criminal Procedure Code of Bosnia and Herzegovina, the Accused shall be relieved of the obligation to reimburse the costs of the criminal proceedings.

Pursuant to Article 198 (2) of the Criminal Procedure Code of Bosnia and Herzegovina, the injured parties Čedo Prodić, Luka Patković, Momir Lazić and Stojaković Radoslav are hereby referred to take civil action with their claims under property law.

Reasoning

1. Charges

The Indictment of the Prosecutor's Office of Bosnia and Herzegovina, the Special Department for War Crimes, number: KT-RZ-8/08 dated 20 February 2008, which was confirmed on 21 February 2008, charged the accused Ivica Vrdoljak aka Gezo with the commission of the criminal offense of *War Crimes against Civilians* under Article 173 (1) e) of the Criminal Code of Bosnia and Herzegovina (the CC of BiH), by the inhumane treatment of prisoners, who, due to the physical and mental abuse, experienced great physical and mental suffering.

On 4 March 2008 the Accused pleaded not guilty to all counts of the Indictment whereupon the case file was forwarded to the first-instance Panel who on 22 February 2008 held a status conference and on 6 May 2008 opened the main trial.

The Prosecution announced in their opening argument that the allegations laid down in the Indictment will be proven by the direct victims – witnesses, while the Defense said their basis will be the alibi, that is, the fact that the Accused was wounded and was not in Bosnia and Herzegovina during the relevant time period.

2. Presentation of Evidence

a) The Prosecutor's Office:

The witnesses examined in the course of the main trial are as follows: Čedo Prodić, Luka Patković, Momir Lazić, Radojica Garić, Radoslav Stojaković, Cvijo Aničić, Borislav Miodanić, Predrag Nikolić, Svetislav Topalović, Bogdan Radojković, Slobodan Kovačević and expert witness Dr. Ljubomir Cerkić.

The following documentary evidence was presented: the Prosecutor's Office of BiH Record on Examination of Witness Čedo Prodić number KT-RZ-8/08 dated 12 February 2008, the Prosecutor's Office of BiH Record on Examination of Witness Luka Patković number KT-RZ-8/08 dated 12 February 2008, the Prosecutor's Office of BiH Record on Examination of Witness Momir Lazić number KT-RZ-8/08 dated 14 February 2008; the Prosecutor's Office of BiH Record on Examination of Witness Radojica Garić number KT-RZ-8/08 dated 14 February 2008; the Prosecutor's Office of BiH Record on Examination of Witness Radoslav Stojaković number KT-RZ-8/08 dated 14 February

2008; findings and opinion of Dr. Ljubomir Cerkić dated 2 June 2006; Decision on the declaration of imminent threat of war, number 1/92 dated 9 April 1992 rendered by the SR BiH Presidency; The Decision on the declaration of the state of war rendered by the SR BiH Presidency, number 7/92 dated 20 June 1992; Decision number 08-560-20 dated 7 August 2001 issued to Luka Pavković (disability); Findings and Opinion of the medical board of the General Hospital Derventa for Luka Pavković dated 22 November 1994; Findings and Opinion of the medical board of the General Hospital Derventa for Momir Lazić dated 23 November 1994; referral to the specialist issued to Radojica Garić (11 referrals and findings); Certificate of the Military Post 7127 Derventa number 6-461 dated 2 November 1993 on the wounding of Radojica Garić; Certificate of the Military Post 7127 Derventa number 3/1-39 dated 22 February 1995 on the wounding of Radojica Garić; Certificate of the International Committee of the Red Cross issued to Radojica Garić, dated 24 April 1995, No. BAZ-270169; Certificate of the 1st Krajina Corps – Commission for the exchange of the prisoners of war Banja Luka number 113/94, dated 15 September 1994, issued to Radojica Garić; Decision on recognizing the status of a disabled war veteran for Radojica Garić issued by the Department for veterans and disabled war veterans affairs, Derventa municipality, No. 08-560-193, dated 6 July 2005; Photo documentation of the RS Ministry of Interior, Doboj Public Security Center, Public Security Station Derventa No. 45/3 dated 18 July 2001 on the scarring of Radojica Garić; Medical documentation for Radoslav Stojaković (14 findings); Findings and Opinion of the medical board of the General Hospital Derventa for Borislav Miodanić dated 22 November 1994; Findings and opinion of the court expert - surgeon dated 25 December 1997 for Borislav Miodanić; Findings and Opinion of the court expert – neuropsychiatrist for Borislav Miodanić dated 27 September 1998; Miodanić Borislav, application form for the Association of Prisoners of War of Derventa municipality; Medical documentation for Svetislav Topalović (5 referrals and Findings and Opinion); Photo documentation of the RS Ministry of Interior, Public Security Center Doboj, Public Security Station Derventa no. 97/2001 dated 13 November 2001 on injuries sustained by Svetislav Topalović; Svetislav Topalović ICRC ID card no. 270111; Order of the District Prosecutor's Office Doboj number KT-RZ-7/02 dated 25 December 2007 for expert evaluation; Photo documentation of the RS Ministry of Interior, Public Security Center Doboj, Public Security Station Derventa – Prisons, camps, torture chambers in the territory of Derventa municipality, No. 69/01 dated 13 September 2001 (6 photographs); Photo documentation of the Brod Crime Prevention Department, Doboj Municipal Secretariat of the Interior dated 25 April 1993 – the Tulak collection camp for civilians, at the warehouse of the Beograd department store in Brod; Photo documentation of the RS Ministry of Interior, Public Security Center Doboj, Public Security Station Derventa no. 67/01 dated 13 September 2001 – instruments for torture and liquidation; Payroll records for the 103rd Derventa Brigade, HVO, dated 12 December 1992, with the BiH Ministry of Defense cover letter No. 08-04-1-204-3/07 dated 5 December 2007; Record of expenses of the Prosecutor's Office of BiH, No. KT-RZ-8/08 dated 19 December 2007; Record on expenses of the District Prosecutor's Office Doboj, No. KT-RZ-7/02, dated 15 January 2008; Ivica Vrdoljak's ID card No. 15131899 issued by the Ministry of Interior Zagreb, the Republic of Croatia on 18 December 2001; Certificate of permanent residence for Ivica Vrdoljak, Police Administration Zagrebačka No. 511-19-22/1-37391/07 dated 25 April 2007; Report on Ivica Vrdoljak, Police Station Derventa, No.

11-5/02-230-182/01, dated 25 July 2006; Request of the NCB Interpol Sarajevo to the BiH Ministry of Justice, No. IP-I-PL-1431/07-1 dated 28 May 2007; the Prosecutor's Office of BiH Record on the Examination of Witness Slobodan Kovačević No. KT-RZ-8/08 dated 26 May 2008 and Military Police Domaljevac personal data on their member dated 16 January 1994 pertaining to Ivica Vrdoljak.

b) The Defense:

The following Defense witnesses have been examined: the accused Ivica Vrdoljak, Ćazim Kraljušić, Mato Bilonjić, Franjo Krajinović, Kata Vrdoljak, Zoran Jurić, Stjepan Samardžić, Petar Mrvelj and Vlado Hostjuk as well as expert witness Dr. Marija Kaučić-Komšić.

The following documentary evidence was presented by the Defense:
The District Prosecutor's Office Doboj Record on the examination of witness Čedo Prodić number KT-RZ-7/02 dated 3 December 2007; the Derventa Basic Court Record on the examination of witness Momir Lazić number Kri 56/94 dated 18 October 1992; the Derventa Basic Court Record on the examination of witness Luka Petković number Kri 44/94 dated 14 October 1994; the Doboj Basic Court Record on the examination of witness Radojica Garić number Kri-67/94 dated 24 October 1992; the Decision issued by the Derventa municipality to Radojica Garić (disability allowance) number 08-560-193 dated 6 July 2005; Certificate of the Military Post 7127 number 3/1-39 dated 22 February 1995 issued to Radojica Garić; Certificate of the Military Post 7127 number 6-46/(year not stated) dated 2 November 1993 issued to Radojica Garić; the Derventa Basic Court Record on the examination of witness Cvijo Anđić number Kri 68/94 dated 24 October 1994; Borislav Miodanić's Application Form for the Association of Prisoners of War of Derventa municipality (no date or number); Document from the case file of the Municipality Court in Belgrade number 3067/97 pertaining to the Borislav Miodanić lawsuit against SR Yugoslavia; Findings and Opinion of Dr. Marija Kaučić-Komšić on the mental state of the Accused dated 12 February 2008; Excerpt from the register of patients of the Medical Centre – Hospital in Derventa; Patient history issued on 4 June 1996 by the War Hospital in Tolisa signed by Dr. Ćazim Kraljušić; Findings and Opinion of the First-instance military-disability board – Military District Oražje dated 29 April 1996 issued to Ivica Vrdoljak (disability); Certificate related to the wounding, issued by the 103rd HVO Brigade Derventa number 07-237 dated 14 May 1996 to Ivica Vrdoljak; Decision issued by the Bosanski Brod Administration – Derventa office for defense – Ministry of Defense dated 20 June 1996 to Ivica Vrdoljak (disability); Decision rendered by the Ministry of Defense Mostar number 562-02/96-01/01 dated 15 December 1996 to Ivica Vrdoljak (disability – correction of the Decision – evidence O16); Specialist findings of expert Dr. Frank Žanetić (Fra Mate Nikolić hospital) number 4384/08 dated 17 April 2008 pertaining to Ivica Vrdoljak; Letter from the Clinical Hospital Dubrava Zagreb, Croatia number 4-316-1/08 dated 11 March 2008 sent to the Zubak Law Firm; photograph of a group of JNA members including the Accused; Derventa statistical bulletin excerpt – statistical overview of the ethnic make-up in the territory of Derventa municipality according to the 1991 census; statement of the witness Željka Marvić given

on 28 April 2008 to the notary Koko Bona, and Findings of Dr. Draženka Blažević dated 20 June 2008 pertaining to Željko Marvić.

