

SUD BOSNE I
HERCEGOVINE



HERCEGOVINE СУД БОСНЕ И

Number: X-KR-07/400

Date: 24 March 2009

BEFORE THE TRIAL PANEL

composed of: Judge Minka Kreho, the President of the Panel
Judge Marjan Pogačnik
Judge Tihomir Lukes

PROSECUTOR

vs.

KRSTO SAVIĆ and MILKO MUČIBABIĆ

VERDICT

Prosecutor of the Prosecutor's Office of Bosnia and Herzegovina:

Munib Halilović

Defense Counsels for the accused Krsto Savić:

**Attorney Slaviša Prodanović
Attorney Momir Kolesar**

Defense Counsel for the accused Milko Mučibabić:

Attorney Krešimir Zubak

Record-taker:

Number: X-KR-07/400
Sarajevo, 24 March 2009

IN THE NAME OF BOSNIA AND HERZEGOVINA

The Court of Bosnia and Herzegovina, sitting on the Panel composed of Judge Minka Kreho, as the President of the Panel, and Judges Marjan Pogačnik and Tihomir Lukes, as the Panel members, in the presence of Legal Officer Emil Pinkas, as a Record-taker, in the criminal case against the accused Krsto Savić and Milko Mučibabić, regarding the amended Indictment by the Prosecutor's Office of Bosnia and Herzegovina Number: KT-RZ-97/06 dated 26 February 2009 whereby the accused Krsto Savić is charged with the commission of the criminal offense of Crimes against Humanity referred to in Article 172, Paragraph 1, Sub-paragraph h) as read with a),b),d),e),f),g),h),i) and k), and in conjunction with the criminal offense of War Crimes against the Civilians referred to in Article 173, Paragraph 1, Sub-paragraphs c),e) and f), all in conjunction with Article 180, Paragraphs 1 and 2 and Article 29 of the Criminal Code of Bosnia and Herzegovina (the CC BiH) and Milko Mučibabić for the criminal offense of Crimes against Humanity referred to in Article 172, Paragraph 1, Sub-paragraph h) as read with a),b),d),e),f),h),i) and k), and in conjunction with the criminal offense of War Crimes against the Civilians referred to in Article 173, Paragraph 1, Sub-paragraphs c),e) and f), all in conjunction with Article 180, Paragraphs 1 and Article 29 of the CC BiH and the criminal offense of Illegal Manufacturing and Trade of Weapons or Explosive Substances referred to in Article 399(1) of the Criminal Code of Republika Srpska, following the public hearing, which was partly held in closed session, in the presence of the accused Krsto Savić and his defense counsels, Attorneys Slaviša Prodanović and Momir Kolesar, and the accused Milko Mučibabić and his defense counsel, Attorney Krešimir Zubak, in the presence of Munib Halilović, the Prosecutor of the Prosecutor's Office of BiH, handed down and on 24 March 2009 publicly announced the following

VERDICT

The accused:

KRSTO SAVIĆ, a.k.a. *Kičo*, son of Marko and Dušanka née Ivaniš, born on 10 October 1959 in the village of Slati, Nevesinje Municipality, Personal Identification Number 1010959153174, currently residing in Trebinje at Tina C-39 Str., of Serb ethnicity, citizen of Republika Srpska and Bosnia and Herzegovina, currently unemployed, literate, university degree in political sciences, married, father of one child, completed his military service in the duration of four (4) months in Karlovac,

of average financial standing, previously convicted of the criminal offense of Manslaughter, no other criminal proceedings pending, placed in custody during the period from 6 September 2007 to 23 January 2009.

MILKO MUČIBABIĆ, a.k.a. Mileta, son of Božo and Danica née Guzina, born on 31 March 1951 in the village of Ljeskov Dub, Gacko Municipality, currently residing at Kilavci bb, Nevesinje Municipality, Personal Identification Number 3103951153154, of Serb ethnicity, citizen of Bosnia and Herzegovina, retired, elementary school education, married, father of three children, military service completed in 1971, indigent, no prior conviction, placed in custody during the period from 6 September 2007 to 17 October 2008;

ARE GUILTY

BECAUSE:

I

The accused Krsto Savić:

In the period from the beginning of May 1992 to the end of 1992, within a widespread and systematic attack of the army, police and paramilitary units of the self-proclaimed Serb Republic of Bosnia and Herzegovina, later on the Republika Srpska, directed against the Bosniak and Croat civilian population of the Municipalities of Nevesinje, Kalinovik, Gacko and Bileća, holding the office of the Chief of the Trebinje Security Service Center and at the same time as the Minister of the Interior of the Serb Autonomous Region (SAO) of Herzegovina up to 13 July 1992, and as a member of the Staff of the Ministry of the Interior (MUP) of the Serb Republic of Bosnia and Herzegovina in charge of command and control over the overall MUP force, as a knowing participant in the joint criminal enterprise undertaken by Mićo Stanišić, Minister of the Interior of the Serb Republic of Bosnia and Herzegovina, Radovan Grubač, Commander of the Herzegovina Corps, Novica Gušić, Commander of the Nevesinje Brigade, the leadership of the Public Security Stations in Gacko, Nevesinje, Kalinovik and Bileća, and members of the municipal leadership of these municipalities, acted deliberately with the common purpose to implement the common policy and thus conduct the persecution of the Bosniak and Croat civilians on political, national, ethnic, cultural and religious grounds by killing, deportations and forcible transfer of population, unlawful imprisonment, torture, rape, enforced disappearance, and other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to physical or mental health, ordered and committed the persecution of the Bosniak and Croat civilians of the Municipalities of Gacko, Bileća, Kalinovik and Nevesinje, in as much as he:

- 1) During June 1992, members of the Gacko SJB */Public Security Station/*, which operated as part of the Trebinje Security Service Center (CSB), took part in the persecution of the Bosniak civilians in the Gacko municipality by arresting able-bodied men whom they detained and held in the camps they set up on the premises of the Gacko SJB, the school in Avtovac, Gacko Municipality, and in the basement of the *Samački Hotel / Translator's note: Hostel for single persons/* in Gacko, where they confined approximately 150 (hundred and fifty) men and held them in inhumane conditions, without adequate accommodation and medical care, subjected them to everyday physical abuse when taking them to night-time interrogations, allowed other soldiers to freely enter the premises with the detainees who were beaten with different hard objects on such occasions; in these detention facilities Osman Omanović, Miralem Voloder, Mirsad Džeko, Edhem Šahović, Aziz Fazlagić, Arif Jaganjac and Latif Halilović were killed, as well as Aziz Hasanbegović and Enver Redžović who are still unaccounted for; the detained civilians were held in these facilities until 29 June 1992 or approximately to that date, when they were transported by tractor-trailers and under the escort of the Gacko SJB policemen and detained in the camp located in the barracks in Bileća;
- 2) During the period from June to the end of 1992, members of the Bileća SJB, which operated as part of the Trebinje CSB, took part in the persecution of the Bosniak civilians in Bileća Municipality by arresting able-bodied men whom they held, with his knowledge and approval, in the camps they set up on the premises of the Bileća SJB and the premises called the *Đački dom /Translator's note: Students' Dormitory/*, where around 150 (hundred and fifty) Bosniaks were detained and held on inadequate premises, where the food was brought to them by their family members, without proper conditions to meet basic hygienic needs, without appropriate medical care and sufficient water, where they were exposed to beatings by the Bileća SJB policemen, whereupon around 5 October 1992 approximately one half of the detainees and their family members were deported to Montenegro under the police escort;
- 3) During the period from early May 1992 to the end of 1992, members of the Kalinovik SJB, which operated as part of the Trebinje CSB, took part in the persecution of the Bosniak civilian population in the Kalinovik Municipality and parts of the civilian population in the Municipalities of Gacko, Trnovo, Foča and Nevesinje, in as much as they:
 - a) In early May 1992, members of the Kalinovik Police Station, together with members of military formations, in the region of the Jažići settlement, Kalinovik Municipality, surrounded and captured around 280 (two hundred and eighty) civilians from the Jeleč Local Community, Foča Municipality, who, fleeing from the Serb armed force attack, tried to cross the territory of the Kalinovik Municipality, whereupon the men were forcibly separated from the women, children and the elderly and detained at the *Miladin Radojević* Elementary School, where they were guarded by the Kalinovik SJB policemen,

while the women and children were transported to the territory controlled by the Army of BiH; the detained men, approximately 50 (fifty) of them, were taken to the Bileća camp, taken back to Kalinovik and subsequently handed over to the Foča Penal and Correctional Facility where the majority of these civilians were killed or disappeared;

