SUD BOSNE I HERCEGOVINE  СУД БОСНЕ И ХЕРЦЕГОВИНЕ

Number: X-KRŽ- 06/298
Sarajevo, 16 December 2008

IN THE NAME OF BOSNIA AND HERZEGOVINA!

The Court of Bosnia and Herzegovina, in the Appellate Division Panel of Section I for War Crimes, composed of Judge Dragomir Vukoje as the Presiding Judge and Judges Robert Carolan and Azra Miletić as the Panel Members, with the participation of the Legal Officer Medina Hababeh, as the Record-taker, in the criminal case against the accused Krešo Lučić, for the criminal offense of Crimes against Humanity in violation of Article 172(1) e), f), and k) of the Criminal Code of Bosnia and Herzegovina (the BiH CC), as read with Article 180(1) of the BiH CC and Article 29 of the BiH CC, deciding upon the Indictment of the Prosecutor's Office of Bosnia and Herzegovina (the Prosecutor's Office of BiH) number: KT-RZ 130/05 dated 23 October 2006, which was confirmed on 26 October 2006, following the trial, on 9 December 2008 rendered and on 16 December 2008, in the presence of the Prosecutor of the Prosecutor's Office of BiH, Slavica Terzić, the accused Krešo Lučić and his defense counsel Krešimir Zubak, publicly announced the following:

VERDICT

The accused **KREŠO LUČIĆ**, son of Ivo and Anđa, born on 19 March 1969 in the Kreševo Municipality, residing in Široki Brijeg, at Kralja Tomislava Street bb /*no number*/, citizen of Bosnia and Herzegovina and the Republic of Croatia, married, father of three underage children, unemployed, no prior convictions, in custody from 27 April 2006 until 19 January 2007 when by the Decision of this Court number: X-KR-06/298 dated 11 January 2007 the custody was terminated and bail and prohibiting measures ordered, and subsequently partially modified by this Court Decision number: X-KRŽ-06/298 dated 11 February 2008,

Pursuant to Article 284 c) of the Criminal Procedure Code of BiH (the BiH CPC), the accused is hereby

ACQUITTED OF THE CHARGES

That:

In the period between April 1993 and late September of the same year, within a widespread and systematic attack of the army and military police of the Croat Defense Council directed against civilian Bosniak population in the territory of the Kreševo Municipality, as well as in the territory of the municipalities of Kiseljak, Busovača and Vitez, which constitute Central Bosnia, knowing about the attack, in his capacity of the Kreševo HVO Military Police Commander he committed and took part in imprisonment contrary to the fundamental rules of international law, and committed and took part in torturing the Bosniak civilian population and aided others in inhumane acts of taking to forced labor and imprisonment in poor conditions by the following:

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

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

3. In June and July 1993, in the Kreševo Military Police Main Staff in the *Elektroprivreda* building in Kreševo**,** he tortured the following Bosniak prisoners brought from the *Šunje* camp: Galib Kustura, Fazil Fazlibašić, Ibrahim Beganović, Nedžib

Fazlibašić, Almedin Mušanović, Kasim Fazlibašić and Hajrudin Bejtić punching them, kicking them and beating them with wooden batons all over their bodies and ordered his subordinate military police officers to physically abuse them, which they did, punching them, kicking them and beating them with wooden batons all over their bodies, as a result of which the above-named prisoners sustained visible bodily injuries and as such they were taken back to the *Šunje* camp in Kreševo,

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

Therefore, within the widespread and systematic attack directed against the Bosniak civilian population, knowing of such an attack, he ordered and committed imprisonment contrary to the rules of international law and he ordered and committed torture of Bosniak civilian population and aided others in their inhumane acts by taking the detained persons to forced labor and their imprisonment in poor conditions

Whereby he committed the criminal offense of Crimes against Humanity in violation of Article 172(1) of the BiH CC, in conjunction with Article 180(1) and Article 29 of the BiH CC as follows:

1. sub-paragraph (e) in relation to Count 1 of the Indictment,
2. sub-paragraph (f) in relation to Counts 2, 3, and 4 of the Indictment
3. sub-paragraph (k) in relation to Count 1 of the Indictment,

Pursuant to Article 189(1) of the BiH CPC, the costs of the criminal proceedings stipulated under Article 185(2) sub-paragraphs a) through f) of this Code, as well as the necessary expenditures of the accused and the necessary expenditures and remuneration for the defense counsel, shall be paid from the budget.

R e a s o n i n g

1. Charges

1. The Indictment of the Prosecutor's Office of BiH number: KT-RZ 130/05 dated 23 October 2006, confirmed by this Court on 26 October 2006, charged the accused Krešo Lučić with having committed the criminal offense of Crimes against Humanity in violation of Article 172 (1) e), f), and k) of the BiH CC in conjunction with Article 180 (1) of the BiH CC and Article 29 of the same Code.

2. Procedural history

2. By the Verdict of the Court of Bosnia and Herzegovina (the Court of BiH) number X-KR-06/298 dated 19 September 2007, the accused Krešo Lučić was found guilty of having committed the criminal offense of Crimes against Humanity in violation of Article 172 (1) e) and k) (*Section 1 of the operative part*), and sub-paragraph f) *(Sections 2 and 3 of the operative part)*, as read with Article 180(1) of the BiH CC and Article 29 of the BiH CC, by the acts described in the operative part of the referenced Verdict.

3. For the referenced criminal offense the first instance Court sentenced the accused to imprisonment for a term of six (6) years, while pursuant to Article 56 of the BiH CC, the time the accused spent in custody, from 27 April 2006 until 19 January 2007, was credited towards the sentence as imposed. Applying Article 188(4) of the BiH CPC, the accused was relieved of the duty to reimburse the costs of the criminal proceedings, while pursuant to Article 198(2) of the BiH CPC the injured parties were referred to take civil action with their potential claims under the property law.

4. Under the same Verdict the accused was acquitted of the charges that, in the manner as described under Section 4 of the operative part of the Verdict, he committed the criminal offense of Crimes against Humanity in violation of Article 172(1)f) in conjunction with Article 180(1) and Article 29 of the BiH CC.

5. By the Appellate Panel Decision number: X- KRŽ-06/298 dated 3 April 2008, the appeals filed by the Prosecutor's Office of BiH and the defense counsel for the accused Krešo Lučić were granted, hence the Verdict of the Court of Bosnia and Herzegovina number X-KR-06/298 dated 19 September 2007, was revoked and a hearing scheduled before the Appellate Division of Section I for War Crimes of the Court of Bosnia and Herzegovina.

3. Evidentiary procedure before the Appellate Division Panel

6. Pursuant to Article 317 of the BiH CPC, the hearing before the Appellate Panel of the Court of BiH was held and during the evidentiary procedure the Appellate Panel again heard the following evidence presented in the first instance proceedings:

a) Prosecution evidence

7. By listening to the audio and video recordings of the testimonies of the prosecution witnesses: Osman Bejtić, Enver Bejtić, Edin Hasandić, Admir Topalović, Refik Hodžić, Junuz Ahbabović, Džemo Ramić, Aiša Agić, Halid Lušija, Adem Lušija, Ibrahim Lisovac, Meho Hodžić, Salih Skopljak, Avdulah Popara, Benjamin Kardaš, Galib Kustura, Almedin Mušanović, Našid Beganović, Nedžib Fazlibašić, Ivica Šunjić, Hajrudin Bejtić, Kasim Fazlibašić, Fazil Fazlibašić, Ljuban Cigelj, Nermin Poturković and Zajim Šarić.

8. Furthermore, the following documentary evidence tendered by the Prosecutor's Office of BiH was inspected: Exhibits: T-1- Record on examination of witness Osman Bejtić dated 10 May 2006; T-2- Record on examination of witness Enver Bejtić dated 5 June 2006; T-3- Record on examination of witness Edin Hasandić dated 12 September 2006; T-4- Record on examination of witness Admir Topalović dated 26 September 2006; T-5- Record on examination of witness Refik Hodžić dated 5 June 2006; T-6- Record on examination of witness Junuz Ahbabović dated 21 September 2006; T-7- Record on examination of witness Đemo Ramić dated 13 September 2006; T-8- Record on examination of witness Aiša Agić dated 13 September 2006; T-9- Record on examination of witness Halid Lušija dated 17 August 2006; T-10- Record on examination of witness Adem Lušija dated 18 September 2006; T-11- Record on examination of witness Ibrahim Lisovac dated 23 January 2006; T-12-Medical findings for Meho Hodžić dated 19 October 1993; T-13- Record on examination of witness Meho Hodžić dated 9 August 2006; T-14-International Red Cross Certificate proving Salih Skopljak's detention in Kreševo dated 20 October 2004; T-15-Certificate recognizing Salih Skopljak's status of Bosnia and Herzegovina detainee, dated 1 November 2004; T-16- Record on examination of witness Salih Skopljak dated 17 August 2006; T-17-Certificate of the State Commission for Exchange of Prisoners of War proving that Avdo Popara was registered as a detainee in a camp in Kreševo, dated 21 April 1995; T-18- Certificate of the State Commission for Exchange of Prisoners of War proving that Avdo Popara was detained as a civilian detainee in the HVO camp in Kreševo dated 27 April 1994; T-19- International Red Cross Certificate proving that Avdo Popara was detained in Kreševo dated 27 May 1994; T-20- Certificate recognizing Avdo Popara's status of Bosnia and Herzegovina

camp detainee dated 8 October 1998; T-21- Record on examination of witness Avdulah Popara dated 7 March 2006; T-22- Record on examination of witness Benjamin Kardaš dated 16 August 2006; T-23- Record on examination of witness Galib Kustura dated 19 September 2006, T-24- Record on examination of witness Almedin Mušanović dated 18 August 2006.; T-24- Record on examination of witness Almedin Mušanović in the case Vlatko Buzuk dated 21 November 2000(copy and original); T-25- Record on examination of witness Našid Beganović dated 17 August 2006; T-26- Record on examination of witness Nedžib Fazlibašić dated 18 September 2006; T-27-Certificate on seizure of the *Šunje* warehouse dated 5 March 1994; T-28- Record on examination of witness Ivica Šunjić dated 7 August 2006; T-29- Record on examination of witness Hajrudin Bejtić dated 18 May 2006; T-30- Record on examination of witness Kasim Fazlibašić dated 4 October 2006; T-31- Record on examination of witness Fazil Fazlibašić dated 6 March 2006; T-31a- Record on examination of witness Fazil Fazlibašić in the case Vlatko Buzuk dated 21 November 2000(original and copy); T-32-Record on examination of witness Ljuban Cigelj dated 30 May 2006; T-33-Certificate of membership of Krešo Lučić in the Armed Forces (the HVO (Croat Defense Council)-R BiH) dated 22 November 2004; T-34-Personal file of Krešo Lučić; T-35-List of soldiers dated 8 October 1993; T-36-Military Police Report dated 12 February 1994; T-37-Official Note dated 21 December 1993; T-38-Order dated 9 December 1993; T-39- Kreševo Military Police Document dated 21 October 1993; T-40-Military Police Report dated 19 August 1993; T-41-Report on the work of Military Police dated 18 August 1993; T-42-Order to transfer to house isolation of 15 August 1993; T-43-Order to place Enver Meredan in house arrest dated 15 August1993; T-44-Request for apprehension dated 18 July 1993; T-45-Military Police Patrol Report dated 16 July 1993; T-46-Military Police Report dated 16 July 1993; T-47-Report on the release of Husein Hrkić dated 4 July 1993; T-48-Order for apprehension issued to the Military Police dated 4 July 1993; T-49-Order dated 30 June 1993.; T-50-Work Order dated 15 June 1993; T-51-Military Police Report dated 8 June 1993; T-52-Military Police Report for 4 May 1993; T-53-Daily Report on the work of the Kreševo Military Police dated 4 June 1993; T-54-Daily Report on the work of the Military Police dated 2 June 1993; T-55-Daily Report to the III Company Command- IV Battalion of the Military Police with the seat in Kiseljak dated 27 May 1993; T-56-Certificate of the Handover of Weapons dated 26 May 1993; T-57-Military Police Daily Report dated 25 May 1993; T-58-Report to the Command of the III Company of the IV Battalion-Kreševo Military Police dated 19 May 1993; T-59-HVO Order dated 6 May 1993; T-60-Military Police Report dated 4 May 1993; T-61-Military Police Report dated 26 April 1993; T-62-Military Police Order dated 31 March 1993, T-63-HVO Report on the members of the MOS (Muslim Armed Forces) dated 2 July 1993; T-64-Kreševo Military Police List dated 18 December 1993; T-65-Kreševo Military Police List dated 30 December 1993; T-66-Military Police List dated 12 January 1994; T-67-Kreševo Military Police List dated15 February 1994; T-68-Order by Krešo Lučić dated 18 October 1993;