3. Procedural decisions

a) Exception from the Direct Presentation of Evidence

During the presentation of documentary evidence at the main trial held on 16 June 2008, the Defense Counsel for the Accused proffered as evidence a written statement of the witness Željko Marvić from Crkvenica – the Republic of Croatia pointing out that the witness was not able to appear before the Court of BiH.

The Prosecutor immediately opposed this manner of presentation of evidence, arguing that prerequisites for the exception from the direct presentation of evidence stipulated under Article 273 (2) of the Criminal Procedure Code of Bosnia and Herzegovina (the CPC of BiH) have not been fulfilled.

The Court refused the presentation of this evidence as part of the Defenses documentary evidence and instructed the Defense as to the possibility of obtaining a medical certificate that the witness is not able to appear before the Court of BiH upon which, pursuant to Article 273 (2) of the CPC of BiH, that piece of evidence could be accepted as additional Defense evidence.

After the medical certificate was obtained, and as the Prosecution did not object, on 30 June 2008 the Court accepted the Defense Motion and during the main trial read out the statement of the witness Željko Marvić from Crkvenica given to the public notary in Crkvenica on 28 April 2008, while the findings of Dr. Dražen ko Blažević dated 20 June 2008 was tendered into the Defenses documentary evidence.

b) Non-admission of Some Pieces of Evidence

Although the Court listed in the introductory part of this Verdict all pieces of evidence that were presented during the main trial and admitted into the case file, some of them were not eventually accepted as evidence; namely: the District Prosecutor's Office Doboj Record on the examination of witness Čedo Prodić number KT-RZ-7/02 dated 3 December 2007; the Derventa Basic Court Record on the examination of witness Momir Lazić number Kri 56/94 dated 18 October 1992; the Derventa Basic Court Record on the examination of witness Luka Petković number Kri 44/94 dated 14 October 1994; the Derventa Basic Court Record on the examination of witness Radojica Garić number Kri-67/94 dated 24 October 1992, all of which were proposed by the Defense.
Article 281 of the CPC reads that *the Court shall reach a verdict solely based on the facts and evidence presented at the main trial* while Article 273 of the CPC of BiH stipulates that *records on testimony given during the investigative phase, and if judge or the Panel of judges so decides, may be read or used as evidence at the main trial only if the persons*

who gave the statements are dead, affected by mental illness, cannot be found or their presence in Court is impossible or very difficult due to important reasons.
The above referenced witness statements were not accepted by the Court because during the main trial those witnesses gave their statements before the Court and were subjected to direct and cross examination by the Prosecution and the Defense, as well as the panel members. Additionally, those pieces of evidence had been given to judiciary authorities long before the investigation in this case was opened. The panel believes that only *witness statements given during the main trial*, with exceptions set forth under Article 273 of the CPC of BiH, are relevant and appropriate and can constitute a basis for the court's decision. As the referenced witness statements cannot be regarded as the instances above described, the Court did not evaluate those pieces of evidence in accordance with Article 281 (2) of the CPC of BiH.

4. Closing Arguments

a) Prosecution

The Prosecutor pointed out in his closing argument that during the criminal proceedings the Prosecutor's Office presented to the Court sufficient evidence on the basis of which the Court could reach a correct and lawful decision, not only in relation to the criminal offence stated in the Indictment but also in relation to the criminal responsibility of the Accused.
Through statements of the witnesses examined, as well as the documentary evidence presented and admitted into the case file, the Prosecutor's Office proved beyond any reasonable doubt the existence of an armed conflict as the first and general element of the criminal offence of War Crimes against Civilians in violation of Article 173 (1) c) of the CC of BiH, including the fact that all individuals injured by this criminal offence were protected under the international law, that is, pursuant to Article 3 of the Geneva Conventions.
The payroll record of the 103rd Derventa Brigade wherein the name of the Accused is listed under number 89, confirms that the Accused was a member of the 103rd Derventa Brigade HVO, and was therefore under the obligation to adhere to the customs and rules of warfare as well as the Geneva Conventions.
The *examined Prosecution witnesses are very convincing, and consistent about the* manner in which they were deprived of their freedom and taken to camps in which they were exposed to great physical and mental suffering inflicted upon them by the Accused and other members of HVO. The consequence thereof was their deteriorating health and a decrease of the overall abilities, which undoubtedly follows from medical documentation pertaining to some injured parties.
Expert witness Dr. Ljubomir Curkić, court expert in forensic medicine and pathology, was examined in relation to the time period and the manner of the received injuries inflicted upon the injured parties. He confirmed the description of the Prosecution witnesses as to the manner and time when the wounds were inflicted upon them. At the Order of the Prosecution, he produced the Findings and Opinion thereof in a written form.

Witness statements related to the description of the Accused's physical appearance at the time are also consistent because they remember him as a person who was short but stocky, with cropped hair and without beard, and with an injured right arm, while witnesses Cvijo Aničić and Predrag Nikolić who know the Accused since before, confirmed that he was a military police officer, that is, a guard in the referenced camps.
When referring to the statements provided by the Defense witnesses, the Prosecutor underlined that, credence could not be given to them particularly if it is taken into consideration that those witnesses were mostly relatives and friends of the Accused who tried to help him in their testimonies and who were unconvincing and vague when speaking about when and where they had seen him during the relevant time.
The Prosecution also believes that the Defense argument, that is, the Defense strategy to provide the alibi arguing that because the Accused was wounded he could not have been in the given location at the time relevant to the Indictment, is unproven. Dr. Cazim Kraljušić, as well as the medical documents for the Accused, confirm that the injury sustained by the Accused was treated in the infirmary and that it did not prevent him from performing his guard duties and abusing the prisoners.
Finally, the Prosecutor stated that the Prosecutor's Office of BiH proved beyond any reasonable doubt that the accused Ivica Vrdoljak, during the armed conflict between the HVO and the Army of the Republika Srpska, by violating the rules of international law, committed the criminal offence in this manner, at the time and in the location as stated in the factual description of the Indictment, and proposed to the Panel to render the Verdict of conviction and impose upon the Accused a sentence that would be adequate to the gravity of the offence and the resulting consequences.

b) Defense

In his closing argument the Defense Counsel for the Accused pointed out that the Prosecution failed to prove beyond any reasonable doubt the existence of criminal responsibility on the part of his client in relation to the referenced criminal offence, and that the Court could not base its decision on the statements of the examined Prosecution witnesses.
During his analysis of statements of some of the witnesses, the Defense Counsel underlined that they are contradictory and also contrary to other pieces of evidence, not only in relation to the location but also as to the identity and official capacity of the perpetrator. Some of the witnesses claimed that the Accused was a guard in the referenced camps and that he was a member of the military police, while others stated that the guarding duties in the camps were performed by individuals who were foot soldiers.
Witness statements are also not consistent in relation to the time period they spent in the camps as well as the physical description of the Accused, particularly whether his arm was injured at all, and if it was, which one, whether he had plaster or just dressing and on which part of his arm.
Likewise, witness statements are not consistent about whether the Accused was in camps throughout their stay there or he just came there occasionally. Witness Cvijo Aničić who knew the Accused before claimed to have seen him only once when the latter threw him a blanket over the wire so he could warm himself.

When all the above stated contradictions are taken into account, the Defense Counsel believes that statements given by the Prosecution witnesses are absolutely unreliable and inappropriate as the foundation for the court's decision.
The Defense Counsel noted that during the identification of the Accused by the witnesses, provisions of the CPC have been completely ignored, even violated, by the police authorities, and hence the Court cannot base its decision on the evidence obtained in this manner.
It is correct that the Accused was a member of the 103rd HVO Brigade, but he was a member of the brigade police whose task was to act in the territory of the brigade, while special units of military police were securing the prisoners.
The Defense Counsel believes that during the proceedings they succeeded in proving the alibi of the accused and that the presented evidence, both subjective and documentary, undoubtedly show that on 10 June 1992 the Accused was wounded and that during the relevant time period he was in the territory of the Republic of Croatia.

In view of all the aforementioned, the Defense Counsel holds that the Prosecutor's Office failed to present sufficient evidence in the case at hand proving that the Accused committed the criminal offence he is charged with and that the Court, due to the lack of evidence, should render the Verdict, finding the Accused not guilty.