- b) On 25 June 1992 and the following days, members of the Kalinovik SJB organized and conducted the arrest of Bosniak men in Kalinovik and the neighboring villages of Mjehovina, Jelašca and Vihovići, detained the arrested civilians in the gym of the *Miladin Radojević* Elementary School, where the civilians were guarded by the Kalinovik SJB policemen and where they stayed until 7 July 1992 or around that date, when the policemen organized the transfer of the detained Bosniaks from the *Miladin Radojević* Elementary School, in which the detained civilians could be freely visited by their families and delivered food and clothing by the families, to the *Barutni magacin* /Translator's note: the Gunpowder magazine/ camp, a military facility controlled by the army, secured by barbed wire and mines and guarded by sentries, so, on 5 August 1992, all the detained men, at least 62 (sixty two) of them, were loaded onto trucks and transported under police escort and executed at the place called Ratine and in the locality of the Miljevski tunnels;
- c) In early July 1992, members of the police force of the Kalinovik SJB took part in the capture of at least 200 (two hundred) Bosniak civilians, mainly women and children, and a small number of men from the Municipalities of Gacko and Nevesinje, who were passing through the territory of the Kalinovik Municipality fleeing from the attack by the Serb forces in their respective municipalities, detained the civilians in the school in Ulog where, along with the army, they were guarded by the policemen of the Kalinovik SJB, and on the following day organized their transport to and detention in the *Miladin Radojević* Elementary School, where they were placed on the ground floor of the building, in the gym, the staffroom and one classroom, while the building where they were placed was guarded by members of the Kalinovik SJB;
- d) On 1 August 1992, members of the Kalinovik SJB took part in an attack on the Bosniak civilian population of the village of Jelašca, Kalinovik Municipality, in which at that time only women, children and a small number of the elderly were staying; the Kalinovik SJB policemen surrounded the village and captured all the women and children and set the Bosniaks' houses on fire, while members of the Serb army provided artillery support to the attack by opening fire from an anti-aircraft gun deployed in the region of Brdo near the Badnjareve houses, on which occasion they killed Derviša Pervan in the hamlet of Karaula and wounded the girl Mirveta Pervan and set on fire all the houses in the hamlet with incendiary bullets, while they detained the captured civilians in the *Miladin Radojević* Elementary School on the upper floor of the school premises; on the same night, the remaining civilians from Vihovići, Mjehovina and other neighboring villages, except for the elderly who could

not walk across the hill, fleeing from the attack left the Kalinovik Municipality and hid Derviša Pervan's body in an unknown locality so that she is still unaccounted for;

- e) During July or August 1992, the leadership of the Kalinovik SJB, together with members of this Police Station, took part in the setting fire to the Bosniak villages in the Kalinovik Municipality, namely the villages of Sočani, Daganj, Bojići, Hotovlje, Luko, Kutine and others, on which occasion the police members first set on fire the village of Sočani, while the military set the other aforementioned villages on fire;
 - f) During the period from May 1992 to the end of 1992, on the detention premises of the Kalinovik SJB, without any legal grounds they held the detained civilians Tahir Panjeta, Kasim Bojičić and others, including *hodža /Translator's note: Muslim cleric/* Jašar Vuk; they used some of the detained civilians as drivers to detect mines; the detainees would drive a freight vehicle in front of the military convoys most often using the road from Kalinovik to Miljevina under the escort of the Kalinovik SJB members; in this process, on three occasions at least Huso Tukelija came across mines with the vehicle; the vehicles he drove were destroyed but he managed to survive;
 - g) Members of the Kalinovik SJB, together with members of the army and civilian authorities, during May 1992 took part in the setting up of a prison in the *Miladin Radojević* Elementary School in order to unlawfully detain Bosniak population there, the prison having been guarded by the Kalinovik SJB; they held at least 300 (three hundred) Bosniak civilians from the territory of the Kalinovik Municipality and parts of the civilian population of the Municipalities of Gacko, Nevesinje, Foča and Trnovo in detention in the *Miladin Radojević* Elementary School on inadequate premises without adequate accommodation, denied a possibility to meet their basic hygienic needs, without appropriate medical care, with very meager daily meals, exposed to daily physical and mental abuse and humiliation by different soldiers whom the policemen allowed to enter freely, so in the course of the detention in this prison Suad Hasanbegović was killed, while Zulfo Kadrić, Murat Redžović, Mujo Pervan, Azemina Pervan, Fatima Pervan, the boy Almir Kadrić, Edin Bičo were taken away from the prison and are still unaccounted for, while the detained women were raped in this prison and taken to Miljevina, Foča, the *Pavlovac* farm and to a weekend cottage in the settlement Mjehovina, where they were raped;
- 4)
- a) On 16 June 1992, he was in charge of a group of members of the Nevesinje SJB and came with them to the courtyard of Redžo Trebović's house at around 13.00 hours, and called everyone to get out of the house, whereupon Redžo Trebović and his wife Bahrija, Bajro Mahinić and his wife, and Fadil Trebović and his wife came out, and Krsto Savić took Redžo towards the garage and fired from an unidentified weapon at

Redžo's lower limbs; as a consequence of this Redžo fell, and then, for a rather long period of time Krsto Savić did not allow the others to approach and render assistance to Redžo; thereafter he allowed Redžo's brother Fadil and Redžo's wife Bahrija to drive Redžo to the Health Center in Nevesinje where they pronounced Redžo dead; Redžo Trebović's body has never been found and he has been unaccounted for ever since; when leaving the Trebović courtyard the police members set Redžo's house on fire and thereupon they arrested Bajro and Fadil and detained them in the SJB Nevesinje.