T-69-Daily Report on the work of the Military Police dated 3 May 1993; T-70-Military Police Daily Report dated 1 June 1993; T-71-Military Police Work Order dated 30 May 1993; T-72-Daily Report on the work of the Military Police dated 31 May 1993; T-73-Military Police Report dated10 January 1993; T-74-Kreševo Military Police Report dated 5 July 1993; T-75-Kreševo Military Police Daily Report dated 26 May 1993; T-76-Certificate of the Association of Camp Detainees for Emina Skopljak dated 14 October 2004; T-77- Certificate of the Association of Camp Detainees for Džanan Skopljak dated 14 April 2007; T-78-Certificate of the Association of Camp Detainees for Aida Skopljak dated 14 October 2004; T-79-Request for disqualification of 5 July 1993; T-80-List of the Military Police Kreševo of 18 March 1993; T-81-Criminal Record Excerpt re. Krešo Lučić dated 31 May 2006; T-82-Military Police Daily Report dated 26 January 1993; T-83-Birth Certificate for Krešo Lučić; T-84-Act-Order dated 22 June 1992 and T-85- T-85-Sarajevo MUP (Ministry of Interior) Official Note dated 8 November 2000.

b) Defense evidence

9. With the consent of the parties, the video recordings of the testimonies of the following defense witnesses were inspected and listened through: Ivo Kuliš, Žarko Pavlović, Frano Marković, Pavo Vukoja, Ivica Nuić, Josip Sakić, Ivo Lastro, Anto Marić, Mato Tadić, Vinko Kvesić, Željko Gracić, Tomo Čelan, Orhan Vila, Mile Jukić, Mladen Tolo, Marinko Marić, Ivica Marić, Denis Tadić, Simo Ivanković, Ahmed Beganović, Šefik Kardaš, Andrija Miličević, Vlado Komšić, Marjan Mišanović, Ivica Karatović and Željko Drljo, as well as the doctor Franko Ženetić as an expert witness and the testimony of the accused Krešo Lučić given in his capacity as a witness.

10. The following defense documentary evidence was inspected: Exhibits: O-1-Conclusion of the Presidency of the Kreševo Municipality Crisis Staff dated 4 August 1992; O-2- Conclusions of the session of the Croat and Muslim People dated 21 April 1993; O-3- Receipt on temporarily seized items dated 21 April 1993; O-4-Official Note – Kreševo Police Station dated 22 May 1993; O-5- Assessment and decision as proposed by the Command of the 3rd Corps of Army of BiH dated 17 April 1993; O-6- Action taken with regard to the violation of agreement by the Command of the 3rd Corps of HVO dated 22 April 1993; O-7- Order by the Command of the 3rd Corps of Army of BiH dated 21 May 1993; O-8- Regular Combat Report of the Command of the 3rd Corps dated 2 June 1993.; O-9- Order by the HQ of the Supreme Command of the Armed Forces of the Republic of BiH, dated 14 June 1993; O-10- Order on increased security measures dated 14 May 1993; O-11- Special Report on the situation in the Central Bosnia Operative Zone dated 17 June 1993; O-12- Information of the Franciscan Monastery Kreševo dated 21 June 1993, addressed to the Archbishopric Ordinariate; O-13- Assessment of operations by the aggressor forces made by the Command of the 6th Corps of the Army of

BiH dated 2 August 1993; O-14- Order to march dated 2 September 1993; O-15- Excerpt from the book *A Cunning Strategy*; O-16- Report by the HQ of the Supreme Command – Forward Command Post dated 25 June 1993; O-17- Photographs of the village of Prin; O-18-List of defenders killed in Kreševo, dated 15 May 2007; O-19- List of members of the III Battalion of HVO Kreševo; O-20- List of members of the Construction Platoon dated 12 August 1993; O-21- Certificate of seizure of the *Šunja* hangar (MTS) dated 5 March 1994.; O-22- Command of the HVO Brigade *Ban Josip Jelačić* dated 9 March 1993; O-23- Certificate of the Hunting Club *Tetrijeb* – Kreševo, dated 21 May 2007; O-24- Criminal record excerpt re. Nedžib Fazlibašić dated 3 July 2007 (photocopy); O-25- Criminal record excerpt re. Fazil Fazlibašić (photocopy and original)[1]; O-26- Verdict of the Cantonal Court in Novi Travnik against Mato Đerek dated 21 June 2005; O-27- Verdict of the Cantonal Court in Novi Travnik against Mato Miletić dated 29 March 2005; O-28- Agreement dated 20 April 1993; O-29- Criminal reports against Našid Beganović dated 23 April 2007.; O-30- Witness examination schedule dated 30 May 2007 (Defense document); O-31- Attachment to the agreement of the parties to end conflicts in BiH; O-32- Official Note-Police Administration Kiseljak, dated 18 April 1996; O-33,-O-33a, O-33b, Receipt on temporarily seized items dated 21 April 1993; O-34- Official Note – Police Administration Kiseljak, dated 20 June 1995; O-35- Official Note – Police Administration Kiseljak, dated 17 April 1996; O-36- Death certificate for Marko Mišanović dated 9 February 1994; O-37- Death certificate for Kata (daughter of Vukoje) Petrušić dated 11 September 1993; O-38- Discharge letter for Ivica Barešić dated 20 May 1994; O-39- Hospital release form for Ante Gašić; O-40- Hospital release form for Rozalija Gašić; O-41- Sketch of the site KU/34/95 dated 16 June 1995; O-42- Deževica Parish War Report; O-43-DVD-maps; O-44 through 53 - Photographs of the killed; O-54- Report on the MOS (Muslim Armed Forces) attack on the HVO patrol at the Blinje checkpoint dated 20 June 1993; O-55- Report on the MOS attack on the HVO patrol in Striješće dated 20 June 1993; O-56- Report on the MOS attack on the HVO patrol in Mešće dated 20 June 1993; O-57- Certificate of membership of Denis Tadić in the armed forces (HVO-A RBiH) dated 22 November 2004; O-58- Information from the Criminal Operational Records of the Police Administration Kiseljak and Travnik re. Nedžib Fazlibašić and Fazil Fazlibašić dated 19 July 2007 and O-59- Medical Card for Meho Hodžić.

4. Procedural Decisions

11. At the hearing held on 5 December 2008, the Prosecution proposed that the witness Meho Hodžić be again examined before the Court, as well as that a new piece of

[1] Exhibits No. 24 and 25 constitute one document (criminal records for both persons are stated on one sheet of paper),

evidence, which has not been presented in the first instance proceedings, be adduced, namely, the examination of the witness Ibrahim Beganović.

12. In its verbal response to the mentioned proposal, the Defense submitted that there was no need to summon the witness Meho Hodžić, and that in case he were summoned the defense would also have to propose the examination of another witness. The defense objected to the examination of the witness Beganović since he was not on the list of witnesses contained in the Indictment, and he was available to the Prosecutor's Office in the first instance proceedings as well.

13. Pursuant to Article 263(2) of the BiH CPC, the Court refused the mentioned motions of the Prosecutor's Office, finding them unnecessary and purposeless, given that the witness Meho Hodžić was already examined during the investigation and that he was directly and cross-examined during the trial in the first instance proceedings. The video recording of his testimony has also been presented to the Appellate Panel. This Panel therefore concluded that if this person was to be summoned again as a witness, it would not contribute significantly to the establishment of relevant facts in these criminal proceedings. All possible inconsistencies, that is, any disputes by the defense as to the validity of the testimony of this witness, will be the subject of review by this Panel, in accordance with the principle of free evaluation of evidence.

14. As for the motion to examine the witness Ibrahim Beganović, the Court dismissed the motion as unfounded, considering that the Prosecutor's Office already had an opportunity to contact this witness and that it failed to offer valid and sufficient reasons which would lead to a different conclusion of the Court. Furthermore, this witness is mentioned neither in the Indictment nor in the Appeal. Thus, there is no basis for accepting the presentation of this piece of evidence at the current stage of the proceedings. The Court finds that the case file contains sufficient evidence submitted by the Prosecutor, with respect to the criminal acts which are the subject of the Indictment, and all in relation to the factual circumstances about which this injured person would possibly testify as a witness. Likewise, given the character of the criminal offense the accused is charged with – Crimes against Humanity, that is, the massive character of these crimes, without intending to reduce in any way the scope of the sufferings the victims survived, the Court concluded that the testimony of another witness – victim was not necessary to establish the circumstances surrounding the particular criminal offense. Thus, in the view of this Panel, and having in mind other pieces of evidence presented in relation to this Count of the Indictment, the testimony of the witness Ibrahim Beganović would not affect the gravity or the legal qualification of the offense.

15. Finally, when rendering this Decision, the Court was mindful of applying the principle of judicial economy and efficiency of the criminal proceedings and it decided as stated above for the purpose of implementing these principles.

5. Closing arguments

a) Prosecution

16. While addressing the Court, in her closing arguments, the Prosecution representative referred to the first instance Verdict, commenting on the reason why the first instance Panel erred when it acquitted the accused of the charges for torture (Article 172(1)f) of the BiH CC), focusing particularly on the reason why she believes the first instance Panel made a discretionary evaluation error when, applying Article 49 of the BiH CC, it imposed a sentence which falls short of the special minimum sentence prescribed by the law for that criminal offense.

b) Defense

17. In the closing arguments presented at the hearing held on 9 December 2008, the Defense first pointed to the issue of the acceptance of facts established as proven before the ICTY, which in this case refer to the element of the criminal offense marked as being part of a widespread or systematic attack, and it found the manner in which this institution was used to be unlawful, unfounded and unacceptable.

18. Furthermore, an important element of the criminal offense the accused is charged with is the existence of "a widespread or systematic attack". The Prosecutor was supposed to prove this element in the course of the main trial, which in the opinion of the defense, she failed to do.

19. The Defense particularly points to the opposite situation, namely, the fact that all the Prosecution and Defense witnesses, as well as the documentary evidence presented by the Defense, indicate that the BiH Army attacked the territory of the Kreševo Municipality which was under the control of HVO as a legal army force of BiH.

20. The Defense also points to the fact that the filed Indictment has no legal basis and is unlawful, which follows from the arbitrary expansion on the description and type of the criminal charges contained in Article 172(1) of the BiH CC, which constitutes a severe violation of the principle of the rule of law set forth in Article 3(1) of the BiH CC. The

defense for the accused Krešo Lučić notes that in order to define the criminal offense the accused with is charged as precisely as possible, the legal qualification of the offense must contain the same elements as the particular legal norm. By comparing the operative part of the Indictment, which refers to the framework of the widespread and systematic attack, and the provisions under Article 172 of the BiH CPC the accused is charged with, it can be seen that the particular provision does not contain the charges that he: ordered and committed the imprisonment contrary to the rules of international law, and tortured Bosniak civilian population, aiding others in inhumane acts by taking to forced labor, imprisonment in bad conditions, whereby, according to the Defense, the Prosecutor's Office arbitrarily expanded on the descriptions and the type of criminal charges. In addition, the Indictment concerning the specific acts the accused is charged with must contain the particular norms of international law contrary to which the accused acted.

21. Furthermore, when it comes to the existence of formal correctness of the Indictment, the defense counsel notes that the legal description of the Indictment indicates that the accused committed the criminal offense in violation of Article 172(1) in conjunction with Article 180 (1) and Article 29 of the BiH CC, which implies that he acted as a co-perpetrator, although that is not supported by the factual description which does not list co-perpetrators of the accused, if there were any, and does not indicate whether they are the accused or the convicted persons. Although Article 172(1) of the cited Code does not contain the criminal charges according to which the accused would aid others in inhumane acts of imprisonment in bad conditions, this charge is alleged against Krešo Lučić. Furthermore, the factual description under Count 1 alleges that he ordered the Bosniak civilian population to be taken away and imprisoned in the camp in the *Ivo Lola Ribar* Primary School and in the *Šunje* warehouse, although the legal description indicates that he aided others in the imprisonment in bad conditions. Such positions of the Prosecutor's Office lead to a never resolved confusion as to the difference between the factual and legal terms 'to order', 'to execute' and 'to aid'.

22. Not only did the Prosecution fail to support with the evidence the claim that the accused ordered imprisonment and torture and that he had a role in the allegedly widespread and systematic attack directed against the Bosniak population, but it failed to prove in Indictment that the accused knew about such an attack at all.

23. All of the examined prosecution witnesses assert, and the defense confirms, that except for individual incidents in the territory of the Kreševo Municipality, the actual war between the Army of BiH and HVO did not start before June 1993.