5. Applicable Law

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

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

Article 4a of the CC BiH stipulates that Articles 3 and 4 of the CC BiH shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, *"was criminal according to the general principles of international law."*
Article 7 (2) of the ECHR stipulates the same exemption, providing that paragraph 1 of the same Article *"...shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the*

general principles of law recognized by civilized nations". (See also Article 15 (1) and (2) of the International Covenant on Civil and Political Rights which contains similar provisions). The State of Bosnia and Herzegovina, as a successor of Yugoslavia, ratified this Covenant.

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

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

Furthermore, the fact that the criminal acts listed in Article 173 of the CC BiH can also be found in the law which was in effect at the relevant time period – at the time of the perpetration of the offense, specifically under Article 142 of the CC SFRY, or, in other words, that the criminal acts were punishable also under the then applicable criminal code, additionally supports the conclusion of the Court regarding the principle of legality.

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

The foregoing is in line with the position of the Appellate Division of Section I of the Court of BiH taken in its Verdict against Abdulathim Maktouf number KPŽ 32/05 dated 4 April 2006, and the Verdict against Dragoje Paunović, number KPŽ 05/16 dated 27 October 2006. The Constitutional Court of Bosnia and Herzegovina deliberated on this issue in the A. Maktouf Appeal (AP 1785/06) and stated in its Decision dated 30 March 2007: "68. In practice, legislation in all countries of the former Yugoslavia did not provide a possibility of pronouncing either a sentence of life imprisonment or long term imprisonment, as often done by the International Criminal Tribunal for crimes committed in the territory of the Former Yugoslavia (the cases of Krstić, Galić, etc.). At the same time, the concept of the CC SFRY was such that it did not stipulate either long term imprisonment or life sentence but death penalty for the gravest crimes and maximum 15 year imprisonment for less serious crimes. Hence, it is clear that a sanction cannot be separated from the totality of goals sought to be achieved by the criminal policy at the time of application of the law." "69. In this context, the Constitutional Court holds that it is not possible to simply 'eliminate' the sanction and apply other, more lenient, sanctions, so that the most serious crimes would in practice be left inadequately sanctioned."

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

Also, at the time when the criminal offenses were committed, Bosnia and Herzegovina, as a successor state of SFRY, was a signatory party to all relevant international conventions on human rights and international humanitarian and/or criminal law.[1]

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

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

[2] *Report of the UN Secretary-General pursuant to Paragraph 2 of Security Council Resolution 808 of 3 May 1993, sections 34-35 and 47-48*

[3] *International Law Commission, Commentary to the Draft Code of Crimes against the Peace and Security of Mankind (1996), Article 8.*

[4] *ICTY, Appeals Chamber, Tadić case, Decision on the Defense Motion for Interlocutory Appeal on Jurisdiction, 2 October 1995, para. 131; ICTY, Trial Chamber Judgment in the Tadić case, dated 7 May 1997, paragraphs 618-623;*

[5] *International Law Commission, Commentary to the Draft Articles on Responsibility of States for Internationally Wrongful Acts (2001), Article 26.*

International Humanitarian Law[6] conducted by the International Committee of the Red Cross. According to that Study "serious violations of international humanitarian law constitute war crimes" (Rule 156), "individuals are criminally responsible for war crimes they commit" (Rule 151) and "States must investigate war crimes allegedly committed by their nationals or armed forces, or in their territory, and, if appropriate, prosecute the suspects. They must also investigate other war crimes over which they have jurisdiction and, if appropriate, prosecute the suspects" (Rule 158).

According to the universal jurisdiction principle, customary international humanitarian law is obligatory for each state throughout the world, regardless of whether it has ratified the appropriate international legal instruments. Therefore, each state is bound to prosecute or extradite (*aut dedere aut judicare*) all persons suspected of having violated customary international humanitarian law.

Principles of International law recognized in the UN General Assembly Resolution 95 (I) (1946) as well as by the International Law Commission (1950) refer to "the Nuremberg Charter and the Judgment of the Tribunal", hence to war crimes in general. "Principles of International Law Recognized in the Charter of the Nuremberg Tribunal and in the Judgment of the Tribunal", which were adopted by the International Law Commission in 1950 and submitted to the General Assembly, prescribe in Principle I that "Any person who commits an act which constitutes a crime under international law is responsible therefore and liable to punishment". Principle II also prescribes: "The fact that internal law does not impose a penalty for an act which constitutes a crime under international law does not relieve the person who committed the act from responsibility under international law".

Therefore, the criminal offense of War Crimes against Civilians should in any case be placed under "general principles of international law" referred to in Article 3 and Article 4 (a) of the CC BiH. That is why regardless of whether viewed from the aspect of customary international law, international treaty law or "the principles of international law", it is indisputable that War Crimes against Civilians constituted criminal offenses at the critical time; in other words, the principle of legality was complied with in the sense of both *nullum crimen sine lege* and *nulla poena sine lege*.

6. Findings of the Court

a) General considerations regarding the evaluation of evidence

The Court has assessed the evidence in this case in accordance with the applicable procedural code, that is, the Criminal Procedure Code of Bosnia and Herzegovina. The Court has applied to the Accused the presumption of innocence referred to in Article 3 of the CPC BiH, which embodies a basic principle of law, so that the Prosecution bears the

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[6] *Jean-Marie Henckaerts and Louise Doswald-Beck, Customary International Humanitarian Law, ICRC, Cambridge University Press, 2005, pages 568 et seq.*

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

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

As regards hearsay evidence, the Court underlines that it is well settled in the jurisprudence of the Court that hearsay evidence is admissible. Furthermore, pursuant to Article 15 of the CPC BiH, the Court is free in its evaluation of evidence. The approach taken by the Court has been that it ought to be satisfied that such evidence is reliable in the sense of being voluntary, truthful and trustworthy. Furthermore, the probative value of a hearsay statement will depend on the context and character of the evidence in question and/or if the evidence has been corroborated by other pieces of evidence.
The Court considered circumstantial evidence as being such evidence of circumstances surrounding an event or offense from which a fact at issue may be reasonably inferred. The individual items of such evidence may by themselves be insufficient to establish a fact, but, taken together, their collective and cumulative effect may be revealing and sometimes decisive.

Documentary evidence presented during the main trial was not voluminous, by its nature it was corroborating evidence; in other words, given the fact that those pieces of evidence are of objective nature confirming certain conditions, for example injuries, membership in the army, previous convictions – all of which are public documents, as well as the fact that the Defense did not contest these „certificates", the Court will not elaborate in great detail here on the manner of evaluation and use of these pieces of evidence as it will be explicitly stated in the final evaluation of decisive evidence related to the charges against the Accused.

b) General characteristics of the criminal offense of War Crimes against Civilians

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

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

c) killings, intentional infliction of severe physical or mental pain or suffering upon a person (torture), inhuman treatment, biological, medical or other scientific experiments, taking of tissue or organs for the purpose of transplantation, immense suffering or violation of bodily integrity or health;.

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

The following general elements of the criminal offense of War Crimes against Civilians, all of which need to be proven by the Prosecution, follow from the legal definition thereof:

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

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

The Indictment charges the accused Ivica Vrdoljak with War Crimes against Civilians in violation of Article 173 of the CC BiH, namely, that in the relevant period he acted contrary to Article 3 (1) a) of the Geneva Convention relative to the Protection of Civilian Persons in Time of War from 1949 (hereinafter: the Geneva Convention).

Article 3 (1) a) of the Geneva Convention reads:
"In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:

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

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

a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;

c) outrages upon personal dignity, in particular, humiliating and degrading treatment;"

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

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

Common Article 3 of the Geneva Convention from 1949 is generally considered a provision of customary law and it is binding on all parties to a conflict, either internal or international, and therefore this provision was in effect at the time and in the place of the incidents charged against the Accused.
When interpreting this provision, it is clear that it is not necessary that the perpetrator be aware of or intends to violate international norms, but rather it is sufficient that the commission itself is contrary to the rules of international law.
In order to establish a violation of the rules of international law, it is necessary to establish against whom the commission was directed, that is, whether the act was directed against the special category of population protected by Article 3 (1) of the Geneva Convention.
According to the definition of the term protected categories contained in Article 3 (1) of the Geneva Convention, civilians are persons not taking part in hostilities, including members of armed forces who have laid down their arms and/or those placed hors de combat.[7]

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

Article 43(1) of Protocol I prescribes that:[9]

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

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[7] *Prosecutor v. Blagojević and Jokić*, Case No. IT-02-60-T, Judgment, 17 January 2005, paragraph 544.
[8] J. Pictet et al, Commentary, Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977, p. 610.
[9] Besides pointing to Article 43 of Additional Protocol I, Article 50 ("Definitions of civilians and civilian population") of the same protocol also makes explicit reference to Article 4 (A) of the Third Geneva Convention concerning those included in the definition of armed forces. The Commentary to Article 50 of Additional Protocol I, however, suggests that Article 43 of Additional Protocol I contains a new definition that includes the provisions of Article 4 (A) of the Third Geneva Convention: see *supra* note 4, p. 611.