- b) On 16 June 1992 and on the days that followed, he was in charge of the attack by the Nevesinje SJB police force against the Bosniak civilian population in the Nevesinje Municipality, on which occasion a large number of civilians were unlawfully arrested; the civilians brought by the police, military and paramilitary formations were separated in front of the SJB building, men were detained on the SJB premises and women were separated and detained on the premises of the tools factory called *Alatnica*; the men detained in the SJB were subjected to physical abuse by being hit with different objects all over their bodies, on which occasion Mujo Ćupina, Meho Ćatić and Adem Mrndžić were bleeding excessively in the part of their heads. Nafija Ramović tried to escape and during the attempt he was killed in the vicinity of the Nevesinje SJB, the bodies of two civilians were lying still in the courtyard of the SJB and the body of Nafija Ramović as well as the bodies of Mujo Ćupina, Meho Ćatić and Adem Mrndžić, have never been found and they are still unaccounted for, while over the following days, the other detained men, around 20 (twenty) of them, were transported under the escort of the Nevesinje SJB policemen to the Bileća camp and detained there;
- c) In the late afternoon of 16 June 1992, members of the Nevesinje SJB took part in the attack against the village of Čanje, Nevesinje Municipality, although there were no legitimate military targets or armed inhabitants there, and during the attack 9 (nine) Bosniak civilians were killed, namely, Ibro Kevelj, Munta Šarančić, Bega Kljako, Suad Šarančić, Bajro Šarančić, Fadil Šarančić, Nefa Šarančić, Mujo Mutilović and Avdija Mutilović, while all the survivors were captured and detained in Nevesinje, the men being detained in the cinema where they were subjected to physical abuse, whereupon they were transported to the Bileća camp, and the women and children being detained in the tools factory called *Alatnica*, while the 9 (nine) killed inhabitants of Čanje were buried in a mass grave by the SJB Nevesinje policeman Željko Pašajlić, using a construction machine;
- d) During the period from 19 June 1992 to 24 June 1992, civilians Ismet Duraković, Mirzo Ćustović and Rašid Toporan were brought from their homes to the Nevesinje SJB and unlawfully confined there; members of the Nevesinje SJB handed over Ismet Duraković and Rašid Toporan to

unidentified members of paramilitary formations, knowing that they, thus, exposed them to mortal danger, violence and mental suffering, whereupon these members of paramilitary formations took Ismet Duraković to the Boračko Lake where he died from beating and his body was found and identified in the Borisavac pit, Konjic Municipality; Rašid Toporan has not been found ever since and is still unaccounted for, while all traces of Mirzo Ćustović have been lost after the Nevesinje SJB and he is still unaccounted for;

- e) On or around 24 June 1992, the inhabitants of the hamlet of Šarica (Local Community of Zijemlje), around 30 (thirty) of them, including men, women and children, were captured by members of paramilitary formations and detained on the premises of the Nevesinje SJB; the SJB members held the captured civilians for two days in the basement under inadequate conditions, whereupon they transported and handed the civilians over to the Bileća camp;
- f) On or around 19 June 1992, in the Nevesinje SJB building, he interrogated the detained civilian Emir Kljako using a bayonet; he threatened the detainee and poked him with the bayonet;
- g) In late June 1992, the policemen of the SJB Nevesinje detained civilians Osman Abaz, Jozo Jarak and a civilian *F* in the basement of the Nevesinje SJB, and, after several days of detention, they handed them over to unidentified members of paramilitary formations, aware that they would thus expose them to mortal danger, violence and mental suffering, whereupon the civilians were taken to the Boračko Lake, Konjic Municipality where they were killed; the bodies of Osman Abaz and Jozo Jarak were exhumed and identified in the Borisavac pit, whereas the *F* was subjected to sexual slavery with her identity changed and she managed to survive the war;
- h) In late June and early July 1992, on the detention premises of the Nevesinje SJB, for several days they held captive three boys aged 8, 10 and 12 years respectively, all three having the last name Ćatić, three elderly women, and Nura Mičijević and Izeta Hajdarević from Rabina with four children aged between 6 months and 5 years; they handed over Nura Mičijević and Izeta Hajdarević to unidentified members of paramilitary formations who took them to the Boračko Lake, Konjic Municipality, wherefrom the women managed to return to Nevesinje owing to the help by one soldier, while they transported the remaining civilians, after several days of detention, to the line of separation in Stolac where the civilians, having been exposed to mortal danger when crossing the line, managed to cross it and reached Stolac;
- i) In late June 1992, the civilian Esad Čopelj was physically abused by members of the army and the police in front of the Nevesinje SJB, on which

occasion they cut off one of his ears, whereupon they handed him over to unidentified members of the paramilitary formations who took him to the Boračko Lake and killed him; his body was found and identified in the Borisavac pit;

- j) During June 1992, he took part in the setting up of a camp in the tools factory called *Alatnica* in Nevesinje in a way that, under his order, women, children and the sick were separated from the captured Bosniak civilians and detained in the *Alatnica*, which was under the control of an unidentified paramilitary formation, where they were held under inhumane conditions and exposed to physical and mental abuse, wherefrom the detained women Zejna Šarančić and Sabira Šarančić were taken away. The body of Sabira Šarančić was found later on while from there all traces have been lost of Zejna Šarančić and she is still unaccounted for, and Hata Mehremić was forced to cross the frontline to reach the territory under the control of the Army of BiH in order to arrange an exchange of the detained women for the dead Serb soldiers;
- k) Several times on or around 23 and 24 June, members of the Nevesinje SJB called via megaphone all the remaining Bosniaks from Nevesinje to gather in front of the old Municipality building, so when they gathered, mostly women, children and the elderly, the policemen loaded them on the buses and freight vehicles and, under the escort of the Nevesinje SJB policemen, transported them in the direction of Mostar to the region of Busak, to the area between the frontlines, thus putting their lives at risk due to the fire coming from the frontlines; while crossing the frontlines in that way Duda Tanković, Bećir Šikalo, who stepped on a landmine, Husref Handžar, Dragica Rotim and Šerifa Eminović were all killed, while Mejra Pendar is still unaccounted for; a number of the civilians were wounded; and while crossing the frontlines three women were separated, on which occasion one of them at least was raped by Serb soldiers;

I I

The accused Milko Mučibabić:

1. In the period from June 1992 to the end of 1992, within a widespread and systematic attack of the army, police and paramilitary units of the self-proclaimed Serb Republic of Bosnia and Herzegovina, later on the Republika Srpska, directed against the Bosniak and Croat civilian population of the Municipality of Nevesinje, having knowledge of such attack, as a police officer of the SJB Nevesinje, acted with the intention to facilitate the conduct of the persecution of the Bosniak and Croat civilians on political, national, ethnic, cultural and religious grounds by forcible transfer of population, unlawful imprisonment and other inhumane acts of a similar character intentionally causing great suffering, or

serious injury to body or to physical or mental health, by facilitating the persecution of the Bosniak and Croat civilians of Nevesinje Municipality, and he:

- a) On 16 June 1992, together with a group of the Nevesinje SJB members under the command of Krsto Savić, he took part in the arrests of Bosniak civilians in the Nevesinje town, and around 13.00 hours they came to the courtyard of Redžo Trebović's house, whereupon, having been called out of the houses and having got out of the houses, Redžo Trebović and his wife Bahrija, Bajro Mahinić and his wife, and Fadil Trebović and his wife came out, Krsto Savić took Redžo towards the garage and fired from an unidentified weapon at Redžo's lower limbs; as a consequence of this Redžo fell, and then, for a rather long period of time Krsto Savić did not allow the others to approach and render assistance to Redžo; thereafter he allowed Redžo's brother Fadil and Redžo's wife Bahrija to drive Redžo to the Health Center in Nevesinje where they pronounced Redžo dead; when leaving the courtyard of the Redžo Trebović's house the police members set Redžo's house on fire; Milko Mučibabić followed them in a police vehicle to the Health Center where he deprived Fadil of liberty and took him to the SJB Nevesinje where Fadil was detained in the basement while Bahrija, having arrived at the SJB Nevesinje, was held there for several hours, during which time she was forced to listen to and watch the abuse of the detained civilians, whereupon she was released home;
- b) On 16 June 1992, at about 18:00 hours, together with other members of the Nevesinje SJB, he unlawfully arrested civilian Nafija Ramović in Nevesinje and took him to the Nevesinje SJB, while the police members who came together with Milko Mučibabić drove a *Citroen Visa* passenger vehicle from Nafija Ramović's garage; while being taken out into the corridor Nafija Ramović escaped from the Nevesinje SJB, where he was detained, through the window, during which attempt he was killed in the vicinity of the SJB building; his body has never been found and he is still unaccounted for;
- c) On 16 June 1992 and onwards in June, he took part in the attack by the Nevesinje SJB police force against the Bosniak and Croat civilians in the Nevesinje Municipality, on which occasion a fairly large number of Croat and Bosniak civilians were unlawfully arrested and confined in the basement of the Nevesinje SJB, and, together with other members of the Nevesinje SJB, he took the detained civilians for interrogation and abuse and allowed members of other military formations to freely enter and abuse the detained civilians; thus he was seen covered in blood, with a knife in his hand, while Mujo Ćupina, Meho Ćatić and Adem Mrndžić disappeared without a trace after the abuse and are still unaccounted for;
- d) On or around 19 June 1992, together with a group of Serb soldiers, he unlawfully arrested civilian Ismet Duraković, who was detained in the Nevesinje SJB, whereupon the SJB members handed him over to unidentified