24. As for the individual charges in the Indictment, the defense claims that the Prosecution failed to prove that the accused had the authority and capacity to order

imprisonment, and that he was not responsible for the conditions in the prison centers. With regard to Count 1 of the Indictment, the Prosecution failed to present the evidence which would confirm that it was precisely Krešo Lučić who arrested and imprisoned the mentioned persons.

25. As to the allegations under Counts 2, 3 and 4 of the Indictment, the Defense finds them absolutely incorrect because the testimonies of the persons whom the accused allegedly beat and who were examined as witnesses, undoubtedly indicate that these persons received instructions, that their testimonies were contradictory by themselves and that they were in contradiction with other testimonies and the documentary evidence.

26. Contrary to the charge which is entirely confusing, both from the legal and factual aspects, and based mainly on subjective evidence, the defense, as it was pointed by the defense counsel, provided consistent evidentiary material based primarily on the documentary evidence which was only supplemented or confirmed by the subjective evidence given by the defense witnesses.

6. Court findings

27. By assessing all pieces of the presented evidence, both individually and in their mutual connection, the Court has inspected the factual basis of the Indictment with respect to the existence of cumulatively set elements of the criminal offense of Crimes against Humanity in violation of Article 172(1) of the BiH CC.

28. The Prosecutor's Office advocated the view that at the time relevant to the charges against the accused, there was a widespread and systematic attack of the HVO units, including the HVO Military Police Members, on the Bosniak civilian population in the territory of the Kreševo Municipality.

29. In order to prove this essential element of the criminal offense of Crimes against Humanity, the Prosecutor's Office maintained its motion from the first instance proceedings, moving the Court to accept as proven the facts established by the ICTY in the cases IT-95-14/2-T, *Prosecutor versus Dario Kordić and Mario Čerkez* (Trial Judgment dated 26 February 2001 and Appeals Judgment dated 17 December 2004).

30. While considering whether the commission of the criminal acts the accused Krešo Lučić is charged with, and accordingly his criminal responsibility, has been proven, the Court made a thorough analysis of the relevant evidence, and further in the text it will

state the reasons for rendering its decision, as imperatively set forth in Article 290(7) of the BiH CPC.

31. The Appellate Panel will deal primarily with those pieces of evidence which are necessary for the purpose of this Verdict, that is, the Panel holds that it is not necessary to discuss each single piece of evidence.[1] In other words, this Panel finds it sufficient to focus on the review and assessment of the evidence on which the criminal offense the accused is charged with is based. Thus, in this propedeutic approach, the Panel will first focus its attention on the comprehensive analysis of the requirements for the applicability of the general element (*chapeau*) of Crimes against Humanity under paragraph (1) of the cited Article reflected in the *widespread or systematic attack directed against any civilian population*, and its sub-elements – perpetrator's knowledge of such an attack and that the act of the perpetrator constitutes part of that attack, that is, that there is *nexus* between the perpetrator's act and the attack on the civilian population, all that amid the consideration of the factual basis of the case. Depending on the answers to these questions, and bearing in mind the defense for the accused, the Panel will only then consider whether the factual allegations of the Prosecutor's Office, concerning the individual charges, have been proven to the extent required for this Verdict (see paragraph 84 of this Verdict).

7. Applicable law – elements of Crimes against Humanity

(a) Requirement that the Crimes against Humanity be committed in the context of a widespread or systematic attack

32. The Appellate Panel notes that in order for the acts by an accused to be legally qualified as Crimes against Humanity, they must fall within the framework of a widespread or systematic attack directed against any civilian population.

33. Second paragraph, sub-paragraph a), provides the meaning of the term „attack" under Article 172(1) of the BiH CC, which implies the conduct involving multiple perpetrations of acts referred to in paragraph (1) of the cited Article against any civilian population pursuant to or in furtherance of a state or organizational policy to commit such attack.

34. The ICTY jurisprudence uses the phrase „widespread attack", which refers to the large-scale nature of the attack and the number of targeted persons, while the phrase „systematic" refers to the organized nature of the acts of violence and improbability of their random occurrence. Patterns of crime – in the sense of the non-accidental repetition

[1] See ICTY Trial Chamber I Judgment in the case *Prosecutor versus Dario Kordić and Mario Čerkez,* case no. IT-95-14/2-T dated 26 February 2001 (hereinafter: cited ICTY Trial Judgment), paragraph 20, and the Appeals Judgment in the same case number: IT-95-14/2-A dated 17 December 2004, paragraph 382 (hereinafter: cited ICTY Appeals Judgment).

of a similar criminal conduct on a regular basis - are a common expression of such systematic occurrence.[2]

(b) Requirement that the accused is aware that his acts form part of a widespread and unlawful attack

35. The Appellate Panel considers that the *mens rea* of Crimes against Humanity is satisfied when the accused has a preserved awareness and will to commit one or several underlying offenses he is charged with (underlying acts of crime), when he knows that there is an attack on the civilian population and also knows that his acts form or fall within that attack, namely, when the accused knows about the contextual basis into which the offense he committed fits.

36. As for the requirement that the attack must be directed against a civilian population, the ICTY Appeals Chamber in the case *Kunarac et al.*, dated 12 June 2002, paragraph 90, established that the expression „directed against" means *that in the context of a crime against humanity the civilian population is the primary object of the attack*.

37. Before the Appellate Panel established the relevant factual findings based on which it reached the conclusion concerning the (non)existence of the attack as characterized above, it was mindful of the averment made by the Prosecutor who finds the existence of such an attack by the HVO entirely undisputable. On the other hand, the Panel also took into account the position of the defense which was crystal clear on that issue, asserting that such an attack by the HVO on the Muslim civilian population in the territory of Kreševo simply never occurred, and that on the contrary, it was the Army of BiH that attacked Kreševo.

(1) The dismissal of the *tu quoque* principle: the argument that the adversary committed similar criminal offenses is not a valid defense

38. In the case *Kupreškić et al.,* (Trial Chamber) ICTY, dated 14 January 2000, paragraph 51, 515-520, it is stated that this argumentation (...) [*M*]*ay amount to saying that breaches of international humanitarian law, being committed by the enemy, justify similar breaches by a belligerent. However, the tu quoque defense has no place in contemporary humanitarian law*. The ICTY Trial Chamber in that case rejected the mentioned principle as „fallacious and inapplicable" in international humanitarian law. It has to be universally rejected and flawed in principle as it envisages "humanitarian law as based on a narrow bilateral exchange of rights and obligations". Instead *‚the bulk of this*

[2] See the cited ICTY Appeals Judgment, paragraph 94.

body of law lays down absolute obligations, namely obligations that are unconditional or in other words based on reciprocity.[3]

39. The Prosecutor's Office invoked this correct view of the ICTY jurisprudence, citing the ICTY Trial Judgment in the case of *Dario Kordić and Mario Čerkez* („the fact that there may have been persecutions of Croats by Muslims in other municipalities does not detract from this finding and in no way justifies HVO persecution /paragraph 520, page158 /)."

40. And yet, while considering the issue of the reciprocity of obligations, the Appellate Panel focused on the opinion of the ICTY Appeals Chamber in the case *Kunarac, Kovač and Vuković*, stated in the Judgment dated 12 June 2002, paragraphs 87-88: *Evidence of an attack by the other party on the accused's civilian population may not be introduced unless it tends* „to prove or disprove any of the allegations made in the Indictment", *notably to refute the Prosecutor's contention that there was* „a widespread or systematic attack directed against a particular civilian population."

41. It was precisely the defense for Krešo Lučić which acted in the presented manner, being persistent and finally proving in the course of the proceedings that it was the ARBiH which first attacked the Kreševo Municipality and the town of Kreševo. See paragraph 70 of this Verdict. The issue of the application of this principle can be viewed from the opposite perspective. Having in mind the established facts from the final ICTY Judgments, which this Appellate Panel finds absolutely indisputable, and according to which the HVO attacked and persecuted the Bosniak civilian population in the Central Bosnia region (Lašva Valley), that was not a reason for its adversary, the ARBiH, to commit similar acts by shelling civilian targets in the territory of Kreševo. However, as that was not the subject of the charges in this case, the Panel will no longer consider the range of the application of this argumentation. The Panel dealt with this issue only when the confusion between the theses needed to be removed.

42. Upon the Motion of the Prosecutor's Office, the Appellate Panel took judicial notice of the established facts from the Trial Judgment (IT-95-14/2-T dated 26 February 2001) and the Appeals Judgment (IT-95-14/2-A dated 17 December 2004) in the ICTY case Prosecutor versus *Dario Kordić and Mario Čerkez*, according to which the weight of the evidence points clearly to the persecution of Bosniaks in the Central Bosnia municipalities taken over by the HVO, including the municipalities of Kiseljak, Busovača and Vitez. The Appellate Panel reiterated this in its factual findings, noting that the attack was widespread and systematic and directed against civilian population, that it was

[3] See Human Rights Watch, *Genocide, War Crimes, Crimes against Humanity* , Thematic collection of excerpts from the ICTY jurisprudence, UNDP Serbia and Montenegro, 2004, p. 143.

committed during the armed conflict between the HVO and the BiH Army and that the crimes committed during the attack constitute persecution.

43. However, while invoking the mentioned ICTY Judgments, which the Defense commented in its closing arguments, the Prosecutor did not take into account the averments of the Appeals Chamber in the same case of *Dario Kordić and Mario Čerkez*: *The Appeals Chamber notes, in relation to Kreševo, that it is not listed in the relevant counts in the Indictment; hence, there is no basis for a conviction on Kreševo. In relation to the June 1993 offensives in Kreševo and Žepče, discussed in paragraphs 727 and 728 of the Trial Judgment, the Trial Chamber reaches no conclusion as to the nature of the assaults* (paragraph 659) and the averments: *In view of the foregoing, the Appeals Chamber concludes that the finding contained in paragraph 520 of the Trial Judgment concerning persecutions in the municipalities must be reversed in relation to Kreševo, Žepče and Vareš* (paragraph 660).

44. Contrary to such conclusion of the ICTY Appeals Chamber and its Judgment which the Prosecutor invokes while building her theory on the existence of a widespread and systematic attack of the HVO army and military police directed against the Bosniak civilian population, in the introductory part of the factual description, the Prosecutor links the attack as characterized above to, among others, the territory of the Kreševo municipality.

45. While examining the correctness of the allegations of the Prosecution, the Appellate Panel was mindful of Article 280 of the BiH CPC, according to which a verdict may, *inter alia*, refer only to the criminal offense which is the subject of charges contained in the indictment that has been confirmed or amended at the main trial, while the Court is not bound to accept the proposals of the prosecutor regarding the legal evaluation of the act.

46. As the facts in the Indictment, concerning the perpetration of the criminal acts by the accused, which are claimed to form a part of such an attack, mention the locations which refer exclusively to Kreševo and the Kreševo municipality, the consideration of the issue as to who undertook the widespread and systematic attack, and accordingly, the fulfillment of other requirements for the existence of this criminal offense, should have been linked only to this territory rather than the wider territory which comprises Central Bosnia[4]

[4] While considering this issue, the Appellate Panel was mindful of the position of the ICTY Trial Chamber in the case *Blaškić* , 3 March 2000, paragraph 64, according to which: *It is not necessary to establish the existence of an armed conflict within each municipality concerned. It suffices to establish the existence of the conflic within the whole region of which the municipalities are a part*. However, the Appellate Panel opines that when such position is applied in this case, it should be considered only within the context of the

47. Contrary to the prosecution allegations, numerous pieces of the presented prosecution and defense evidence, both the subjective and documentary evidence to which even the prosecution representative had no objections, suggests that it was the BiH Army and not the HVO units that attacked Kreševo.[5]

48. Given that this a decisive element without which the element of the criminal offense of Crimes against Humanity the accused is charged with cannot be satisfied, the Panel will evaluate the evidence in a systematic and well laid-out manner and present the facts based on those pieces of evidence, which led the Court to conclude that the Prosecutor failed to prove the charges concerning the existence of a widespread and systematic attack by the HVO in the territory of the Kreševo Municipality, in the period relevant to the Indictment. The Prosecutor maintained these allegations throughout the trial before the Appellate Division Panel.

(2) Ethnic structure of the population in the territory of the Kreševo municipality in 1991

49. Defense witness, expert Žarko Pavlović, testified that according to the 1991 census, the Kreševo municipality had the population of 6,731 inhabitants who lived in 27 settlements. The ethnic composition of the population was the following: 4,714 or 70.03% were Croats, 1,531 or 22.7% were Bosniaks, 34 or 0.50% were Serbs, 251 or 3.72% were Yugoslavs and there were 201 or 3.1% of others. This was all presented with the supporting documentation (DVD with maps).