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

Therefore, considering the definition of the term "civilian", explicitly stating that civilians are all persons who are not taking part in hostilities and who are not members of the armed forces, it is clear that all the persons injured by unlawful conduct of the Accused described under counts 1 and 2 of the operative part were civilians. Therefore, the option of participation in a combat is ruled out. None of these persons had weapons, not even those who some witnesses, both the Prosecution and the Defense witnesses, claimed were members of an armed group prior to the relevant incident. However, those witnesses were clear in their statements that at the time of their deprivation of liberty they did not have any weapons. They were not in a position to fight, while the act the Accused is charged with was directed against civilians of an ethnicity different from the ethnicity of the military force that controlled the territory where the civilians lived. This category of civilians is especially protected by international law. Injuries to life and bodily integrity, inflicted upon this category are especially forbidden. Therefore, it is obvious that the criminal action referred to in the Indictment, which the Accused has been found to have committed, was contrary to the rules of international law, namely Article 3 (1) a) and c) of the Geneva Convention.

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

Article 173 of the CC BiH provides that the criminal offense has to be in connection with violations of the rules of international law during, inter alia, an armed conflict. Since the Panel has found that the actions of the Accused satisfy the elements of a violation of the rules of international law, to wit, Article 3 (1) a) of the Geneva Convention, which provides that the Article is applicable to an armed conflict not of an international character, in that regard the Panel notes that many courts have concluded that this Article applies not only to internal conflicts, but to conflicts of an international character as well[11]. However, the Court did not deal with establishing the character of the armed conflict which has been found in this case to have taken place in BiH at the time relevant to the Indictment, because Article 173 of the CC BiH does not require that the character of the armed conflict, internal or international, be determined.

An armed conflict exists whenever there is a resort to armed force between States or protracted armed violence between governmental authorities and organized armed groups or between such groups within a State. In terms of Common Article 3, the nature of this

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[10] See supra note 4, p. 611.

[11] *Prosecutor v. Delalić et al*, Case No. IT-96-21-A, Judgment, 20 February 2001, paragraphs 148-152, especially paragraph 147. See also *Prosecutor v. Hadžihasanović et al*, Case No. IT-01-47-AR72, *Decision on Interlocutory Appeal Challenging Jurisdiction in Relation to Command Responsibility*, 16 July 2003, paragraph 13.

conflict is irrelevant. Namely, it is irrelevant whether a serious violation occurred in the context of international or internal armed conflict, if the following conditions are met: the violation must constitute an infringement of a rule of international humanitarian law; the rule must be customary in nature or, if it belongs to treaty law, the required conditions must be met; the violation must be serious, that is to say, it must constitute a breach of a rule protecting important values, and the breach must involve grave consequences for the victim, and the violation of the rule must entail the individual responsibility of the person breaching the rule.

In addition to the agreement of the parties on the existence of an armed conflict, it is important to underline that it also follows from the documentary evidence presented by the Prosecution that there was an armed conflict during the period concerned, and that the conflict took part in the wider area of Derventa as well.

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

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

What ultimately distinguishes a war crime from a purely domestic offense under the national legislation is that a war crime is shaped by or dependent upon the environment – the armed conflict – in which it is committed. It need not have been planned or supported by some form of policy. The armed conflict need not have been causal to the commission of the crime, but the existence of an armed conflict must, at a minimum, have played a

substantial part in the perpetrator's ability to commit it, his decision to commit it, the manner in which it was committed or the purpose for which it was committed. Hence, if it can be established, as in the present case, that the perpetrator acted in furtherance of or under the guise of the armed conflict, it would be sufficient to conclude that his acts were closely related to the armed conflict. The Court's finding on that point is unimpeachable.

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

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

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

The third requirement is to allow for the distinction that not all crimes committed in times of armed conflict can be automatically labeled as war crimes. International jurisprudence has firmly established that for an act to be labeled a war crime there has to be a sufficient nexus to the armed conflict; that is, the acts of the Accused have to be "closely related to the armed conflict".[12]

This close connection does not necessarily mean there has to be actual fighting occurring in the territory where the acts are being committed. The ICTY Appeals Chamber in *Tadić* held that: "international humanitarian law continues to apply in the whole territory of the warring States, or in the case of internal conflicts, the whole territory under the control of a party, whether or not actual combat takes place there, and continues to apply until a general conclusion of peace is reached, or in the case of internal armed conflicts, a peaceful settlement is achieved".[13]

Furthermore, "[t]he armed conflict need not actually have been causal to the perpetration of the crime. But the existence of an armed conflict must, at a minimum, have played a substantial part in the perpetrator's ability to commit it, his decision to commit it, the manner in which it was committed or the purpose for which it was committed".[14]

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[12] See *inter alia*, *Prosecutor v. Kunarac*, Case No. IT-96-23 & IT-96-23/1-A, Judgment, 12 June 2002, paragraph 55; *Prosecutor v. Vasiljević*, Case No. IT-98-32-T, Judgment, 29 November 2002, paragraph 24; *Tadić* Jurisdiction Decision, paragraph 70.
[13] *Tadić* Jurisdiction Decision, paragraph 70.
[14] *Prosecutor v. Kunarac et al*, Case No. IT-96-23 & IT-96-23/1-A, Judgment, 12 June 2002, paragraph 58.

To establish whether acts were indeed 'closely related to the armed conflict', the Appeals Chamber in *Kunarac* listed indicators such as: "the fact that the perpetrator is a combatant; the fact that the victim is a non-combatant; the fact that the victim is a member of the opposing party; the fact that the act may be said to serve the ultimate goal of a military campaign; and the fact that the crime is committed as part of or in the context of the perpetrator's official duties".[15]

Taking into account the presented evidence, the Court finds that the acts of the Accused were sufficiently related to the armed conflict. The Court takes particular notice of the position of the Accused in the military, that is, that he was a member of the military police unit, that he was present at the location where the crime was committed, as well as the length of time over which the prisoners were unlawfully treated. Moreover, due to his work and his duties there can be no doubt that the Accused was aware of the armed conflict and the fact that he was very much a part of it.

iv. The perpetrator must order or perpetrate the act

From the testimonies of the Prosecution witnesses who were direct victims of the unlawful conduct of the Accused, there follows the inevitable conclusion that the Accused committed the acts which have the elements of the criminal offence of War Crimes against Civilians. These acts resulted in a severe deprivation of fundamental rights, such as the right to freedom and security, which is contrary to international law and which, in accordance with the above-quoted Article 3 (1) of the Geneva Convention IV, is impermissible against unarmed persons or those who are not part of an armed force, whereby he violated the international law beyond any doubt. The acts were committed during the armed conflict the Accused was aware of and in which he undoubtedly participated.

The reasoning of this conclusion reached by the Court is set out below.

In. Killings, intentional infliction of severe physical or mental pain or suffering upon a person (torture), inhumane treatment

Provisions related to the treatment of the prisoners of war, both civilian and military, date back to the time of the Lieber Code of 1863. Article 56 of the Code reads that *"a prisoner of war is subject to no punishment for being a public enemy, nor is any revenge wreaked upon him by the intentional infliction of any suffering, or disgrace, by cruel imprisonment, want of food, by mutilation, death, or any other barbarity."*[16]
Article 5 of the Geneva Convention relative to the Treatment of Prisoners of War dated 1929 provides that *"no pressure shall be exercised on prisoners to obtain information regarding the situation in their armed forces or their country. Prisoners who refuse to*

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[15] *Ibid*, paragraph 59.
[16] Jean-Marie Henckaerts and Louise Doswald-Beck, Customary International Humanitarian Law, Volume 2: Practice, paragraph 1011

reply may not be threatened, insulted, or exposed to unpleasantness or disadvantages of any kind whatsoever."[17]

The majority of the remarks in the Geneva Conventions arise from the very foundations of the conventions. They proclaim the principle of respect for the human person and the inviolable character of the basic rights of individual men and women.[18]
According to the Commentary to the Fourth Convention "the principle of respect for the person must be understood in its widest sense: it covers all the rights of the individual, that is, the rights and qualities which are inseparable from the human being by the very fact of his existence and his physical and mental powers; it includes, in particular, the right to physical, moral and intellectual integrity – an essential attribute of the human person."[19]
To wit. conventions mostly focus on the importance of humane treatment whereby all that does not fall under such treatment is regarded as 'inhumane'.
Inhumane treatment is regarded as severe violation by all four Geneva conventions.[20] For example, Article 13 of the Geneva Convention III prescribes that prisoners of war must at all times be humanly treated and that they must at all times be protected, particularly against acts of violence or intimidation and against insults and public curiosity. Violation of this provision is construed as grave breach according to Article 130 of the same Convention. This includes inhumane treatment. Inhumane treatment does not mean solely treatment constituting an attack on physical integrity or health; the aim of the Convention is to grant prisoners of war in enemy hands a protection which will preserve their human dignity and prevent their being brought down to the level of animals.[21]

Other provisions of the Geneva conventions include Article 17 of the Geneva Convention III which reads that "no physical or mental torture, nor any other form of coercion, may be inflicted on prisoners of war to secure from them information of any kind whatever. Prisoners of war who refuse to answer may not be threatened, insulted, or exposed to unpleasant or disadvantageous treatment of any kind." Article 32 of the Geneva Convention IV stipulates that "the High Contracting Parties specifically agree that each of them is prohibited from taking any measure of such a character as to cause the physical suffering ... of protected persons in their hands. This prohibition applies not only to ... torture ... but also to any other measures of brutality whether applied by civilian or military agents."
Because of the stress placed on those acts which can be regarded as humane treatment it is difficult to assess actual physical acts which can be qualified as inhumane treatment. It is considered that the word 'treatment' must be understood in its most general sense as applying to all aspects of man's life.[22] For example, reference to physical or mental injury