Serb soldiers who took him to the Boračko Lake where he succumbed to beating;

- e) In the second half of June 1992, in the late night hours on the detention premises of the SJB Nevesinje in which Mirsad Bajgorić was unlawfully detained, he made it possible for two unidentified soldiers to beat Mirsad Bajgorić all over his body with a wooden lath until he became still;
 - f) On or around 23 and 24 June 1992, he called via the police vehicle megaphone all the remaining Bosniaks in Nevesinje to gather in front of the building of the Nevesinje Municipal Assembly, aware that upon their gathering they would be expelled from Nevesinje and transported to the separation line in the direction of Mostar, which was done;
2. On 7 September 2007, at the family house at Kilavci bb Str., Nevesinje Municipality, in contravention of Article 6 and 7 (2) of the Law on Weapons and Ammunition of Republika Srpska, he unlawfully possessed the firearms and ammunition the possession of which is prohibited to citizens, namely a semi-automatic rifle, Serial No. 594416, an empty clip for automatic rifle, 206 pieces of ammunition for 7.62-mm rifle, 12 pieces of 7.9-mm ammunition, 2 defensive grenades, Serial Nos. 8608 and 8142, 2 empty clips for automatic rifle, a rifle kit with 4 empty clips, 2 empty Scorpion clips and 84 pieces of 7.62-mm pistol ammunition;

Therefore,

The Accused Krsto Savić, by his acts under Count I – 1, 2, 3a, 3b, 3c, 3d, 3e, 3f, 3g, 4a, 4b, 4c, 4d, 4e, 4f, 4g, 4h, 4i, 4j and 4k, as part of a widespread and systematic attack directed against the civilian population of Gacko, Bileća, Kalinovik and Nevesinje municipalities, with knowledge of that attack and as a knowing participant in a JCE undertaken with a view to persecuting Bosniak and Croat population of Gacko, Bileća, Kalinovik and Nevesinje municipalities on political, national, ethnic, cultural and religious grounds, he planned, ordered and carried out persecution by way of murder, deportation and forcible transfer of population, unlawful imprisonment, torture, rapes, enforced disappearances and other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to physical or mental health,

The Accused Milko Mučibabić, by his acts under Count II – 1a, 1b, 1c, 1d, 1e and 1f, as part of a widespread and systematic attack of the army, police and paramilitary units of the self-proclaimed Serb Republic of Bosnia and Herzegovina (later renamed Republika Srpska) against the civilian Bosniak and Croat population of the Nevesinje Municipality, as a police officer at the Nevesinje SJB /Public Security Station/, he aided the persecution of the civilian Bosniak and Croat population on political, national, ethnic, cultural and religious grounds by way of forcible transfer of population, unlawful imprisonment and other inhumane acts of a similar character

intentionally causing great suffering, or serious injury to body or to physical or mental health; under Count II-2, the Accused Mučibabić illegally purchased and possessed a firearm, ammunition, explosive substances and other means of combat that the citizens are not authorized to purchase and possess,

Whereby

The Accused Krsto Savić committed the criminal offense of Crimes against Humanity – Persecution under Article 172(1)(h) of the Criminal Code of Bosnia and Herzegovina in conjunction with:

- subparagraphs (a), (e) and (k) of the CC BiH (Section I-1 and I-4c of the Verdict's operative part),
- subparagraphs (d), (e) and (k) of the CC BiH (Section I-2 of the Verdict's operative part),
- subparagraphs (d) and (e) of the CC BiH (Section I-3a of the Verdict's operative part),
- subparagraphs (a) and (e) of the CC BiH (Sections I-3b, I-3d and I-4a of the Verdict's operative part),
- subparagraph (e) of the CC BiH (Sections I-3c, I-4e and I-4h of the Verdict's operative part),
- subparagraphs (e) and (k) of the CC BiH (Section I-3f of the Verdict's operative part),
- subparagraphs (a), (e), (f), (g), (i) and (k) of the CC BiH (Section I-3g of the Verdict's operative part),
- subparagraphs (a), (e), (f), (i) and (k) of the CC BiH (Section I-4b of the Verdict's operative part),
- subparagraphs (e) and (i) of the CC BiH (Section I-4d of the Verdict's operative part),
- subparagraph (k) of the CC BiH (Section I-4f of the Verdict's operative part),
- subparagraphs (e), (i) and (g) of the CC BiH (Count I-4g of the Verdict's operative part),
- subparagraphs (i) and (f) of the CC BiH (Section I-4i of the Verdict's operative part),
- subparagraphs (e), (i) and (k) of the CC BiH (Section I-4j of the Verdict's operative part),
- subparagraphs (a), (d) and (g) of the CC BiH (Section I-4k of the Verdict's operative part),

And the criminal offense of Crimes against Humanity under Article 172(1)(h) of the Criminal Code of Bosnia and Herzegovina (Section I-3e of the Verdict's operative part), all in conjunction with Article 180(1) of the CC BiH;

The Accused Milko Mučibabić committed the criminal offense of Crimes against Humanity – Persecution under Article 172(1)(h) of the Criminal Code of Bosnia and Herzegovina in conjunction with:

- subparagraph (e) of the CC BiH (Sections II-1a, II-1b and II-1d of the Verdict's operative part),

- subparagraph (e) and subparagraph (k) as read with Article 31 of the CC BiH (Section II-1c of the Verdict's operative part),
- subparagraph (k) as read with Article 31 of the CC BiH (Section II-1e of the Verdict's operative part),
- subparagraph (d) as read with Article 31 of the CC BiH (Section II-1f of the Verdict's operative part), all in conjunction with Articles 31 and 180(1) of the CC BiH, and the criminal offense of Illegal Manufacturing and Trade of Weapons or Explosive Substances under Article 399(1) of the Criminal Code of the Republika Srpska;

Consequently, **the First Accused Krsto Savić**, with respect to the criminal offense of Crimes against Humanity under Article 172(1)(h) in relation to subparagraphs (a), (d), (e), (f), (g), (h), (i) and (k), all in conjunction with Article 180(1) of the CC BiH, by application of the cited provisions as well as the provisions of Articles 39, 42 and 48 of the CC BiH,

**IS HEREBY SENTENCED
TO LONG-TERM IMPRISONMENT
FOR A TERM OF TWENTY (20) YEARS**

With respect to **the Second Accused Milko Mučibabić**, by applying the provisions of Articles 39, 42, 48, 49 and 50 of the CC BiH, the Court **HEREBY SENTENCES HIM TO A FIVE (5) YEARS' IMPRISONMENT** for the criminal offense of Crimes against Humanity under Article 172(1)(h) in relation to subparagraphs (d), (e) and (k), in conjunction with Article 31 of the CC BiH, and **SIX (6) MONTHS' IMPRISONMENT** for the criminal offense of Illegal Manufacturing and Trade of Weapons or Explosive Substances under Article 399(1) of the Criminal Code of the Republika Srpska

By the application of Article 53(2)(b) of the CC BiH, the **Second Accused Milko Mučibabić**

**IS HEREBY SENTENCED
TO A COMPOUND PUNISHMENT
FOR A TERM OF FIVE (5) YEARS AND THREE (3) MONTHS**

Pursuant to Article 56 of the CC BiH, the time that the accused spent in custody shall be credited towards the sentences imposed, as follows:

- for the Accused Krsto Savić: the time spent in custody between 6 September 2007 and 23 January 2009 and between 24 March 2009 and 31 March 2009,
- for the Accused Milko Mučibabić: the time spent in custody between 6 September 2007 and 17 October 2008.