50. It is therefore evident that at the time of the outbreak of conflict in the territory of the Kreševo municipality, the most forward municipality in relation to the positions held by the BiH Army in the Central Bosnia region, the Croats formed the absolute majority in the ethnic composition of the population.

51. Immediately before the conflict, the defense forces in the Kreševo municipality consisted of Croat and Bosniak population, that is, of two components: the Croat Defense Council (HVO) and the Territorial Defense (TO) which later became the Army of the

1. ---

fullilment of requirements for the existence of an armed conflict as a general element for crimes under Article 2 of the Statute which delas with grave breaches of the 1949 Geneva Conventions, that is, within the applicability of requirements for the existence of War Crimes against Civilians in violation of Article 173 of the BiH CC, and not for the existence of Crimes against Humanity in violation of Article 172 of the BiH CC. Thus, this Appellate Panel will primarily consider the existence of the attack, as characterized above, as a general element of this criminal offense, only touching upon the existence of the armed conflict between the HVO and the BiH Army.

[5] V. Charles R. Shrader, *The Muslim-Croat Civil War in Central Bosnia, A Military History 1992-1994*, Texas A&M, University Press, College Station, Eastern European studies: № 23, First edition, 2003, ps 77, 139-40,

Republic of Bosnia and Herzegovina (ARBiH). In that period, the Presidency of the Kreševo Municipality Crisis Staff was formed as the first joint War Presidency authorized to undertake certain activities with respect to the joint defense of the Croats and Bosniaks against the forces of the Republika Srpska Army (VRS) which launched combat operations in the immediate and farther surroundings of the Kreševo municipality.

52. The mentioned follows from the Conclusion of the session of the Presidency of the Kreševo Municipality Crisis Staff dated 4 August 1992, signed by the then President of that Presidency, Viktor Buljan.

53. In addition to Žarko Pavlović, who was an operations officer in the 3rd HVO Battalion at the time of those events, Ivo Kuliš and the accused himself testified about this circumstance, portraying in detail the situation, namely the organization of military structures, their tactical deployment, functioning and the operative activities immediately before the conflict between the HVO units and the ARBiH in the territory of this municipality. The goal of the first activities of the mentioned joint forces was to keep the lines towards VRS, as stated vividly by witness Pavlović: *In that period they* (referring to the joint military forces, Court's remark) *functioned as one being because our cooperation was that good*.

54. In April 1993, by the War Presidency Decision, several joint checkpoints were already strategically set up at the entrance and exit of the Kreševo Municipality. They were secured by military and civilian police officers. The civilian police also had members of the Bosniak ethnicity.

55. In addition to the defense witnesses, mostly the then members of the Military Police Platoon, the Prosecution witness, Refik Hodžić, also testified about the joint checkpoints. Some 11 years before the conflict, this witness was a member of the Reserve Police Force and he performed that duty up until late May and early June 1993 when his weapons were seized from him. Until that moment, until the ARBiH and HVO separated, as stated by the witness, he worked a reserve police officer at the Tomić checkpoint, together with his colleagues of Croat and Bosniak ethnicity.

56. Furthermore, it should be noted here that at the time relevant to the charges, the 3rd Kreševo Battalion and the assistant for security, that is, the Investigative Security Service (SIS) of the 3rd Kreševo Municipality took the command over the Military Police.

57. Based on the testimonies of both groups of witnesses, the prosecution and the defense witnesses alike, by inspecting the documentary evidence and taking into account the

testimony of the accused himself, who was examined as a witness and whose testimony is consistent with other testimonies concerning this issue, the fact that on 17 June 1993, following several prior incidents in the territory of the Kreševo Municipality, the ARBiH launched an attack on very Kreševo and on the peripheral area of that municipality, has been established as undisputable. The attack began by the shelling of vital facilities in the town itself, whereby civilians got killed. Accordingly, the prosecution allegations according to which the accused committed the referenced criminal offense in the period between April and September 1993 are incorrect.

58. Even all of the prosecution witnesses confirmed that they were arrested or detained after the war began, as they say, and that was after 17 June 1993.

59. Among others, the following witnesses gave consistent testimonies as to the specific date when the ARBiH launched the attack on Kreševo: Admir Topalović, Junuz Ahbabović, Avdulah Popara, as well as the defense witnesses Žarko Pavlović, Ivo Kuliš, Tomo Čelan, Orhan Vila and others.

60. The Prosecution witness, Admir Topalović, whose testimony was found fully credible in all its aspects by this Panel, stated during his examination at the main trial that the first conflict began on 17 or 18 June 1993 when there was an intense shelling. The witness also confirmed that Marko Mišanović died as a result of the shelling in the place called Brce, located 50-100 meters from the bakery where the witness worked, while Mirso Ahbabović's little daughter got hurt, referring to her being wounded. The allegations of his testimony were corroborated by the Prosecution witness Junuz Ahbabović.

61. In his testimony, which the Court found objective and credible, the witness Pavlović gave a comprehensive portrayal of the developments in the ARBiH combat activities, their goals and consequences, which clearly show that the Kreševo HVO never took part in the combat activities beyond the Kreševo Municipality, that is, that it never participated in a widespread and systematic attack on the Bosniak population of this Municipality.

62. It should be taken into consideration, as it was explained clearly and in detail by the witness Pavlović, that at the time when the ARBiH launched an immediate attack, the mentioned HVO Battalion had about 900 members, and that there were two ARBiH brigades in that territory: the 9th Mountain Brigade and the 82nd Foča Brigade. If taken into account that according to a free estimate the Brigade had about 2,500 -3,000 members in that period, based on his testimony it can be claimed that at that time about 5,000-6,000 ARBiH members were under combat readiness in the wider territory of Kreševo.

63. Finally, in the conclusion of his testimony, while testifying about what he survived but also testifying from the professional aspect, this witness stated that: *the HVO of the Kreševo Municipality could not move an inch forward since we were fighting hard to keep the remaining third of the municipality which we still had, and let alone launch an attack, that would be insane, that would be genocide for our own people – to lead someone into ruin*.

64. Taking into account all these pieces of evidence, the Appellate Panel found it evident that the ratio of forces was multiply disproportionate, namely that the ARBiH had the military force and the prevailing manpower[6], contrary to the HVO, which did not have sufficient military force with the available manpower to launch any attack, particularly not a widespread large-scale attack.

65. The expert testimony of Žarko Pavlović was fully corroborated by the testimony of the Defense witness Ivo Kuliš who was the HVO Kreševo commander at the time relevant to the charges.

66. By providing a general picture of the events that took place prior to the ARBiH attack on Kreševo, this witness confirmed that following the several incidents which he described in detail, on 17 June 1993, the ARBiH launched a fierce attack on the two thirds of the Kreševo defense line, as well on the very town center. The shelling began that day, and the grenades were falling around the Healthcare Center, the facility which quartered the HVO Command. The grenades were falling near the bakery which was operational for the HVO needs, near the Primary School, and later near the private houses as well, as a result of which civilians got killed in Kreševo town itself. When asked by the defense counsel, the witness confirmed that Marko Mišanović was among those civilian victims, and that he was hit by pieces of shrapnel belonging to a grenade which fell near his family house. There is physical evidence of his death, namely, the Death Certificate for this person, issued by the Tomić Dispensary. While describing the scale and the intensity of the attack the witness said *...the attack was really fierce, a lot of manpower, that is, soldiers, were primarily used, and the equipment as well...*, pointing out, that on the other hand, the Kreševo defense members had no prior combat experience, which resulted in the death of 6-7 HVO members on the first day alone. Finally, based on the analytical notes, the witness claimed that 51 HVO soldiers altogether got killed in the following month or so.

67. The number of defenders killed in Kreševo was documented by the List of defenders killed in Kreševo in the period between April and September 1993, issued by the

[6] 6-8.000 soldiers, *ibidem*

Department for economy, reconstruction, social welfare and displaced persons of the Kreševo Municipality number 03-41-s1/07 dated 15 May 2007, which contains 56 persons. All of the listed persons, except for one person who got killed in Kaćuni, Busovača Municipality, got killed in the territory of the Kreševo municipality. Although the title of the document refers to the April 1993 killings, by the inspection of this document it has been established that all persons, with the exception of the person who got killed in Busovača, got killed in the period covering June, July, August and September, while nine of them got killed on 17 June 1993 alone.

68. A part of the attack was also directed against the villages of Deževica and Pirin, with the exclusively Croat population. With the presentation of the supporting documentary evidence, primarily photographs, witness Kuliš described the sufferings in these Croat villages which were burnt and destroyed almost to the ground, while the population was moved from those territories. The mentioned is confirmed by the Deževica Parish War Report dated 12 September 1995, made by the parish priest Danijel Jakovljević, as well as by the photographs of the destruction and burning of these two villages.

69. Amid the turmoil of war events, the Croat and Bosniak population were both in panic, as a result of which a large part of the population, about one to two thousand of them, tried to or headed towards Kiseljak, and all, as concluded by this witness, with the purpose to move from the territory of the Kreševo Municipality. The mentioned is supported by the letter of the guardian of the Kreševo Monastery, Fra Jure Miletić, dated 21 June 1993, addressed to the Archbishopric Ordinariate in Sarajevo. It is *inter alia* stated in the letter that on 20 June 1993, the ARBiH launched a military attack on Kreševo, due to which women and children were evacuated. It is also noted that throughout the day, the ARBiH brutally attacked the Kreševo defense lines, that there are many wounded and dead who cannot be pulled out, that Kreševo is surrounded by all sides and that there is a fear that unprotected civilians could be killed, which is indicated by the destiny of the Pirin village which was burned down and plundered two days earlier. Finally, an urgent intervention of the Assembly and the Government of BiH, as well as of the ARBiH command is requested for the purpose of protecting the population and securing their return home and further co-existence which has centuries-old tradition, and that there have never been any conflicts with the Muslims.

70. Defense witness Avdulah Popara also testified about the beginning of the fighting between, as he calls it, the Territorial Defense and the HVO. That day when the fighting started, electricity went out and the Croat population started preparing to leave Kreševo because, according to this witness, they were afraid that Kreševo might fall, and this Panel finds that all of the above described details indicate an atmosphere of general panic, fear and turmoil that existed among the population of Kreševo municipality, both Bosniak and Croat.

71. The conclusion that it was indeed the attack of ARBiH on the Kreševo Municipality and not the other way around, that the HVO carried out the attack, is also supported by the testimonies of witnesses Tomo Čelan, Orhan Vila, Ahmed Beganović and Šefik Kardaš. In their testimonies, these witnesses, among whom the latter three are Bosniaks, confirmed that it was the ARBiH who carried out the attack on Kreševo and that, up until that point, the relations between Croats and Bosniaks were relatively good. After the attack, the relations between Croats and Bosniaks deteriorated.

72. Witness Orhan Vila, who is a doctor and a respectable citizen of Kreševo, who continued living in his home in this municipality during the war, stated that, before the conflict, the relations between Croats and Bosniaks were good, and that he himself had no problems whatsoever even after the conflict broke out, especially not any caused by the military police commanded by Krešo Lučić, who were quartered on the premises bellow his apartment. According to his records, around 72 HVO soldiers were killed by that time. Finally, the witness pointed out that the problems had started with the arrival of Croat refugees from different areas and the military units that were not from that area, which is why revenge against the Bosniak population was feared. Namely, Kreševo was a municipality where the lives of the members of these two ethnic groups went on normally for the longest period of time.

73. Therefore, with respect to the factual description in the Indictment related to the existence of the widespread and systematic attack of the HVO directed against the Bosniak population in the period between April and September 1993, the Defense was successful in proving that not only that there had been no such attack, but that in the period from April up until 17 June 1993 there were no special military developments. Everything that was happening in the territories of other municipalities was not a pattern that applied to the Kreševo Municipality area, therefore the findings and accepted facts on the existence of a widespread and systematic attack in the municipalities cannot automatically, without factual grounds, be applied to and considered unquestionable in case of the Kreševo Municipality.