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[17] *Idem*, paragraph 961
[18] J. Pictet et al, Commentary, Geneva Convention relative to the Protection of Civilian Persons in Time of War, Convention IV, commentary to Article 27, page 200
[19] *Ibid*
[20] Article 50 of the Geneva Convention I; Article 51 of the Geneva Convention II; Article 130 of the Geneva Convention III; Article 147 of the Geneva Convention IV.
[21] J. Pictet et al, Commentary, Geneva Convention relative to the Treatment of Prisoners of War, Convention III, commentary to Article 130.
[22] See reference 4. commentary to Article 27.

in Commentary to Article 147 of the Geneva Convention IV implies injuries which can be established by a doctor. Commentary to Article 27 of the Geneva Convention IV gives the following as examples *"act of violence or intimidation inspired not by military requirements or a legitimate desire for security, but by a systematic scorn for human values (insults, exposing people to public curiosity, etc.)."*[33]

Further indications as to what is considered as inhumane treatment can be found in the Commentary to Article 13 of the Geneva Convention III wherein it is stated that the concept of humane treatment implies the absence of any kind of corporal punishment and also adds the notion of protection. To protect someone means to stand up for him, to give him assistance and support and also to defend or guard him from injury or danger.[34] It is therefore a positive obligation for the Detaining party which follows from the obligation to treat prisoners humanely

c) Charges against the Accused

In relation to Section 1 of the operative part, this Court has established that in late June 1992, the accused Ivica Vrdoljak aka Gezo, in the Silos facility in Polje, ordered all prisoners to stand straight and hold their hands crossed behind their necks and persons who did not comply he took to other room on the floor of that facility and on an undetermined date in June 1992, he took Momir Lazić, Rizo Pašković, Slobodan Vukićević and Radojica Garić, whereupon, together with other persons, beat them with hands, feet with military boots on and batons.

Therefore, during war in Bosnia and Herzegovina, violating rules of International Humanitarian Law, he inhumanely treated prisoners, mentally and physically abusing them, inflicting great physical and mental suffering upon them, whereby he committed the criminal offence of *War Crimes against Civilians* in violation of Article 173 (1) e) of the Criminal Code of Bosnia and Herzegovina, in conjunction with Article 29 and Article 180 (1) all of the CC of BiH.
Essential elements of the criminal offence of War Crimes against Civilians, which can be seen in the existence of war and violation of the rules of international law and within such conduct specific acts committed by the Accused, the Court assessed during the entire evidentiary proceedings. The Court would like to point out that the existence of war undoubtedly ensues not only from the Decision on the declaration of a state of war (Official Gazette R BiH no. 7/92) rendered by the Presidency on 20 June 1992 but also from statements of both the Defense and Prosecution witnesses, which was reasoned in great detail under section 6.b. of the Reasoning.

It is undisputable that during the period since late June and during July 1992, in the Silos facility in Polje and in the warehouse of the Beograd department store in Tuzla, there were camps for civilians of Serb ethnicity, which follows from concurring statements of all witnesses who, although they could not give exact dates when their

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[33] *Ibid*
[34] See reference 7, commentary to Article 13.

captivity began and ended, left no doubt as to the manner of how they were deprived of their freedom, as well as the conditions and treatment they were exposed to in the camps.

It is undisputable that the accused Ivica Vrdoljak was a member of the 103rd Derventa Brigade which was not denied by the Accused himself and which was corroborated by the payroll record of the 103rd Derventa Brigade HVO wherein the Accused is listed under number 89.

It is undisputable that the prisoners who were imprisoned in the Silos facility and the Beograd department store survived great physical and mental abuse, as well as great physical and mental suffering inflicted upon them in the way that they were beaten with hands and feet with military boots on and even batons all over their body. This was described in great detail by the abused witnesses in their statements.

It was disputable however, whether it was the Accused who committed the criminal offence of War Crimes against Civilians in the manner as described under sections 1 and 2 of this Verdict.

The Defense for the Accused claimed that 4 individuals under the name Ivica Vrdoljak lived in Derventa and thus tried to prove that witnesses, in particular the victims of the unlawful acts, erred in identifying the person who tortured them since many of them did not know the accused Ivica Vrdoljak before the relevant incidents.

The Court took particular notice and exercised great caution when evaluating evidence from the trial pertaining to identification. The Court accepts that the evidence related to identification is inherently uncertain. This uncertainty is a result of many difficulties inherent to the process of identification caused by whimsical human perception and memory. The fact that a witness testified honestly is not sufficient. The crux of the identification is not whether the testimony is honest but whether it is reliable. When all turbulent and frequently traumatizing circumstances the witnesses found themselves in are taken into consideration, the Court is deeply aware of the possibility that a mistake can occur, during the identification of a person the witness did not know before. The Court bore this in mind when assessing the statements provided by witnesses – victims.

Nevertheless, the Court concluded that the identification of the Accused as the person who committed the acts described was indisputable. The Court took into account the consistent statements of all witnesses pertaining to the physical description of the Accused during the relevant time, whom they remember as being short, stocky, with cropped hair and beardless. The witnesses agree as well that, at the relevant time the Accused had an injured arm, which is confirmed by the presented medical documentation from which it undoubtedly ensues that the Accused was wounded on 10 June 1992.
All witnesses agree that in the Silos facility in Polje and in the warehouse of the Beograd department store in Tuzla, a person they did not know before but whom the other soldiers called Geza took them out and together with other persons beat them. Witnesses Luka Petković, Cvijo Aničić and Predrag Nikolić who knew the Accused before the war, confirmed that Geza is the accused Ivica Vrdoljak. It is also necessary to underline that

several witnesses knew one or two more persons under the name Ivica Vrdoljak and they were explicit that it was the accused Ivica Vrdoljak who during the relevant time and in the manner as described in the operative part of the Indictment took part in their abuse.

The Defense stated that during the relevant time period the Accused was not in the relevant area at all as he went to his family who lived in the Republic of Croatia to receive treatment for his wounded arm.

The Court accepted the fact that the Accused was wounded in the arm as undisputable, but the wound was treated in the infirmary, which follows from the statement of the Defense witness – Dr. Čazim Kraljušić as well as after the inspection of the register book. The witness Dr. Čazim Kraljušić elaborated on the type of the wound and its consequences as well as on the manner of treatment. In order words, he explained that such wounds are treated in the infirmary and that the Accused, after his wound had been treated in the infirmary, came to change the dressing on his wounded arm. Additionally, this witness confirmed that it was customary at the time to make an entry into the register of patients if the patient is sent for hospital treatment, which in the case at hand was not done for the Accused.

It is, therefore, clear that the arm injury did not incapacitate the Accused from performing his regular guard duties, and also, as the Court concluded beyond any reasonable doubt, from abusing – mistreating the prisoners.
The Court also accepted the possibility that the Accused did indeed leave the relevant territory to visit his family in the Republic of Croatia, but those occasional and temporary visits do not exclude the conclusion of the Court concerning his participation in the incidents as alleged under the Indictment; the more so as the Defense did not offer a single piece of documentary evidence which could show that the Accused was on sick leave for a longer period of time and underwent longer hospital treatment.

Therefore, the Court dispelled all doubts related to the identification of the accused Ivica Vrdoljak aka Geza, and confirmed the fact that the Accused, as described under, committed the criminal offence of War Crimes against Civilians.

In relation to Section 1 of the operative part, direct victims of the unlawful conduct of the accused, namely, Momir Lazić and Radojica Garić provided their testimonies, as well as other prisoners indirectly: Svetislav Topalović, Bogdan Radojković, Predrag Nikolić, Cvijo Anđić and Borislav Miodanić.

Witness Momir Lazić testified about the beginning of the war, that is, how about 30 men, his fellow-countrymen – neighbors from the settlement of Čardak in Derventa were arrested on 26 April 1992 and taken to the *Dom Armije* /Army Centre/ and subsequently to some hangar. This witness remembers particularly well that the imprisoned group was taken to Silos in late June 1992.
Men from Poljari and Rebić were also imprisoned in Silos, but he distinctly remembers his neighbors Radojica Garić, Rino Paunović and Slobodan Vukićević, who were soon upon arriving at Silos "selected" for abuse together with him. He remembers well on one

occasion when due to the blows he suffered, and which were inflicted upon him with legs, as well as with hands and batons, he could not hold his hands above his neck, which was an "additional" motive for further abuse. Due to the force of the succeeding blows he suffered, mostly inflicted upon him by Fric and Geza, he lost consciousness, after which those soldiers splashed him with water and continued abusing him. The witness recalls how at those moments he could hear Radojica Garić's screams from the adjacent room. Later on this witness would see for himself that Radojica was also a victim of abuse.
Although he does not remember the names of all perpetrators of the above referenced actions, the witness is convincing when describing that he, and other named prisoners, was abused by, among others, Fric, Almas and Geza.
These soldiers were unknown to the witness by their full and real names, but when speaking about the Accused he remembers a soldier who was short, with cropped hair and bandaged right arm and who, as he later discovered, was called Ivica Vrdoljak and who was a best man to Luka Paskvić, also one of the prisoners. The witness had an opportunity to see this soldier again during his captivity, when that same soldier abused him again.