II

Pursuant to Article 284(1)(c) of the CPC BiH

The Accused Milko Mučibabić

IS ACQUITTED OF THE CHARGE

That

He drove in a police vehicle the unlawfully detained civilian Hata Mehremić, who was detained in the tools factory called *Alatnica*, to the separation line so that she would arrange an exchange of the detained women for dead Serb soldiers; he drove Hata together with another civilian, Salko Brkan, to the separation line at Busak and ordered them, thus exposing them to mortal danger, to cross the frontline to the enemy side and arrange the exchange of the detained women and return to Nevesinje thereafter,

Whereby he would commit the criminal offense of Crimes against Humanity under Article 172(1)(h) in relation to subparagraph (k) of the CC BiH.

III

Pursuant to Article 74 of the CC BiH, the following objects shall be forfeited from the Accused Milko Mučibabić: a PAP /semi-automatic/ rifle (serial no. 594416), an empty clip for an automatic rifle, 206 rounds of ammunition for a 7.62 mm rifle, 12 rounds of 7.99 mm ammunition, two defensive hand grenades (serial nos. 8608 and 8142), two empty clips for an automatic rifle, a rifle kit with four empty clips, two empty clips for a "Scorpion" and 84 rounds of 7.62 mm pistol ammunition, six rounds of 7.65 mm ammunition, two rounds of 9 mm ammunition, three rounds of 9 mm pistol ammunition, 11 rounds of 7.65 mm pistol ammunition, two rounds of 6.35 mm pistol ammunition.

IV

Pursuant to Article 186(1) and (2), the accused Krsto Savić and Milko Mučibabić shall cover the costs of the criminal proceedings. The Court shall issue a separate decision concerning the costs upon obtaining necessary data.

REASONS

1. Charges

1. Krsto Savić and Milko Mučibabić were charged under the Indictment of the Prosecutor's Office of Bosnia and Herzegovina - Special Department I for War Crimes no. KT-RZ-97/06 dated 20 August 2008.

2. Under the Indictment, Krsto Savić was charged with committing the criminal offense of Crimes against Humanity under Article 172(1)(h) in relation to subparagraphs (a), (b), (d), (e), (f), (g), (h), (i) and (k) of the CC BiH and in conjunction with Article 173(1)(c), (e) and (f), all in conjunction with Article 180(1) of the CC BiH; whereas Milko Mučibabić was charged with the criminal offense of Crimes against Humanity under Article 172(1)(h) in relation to subparagraphs (a), (b), (d), (e), (f), (h), (i) and (k) of the CC BiH in conjunction with Article 173(1)(c), (e) and (f), all in conjunction with Article 180(1) of the CC BiH. Milko Mučibabić was additionally charged under the same Indictment with committing the criminal offense of Illegal Manufacturing and Trade of Weapons or Explosive Substances under Article 399(1) of the CC BiH.

3. At the plea hearing held on 7 March 2008, Krsto Savić and Milko Mučibabić both entered a plea of not guilty on all counts of the referenced Indictment. The Indictment was confirmed on 29 February 2008.

4. After entering a plea of not guilty, pursuant to Article 299(4) BiH CPC the preliminary hearing judge referred the case to the Panel assigned to try the case to schedule the trial.

5. Having presented their evidence, the Prosecutor's Office filed an amended Indictment to the Court on 26 February 2009, charging Krsto Savić with committing Crimes against Humanity under Article 172(1)(h) in relation to subparagraphs (a), (b), (d), (e), (f), (g), (h), (i) and (k) of the CC BiH in conjunction with Article 173(1)(c), (e) and (f), all in conjunction with Article 180(1) and (2) and Article 29 of the CC BiH; while Milko Mučibabić was charged with committing Crimes against Humanity under Article 172(1)(h) in relation to subparagraphs (a), (b), (d), (e), (f), (h), (i) and (k) of the CC BiH in conjunction with Article 173(1)(c), (e) and (f), all in conjunction with Article 180(1) and Article 29 of the CC BiH. Milko Mučibabić was additionally charged under the same Indictment with Illegal Manufacturing and Trade of Weapons or Explosive Substances under Article 399(1) of the CC BiH.

2. Presented evidence

a) The following witnesses were examined upon the Prosecutor's proposal:

6. Witness "A", Ahmet Mičijević, Ahmo Mušanović, Aiša Kazazić, Aleksa Kravić, Asaf Pošković, Asim Zametica, Aleksandar Krulj, witness "B", Behidža Čustović, Bahrija Trebović, witness "C", witness "D", Danilo Đorem, Dika Suljić, Dragan Cerovina, Dragan Ivković, Dragan Savić, Dragan Radovanović, Dušan Soldo, Džemila Redžović, witness "E1", Elvir Čusto, Ejub Krvavac, Emir Kljako, Emira Voloder, Enesa Hasanbegović, Enver Avdić, Esad Humić, Esad Šarančić, witness "F", Fahira Ramović, Fadil Trebović, Fehma Kadić, Fejzija Hadžić, witness "G", witness "H", Hasan Tanković, witness "I", Ismir Rogoj, Irfan Ćatić, Jusuf Ćatić, Kemo Bulić,

Madžid Smajkić, Maida Ćupina, Mensud Bajramović, Milan Đerić, Milan Lalović, Miloš Crnjak, Miloš Veletić, Milivoje Faladžić, Milovan Milović, Miodrag Kovač, Miralem Trebović, Mirsad Bajgorić, Mirsad Bajgorić, Mirveta Pervan, Momčilo Zubac, Muradif Jašarević, Mušan Šarančić, Munevera Rahimić, Medina Ćupina, Nura Mičijević, Rade Damjanac, Salko Trnovac, Senad Šarančić, Suad Bajramović, Šaćir Kljako, Šućrija Tanković, Šućro Šarančić, Vuk Jašar, Vukan Bratić, witness "W", Zumreta Zumo, Zlatka Hadžić, Željko Kovačević and Željko Pašajlić. The respective statements of witnesses Huso Tukelija, Hata Mehremić and Fehma Kadrić were read out for the reasons explained below.

c) The following expert witnesses presented their reports upon the Prosecutor's proposal:

7. Hamza Žujo and Davorin Kozomara

b) The Prosecution presented the following documentary evidence during the main trial:

8. Prosecutor's Office of BiH Record of Interview of Witness Ahmet Mičijević no. KT-RZ-97/06 dated 24 May 2007, ICRC's card issued to the name of protected witness "A", ICRC's card issued to the name of Kemo Bulić and ICRC's certificate dated 12 February 2007 issued to the name of Kemo Bulić, SIPA photographic documentation- building of the Nevesinje PS /Police Station/ no. 17-14/1-7-03/08 dated 29 January 2008, Prosecutor's Office of BiH Record of Interview of Witness "H" no. KT-RZ-97/06 dated 17 December 2007, SIPA photographic documentation (Collet Chucks Factory "Alatnica") no. 17-14/1-7-05/08 dated 11 January 2008, Prosecutor's Office of BiH Record of Interview of Witness Aleksa Kravić no. KT-RZ-97/06 dated 5 February 2008, Prosecutor's Office of BiH Record of Interview of Witness Željko Pašajlić no. KT-RZ-97/06 dated 22 October 2007 and Prosecutor's Office of BiH Record of Interview of Witness Željko Pašajlić no. KT-RZ-97/06 dated 1 February 2008, Prosecutor's Office of BiH Record of Interview of Witness Željko Kovačević no. KT-RZ-97/06 dated 9 October 2007, Prosecutor's Office of BiH Record of Interview of Witness Dušan Soldo no. KT-RZ-97/06 dated 9 October 2007 and Prosecutor's Office of BiH Record of Interview of Witness Dušan Soldo no. KT-RZ-97/06 dated 5 February 2008, Prosecutor's Office of BiH Record of Interview of Witness Dragan Radovanović no. KT-RZ-97/06 dated 4 February 2008, Crime Scene Investigation Logbook for 1992/1993/1994/1995/1996/1997/1998/1999/2000/2001/2002, List of employees of the Nevesinje SJB who received their April 1992 salary, List of employees of the Nevesinje SJB who received their June 1992 salary, SIPA photographic documentation (Muslim cemetery Šarića harem-Mostar) no. 17-14/1-7-11/08 dated 31 January 2008, SIPA photographic documentation (Catholic cemetery Mirkovići-Mostar) no. 17-14/1-7-12/08 dated 31 January 2008, Prosecutor's Office of BiH Record of Interview of Witness Asaf Pošković no. KT-RZ-97/06 dated 21 September 2007, SIPA photographic documentation (village of Sočani-Kalinovik) no. 17-14/1-7-24/07 dated 19 November 2007, SIPA photographic documentation (villages of Bojičići and Daganj-Kalinovik) no. 17-14/1-7-25/07 dated 19 November 2007, SIPA photographic documentation (villages of Kutine and Hotovlje-Kalinovik)

no. 17-14/1-7-26/07 dated 19 November 2007, SIPA photographic documentation (weekend cottage Sabljica M. and the village of Mjehovina-Kalinovik) no. 17-14/1-7-31/07 dated 19 November 2007, Prosecutor's Office of BiH Record of Interview of Witness Dragan Cerovina no. KT-RZ-80/05 dated 28 September 2007, Statement by Witness "W" no. 17-14/03-1-138/07 dated 3 September 2007, Prosecutor's Office of BiH Record of Interview of Witness Milivoje Faladžić no. KT-RZ-80/05 dated 16 October 2007, Prosecutor's Office of BiH Record of Interview of Witness Fehma Kadić no. KT-RZ-80/05 dated 8 November 2007, Prosecutor's Office of BiH Record of Interview of Witness Milan Lalović no. KT-RZ-80/05 dated 18 October 2007, Court of BiH's Order no. X-KRN-07/400 dated 6 September 2007, Record of Search of Dwellings, Other Premises and Movable Property dated 7 September 2007 (owned by Milko Mučibabić); Receipt Confirming Temporary Seizure of Objects dated 7 September 2007, Nevesinje PS Receipt Confirming Handover of Objects dated 7 September 2007, Photographic documentation pertaining to the search of a house (with supporting documents) dated 11 October 2007, Statement by Witness "E1" to the Prosecutor's Office of BiH dated 26 October 2007, Prosecutor's Office of BiH Record of Interview of Witness Džemila Redžović no. KT-RZ-80/05 and KT-RZ-90/07 dated 16 April 2007, Higher Court of Mostar Exhumation Report no. Kri: 4/98 dated 4 May 1999 (village of Odžak-Čanje, Nevesinje Municipality), Higher Court of Mostar Exhumation Report no. Kri: 9/99 dated 13 May 1999 (harem Čanje, Nevesinje Municipality), Autopsy Report of the Institute of Forensic Medicine with the Faculty of Medicine in Sarajevo dated 19 November 1999, Photographic documentation of Čanje site no. 397/01, Cantonal Court of Mostar Exhumation Report no. Kri: 9/01 dated 27 August 2001 (Borici site-Konjic), Photographic documentation of exhumation of 16 unidentified bodies exhumed from "Borisavac" pit, Autopsy report (Borisavac pit-Nevesinje) for body no. 3, Autopsy report (Borisavac pit-Nevesinje) for body no. 14, Autopsy report (Borisavac pit-Nevesinje) for body no. 10, Autopsy report (Borisavac pit-Nevesinje) for body no. 15, Photographic documentation of Gacko-Stanički most site no. 315/99, Photographic documentation of Gacko-Partizansko groblje site no. 307/99, Autopsy Report of the Institute of Forensic Medicine with the Faculty of Medicine in Sarajevo dated 19 November 1999, Sarajevo Canton Prosecutor's Office Motion to Issue an Order to Carry Out Exhumation, Cantonal Court of Sarajevo Exhumation Order, Exhumation Report (Vjetren brdo site-Kalinovik Municipality) dated 15 July 2004, Autopsy report-Kalinovik body no. 1, Official Note of the General Crime Section of the Crime Police Sector of the Ministry of Interior in Sarajevo no. 02/2.2-671/04 dated 2 August 2004, Body Identification Record no. 02/2-2-234-1/04 dated 2 August 2004, Firearms Evidence Examination Report by the Crime Scene Investigation Department of the Crime Police Sector of the Ministry of Interior no. 02/2-6-04-09-1988 dated 3 March 2005, Crime Scene Investigation Report no. 3100/04 dated 15 July 2004, Photographic documentation of exhumation and autopsy-Vjetren brdo site in Kalinovik, Sarajevo Canton Prosecutor's Office Identification Record no. KTA-151/07-RZ dated 14 February 2007, Autopsy report-Kalinovik body no. 2, DNA Report, Official Report relative to actions taken under the Order to search dwellings, other premises and movable property no. 17-04/2-04-02-381-25/07 dated 10 September 2007; Record of Search of Dwellings, Other Premises and Movable Property no. 17-04/2-04-02-14/07