74. The Defense presented several pieces of evidence bearing objective significance in order to prove that the real intention of the ARBiH command was not to establish truce with the HVO and maintain peace that existed in the Kreševo Municipality area, but on the contrary, to use incidents to provoke a conflict and get a reason to attack Kreševo. So, next day after the conclusion of the agreement between HVO and ARBiH on 21 April 1993, which treated these two armed forced as legitimate and equal, the Commander of the ARBiH 3rd Corps issued an order to his subordinates in Central Bosnia giving two variants of action both against the HVO in general and against Kreševo (Defense Exhibit

No. O-6), which is confirmed by that Corps' combat reports (Defense Exhibits Nos. O-5 and O-7). In order to show that this was a planned conflict, the Defense presented evidence, which at the same time is an ICTY document, that being a report by a former Chief of ARBiH Main Staff, Sefer Halilović, to his Supreme Command, which reads: "[That] the previously set tasks to liberate the Dusina-Fojnica road communication (that being a road communication through Kreševo, defense counsel's comment) and the liberation of Kreševo have not been accomplished." Therefore, this rendered Defense Counsel's question logical when he asked who Kreševo was supposed to be liberated from when the HVO was a legitimate armed force there and when the Croat population was absolute majority there. In addition, the evidence presented by the Defense, Exhibit No. O-9, shows that, in his Order of 14 June 1993, Rasim Delić expressly forbade concluding local-level agreements with the HVO, although such an agreement on the handover of weapons had already been concluded (Defense Exhibit No. O-2) in the territory of Kreševo and Fojnica, which was complementary to the Zenica agreement of 21 April 1993, but then, only three days after the issuance of the Order mentioned above, the ARBiH attacked Kreševo.

75. In the process of weighing the testimony of the accused Krešo Lučić, the Panel found that his testimony was in accord with other evidence that was given credence to with respect to the factual findings the Court used as a basis for their decision. The Court was especially careful when weighing this testimony, because it is generally in the interest of the accused to alleviate his position in the course of the criminal proceedings, but analysed his testimony in detail and compared it with the evidence given by the witnesses whose testimonies had been found to be credible, the Court found that his testimony was consistent with them in important facts related to the charges at issue here, primarily in those related to the absence of the general element of the respective criminal offense.

76. Namely, in his testimony, the accused described the events of the critical period rather consistently, of course based on his own understanding, and in consistence with other witnesses, and confirmed that the ARBiH attack started on 17 March 1993. That morning, according to the description given by the accused, Kreševo was in total chaos and disarray, because shells started falling on the town. On that occasion, a civilian Mišanović was killed, one girl lost her eye, while one young man lost his leg in the vicinity of the headquarters. The Panel is of the view that these factual circumstances the accused testified about are important for the examination of the existence of *mens rea* on his part related to the existence of the attack that had the characteristics as described above.

77. Given the fact, also not contested by the Prosecution, that, at the time when the conflict in the territory of Kreševo municipality started, in terms of ethnic composition of

the population, Croats made up the absolute majority, the Court finds that the thesis of the Prosecution, according to which the HVO, as an armed component of that ethnic group, carried out a widespread and systematic attack against the Kreševo municipality, and thereby also against its, in this case, majority Croat population, appears completely illogical.

78. Therefore, as shown by the witness testimonies, but also by the evidence that has objective significance, having weighed of all the mentioned facts in detail, including the fact, accepted by the Court as true, that the HVO had 900 members in that period, the Court drew a reasonable inference that it was the ARBiH that, both in terms of formation and in terms of the military resources it had at its disposal, was superior and in a position to launch a large scale attack. The ARBiH was interested in taking the territory of this municipality in order to take over and control vital road communications from Tarčin via Kreševo-Dusina-Fojnica. Anyway, as reasonably noted by the Defense Counsel for the accused, why would the HVO need to attack anyone when they controlled the situation in that area.

79. The ARBiH activities, or rather the lack of proof for the Prosecution thesis according to which the HVO carried out a widespread and systematic attack, are also supported by material documentation as follows: Order issued by the 3rd Corps Command, dated 22 April 1993, issued two days after the Zenica agreement with the HVO, specifying the options for the deployment of forces and tasks for units in case the agreement to end the conflict is violated; Order by the 3rd Corps Command dated 21 May 1993 to carry out combat operations in the territory of municipalities of Fojnica, Kiseljak and Kreševo, as well as the Special Report on the Situation in the Central Bosnia Zone of Operations dated 17 June 1993, where the Commander Tihomir Blaškić briefed on the situation in this zone of operations, stressing that, on that morning, more precisely on 17 June 1993, a heavy attack was launched on the territories of Kiseljak and Kreševo municipalities from the direction of Igman, Tarčin in the direction of Kreševo. Finally, there is also the excerpt from the book *Cunning Strategy* (Lukava strategija) which includes the already mentioned Report by the Chief of ARBiH Main Staff, Sefer Halilović, to his Supreme Command.

80. This Court does not find it questionable that the suffering of the Bosniak civilian population occurred and that all Bosniak male population of military age, including also several underage persons, were imprisoned in the *Šunje* hall, which will be detailed in the discussion of individual charges within the limits of the factual findings of this Verdict, and which, it is true, happened after the ARBiH attacked the area of Kreševo Municipality.

81. Therefore, with respect to the examination of essential elements of the criminal offense of Crimes against Humanity, after a detailed analysis of the abovementioned testimonies and evidence bearing objective significance, and bearing in mind that the Court is bound by the factual description in the Indictment, which, *inter* alia, is linked to a close locality, in this case the Kreševo municipality, more precisely with respect to the place of perpetration of the criminal offence, that being a general element of the offence, the Appellate Panel found that the Prosecution failed to prove, beyond a reasonable doubt, the existence of a widespread and systematic attack by the HVO on the Kreševo municipality.

82. Therefore, the first and general element of the respective criminal offense has not been met under Article 172(1) of CC of BiH - existence of a widespread and systematic attack against the Bosniak civilian population in the Kreševo town and municipality.

83. Finally, as regards the examination of *mens rea* on the part of the accused, the Prosecutor failed to present a single piece of direct evidence, or a circumstantial one, that would lead a reasonable trier of fact to a conclusion that the accused was aware of the attack that had the above mentioned attributes, and that his unlawful actions would constitute part of that attack. The effect of the lack of awareness of the accused about the existence of an attack with such characteristics is that he cannot be criminally responsible for individual acts related to the criminal offense charged.

84. The Panel wishes to note the conclusion cited in the *Kupreškić* and *Blaškić* cases, and taken from the ICTR Judgment in the *Kayishema* case which says: „The perpetrator must knowingly commit crimes against humanity in the sense that he must understand the overall context of his act. [...] Part of what transforms an individual's act(s) into a crime against humanity is the inclusion of the act within a greater dimension of criminal conduct; therefore an accused should be aware of this greater dimension in order to be culpable thereof. Accordingly, actual or constructive knowledge of the broader context of the attack, meaning that the accused must know that his act(s) is part of a widespread or systematic attack on a civilian population and pursuant to some sort of policy or plan, is necessary to satisfy the requisite *mens rea* element of the accused.“[7]

85. When applying everything described above to factual findings in this case related to the examination of the existence of *mens rea* on the part of the accused, this Panel took into consideration several facts. The accused was *in tempore criminis* a young man; in terms of the chain of command, as the Commander of the Military Police Platoon he was

[7] Trial Judgment, *Kayishema* case, paragraphs 133-134, cited in the Trial Judgment in *Kupreškić* case, paragraph 557, and the Trial Judgment in *Blaškić* case, paragraph 249. Trial Chamber in *Tadić* also concluded that such knowledge can be gained through inference based on circumstances (actual or constructed knowledge), Trial Judgment in *Tadić* case, paragraph 657.

at the bottom of the chain; according to his own admission, in operational terms, he carried out the orders of SIS and Kreševo Crisis Staff (who appointed him at the time when its composition, besides Croats, also included Muslims), and, as he himself testified, because he was considered a good young man from an honest family.

86. The Appellate Panel finds no reason not to trust him when he says that, bearing in mind the testimonies of Defense witnesses primarily, but also the Prosecution ones, as well as the direct insight this Panel had, in relation to the assessment of his personality, including a psychological assessment of his testimony. In his testimony, Ivo Kuliš, who was, at that time, the Commander of the Kreševo Defense, explicitly stated that the accused, as the Commander of the Military Police Platoon, just carried out the orders. In addition to that, witness Marković, who at that time headed the Security Service, stated that the arrests carried out by the Military Police had been carried out on his orders and not based on the decision of the accused, who after all had no authorization for anything of that kind. (See paragraph 56 herein). Based on the testimonies of these witnesses, and the testimony of witness Komšić, it appears indisputable that the Military Police Platoon and the accused as its Commander was mainly deployed to the front line, and when it was not, they carried out duties that were within the scope of their authorities, and those were, securing facilities, bringing conscripts in for disciplinary sanctions, assisting the work of Security and Information Service (SIS), who were the ones authorized to carry out interrogations, and not the accused; partaking in the operation of disarmament and bringing in Muslims who failed to hand over weapons; individuals suspected of subversive action, including Croats, also deserters, which is also supported by documentary evidence such as Order to Bring in Individuals on the Grounds of Failure to Respond to General Mobilization Notice and Evasion of Military Service, dated 4 July 1993, issued by the Chief of the Kreševo Defense Office (T-48). At the main hearing of 19 April 2007, the Prosecution witness Fazil Fazlibašić expressed his personal opinion according to which he did not think Krešo Lučić was responsible for the events in Kreševo.

87. In his closing argument, counsel for the prosecution stated, although in the context of challenging the ruling on the sentence pronounced by the first instance panel in the earlier verdict, that the fact that the accused had been appointed to a commanding position as a young man could mean many things, for example “his inability to be a leader”. In addition to that, there is no evidence in this case that the accused Krešo Lučić had any knowledge whatsoever about there being a common plan at that time devised and implemented by the Bosnian Croat leadership (nor has the Prosecution proved beyond a reasonable doubt that the accused had any connection whatsoever with that) to ethnically cleanse Muslims from the Lašva Valley.

88. The accused himself, really, does not deny the facts that the Kreševo Military Police, which he commanded, was involved in disarming Bosniaks, searching their houses, and escorting them, individually or as a form of assistance to the civil police, all of which was done on the orders of SIS or the Crisis Staff at the HVO 3rd Battalion – but, exclusively with respect to Kreševo and Kreševo municipality. Objective proof presented by the Prosecution (Order Ref. number 374/98, dated 30 June 1993, issued by the Commander of the Kreševo 3rd Battalion Command, T-49), which shows that the accused Krešo Lučić was directly linked with the Kreševo HVO Command, actually means that he was separated from the chain of command of the HVO Military Police for Central Bosnia, which leads to a logical conclusion that the accused cannot be seen as a person who played an important role in planning and implementing a widespread or systematic attack in that area. Also, that Prosecution exhibit proves the allegations of the Defense of the accused according to which he only carried out the orders of the Kreševo HVO Command exclusively (paragraph 85).

89. In *Kupreškić et al,* Judgment of 14 January 2000, paragraph 556, the Trial Panel states: "[T]he requisite *mens rea* for crimes against humanity appears to be comprised by (1) the *intent* to commit the underlying offence, combined with (2) *knowledge* of the broader context in which that offence occurs." It is required, thus, that the perpetrator of the crime must know that his acts are part of that attack, in other words there must be knowledge on his part about the *nexus* between the offense he committed and the existence of a widespread and systematic attack.

90. Krešo Lučić's Defense presented numerous evidence which shows that the ARBiH mortar shell attack on Kreševo was unexpected despite the tensions that existed prior to that. Defense witnesses vividly described the total chaos and confusion among the population that had been ready for evacuation, that the ARBiH was more powerful than the HVO in that sector. Therefore, it is logical that the accused, and the Military Police he commanded, was focused on defending Kreševo, so, according to his testimony, but also according to the testimonies of other witnesses, who at that time were members of the Military Police, Lučić himself was on the first lines of defense most of the time, due to the lack of manpower and in order to prevent desertion with his presence and authority. Being there, he was in a situation to give police officer Denis Tadić first aid treatment when he was wounded in the neck and prevent his bleeding to death. In such a situation, which was becoming even dramatic, which also included defense duties, it is unlikely that the accused, according to the objective criterion too, could have had time and therefore the knowledge of a wider context of events outside the Kreševo area.

91. Since the existence of the attack with the described characteristics by the HVO on Kreševo has not been proved, it is logical to conclude that the individual acts with which

the accused is charged under Counts 1 through 4 of the Indictment could not have constituted part of such an attack after all, therefore, for that reason, the Appellate Panel does not find it necessary to go into a more detailed discussion of whether the matter of individual acts with which Krešo Lučić is charged in the Indictment has been proved.

92. Still, the Panel particularly examined one of the acts with which the accused is charged, that being the one under Count 1 of the factual description in the Indictment related to Article 172(1)(e) of CC of BiH (imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law). The reason for that being that, in terms of the facts of the case, by accepting testimonies of several Prosecution witnesses, the Panel found it established that the accused took part in the deprivation of liberty of some Bosniak civilians, but that those facts alone were not sufficient to find him guilty of this charge in the Indictment because the Prosecution failed to prove the existence of other requirements necessary in order to apply the relevant legal norm and find the accused criminally responsible for this underlying offense of the crime.