The witness – injured party Radojica Garić endured the same pain and suffering. This witness is also from the settlement of Čardak whose inhabitants, as proven during the evidentiary proceedings, were particularly abused.
His testimony is completely consistent with the testimony of the witness Momir Lazić and he points out that he also recalls one occasion when he was particularly abused together with three other individuals from Čardak: witness Lazić, Slobodan Vukićević and Risto Paskvić (who was about 60 years old then). The witness explicitly remembers the accused Ivica Vrdoljak, one of the three persons he knew lived in Derventa.
The Accused was a young man, of about 25 years, short (up to the witness's shoulder as he demonstrated in the courtroom), with a bandaged arm. The witness remembers well that the Accused was hitting prisoners even with the bandaged arm. He was also hitting them with baseball bats.
The two other individuals under the name of Ivica Vrdoljak the witness did not see during his captivity.
One of them was his neighbor and to his knowledge Ivica Vrdoljak lives in Germany or Austria, and as for the other, he does not know anything.
The witness stressed that it was the Accused who introduced himself to the prisoners when he first met them.

The witness Svetislav Topalović also testified about the imprisonment and abuse the prisoners in Silos suffered, but also about the identity of the Accused. This witness saw and met Ivica Vrdoljak aka Geza for the first time in Silos. He knew him as a soldier who abused the prisoners in different ways.
In his testimony, the witness stated that the Accused, together with three other individuals in uniforms, more precisely, Hamzić, Fric, Sicilić and the Accused were hitting him with their hands and feet all over his body.
Although during the main trial the witness could not recognize the Accused as Ivica Vrdoljak aka Geza he remembers, due to the lapse of time, his description of the

Accused, a person of a short stature, brown hair and bandaged arm, is fully consistent with the description provided by other witnesses.
Witness Topalović personally knew three individuals under the name Ivica Vrdoljak and he is certain that none of them was a soldier who abused prisoners. This additionally corroborates the conclusion of the Court that the accused Ivica Vrdoljak aka Geza participated in the offences as charged under the Indictment.

Testimony of the witness Bogdan Rašojković confirms the indisputable conclusion of the Court pertaining to the identity of the Accused. This witness was also one of the prisoners and he remembers well that Jozo Vrdoljak's son Ivica Vrdoljak aka Geza would come to the camp Silos. The fact that the witness knew the Accused's father is explained by the witness's profession as he was a police officer and in charge of the area where Jozo Vrdoljak's family lived and he often visited them.
Because there was a great difference in age (the witness was born in 1934 and the Accused in 1968) the witness did not know the Accused well, but he nevertheless clearly remembers his appearance (short and well-built), his bandaged arm and also his behavior, all referring to Jozo's son.
He recalls that the prisoners from the settlement of Čardak were treated differently than others, and he also testified about the abuse of the injured party Risto Pavković.
He remembers particularly well the abuse they suffered at the hands of Nihad Hamzić aka Fric and Geza. They would order prisoners to hold their hands above their heads and to kneel, after which they would be exposed to blows and insults.

The identity of the Accused and the fact that he was in Silos were also confirmed by witnesses Predrag Nikolić, Cvijo Anđić and Borislav Miodanić.

Predrag Nikolić, one of the prisoners in Silos, also recalls how his pre-war acquaintance Geza – Ivica Vrdoljak participated in taking away many people from Čardak, but he did not see him ever beating any of them.
He distinctly remembers on one occasion when he was attacked by an unknown HVO soldier and how the Accused saved him by telling that soldier that he knew Predrag and that the latter should not harm him.
He recollects that Geza had his arm bandaged those days; he believes it was his right arm.

Witness Cvijo Anđić, pre-war inspector at the Police Station Derventa, was also imprisoned in Silos. This witness testified that he was not abused nor did he see other prisoners being abused, but he did see their faces and bodies when they would return to the hall in which all of them were placed. The witness was explicit that they were "beaten up".
He remembers the Accused as well, because he was an inspector when he examined him during the criminal proceedings in which the Accused was suspected of the criminal offence of Aggravated Robbery. He is certain it was Geza – Ivica Vrdoljak.
On one occasion the Accused addressed the witness with "Inspector, do you remember me?" and it was then that the witness recognized Geza. Geza threw him a blanket over the fence so the witness would have something to cover himself with. He remembers Geza as a young person of short stature who had a bandaged arm at the time.

Witness Boristav Mlodanić was also one of the Čerdak inhabitants who was imprisoned in Silos, and he can recall well the tortures they in particular were exposed to. He remembers Luka Patković, Slobodan Vukićević and Momir Lazić and that they were all beaten with hands, feet and batons. The witness did not know the majority of people who did that, but he remembers that the soldiers called each other Milas, Dinar and Geza.
From what he can recall, Geza was young, about 170cm tall, weighing around 80kg, strongly built and with cropped hair. He heard from other soldiers that Geza's name was Ivica Vrdoljak.

It is clear therefore that all witnesses, not only the injured parties listed under section I of the operative part, but other prisoners as well, clearly and distinctly remember a soldier with a bandaged arm who despite that, physically and mentally abused them together with several other soldiers by taking them out of the facility in which they were imprisoned to another room. Bearing in mind the fact that the prisoners were not only imprisoned in a room with poor conditions but were also not given food or water for longer periods of time, it is logical that all of them experienced both mental and physical traumas due to physical abuse.

Furthermore, on the basis of the testimony of the examined witnesses Predrag Nikolić and Cvijo Aničić, the Court established that on that specific occasion, the Accused saved the witness Predrag Nikolić from abuse and that he gave a blanket to the witness Cvijo Aničić.

In relation to count 2 of the operative part, the Court found that in July 1992, at the warehouse of the Beograd department store in Tuzla settlement in Bosanski Brod, in the evening hours and on several occasions, he took prisoners, among whom were Radoslav Stojaković, Čedo Prodić, Luka Patković, Momir Lazić and Radojica Gerić, to an unlit room, whereupon, together with other persons, beat them with hands, feet with military boots on and batons.

The existence of general elements of the criminal offence the Accused was found guilty of, as well as the indisputable identity of the Accused, the Court reasoned in section I of the operative part, and hereunder will deal only with the participation of the Accused in the incidents at the warehouse of the Beograd department store in Tuzla as alleged under the indictment.
However, it is important to underline the fact that the captivity in Tuzla was only a part of the hardships endured by the Serb civilians deprived of their freedom as early as April 1992 and that the majority of them witnessed the abuse in Silos and Tuzla, which will be reasoned below.

Injured parties Luka Patković, Radojica Gerić, Čedo Prodić, Momir Lazić and Radoslav Stojaković provided their testimonies pertaining to section 2 of the operative part.

The witness – injured party Luka Patković, who knew the Accused when he was the best man at the wedding of Ana and Petar, the Accused's sister and his brother-in-law, was just one of the prisoners at the warehouse of the Beograd department store in Tuzla

settlement who was exposed to different tortures inflicted not just by the Accused but by other soldiers as well.
This injured party, who was imprisoned on Easter, that is, on 26 April 1992, especially pointed out the treatment which inhabitants of Čardak were exposed to.
He remembers well when once the accused Ivica Vrdoljak and other soldiers known to him as Fric, Brico Jozo and Lepan Drago took him out of the warehouse and kicked him with their feet forcing him to admit to having been a sniper and having committed killings. The witness stressed that in those difficult moments he asked those soldiers for a pistol to kill himself. He recalls that the Accused beat him on three occasions, always during the night. The witness again underlined how he was the best man at the wedding of the Accused's sister and his brother-in-law.
He knows that the Accused beat other people too because all prisoners would say they were beaten by Geza when they would return to the warehouse.
It is correct that the witness did not know the Accused by his nickname Geza but there is no place for doubt about the identity of the person he knew as of 1985 – 86 and who beat him on three occasions.
During the cross-examination the Defense tried to discredit this witness, first by presenting a pre-war row between the witness and the Accused's brother-in-law and afterwards by claiming that the Accused would have never abused witness Luka Petković who was his sister's best man, denying at the same time that he was there during the relevant time since being a best man is sacred to him.
However, the Court bore in mind all other evidence as well as the statement of the witness himself and evaluated them in their mutual relation, reaching the conclusion that this witness did not have any valid reason to falsely charge the Accused but that he was convincing and clear when describing the relevant incidents and the torture he suffered at the hands of the person known to him.

The injured party Radoslav Stojaković, who was to the best of his recollection imprisoned on 24 or 25 April 1992, was in many camps during his captivity, including the camp at the warehouse of the Beograd department store in Tulek.
The witness emphasized that he sustained more beatings in Tulek than during his entire captivity, and that Drago Lepan, a citizen of Brod, particularly stood out in the beatings, as well as the accused Geza who, as far as the witness can remember, *especially enjoyed doing it*.
He remembers that Geza also took out and beat other prisoners and that they were afterwards provoked with questions as to who beat them. The incident which they distinctively related to the character and actions of Geza is the beating and abuse on the day before the exchange.
He recalls that Geza had a T-shirt and that his arm was bandaged. He does not know whether it was in plaster. Together with 5 or 6 other individuals, soldiers unknown to the witness, Geza started beating prisoners with so much force that, as the witness underlined, it could not be seen who was hitting whom at any given moment. He nevertheless remembers that he could feel up to four feet kicking him at the same time.
Therefore, he had an opportunity to get to know the accused Geza well.