dated 7 September 2007; Record of Search of Dwellings, Other Premises and Movable Property no. 17-04/2-04-15/07 dated 7 September 2007; Receipt Confirming Temporary Seizure of Objects no. 17-04/2-04-2-24/07 dated 7 September 2007, Receipt Confirming Temporary Seizure of Objects no. 17-04/2-04-2-22/07 dated 7 September 2007, Photographic documentation no. 17-14/1-7-17/07 dated 4 October 2007 (search of premises of the Nevesinje PS), Record on opening and review of temporarily seized objects and documents no. KT-RZ-97/06 dated 26 September 2007, Notification of the Crime Police Administration of the RS /Republika Srpska/ Ministry of Interior concerning delivery of requested documents no. 02-490/07 dated 23 October 2007, Decision of the MUP /Ministry of Interior/ no. 10-577 dated 1 April 1992 on Temporary Assignment of Krsto Savić, MUP's Decision Appointing Krsto Savić Chief of the Trebinje CSB /Security Services Center/, Decision no. 10-1907/92 dated 22 June 1992 Assigning Krsto Savić to the Post of Chief of the Trebinje Security Services Center, Decision no. 6676 dated 27 April 1994 Assigning Krsto Savić to the Post of Chief of the Trebinje Security Services Center, Decision no. 09/3-120-4494 dated 1 December 1994 Assigning Krsto Savić to the Post of MUP Chief Inspector at the Office of the Minister, Decision no. 08/1-134-618 on Extraordinary Promotion of Krsto Savić to the Succeeding Rank-Rank of Major, Decision no. 09/3-120-935 dated 3 March 1997 Assigning Krsto Savić to the Post of Chief of Trebinje Operations Center at the Intelligence and Counter-Intelligence Sector, Personal Questionnaire for Krsto Savić, Decision dated 9 April 1997 on Extraordinary Promotion of Krsto Savić to the Succeeding Rank-Rank of Lieutenant-Colonel, Decision no. 06/3-126-1343 dated 10 March 1992 Terminating Krsto Savić's Employment, Decision no. 10-952 dated 1 April 1992 on Temporary Assignment of Milko Mučibabić as Police Officer at the Nevesinje CJB /Public Security Center/, Personal Questionnaire for Milko Mučibabić, Decision Assigning Milko Mučibabić to the Post of Head of Duty at the Nevesinje PS, Decision no. 08/1-134-358 dated 20 October 1995 Determining the Rank of Milko Mučibabić, Milko Mučibabić's Personal Questionnaire for Determination of the Rank of Authorized Official Person, copy of Milko Mučibabić's employment record card, Decision no. 03/1-2-120-2659 dated 17 April 1999 Assigning Milko Mučibabić to the Post of Head of Duty at the Nevesinje PS-Nevesinje CJB; Decision no. 03/1-2-126-522/00 dated 20 June 2000 Terminating Milko Mučibabić's Employment, Death Certificate issued to the name of Huso Tukelija, Prosecutor's Office of BiH Record of Interview of Witness Huso Tukelija no. KT-RZ-80/05 dated 29 October 2007, Certificate of the Federation of BiH Commission for Tracing Missing Persons no. 01-41-457-E/2007 dated 15 November 2007 issued to the name of Mirzo Čustović, Federation of BiH Commission for Tracing Missing Persons Certificate no. 01-41-458-E/2007 dated 15 November 2007 issued to the name of Rašid Toporan, Federation of BiH Commission for Tracing Missing Persons Certificate no. 01-41-35-E/2008 dated 12 February 2008 issued to the name of Zejna Šarančić, Federation of BiH Commission for Tracing Missing Persons Certificate no. 01-41-36-E/2008 dated 12 February 2008 issued to the name of Sabira Šarančić, Federation of BiH Commission for Tracing Missing Persons Certificate no. 01-41-30-E/2008 dated 11 February 2008 issued to the name of Mejra Pandan, Federation of BiH Commission for Tracing Missing Persons Certificate no. 01-41-33-E/2008 dated 11 February 2008 issued to the name of Šerifa Eminović, Combat

Report of the Main Staff of the Army of the Serb Republic of BiH no. 147-273 dated 3 July 1992, Report of the Ministry of Justice of the Serb Republic of BiH sent to the Government of the Serb Republic, Trebinje CSB Report no. 09-1/93 dated 13 January 1993 relating to the activities of the Trebinje CSB between 4 April 1992 and 31 December 1992, Minister Mićo Stanišić's Order no. strictly confidential 10-23/92 dated 17 August 1992 sent to the attention of Chief of the CSB, Trebinje CSB Report no. strictly confidential 01-172/92 dated 4 August 1992 concerning the activities of the so-called paramilitary formations, Report on the activities of and current problems in the Trebinje CSB, Assessment of the political and security situation in the area covered by the Trebinje CJB, List of persons detained in the Bileća camp and in Gacko; Federation of BiH Commission for Tracing Missing Persons Certificate no. 01-41-29-E/2008 dated 11 February 2008 issued to the name of Aziz Hasanbegović, Federation of BiH Commission for Tracing Missing Persons Certificate no. 01-41-31-E/2008 dated 11 February 2008 issued to the name of Enver Redžović, Federation of BiH Commission for Tracing Missing Persons Certificate no. 01-41-32-E/2008 dated 11 February 2008 issued to the name of Nelman Memić, Summary of a working meeting of senior MUP staff held on 20 August 1992, Minutes of a meeting held in Banja Luka on 11 February 1992, List of employees of the Nevesinje SJB for October 1992 salary disbursement, Trebinje CSB Dispatch Note no. 103/92 dated 7 August 1992, Personal Questionnaire for Krsto Savić, List of employees of the Nevesinje SJB for September 1992 salary disbursement, Letter of the Executive Committee of the Nevesinje SDA /Party of Democratic Action/ sent to Mr. Alija Izetbegović, List of employees for April 1992 salary disbursement, Notification that the Autonomous District Herzegovina elected the government, List of employees of the Trebinje CSB for May 1992 salary disbursement, Sarajevo Decision Temporarily Removing Krsto Savić from the MUP, Trebinje CSB Dispatch Note-strictly confidential dated 12 October 1992 sent to the Republika Srpska MUP Bijeljina); Trebinje CSB Dispatch Note no. 141/93 dated 27 March 1993 sent to the Chief of the Rudo SJB, Trebinje CSB Dispatch Note no. 82/92 dated 24 July 1992 sent to the Serb MUP Sarajevo, Trebinje CSB Dispatch Note no. 84/92 dated 26 July 1992 sent to the Ministry of the SR BiH Sarajevo, Trebinje CSB Dispatch Note-strictly confidential no. 88/92 dated 29 July 1992 sent to the Command of the Herzegovina Corps-Operations Center; Trebinje CSB Dispatch Note no. 91/92 dated 31 July 1992 sent to the MUP of the Serb Republic of BiH Sarajevo, Trebinje CSB Dispatch Note no. 99/92 dated 4 August 1992 sent to the MUP SR BiH Sarajevo, Trebinje CSB Dispatch Note no. 103/92 dated 7 August 1992 sent to the MUP SR BiH Sarajevo, Trebinje CSB Dispatch Note dated 10 September 1992 sent to the MUP SR Sarajevo, Trebinje CSB Dispatch Note no. 160/92 dated 11 September 1992 sent to the MUP SR Sarajevo, Trebinje CSB Dispatch Note dated 29 September 1992 sent to the MUP SR Sarajevo, Trebinje CSB Dispatch Note no. 23/92 dated 2 October 1992 sent to the MUP SR Sarajevo, Trebinje CSB Dispatch Note no. 33/92 dated 10 October 1992 sent to the RS MUP Bijeljina, Amendment to Information upon the Decree on awarding a medal dated 26 April 1995, *Nedjeljni glas* Banja Luka no. 6555 dated 15 March 1992, Banja Luka RDB /State Security Department/ Centers Dispatch Note no. 10-2709 dated 21 November 1994 sent to the RDB Section Drvar, M.Grad-Prijedor; summary of discussions-Stojan Župljanin (Chief of the Banja Luka CSB); Motion for Extraordinary Promotion of Krsto Savić to