93. As regards the factual allegations made by the Prosecution under Count 1 with regard to the deprivation of liberty, - as well as the imprisonment of Bosniak civilians in the *Ivo Lola Ribar* Primary School and the *Šunje* hangar in Kreševo, the bad conditions that existed in those facilities where the detainees did not have sufficient food, water, necessary medical assistance, and were taken to perform hard labor on a daily basis (whereby, according to the Prosecution, the latter acts would fall under Article 172(1)(k) of CC of BiH – included in the residual clause "other inhumane acts"), several witnesses of both the Prosecution and Defense testified about this. According to the evidence presented by the Prosecution, Galib Kustura, Džemo Ramić, Refik Hodžić, Enver Bejtić and Osman Bejtić, as they themselves also testified, had been deprived of liberty by the military police. In the trial in this case, as has already been stated, the fact that this unit was commanded by Krešo Lučić is not disputable, but nevertheless this Court does not find it disputable that the Prosecution failed to present a single piece of evidence showing that the accused had ordered a single arrest.

94. In addition to that, according to the Indictment, Lučić is charged with individual criminal responsibility under Article 180(1) of the CC of BiH and not command responsibility prescribed under paragraph 2 of the cited article. Based on that, the Court infers that the accused cannot be criminally responsible for the deprivation of liberty committed by his subordinates against these civilians. As regards the deprivation of liberty in the case of Omer Ramić, Halid Ramić, Ibrahim Beganović and Asim Beganović, their testimonies show that they have been deprived of liberty but it has not

been established by whom, and therefore the Prosecution failed to prove beyond a reasonable doubt that the accused is responsible for their arrest.

95. This Court drew the identical inference with respect to the Prosecution allegation according to which the accused is criminally responsible for ordering the taking and imprisonment of the Bosniak civilian population in camps such as the *Ivo Lola Ribar* Elementary School and the *Šunje* hangar in Kreševo, and that he was responsible for the bad conditions that existed in those facilities.

96. However, the testimonies of both groups of witnesses, the Prosecution ones and the Defense ones, who testified about these factual allegations of the Prosecution, do not show what role the accused had in the imprisonment of the Prosecution witnesses, or more precisely, they do not show what authorization or influence on the functioning of these camps (the term that the Prosecution insists on, whereas the Defense rather sees these facilities as isolation centers) the accused might have had, nor did the Prosecution present a single piece of evidence that would link the accused with that, except that, over a certain period of time, the Military Police provided outdoor security of those facilities. The Court drew the same inference with respect to the responsibility of the accused for the bad conditions that existed in the *Šunje* hall, as described by the Prosecution witnesses listed below who had been imprisoned there. After all, the majority of them identified the person by the name of Josip Topić as the "camp" commander during the relevant period.

97. Former civilian detainees who testified as Prosecution witnesses: Osman Bejtić, Enver Bejtić, Edin Hasandić, Refik Hodžić, Junuz Ahbabović, Adem Lušija, Halid Lušija, Avdulah Popara, Benjamin Kardaš, Fazil Fazilbašić, Edin Hasandić, Ibrahim Lisovac, Salih Skopljak, Džemo Ramić, Ljuban Cigelj and Našid Beganović, stated in this case that a number of them had been taken from the Šunje hall by the military police on a daily basis to dig trenches. (It is true, witness Hajrudin Bejtić could not say whether they had been taken by the military or civil police, while witness Halid Lušija mentioned that, in addition to the military police, they had been taken to perform forced labor – dig trenches by the civil police as well). Those circumstances were also confirmed by the Defense witnesses including Žarko Pavlović, Pavo Vukoja, who mentioned that the detainees had performed agricultural work as well, Anto Marić, Mato Tadić, Mladen Tolo, Ivica Tomić, Denis Tadić, Simo Ivanković. Ivo Kuliš added that some of the detainees had volunteered to dig trenches, and this was confirmed by Ahmed Beganović and Šefik Kardaš, who explained that there were various privileges that the members of the labor unit had had regardless of whether they were Croats or Bosniaks, while Marinko Marić claimed that the lists had been made by the detainees themselves.

98. Everything mentioned above indicates that, by way of evidence they presented, the Prosecution failed to prove beyond a reasonable doubt that the accused, as the perpetrator, undertook the action he is charged with under Count 1 in relation to sub-paragraph (k) in the legal description provided in the Indictment, or more precisely that, by his actions, he represented a link in the chain of the system of imprisoning people in the so called "detention centers" such as the *Šunje* hangar and the Elementary School in Kreševo, and in the taking of detainees from those centers to perform forced labor.

99. This is not intended to question the suffering of the civilians imprisoned in those detention centers, especially not in the *Šunje* hall, where the conditions in which they stayed were difficult because the detainees did not have sufficient food and water, the sanitary conditions were very bad, and they did not receive adequate medical aid, although several Defense witnesses like Ivo Kuliš tried to challenge this, when he said that his knowledge was that (the detainees) had had sufficient water and food. Namely, the testimonies of all witnesses-victims who experienced detention sufferings, to whom this Panel fully trusts in that respect and shows the necessary sensitivity, evidently show that the conditions in this center were, at the very least, inhumane and degrading, and had severe health consequences for detainees.

100. As regards the other Prosecution witnesses who spoke about the deprivation of liberty, Aiša Agić claimed that she was arrested directly by Krešo Lučić on 24 June 1993 together with several other women, that she did not know the accused at that time, but that one of the women who was with her told her that that was Krešo Lučić. Halid Lušija testified that, on 23 June 1993, he was arrested by the accused, Mato Miletić, and another young man, that before that, like other Muslims, he had to return the HVO uniform and weapons. Našid Beganović stated that, on 20 June 1993, he was arrested by the military police officers Denis Tadić and a person by the name Mladen commanded by Krešo Lučić, whom he had known from before and who took him to the school in Kreševo. Adem Lušija testified that, on 23 June 1993, together with his brother and cousin, he was arrested in the vicinity of his house by the accused and Mato Miletić, who was in plain clothes, whereas Krešo Lučić was wearing a uniform like the soldiers around his house, that he was a member of TO[8], that before that he was disarmed and so was the entire village of Rakova Noga.

101. Contrary to them, the Defense witnesses pointed out that the arrests of civilians were not within the authority of the military police, but the civilian police. Thus, Frano Marković testified that in his capacity as the Chief of SIS he had interrogated several

[8] From the ICTY case *Prosecutor vs. Kupreškić*, IT-95-16-T (14 January 2000): "There was also the Territorial Defence of Bosnia and Herzegovina which was essentially a Muslim force, which was later incorporated, at least on paper, into the BiH Army".

persons, that he had used Military Police when Croats who refused to go to the front line needed to be arrested, that the Military Police was in charge of the men liable for military service. Tomo Ćelan stated the same as this previously mentioned witness and added that "Bosniak military-age men", who were arrested after the beginning of the conflict on 17 June 1993, were imprisoned in the hall. Testimonies of witnesses Mladen Tolo, Marinko Marić, Ivica Tomić and Vlado Komšić agreed with those mentioned above, while Orhan Vila stated that the men in *Šunje* were mainly civilians. Šefik Kardaš said that he had been arrested by his neighbor Janko Drljo. This Panel finds that the allegations of Denis Tadić according to which the military-aged men stayed in the *Šunje* hall voluntarily, for their own safety, together with other similar testimonies according to which the position of the Bosniak detainees was no different from that of the Croats, are only partly true and represent a simplified version of the events and are intended to be *in favorem* of the accused.

102. On the other hand, through their analysis of the testimonies of Prosecution witnesses, the Defense challenged their credibility, and did so successfully according to this Panel, relying, *inter* alia, on the results of cross-examination, finding numerous illogicalities and contradictions in their testimonies both individually and in correlation with the testimonies of other Prosecution witnesses, but also Defense witnesses. So, for example, with respect to the testimony of Aiša Agić, the Defense Counsel for the accused noted that she stated that she had never seen the accused in her life, but that she had heard from other women that it was the accused himself who had arrested her, although she could not remember which woman that was despite the fact that there had been only two women there. The situation is no better with the testimony of Galib Kustura, who, when asked what the accused looked like at that time, stated: "[A] man like any other man, exactly the same as he looks today, he was young and had a short haircut". Witness Hajrudin Bejtić answered the same question as follows: "[A] young man like any other, he had fair hair", although the Defense tendered the photographs of the accused from that time which show the opposite, he neither had a short haircut, nor did he have fair hair, and his physical appearance was not the same as today (which the Panel could see for themselves). In response to that same question, witness Hodžić stated the following: "I don't know, had I known this would be one of the questions, I would have asked around and then would be able to answer you."

103. Everything described above shows how the respective witnesses testified about the identification of the accused. However, even at first sight, it is clear that the quality of their testimonies was not such so as to represent reliable grounds for the identification of the accused.

104. Testimonies of witnesses like Aiša Agić, Halid Lušija, Adem Lušija, Edin Hasandić, and Junuz Ahbabović, who claim to have been arrested by the accused, are confronted with the following Defense witnesses: Mladen Tolo, Denis Tadić, Marinko Marić and the accused himself, who consistently stated that, on the days when the Prosecution claimed these persons had been arrested, for a period of nine days, starting from the day when Kreševo was attacked, or more precisely from 17 June to 26 June 1993, they were on the front line; that a military police officer Denis Tadić was wounded in the neck in that period, more precisely on 26 June 1993 (which is also supported by the medical report), and that he was given first aid treatment by the accused himself.

105. This Panel is of the opinion that the fact that the military police officers, including the accused as their commander, were on the front line during the relevant period, does not mean that their presence there was continuous, as Marić claims with respect to that circumstance. This Panel is of the view that they, including the accused, could have been absent from the front line for short or long periods of time, among other things also for the purpose of arresting the relevant Bosniak civilians, especially men. However, even if the reservations with respect to the testimonies of Prosecution witnesses, as pointed out by the Defense, were to be accepted, all that, with the exception of the testimonies of the explicitly listed witnesses whose testimony is acceptable for this Panel, as stated in paragraph 115 herein, that does in no way diminish the significance of the fact established by this Court, which follows from the testimony of Defense witnesses as a whole, including the admission of the accused, that based on the orders of SIS or local HVO Command, the Military Police, including the accused himself, carried out the arrests of military-aged Bosniak civilians, as has been established based on the mutually consistent testimonies of Edin Hasandić, Junuz Ahbabović and Edin Topalović. In addition, several Prosecution witnesses, former TO members, like Adem Lušija and Enver Bejtić, as has already been stated, pointed out in their testimonies that they had been disarmed by Croat soldiers or the military police.

106. In the course of the proceedings, the Defense pointed out the fact that the Novi Travnik Cantonal Court had rendered a final Verdict, Ref. number: K-19/04-Rz, dated 26 April 2006, in a case involving the same factual incident which is the subject of this Indictment, that in those proceedings, witnesses from this case: Džemo Ramić, Refik Hodžić and Enver Bejtić claimed they had been arrested by Mato Miletić, while this Verdict makes no reference to the accused Krešo Lučić. Those same witnesses repeated that during these proceedings as well, however the same circumstance was also described by witnesses Halid Lušija, Osman Bejtić and Adem Lušija, who in addition to Mato Miletić also mentioned Krešo Lučić. In addition to that, the Defense pointed out that the testimonies of the Lušija brothers, Halid and Adem, in the case against the convicted Miletić were entirely different from their testimonies in this case because they stated that

Miletić arrived in front of their house together with several other members of HVO (so, not members of the Military Police), and, as opposed to this case, did not mention Krešo Lučić. However, having examined this factual allegation made by the Defense, the Appellate Panel found that, if the operative part of this Verdict does not make any mention of Krešo Lučić, its Reasoning does because, on page 8, paragraph 2, it presents the contents of the testimony of witness Adem Lušija about the incident in the village of Rakova Noga on 23 June 1993, where together with Mato Miletić, Krešo Lučić is also mentioned as a person who, together with other HVO members, stepped out of the vehicle in the vicinity of his house, thus, in that context, the allegation made by the Defense is not substantially true.

107. Thus, having analyzed the testimonies of witnesses who have been given credence, and having, prior to that, taken into consideration the allegations made by the Defense, this Court made factual findings according to which the accused was involved in the arrest of Adem Lušija and his brother Halid, Edin Hasandić, Junuz Ahbabović and Našid Beganović. However, regardless of these factual findings, the Court found that, as has already been stated, these were not sufficient to establish the guilt of the accused on the charges under Count 1 of the Indictment, instead it is necessary first to examine whether requirements have been met as the provision of Article 172(1)(e) of the CC of BiH prescribes, before a definite answer to this question is given.