However, this witness admits that he did not know the Accused by his name but just by his nickname, but that he is certain of the identity of the person who beat him on several occasions.

Radojico Garić, a witness whose suffering was described in the reasoning of section I of the operative part, spent the last days of his imprisonment in Tulek, the warehouse of the Beograd department store.
He recalls that the prisoners were placed in Tulek around 1 July 1992 and that he again saw the accused Geza there. The witness remembers well that Geza was hitting prisoners with baseball bats and remembers distinctly on one occasion when Geza ran after a witness who had already been beaten up so as to beat him more.

The witness Momir Lazić was the Accused's victim of abuse in Tulek as well.
He recalls clearly that one morning the Accused, together with another soldier, took him out of the warehouse to a room full of construction material. They first hit him with bats on which a letter U was inscribed, whereupon the Accused alone hit him with a brick-block. The witness remembers well that after that beating he was in such a condition that he could not reach the door which was only 10–15 meters away.
He also recollects that the day before the exchange the Accused told him "Had I known you were going to be exchanged I would have killed you, you would have never been exchanged."

The witness Čedo Predić was also a victim of the Accused. He recollects that the prisoners were taken out on a daily basis and he remembers clearly the abuse and maltreatment they suffered from the Accused.
On one occasion the Accused told him he would not leave the camp alive.

Testimony of the court expert Dr. Ljubomir Curkić, who was examined during the main trial, clearly shows that during the relevant period some of the injured parties sustained light and some severe bodily injuries. He reached this conclusion after inspection of the medical findings presented to him by the injured parties who underwent medical treatment after being exchanged. Moreover, on the basis of the medical documentation and his professional knowledge, the court expert underlined that the injured party Momir Lazić sustained a severe bodily injury, and that injured parties Radojica Garić, Luka Patković, Radoslav Stojaković and Cvijo Anđić sustained light bodily injuries. Furthermore, it follows from the statement of the examined court expert that the injuries were inflicted with a blunt mechanical object, that is, feet with military boots on or hands or some other blunt object.

The Court accepted the statement of this expert witness in its entirety and found it clear, convincing and objective since the expert evaluation was carried out on the basis of professional knowledge related to the area for which the expert was hired.

On the other hand, the Defense witnesses, beginning with the Accused who denied participation in the described incidents with his alibi, speak mostly about how the Accused was wounded and how he left to the Republic of Croatia. '

Former fellow soldiers of the Accused claim in their statements that they do not know anything about camps in Silos, that is, the Beograd department store in Tuzla although during the relevant time period they were on that area according to their war deployment records.

The Accused himself denies any participation alleged in the indictment through his alibi, stating that during the relevant time period he was wounded and in the Republic of Croatia.
The Accused claims that he was a member of the Živinice unit HVO which was later transformed into the special platoon of the military police and quartered at the Primary School Nikola Tesla. On 10 June 1992, together with 15-20 fellow soldiers, he took part in combats around the check point – the old bridge in Derventa. The Army of RS was attacking them from all sides and the Accused, together with several of his fellow soldiers managed to retreat to the hotel. The next thing he remembers is that one of them, Biljan, peered out after which a shot was heard. The Accused stated that he woke up in a hospital and realized he was wounded, he also heard that Biljan got killed. He recalls that Commander Franjo Krajinović visited him in the hospital. It was the commander who informed the Accused's parents that the latter would be on a mission for the following 10-15 days.
However, the Accused recalls well that he spent 7 days in hospital whereupon, together with his mother and father, he went to the Republic of Croatia where, first in Zagreb and afterwards in Hrvatski Leskovac, he stayed until August 1992 when he returned to Bosanski Brod.
The Accused claims he did not know there were prisons for non-Croat population and, accordingly, did not know people were abused in them. Hence, the Accused stresses it is impossible that he was a guard in a camp.
When speaking about his nickname the Accused alleges that he had never had a nickname and that everybody, including his relatives and friends called him either Ivica or Vrdoljak, adding that his late brother had a nickname Geza. He states that the nickname was never used after his brother died.
When referring to allegations of the Prosecution witnesses the Accused claims that he does not know any of them, including Cvijo Aničić. He does, however, know Luka Patković who used to come to the Accused's father with his brother-in-law "at least 100 times".
In relation to his *bandaged arm* to which almost every witness referred, the Accused underlines that he was wounded in the shoulder and not forearm, and that his arm was positioned down his body and bandaged in that manner.

The witness Ćazim Kraljušić, surgeon who admitted the Accused on the day he was wounded, recalls that the Accused was wounded and after inspection of the hospital register entry for 10 June 1992 (the Defense exhibit), explains that the Accused was minimally treated in the infirmary and released.
He added that it was a blast wound in the region of the right shoulder-blade and upper arm, that there were no fractures and that the Accused received tetanus shot.
Witness Kraljušić explained that the treatment of these wounds was not long, since there were no fractures and that the register was primary for the history of disease. The witness

expounded that it clearly follows from the presented register that the Accused was not hospitalised; pointing out that the team of doctors evaluated who was to be treated in hospital and who was to be sent home.

The Defense witness Mate Bjelović, who was a commander of the HVO "Bomb" unit, remembers soldier Ivica Vrdoljak. He did not know that Ivica before the war but during the war he got to know him as a brave soldier. He recalls that Ivica was wounded and that another soldier asked for the permit so that Ivica could leave BiH and go to the Republic of Croatia. To the question of the Prosecutor this witness pointed out that the soldier could leave /Trans. note: the country/ for treatment only upon the recommendation of the doctor. This was not recommended in the case at hand as the Defense witness, the doctor who treated the Accused's wound, Dr. Čazim Kraljušić, stated that the Accused was treated in the infirmary and released home and that the type of injuries the Accused sustained are treated for a shorter period of time only. Therefore, doctors did not recommend that the Accused should be further treated in the Republic of Croatia. and a permit to leave, that is, permit for the relocation of the family was issued only for a specified number of days. Accordingly, the Accused could not have been in any manner whatsoever absent from the unit for the entire month without a permit because such conduct would be regarded as desertion and would be certainly registered by the wartime establishment the Accused was a member of.
Furthermore, when asked about the camps in Silos and Tulek, this witness replied that Silos was under projectile five and that a camp could not have been set up there. He did not hear of the camp in Tulek, and the only location for which he heard was a camp in Rabić.

The witness Franjo Krajinović aka Čazo also remembers the Accused, in particular that he was wounded and that he visited him in the hospital.
Before the war he knew the Accused only by sight, and became his fellow soldier at the beginning of war. He recalls that the Accused had an ill brother who was nicknamed *Gezo* and because of that they often called him *Gezin /Trans. note: belonging to Gezo/*.
This witness also did not hear there was a camp in Silos, but he did hear that the inhabitants of Čardak were imprisoned somewhere.

Witnesses Zoran Jurić and Stjepan Samardžić confirm that the Accused was wounded and the witness Jurić remembers seeing him at the *Surgery*.
Witness Samardžić claims that the Accused stayed at his place in Zagreb until the end of August 1992, which is when he returned to Bosnia.

The witness Vlado Hnatjuk, brother-in-law of the Accused, recalls that the Accused came to see him in Crikvenica first time in July and later on in August too. He recollects that the Accused was wounded and that he also came on 1 August 1992, on his birthday.

The witness Stjepan Marvelj, the other brother-in-law of the Accused, testified in relation to the acquaintance of the injured party Luka Patković and the Accused.
Witness Marvelj confirmed the acquaintance between the Accused and Luka Patković explaining that he has known Luka since childhood, that they were friends and frequently

visited each other and thus Luka was even his best man. Hence, Luka knew witness's entire family, including the Accused. Luka frequently went to the witness's father-in-law (father of the Accused he lived together with).

Mother of the Accused, witness Kata Vrdoljak, confirmed the claims by the Accused that, his late brother (her son) had a nickname Geza; however, it is a fact that the mother of the Accused could not have known how her son Ivica was called by his fellow soldiers in the unit.

Bearing in mind all the aforementioned, namely, testimonies of the Prosecution witness-victims and eye-witnesses to the relevant incidents, as well as the Defense witnesses testimonies, none of whom are eye-witnesses but only witnesses, the fact that the Accused was wounded and had to leave the territory of Bosnia and Herzegovina, the Court concluded beyond any reasonable doubt that the Accused committed the acts described under sections 1 and 2 of the operative part herein.
The Court accepts the fact that the Accused was wounded, on which both the Defense and Prosecution witnesses agree, but this very circumstance is one of decisive elements when differentiating the Accused from other soldiers in the camp, which with all other identification factors removes any doubt that it was the accused Ivica Vrdoljak aka Geza who abused the prisoners. This is particularly so if it is taken into account that the majority of the witnesses, victims, did not know the Accused before, or his late brother nicknamed Geza, all of which shows that those witnesses did not have any reason whatsoever to falsely charge the Accused, and particularly not to identify him as Geza. Obviously, those witnesses heard that nickname during the incidents alleged in the indictment only from the Accused who introduced himself, and from the fellow soldiers of the Accused who called him by that name.