108. In the course of examining the existence of the charges against the accused under Count 1 of the factual substratum of the Indictment, the Panel took an approach somewhat different from that of the Defense, as will be discussed below.

109. The Appellate Panel took into consideration the ICTY Judgment in the *Mucić at al.* case (Appeals Chamber), 20 February 2001, paragraph 342, which says: "The Appeals Chamber is of the view that to establish that an individual has *committed* the offence of unlawful confinement, something more must be proved than mere knowing "participation" in a general system or operation pursuant to which civilians are confined. In the Appeals Chamber's view, the fact alone of a role in some capacity, however junior, in maintaining a prison in which civilians are unlawfully detained is an inadequate basis on which to find primary criminal responsibility of the nature which is denoted by a finding that someone has committed a crime. Such responsibility is more properly allocated to those who are responsible for detention in a more direct or complete sense, such as those who actually place an accused in detention without reasonable grounds to believe that he constitutes a security risk; or who, having some powers over the place of

detention, accepts a civilian into detention without knowing that such grounds exist (…)"[9].

110. It appears that the position of the ICTY, according to which it is more appropriate to allocate the responsibility to those who are responsible for detention, and not those involved in it, such as those guarding the detainees, can be applied to the factual findings in this case. Having weighed the evidence in support of this count of the Indictment, the Appellate Panel has arrived at the same conclusion. An analysis of numerous Prosecution evidence, primarily the subjective evidence, and even the Defense evidence, shows that it is not disputable that Bosniak civilians were arrested and taken to the elementary school and the *Šunje* hall where the men were detained.

111. In addition to that, this Panel does not find it disputable that the accused Krešo Lučić was involved in depriving them of their liberty, which was unequivocally stated by Prosecution witnesses such as Admir Topalović, whose testimony this Court considers credible. Finally, the accused himself does not deny so in the context of his carrying out the orders issued by the HVO headquarters or SIS. However, having taken into consideration his testimony in its entirety, as well as the testimonies of both groups of witnesses, the Court arrived at the conclusion that, in the hierarchy of military and civilian authority, he was at the bottom and in that capacity he carried out the orders of the Crisis Staff and SIS. More precisely, he assisted the civilian police, and in doing that, being a disciplined person, which has been stated by numerous witnesses during the trial, he carried out his orders conscientiously, without going into the questioning of reasonable grounds to believe that, under the newly created circumstances in the Kreševo municipality, the civilians who were being arrested in order to be detained constituted a security risk or not. Evidently, this issue was decided by his superiors.[10] This fact itself renders it logical that the accused did not go into the examination of the question whether this act was unlawful, or illegal.

112. Besides, from the legal point of view, the issue of unlawfulness of imprisonment of civilians and their unlawful taking to concentration camps falls into the domain of the

[9] Human Rights Watch, UNDP Serbia and Montenegro, Thematic Collection of Excerpts from ICTY Jurisprudence, Belgrade, 2004, pg. 30.

[10] For applicability to this case see Antonio Cassese, International Criminal Court, Belgrade Center for Human Rights, Belgrade, 2005, pgs. 210-212, quoting the Decision of the Canada Court in the *Moreno* case: "(…) Of course, the further one is distanced from the decision makers, assuming that one is not a "principal", then it is less likely that the required degree of complicity necessary to attract criminal sanctions, or the application of the exclusion clause, will be met." Also, the *Alfons Götzfried* case related to the abuse in the Majdanek camp quotes the Decision of the Stuttgart District Court (*Landgericht*) dated 20 May 1999, which took the following position with respect to the accused: "He was at the bottom of the chain of command, he did not have any right to make decisions or authority to act …Similarly, it has not been proved that the accused had any personal interest in the killing. He only wanted to carry out the order that was given to him."

examination of legal description of the offense under Article 173(1)(e) (War Crimes against Civilians) of the CC of BiH, which will be the subject of discussion below (paragraph 123, *in fine),* and not, strictly speaking, into the domain of fulfillment of requirements for the criminal offense which is the subject of this charge.

113. It goes without saying that special attention is required for the examination of the issue related to the fulfillment of the alternative act under Article 172(1)(e) of the CC of BiH "other serious deprivation of liberty contrary to fundamental rules of international humanitarian law", all in light of the presented evidence. The element of the offense – act of perpetration *"imprisonment or other serious deprivation of physical liberty contrary to fundamental rules of international law" (sub-paragraph e)*, is fulfilled in the case when a perpetrator has imprisoned one or several persons or in another way deprived one or several persons of their personal liberty, where the gravity of the perpetrated act is such that it violates the fundamental rules of international law, and the perpetrator is aware of actual circumstances that resulted in the gravity of the offense. The conduct is perpetrated as part of a widespread or systematic attack directed against civilians, where the perpetrator is aware of the nature of the conduct."[11]

114. Several Prosecution witnesses stated that they had been simply told by the accused to follow him. Thus, Edin Hasandić stated that the accused, together with other two–three military police officers, had come to the bakery where he worked and told the witness, Junuz and Admir, that they had to take them, and when their boss had asked – "why he was arresting them?" the accused shrugged his shoulders and said: "It's got to be done!".

115. Junuz Ahbabović testified that the accused had arrived, told him and Edin they had a warrant for bringing them in, that on that occasion no force had been used against them. Admir Topalović's testimony is equivocal to their testimonies. Based on the testimonies of the Lušija brothers and Našid Beganović, it can be inferred that, on the occasion of their arrest, the accused was merely present there, while their testimonies focused on Mato Miletić. The Panel had no reason not to believe these witnesses, despite the objections of the Defense to these three latter witnesses.

116. With respect to the circumstances surrounding his arrest, witness Ahmed Beganović stated: "No one threatened me. I was able to stay in my house. They just came, picked me up". The testimonies of these witnesses give full insight in the factual circumstances surrounding the deprivation of liberty of those persons, more precisely that they had not been restrained and no physical force had been used against them, which leads to an indisputable conclusion that, in the light of the requirements prescribed by the cited

[11] See, group of authors, *Commentary to the Criminal Laws in Bosnia and Herzegovina,* Volume I, Council of Europe and European Commission Joint Project, Sarajevo, 2005, pg. 566.

order, such actions on the part of the accused can in no way be qualified as "serious deprivation of physical liberty", especially not if one takes into consideration the statement of Admir Topalović, according to which there was confusion on that occasion (in Kreševo), which supports the accuracy of the allegations made by the Defense in that respect.

117. Certainly, such conclusion has to be linked with the question related to the existence of awareness on the part of the perpetrator of actual circumstances significant for the assessment of the gravity of that act, the answer to which, as already given in this Verdict, is negative for the reasons given in paragraph 83.

118. In addition to that, the factual description in Count 1 in the operative part of the Indictment states, *inter alia,* that the accused "unlawfully deprived of liberty and ordered Bosniak civilians from the above villages and from Kreševo to be unlawfully deprived of liberty", whereas the legal description of the act under Article 172(1)(e) of CC of BiH, with which the accused is charged, reads: "imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law".

119. Unlike this provision, Article 173(1)(e) of the cited law describes "unlawful taking to concentration camps and other unlawful imprisonment" as one of the acts of perpetration, so if legal descriptions of these acts are compared, both with one another and with the allegations in the factual description of the Indictment, it is clear that, with this compilation, the Prosecution has achieved a "third or 'omnibus' norm" of a kind, and with that automatically created the confusion, rendering thus fully justified and reasonable the warning given by the Defense Counsel in his closing argument, according to which the legal description of the offense must include the same elements as the respective legal norm in order to define the criminal offense of the accused as precisely as possible.

120. Also, with respect to the proof of individual acts, primarily the one related to Article 172(1)(f) under Counts 2, 3 and 4 of the Indictment (Torture) alleging that the accused beat and physically abused the listed Bosniaks, unlike the Prosecution, the Defense, through their analysis of testimonies of the Prosecution witnesses who have been heard, successfully pointed out the inconsistencies in their testimonies as discussed in paragraph 104.

121. Based on the reasons given above, the Panel finds that the Prosecution failed to prove that any reasonable trier of fact might conclude that the testimonies of the respective witnesses represent a reliable and safe basis for a convicting verdict on these counts of the Indictment.

122. Given the fact that it is not bound by the Prosecutor's proposal of the legal qualification of the act, this Panel focused on examining whether the acts factually described under the respective counts maybe meet the requirements for some other criminal offense under chapter XVII of the CC of BiH, primarily having in mind the criminal offense under Article 173 of the CC of BiH as the only act from the respective Chapter that can alternatively apply, starting from the factual allegations in the Indictment.

123. War Crimes against Civilians (Article 173(1) of CC of BiH) include various forms of inhumane treatment of civilians that represent the gravest breaches of human rights in the time of war, armed conflict or occupation. For this act to exist, it is necessary that the alternatively specified acts of perpetration – a complex of various activities specified under paragraphs (1)(a) - (f) of the cited provision, violate the rules of international law, which indicates that it is a blanket offense (the description of the act in paragraph (1) reads: "Whoever in violation of rules of international law…").

124. Violation of the rules of international law represents an integral element of the legal qualifications of the act, because, otherwise, it would not be this but a different criminal offense such as, for example, murder, grave physical injury, rape, etc.[12]

125. The factual description of the act in the Indictment states that, in the manner described, the accused "acted contrary to the rules of international law", which is not sufficient, because it should have specified the specific norm of international law that is violated.[13] In addition to that, it became apparent that the Appellate Panel had no grounds for further examination of applicability of the cited provision to the factual findings in this case, or else it would violate the objective identity of the Indictment.

126. To make such examination possible, the Prosecution should have, at least, proffered evidence – which they did not do – showing that the imprisonment or deprivation of liberty of civilians was unlawful in the following two situations: "(i) when a civilian or civilians have been detained in contravention of Article 42 of Geneva Convention IV, *i.e.* they are detained without reasonable grounds to believe that the security of the Detaining Power makes it absolutely necessary; and (ii) where the procedural safeguards required by Article 43 of Geneva Convention are not complied with in respect of detained civilians, even where their initial detention may have been justified"[14]. This is even more true because the Defense has pleaded that the special measures of detaining civilians

[12] See, Miloš Babić, PhD, Ivanka Marković, PhD, Criminal Law – Separate Part, Banja Luka, 2005, pg. 474.
[13] For this see, VHS Verdict, Kž-588/02, dated 17 October 2002.
[14] See, *Mucić et al.,* (Appeals Chamber) ICTY, 20 February 2001, paragraphs 322, 327.

were lawful in the circumstances described under Article 42 of the Fourth Geneva Convention.

127. Based on everything mentioned above, it is necessary to point out the standards set by the ICTY Appeals Chamber in the *Čelebići* case, based on which it is possible to assess the responsibility of persons for the unlawful imprisonment of civilians and the form at hand.

128. Namely, in order to establish that an individual has committed the crime of confinement, something more must be proved than the knowing participation in a general system or operation within which civilians are confined. For example, it must be proved that the perpetrator is responsible for placing a person in the camp although there are no reasonable grounds to believe that the person constitutes a security risk; or that the perpetrator, having the authority in the detention facility, detains a person without any reasonable grounds that the person represents a security risk; or that the perpetrator, having the power to release the person, fails to do so despite the knowledge that no grounds for further detention exist.[15]

129. When applied to the specific factual circumstances of this case, the criteria mention above lead to one conclusion only – that the Prosecution failed to prove through the presented body of evidence that any of those criteria have been met, which would eventually mean the responsibility of the accused for the perpetration of the crime of imprisonment. Therefore, the Panel is of the view that the Prosecution failed to eliminate any reasonable doubt and prove that the accused Krešo Lučić is responsible for placing those persons – victims in the respective camps or that he had any authorizations in these facilities, and therefore the power to release these persons.

130. In any case, starting from the factual findings related to depriving civilians of liberty by the accused as set out in paragraphs 113–116, the Court inferred that the accused could not have been expected to assess the unlawfulness of the imprisonment. In other words, the Prosecution failed to proffer evidence of such quality as to exclude any reasonable doubt and establish that the conduct of Krešo Lučić was of such type and degree of criminal liability necessary to find him guilty of unlawful imprisonment.