The Court does not rule out the possibility that, during the period between June and August 1992 the Accused left the territory of BiH and visited his relatives in the Republic of Croatia. Nevertheless, witnesses who were abused by the Accused himself are fully consistent and convincing in their statements and they rule out his absence from the relevant area for longer time periods.

On the other hand, repeated averments of the Defense witnesses that, the Accused did not have a nickname without an explanation as to why a great number of people knew the Accused by his nickname (his character and his actions), as well as their statements that, they did not know of the existence of camps for the Serb population, show the obvious intention of the Defense to avoid criminal responsibility.
The fact that, by denying the presence of the Accused in the relevant area the Defense denied the existence of camps for the Serb population, and, accordingly, excluded the possibility that some of the soldiers who were also deployed as camp guards could be summoned additionally, serves to corroborate this conclusion of the Court.

Moreover, the value of witness statements, former prisoners, especially in relation to the statement of the Defense witness – the doctor who confirmed the day of the wounding and the type of wound sustained by the Accused, can lead to only one conclusion: in late

June 1992 at the facility Silos in Polje and in July 1992 at the warehouse of the Beograd department store in Tuzla, the Accused inhumanely treated prisoners – civilians of Serb ethnicity, and was aware of the circumstances he was in, particularly the fact that he had power over prisoners - civilians, therefore, he was aware of his actions and wanted to commit them.
The Court found that every recourse to physical force (even if there are no heavy injuries) can lead to the violation of Article 3: *the Court points out that in respect of a person deprived of his liberty, any recourse to physical force which has not been made strictly necessary by his own conduct diminishes human dignity and is in principle an infringement of Article 3 of the Convention.* As the Accused was a young and healthy person at the time and knew the situation the imprisoned civilians found themselves in *during the critical period*, he inflicted injuries upon them with the intention to diminish human dignity of the injured parties.

When assessing the evidence, the Court evaluated them individually and collectively, at the same time taking into consideration other pieces of evidence presented during the main trial. The Court however did not place considerable importance on those pieces of evidence nor did it find it necessary to analyze them in great detail as they *did* not significantly influence the established state of facts or the conclusion of the Court reached on the basis of the evidence detailed in the Verdict.
Therefore, the Court concluded beyond any reasonable doubt that the accused Ivica Vrdoljak violated the rules of international law; namely, at the time of the armed conflict he inhumanely *treated prisoners*, physically and mentally abusing them, inflicting upon them great physical and mental suffering, whereby he committed the criminal offence of War Crimes against Civilians as stated in the operative part herein, of which he was found guilty and punished under the law as will be reasoned hereunder.

7. Meting Out the Punishment

In ruling on the duration of the punishment, the Court assessed all circumstances bearing on it as prescribed under Article 48 of the CC BiH. Additionally, the Court evaluated all other circumstances which could have bearing on the type and the duration of punishment by particularly *assessing the degree of responsibility, motives for which the offence was* committed, degree of danger or injury to the protected value, as well as the circumstances under which the offence was committed. Likewise, when ruling on the length of imprisonment the Court took into account the life the Accused led before, his situation and behavior during the proceedings; in other words, the Court evaluated both aggravating and extenuating circumstances.

In ruling on the length of imprisonment, the Court was aware of the exceptional circumstances under which the Accused acted, as well as the fact that he had full freedom in his treatment of prisoners, including taking them out and abusing them.
Nevertheless, the Accused is charged with the one-off unlawful treatment of prisoners, as an accomplice, that is, together with others.

When meting the punishment in relation to the accused Ivica Vrdoljak, the Court first evaluated the gravity of the criminal offence and the contribution of the Accused to its perpetration, that is, the degree of his criminal responsibility.

The gravity of the criminal offence the Accused is charged with has always been determined on the basis of the consequences to victims or persons related to the criminal offence and the closest relatives. The gravity is established *in personam* and not on the basis of universal consequences. The Court concluded that although the guilt of the Accused can be related to every individual and general harm inflicted upon the victim and his relatives, it would be too much to say that every hardship which befell the local community could be attributed to the guilty party.

The criminal offence in violation of values protected by international law carries the punishment of long-term imprisonment. However, bearing in mind the gravity of the consequences the Court did not impose *this punishment in the case at hand.*

In the specific case the Court took into account the following elements, which are usually evaluated when meting out the punishment:

When deciding on the length of punishment, the Court first considered the manner in which a decision could be rendered so as to influence the protection of society from the guilty party, which is an important factor when determining the appropriate punishment. The protection policy depends on the nature of the criminal offence and the conduct of the Accused. The protection of society often implies a long-term imprisonment so that the society could be protected from the enmity or predatory behavior of the guilty parties. This factor is important and relevant when the guilty party is considered dangerous for society.

In the case at hand, the Court assessed the role and the contribution of the Accused in the commission of the criminal offence, the fact that the Accused was found guilty of one-off unlawful action which was a result of the obvious intention to unlawfully treat the prisoners, the protected value in this case. When meting out the punishment the Court had to take into account the fact that the criminal offence was a result of the unlawful actions of the Accused directed against a group of prisoners who were abused by the Accused and other members of the HVO.

Furthermore, the Court bore in mind the rehabilitation factor which deals with the circumstances pertaining to the reintegration of the guilty party into the society. This is usually the case when younger or less educated members of society are found guilty of criminal offences. It is therefore necessary to reintegrate them in the society so that they could become its useful members and to allow them to lead normal and productive lives once they are released. The Court took all this into account when deciding on the length of imprisonment.

In addition to the fact that by imposing an appropriate punishment the Accused should be deterred from ever again thinking of participating in such crimes, when rendering the

decision the Court also considered persons who could find themselves in similar situations in the future and who should also be discouraged from participation in those criminal offences.

Although the consequences of these criminal offences are far-reaching and permanent, the Court believes that this punishment will contribute to raising the awareness of the consequences and the punishability of those crimes, that is, the fairness of punishing the perpetrators.

Aggravating circumstances

Although the criminal offence against values protected by international law carries the punishment of not less than ten years or a long-term imprisonment, the Court did not pronounce this sentence in the case at hand, bearing in mind the seriousness of the consequences but also the conduct of the Accused during the entire period relevant to the indictment as well as his good conduct before the Court. Hence, the Court concluded that in the case at hand there are no aggravating circumstances for the Accused.

Extenuating circumstances

The evidentiary procedure showed that the Accused was not persistent or unscrupulous although he, as was stated above, had unlimited access to prisoners.
The Accused treated prisoners fairly as testified by Predrag Nikolić and Cvijo Antić, except in the two above described situations.
As particularly extenuating circumstances when rendering the decision, the Court evaluated the circumstance that the Accused was young at the time when he committed the acts described in the indictment, as well as the fact that after all war incidents the Accused developed a PTSD (post-traumatic stress disorder).
Furthermore, the Court evaluated not only the conduct of the Accused after the criminal offence but also his conduct during the trial, and found that the 5 (five) year imprisonment will achieve the purpose of punishment, not only in terms of specific, but also general prevention – community's condemnation and influence on the consciousness of citizens of the danger of criminal offences.

Highly extenuating circumstances

Article 49 of the CC of BiH stipulates that:

The court may set the punishment below the limit prescribed by the law, or impose a milder type of punishment:
a) When law provides the possibility of reducing the punishment; and
b) When the court determines the existence of highly extenuating circumstances, which indicate that the purpose of punishment can be attained by a lesser punishment.

In the opinion of the Court, highly extenuating circumstances in the case at hand are facts that the Accused was a young man at the time of the commission of the offence alleged under the indictment, and that after all war incidents he was declared an invalid with a 100% disability suffering from the PTSD.

Conclusion

In view of all the above referred aggravating, extenuating and highly extenuating circumstances, the Court holds that the imposed punishment is proportionate to the gravity of the criminal offence, the degree of criminal responsibility, circumstances under which the crime was committed and motives of the Accused to commit the criminal offence, and that the pronounced sentence of imprisonment will serve the purpose of punishment in terms of general and specific prevention, that is, raising the awareness of the Accused and all other individuals that crimes are prohibited, punishable and will be condemned by the community, and will deter the referenced persons from committing crimes in the future.

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

Pursuant to Article 188 (4) of the Criminal Procedure Code of Bosnia and Herzegovina, the Accused is relieved of the duty to reimburse the costs of the proceedings, given that the Accused is indigent and, in particular, that he is an invalid with 100% disablement and unemployed, in other words, when his constant monthly incomes are taken into account.

When deciding on the unspecified (and imprecise) claims under property law, the Court decided, pursuant to the provision of Article 198 (2) of the Criminal Procedure Code of Bosnia and Herzegovina, to instruct the injured parties Čedo Prodić, Luka Petković, Momir Lazić and Radoslav Stojaković that they may pursue their claims under property law in a civil action.

RECORD KEEPER
JELENA SIMIĆ-SKOKO
/Signature affixed/

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

LEGAL REMEDY: An Appeal from this Verdict may be filed within 15 days as of the date of the receipt of the Verdict in writing.

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

Sarajevo, 19 September 2008

[redacted]

Certified Court Interpreter for English