131. The Prosecution has not presented evidence that would indicate that the accused had any knowledge that the orders he carried out were unlawful or directed to the perpetration of war crimes; moreover, not a single piece of evidence indicates that the accused went into the examination of that issue in the first place or at least that he had reason to believe in the unlawfulness of such orders, especially not when taking into account the previously

[15] Appeals Chamber Judgment in the *Čelebići* case (February 2001), paragraph 342.

described circumstances that existed in Kreševo at that point. Therefore, this Court had no alternative to qualify his actions as war crimes against civilians.[16]

132. This Panel believes that justice is achieved by following the path of law, and the law in this case says that the Prosecution failed to prove beyond a reasonable doubt the existence of a general element of the criminal offense of Crimes against Humanity with which the accused Krešo Lučić has been charged, more precisely the existence of a widespread and systematic attack by the HVO directed against the Bosniak civilian population in the territory of Kreševo municipality, and thereby the other cumulative elements of this criminal offense.

133. This Panel too does not find disputable the facts established in ICTY judgments in various cases related to the existence of the HVO attack with the described characteristics directed against the Bosniak civilian population in the territory of Central Bosnia. In addition, it did not escape the attention of this Panel that in those adjudications Kreševo is only marginally mentioned. However, what this Panel found decisive with respect to this matter was the examination of the accuracy of the Prosecution thesis whether this attack by the HVO took place in the Kreševo municipality and, bearing in mind numerous evidence, both subjective and objective, consistent in all aspects, as has already been stated, the Court found that the answer was negative.

134. When viewed from the factual point of view, in case of individual acts, the only thing this Panel does not find disputable is that the accused carried out the arrests of Bosniaks, who had the status of civilians because of the very fact that they were disarmed, therefore, the Panel does not find it necessary to refer to numerous ICTY decisions or provisions of Geneva Conventions in order to support this allegation because it represents a well-known fact.[17]

135. However, when it comes to the requirements of the legal description of elements of the respective criminal offense being met, based on the results of the presented evidence, it cannot be inferred that the accused took part in the taking and imprisonment or other deprivation of physical liberty that could be qualified as severe, contrary to fundamental

[16] See, Moving *Towards a Harmonized Application of the Law*, Article *Moving Towards a Harmonized Application of the Existing Law in War Crimes Cases before the Courts in BiH – Appendix – Problems in the Application of the Law in War Crimes Cases* – study of *Radanović* case, OSCE, August 2008, pgs. 32 – 37.

[17] It is sufficient here to quote the ICTY decision in the *Blaškić* case (Trial Panel), 3 March 2000, paragraph 214, according to which civilians also include those who were members of a resistance movement and former combatants, regardless of whether they wore uniform or not, „[B]ut who were no longer taking part in hostilities when the crimes were perpetrated because they had either left the army or were no longer bearing arms or, ultimately, had been placed *hors de combat,* in particular, due to their wounds or their being detained."

rules of international law, or more precisely that, when viewed from the aspect of criminal law, his actions can be qualified like that. In other words, the legal basis of the Indictment must follow from its factual description, and since this is not the case, based on the assessment of the results of the evidentiary proceedings, the accused should have been acquitted of Count 1 of the Indictment.

136. As regards the acts under Counts 2, 3 and 4 of the Indictment, which are specifically manifested through the torture of the listed Bosniak civilians by the accused Krešo Lučić, after a detailed analysis of the testimonies of Prosecution witnesses, with special focus on the testimonies of victims themselves, the Court found numerous inconsistencies and contradictions, both in their own statements given at different stages of the proceedings, and in correlation with one another and with testimonies of Defense witnesses.

137. Thus, in case of the testimony of Našid Beganović, who, according to the allegations under Count 2 of the Indictment, was beaten by the accused, when checking the truthfulness of his testimony, the Court took into consideration other sources of information about the guilt. Thus, the Court found that witnesses Denis Tadić, Mladen Tolo, who, according to the factual substratum of the Indictment, after Našid had been tortured, were told by the accused to take him away, and the accused himself, when heard as a witness, energetically denied Našid's allegations leaving his testimony isolated. This is especially true given the procedural value of objective circumstances, as a specific source of information characteristic only for the establishment of the accused's guilt.

138. Those circumstances indicate, bearing in mind the testimonies of witnesses Marković, who, for a while, headed the security service, and Kuliš, according to which the interrogation of the arrested persons was conducted by SIS, that the accused had no such authorizations, and did not do that. In addition, in the course of the proceedings the Defense did not exclude the possibility that force was used in the course of the interrogation of arrested civilians, however, not by the accused, but by other persons, including Mato Đerek, who has been convicted in a final verdict.

139. Witness Andrija Miličević stated that he had known Našid very well because he was his neighbor and that he had offered him a job, but he denied that he ever offered him money for his testimony in this case.

140. Benjamin Kardaš remembered that Našid had been taken out for interrogation, although not from the elementary school but from the *Šunje* hall, and brought back beaten up. Similarly, witness Adem Lušija stated that Našid Beganović had told him he had been tortured, but none of them confirmed or presented at least indirect information that it was the accused himself who had beaten up Našid. With respect to Našid's testimony, the

Court notes that it is not sufficient that the statement is honest, but that the real issue with respect to the identification testimony, in this case identification of the accused as the perpetrator, is how credible it is, which the Court was not convinced about beyond any reasonable doubt.

141. With respect to evidence for the incident described under Count 3 of the Indictment (torture of detainees in the *Elektroprivreda* building), it is primarily necessary to point out the testimonies of Fazil Fazlibašić, Nedžib Fazlibašić, and Galib Kustura, in the parts where they are mentioned as victims of the torture. When it comes to the credibility of these witnesses, the Court could not disregard the fact that, with respect to the personality of witness Fazil, witness Željko Drljo, a police officer from Kreševo, stated that this witness had four or five minor offense reports for the violation of public peace and order, and he was a person known for alcohol overuse. At the main hearing, this witnesses did not wish to give a statement about the circumstances surrounding his beating, but having been presented with the official record on his interview dated 8 November 2000, made at the request of the Sarajevo Cantonal Prosecutor's Office by members of Sarajevo MUP, Nermin Poturković and Zajim Šarić, in the case against Vlatko Buzuk, he stated that he had been beaten by Krešo Lučić.

142. Having weighed his testimony from the psychological point of view, the Court inferred that the testimony of this witness with respect to the Prosecution allegation that he had been beaten by the accused Krešo Lučić cannot be given unreserved credence, given, *inter alia,* his statement that he did not consider Krešo Lučić responsible for the events in Kreševo.

143. In his testimony at the main hearing, witness Almedin Mušanović, also listed as a victim of the respective offense, who at that time was 15 years old, stated that he had been interrogated and beaten by Mato Hercegovac, that, on that occasion, Nedžib was with him, and that, after that, the accused entered the room and did not ask him anything, just gave him a bottle of water, and that this was the only time he saw Krešo Lučić from his arrest to the exchange.

144. Contrary to that, Nedžib Fazlibašić, stated that together with Almedin he had been taken to Krešo Lučić for interrogation which lasted for two to three hours, that Krešo had punched him, while he had slammed Almedin against the cupboard several times. This witness claimed that the accused had left the room and, in the meantime, Mato Đerek had entered. Mato had a huge knife, he grabbed him by the hair, pulled his head back and placed the knife against his neck. However, immediately after that, forgetting the part of his statement where he previously claimed that the accused had left the room, he

introduced the accused again and stated that Lučić had been present there and had not stopped Mato, but instead laughed.

145. Kasim Fazlibašić, who was arrested together with these two witnesses, who were young boys at that time, stated that he had been severely beaten by Mato Đerek, that at one point Krešo Lučić had entered the room and grabbed him by the head closing his eyes so that he would not be able to see him, and punched and slapped him several times. It remains unclear, because the witness did not clarify that, how the accused was able to perform those actions simultaneously, and what reason the accused would have to close the witness's eyes if he had already seen him, etc. In addition to that, in the statement he gave at the investigation stage, Kasim Fazlibašić claimed that, after his arrest, he had been placed in the regular police facilities in Kreševo and then taken to the Military Police headquarters in the *Elektrodistribucija* building, which is not true, because the testimonies of Defense witnesses (witness Vila, for example) show that, at the time of his arrest, Military Police was quartered on the premises of the Pensioners Club.

146. Galib Kustura claimed that the accused Krešo, whom he had recognized as the hunter he had gone hunting with in April 1993, had hit him in the Kreševo Police Station corridor. Therefore, the Defense Counsel was right when he appropriately warned and asked how it was possible that the accused had gone hunting with the witness bearing in mind the allegation of the Prosecution according to which the accused, at that time, had been involved in the systematic attack against Bosniaks, and especially because the accused had never gone hunting. Witness Galib stated that the accused had beaten him on the staircase inside the building where the Military Police was quartered, which is contrary to the testimony of witness Orhan Vila, who denied that this building, which was also the building where he lived, had any staircase at all, and that the premises of the Pensioners Club were connected with the stairs.

147. It is obvious that this testimony is in the least illogical, and thus not suitable for any further examination.

148. In addition, witness Hajrudin Bejtić stated that he had been beaten but not by the accused or that the accused had ordered someone else to do it, as alleged in the Indictment.

149. As regards the factual allegations in the respective Count of the Indictment according to which the accused beat Ibrahim Beganović, only witness Adem Lušija stated that his cousin Ibrahim had told him he had been tortured by the accused Krešo Lučić. However, given the fact that this testimony is circumstantial evidence, that the accused denied his involvement in Ibrahim's torture, and that this person had not been heard in

the course of the trial, based on this testimony, the Court was unable to draw a reliable inference as to the guilt of the accused for the torture of Ibrahim Beganović. In addition, the operative part of the quoted final verdict against the accused Mato Miletić refers to the factual findings according to which Miletić had told the HVO members to beat this person, while there was no reference to Krešo Lučić with respect to this incident.

150. As regards Count 4 of the Indictment related to the torture of Meho Hodžić, the Defense submitted that it appeared *pleano iure* that this witness was an instructed witness since, during the earlier proceedings, he had been interviewed by his son, who had worked as intelligence and security in the ARBiH, that this witness had testified about his imprisonment in Kreševo on several occasions in trials, but that, until this trial, he never mentioned Krešo Lučić as the person who had beaten him.

151. To explain why he never mentioned the accused Lučić before, this witness stated that it had not been the accused's turn at that time, which leads to the conclusion that he is a so called professional witness. In addition to that, this witness stated that he had been severely beaten, banged against the wall, that his shoulder blade bone had been broken, that he had repeatedly lost and regained consciousness, and that he had not spilt a drop of blood in all that, while witness doctor Salih Skopljak, who was in the *Šunje* hangar, remembered the persons to whom he had given medical aid that was within his ability in those conditions, but he could not remember that Hodžić had had the injuries he described, namely that he had been severely beaten.

152. Witness Hodžić stated that, as the result of his torture, his shoulder blade had been broken, although, based on the available medical records, the medical expert witness, specialist in the relevant field, doctor Franko Ženetić, whose expert report was assessed by the Court as objective and entirely acceptable, ruled out the possibility of the shoulder blade bone fracture. The allegations of witness Hodžić, according to which he contracted diabetes as the result of the torture he had allegedly experienced, are unacceptable because the presented evidence showed that he had contracted it on an earlier occasion.

153. Having summed up everything described above, the Court found that, based on this testimony, it was not possible to accept the Prosecution allegations under Count 4, and thus speak about the criminal responsibility of the accused with respect to the torture of Meho Hodžić.

154. Based on everything described above, the Panel found that, with respect to these acts too, the quality of evidence presented by the Prosecution was not sufficiently credible to conclude that the accused had committed the acts with which he is charged under the respective counts of the Indictment, more precisely under Counts 2, 3 and 4. Therefore,

applying the *in dubio pro reo* principle, or more precisely the rule according to which the facts that are detrimental for the accused must be established with full certainty, or "beyond a reasonable doubt", and if there is any such doubt with respect to those facts, as the Panel found in this particular case, they cannot be considered established. On the other hand, the facts favorable for the accused are considered established even if they are only probable.

155. In compliance with the cited principle, and given the fact that this Panel found that the Prosecution failed to prove the guilt of the accused, applying Article 284(c) as read with Article 3 of CPC of BiH, an acquitting sentence was due, therefore it was not necessary to go into the other issues pointed out by the Defense, such as, for example, the application of the CC of FBiH as a more lenient law.

8. Costs of the Proceedings

156. Pursuant to Article 189(1) of the CPC of BiH, the costs of the criminal proceedings under Article 185(2)(a) through (f) of the cited law, as well as the necessary costs of the accused and the necessary costs and the fee of the Defense Counsel, shall be covered from within the Court's budget.

MINUTES-TAKER: **PRESIDING JUDGE:**
Medina Hababeh ***Dragomir Vukoje***

LEGAL REMEDY: There is no right of appeal against this Verdict.