a Higher Rank by the Commander of the BP /Police Battalion/ for ATD /anti-terrorist activities/, SIPA Communication no. 17-04/2-04-2-381-44/07 dated 4 February 2008 concerning delivery of a sketch and photographic documentation, Photographic documentation of Kotlovnice-Kilavci-Nevesinje dated 29 January 2008, Photographic documentation of the Nevesinje Cultural Center dated 29 January 2008, file jacket with an order no. 09-222/92 dated 1 September 1992, folder with duty rosters at the Nevesinje SJB for 31 October 1992, Notification of delivery of a ballistics report (pistol analysis) no. 02-289/92 dated 22 September 1992, Nevesinje SJB Criminal Report no. KU: 26/92 dated 28 August 1992, criminal file jacket to the name of Zoran Perović KU no. 12/92 no. 02-230-22 with a criminal report dated 17 July 1992, criminal file jacket relating to an unknown perpetrator KU no. 06/92 no. 16-14/02-230-7/92 with a criminal report dated 5 March 1992, an A4 green notebook, Certificate issued by the Nevesinje Section of the Ministry of Defense no. 8-835-V-80-1037/96 to the name of Milko Mučibabić and a military card to the name of Milko Mučibabić, Decoration to the name of Krsto Savić dated 21 November 1993, Order by the Acting Chief of the Nevesinje CJB number: official dated 18 April 1992, Service Report by Novo Đogović and Željko Pašajlić no. 717/92 dated 5 May 1992, Kalinovik SJB Approval no. sl/92 dated 25 July 1992 for travel of Huso Tukelija, Kalinovik SJB Approval no. sl/92 dated 10 July 1992 for travel of Huso Tukelija, Kalinovik SJB Approval no. sl/92 dated 30 June 1992 for travel of eight detainees, Kalinovik SJB Approval no. sl/92 dated 6 July 1992 for travel of six detainees, Kalinovik SJB Approval no. sl/92 dated 18 July 1992 for travel of seven detainees, Report on the activities of the Kalinovik SJB no. 17-16/01-211-579/92 dated 18 August 1992, Call-up papers issued by the Kalinovik Municipality Secretariat for Defense dated 25 June 1992, Photographic documentation of Pavlovac farm in Kalinovik dated 19 November 1997, Photographic documentation Jelašca-Kalinovik dated 19 November 1997, Photographic documentation Ljutica Bogdan Oš /Elementary School/ Kalinovik dated 19 November 1997, Federation Commission for Tracing Missing Persons Certificate no. 01-41-450-E/2007 dated 15 November 2007 to the name of Fatima Pervan, Federation Commission for Tracing Missing Persons Certificate no. 01-41-449-E/2007 dated 15 November 2007 to the name of Azemina Pervan, Federation Commission for Tracing Missing Persons Certificate no. 01-41-451-E/2007 dated 15 November 2007 to the name of Almir Kadrić, Federation Commission for Tracing Missing Persons Certificate no. 01-41-453-E/2007 dated 15 November 2007 to the name of Edin Bičo, Federation Commission for Tracing Missing Persons Certificate no. 01-41-454-E/2007 dated 15 November 2007 to the name of Hašim Hatić, Federation Commission for Tracing Missing Persons Certificate no. 01-41-456-E/2007 dated 15 November 2007 to the name of Suad Hasanbegović, Federation Commission for Tracing Missing Persons Certificate no. 01-41-455-E/2007 dated 15 November 2007 to the name of Sejdo Kešo, file jacket-request of the socially owned company "Zelengora" Kalinovik no. 01-335/92 dated 8 July 1992 that Hasan Hodžić be assigned to work during the day, Official Note dated 1 October 1992 composed by Miroslav Mišur and Branko Stanković, police officers at the Kalinovik SJB; Cantonal Court of Sarajevo Autopsy and Exhumation Report no. Kri-82/98 dated 24 June 1999, Report by Expert Davorin Kozomara, MD, regarding witness Hata Mehremić's health condition; Trebinje CSB Payroll Sheet for July 1992, copy of a notebook found

during the search of the Trebinje CSB (certified by the ICTY), Trebinje CSB Dispatch Note no. 147/92 dated 28 July 1992 sent to the MUP SR BiH-Minister; Herzegovina Corps Command Regular Combat Report, strictly confidential, 147-217 dated 11 June 1992; Gacko SJB Letter no. 16-501-421/92 dated 29 July 1992 to the Herzegovina Corps, List of active employees of the Trebinje CSB-Gacko SJB who performed duties in this SM /police station/ in May 1992 and who received advanced payment for salary for the same month, Trebinje CSB Report on the activities of the Trebinje CSB between 1 July 1992 and 15 August 1992, Order to conduct an investigation into the activities of paramilitary groups in the areas of Gacko and Nevesinje municipalities no. 01-223/92 dated 3 July 1992, Letter of the SR BiH Presidency to the SR BiH Government no. 01 456/92 dated 7 August 1992, Gacko Municipal Assembly Proclamation addressed to the Muslim people dated 11 July 1992, Daily Events Bulletin dated 18 August 1992, Daily Events Bulletin MUP Sarajevo no. 5 dated 24 April 1992, Daily Events Bulletin MUP Sarajevo no. 6 dated 25 April 1992, Daily Events Bulletin MUP Sarajevo no. 7 dated 26 April 1992, Daily Events Bulletin no. 70 dated 20 July 1992, MUP SR BiH Letter, strictly confidential, no. 01-2/92 dated 16 May 1992 sent to the CSB Banja Luka, Bijeljina, Doboj, Sarajevo and Trebinje; MUP SR BiH Letter, strictly confidential, no. 10-11/92 dated 17 July 1992 sent to the CJB; Decision of the Speaker of the People's Assembly no. 02-130/92 dated 12 May 1992 concerning the strategic objectives of the Serb people in BiH, MUP SR BiH Letter no. 10-14/92 dated 19 July 1992 sent to the Chiefs of the CJBs, MUP SR BiH Order, strictly confidential, 01-1/92 dated 15 May 1992; MUP SR BiH Order no. 01-54/92 dated 20 April 1992, MUP SR BiH Order, strictly confidential, 01-1/92 dated 4 May 1992; Book of Rules on Disciplinary Responsibility of Employees of the Serb Republic Ministry of Interior in Time of War, Minutes of a meeting of heads of departments in the Republika Srpska Ministry of Interior held in Bijeljina on 5 November 1992, MUP RS BiH Sarajevo Report on some aspects of the previous work and the upcoming tasks, Minutes of an enlarged meeting of heads of departments in the Serb Republic Ministry of Interior held in "Košuta" building on the Jahorina on 9 September 1992, MUP SR Letter, strictly confidential, no. 10-22/92 dated 17 August 1992 sent to the Security Services Center and the Administrations in the HQ; List of reserve employees of the Trebinje CSB-Gacko SJB for July 1992 salary disbursement, July 1992 Payroll Sheet for Trebinje CSB-Bileća SJB; List of reserve employees of the Trebinje CSB-Gacko SJB for July 1992 salary disbursement, July 1992 Payroll Sheet for Trebinje CSB-Nevesinje SJB, List of active employees of the Foča SJB for June 1992 salary disbursement, BiH Missing Persons Institute Certificate no. 01-40-CEN-15/2008 dated 1 December 2008 issued to the name of Dervana Pervan, Cantonal Court of Mostar Record of Identification of Bodies Exhumed in Gacko Municipality- Republika Srpska (no. Kri: 1/99 dated 20 October 1999), Cantonal Court of Mostar Crime Scene Investigation Record no. Kri: 1/99 dated 19 October 1999, Book of Rules on the Internal Organization of the Ministry of Interior During Imminent Threat of War and Time of War, Book of Rules on the Internal Organization of the Socialist Republic of Bosnia and Herzegovina Secretariat of Interior dated 29 January 1990, SAO /Serb Autonomous District/ Herzegovina Assembly Decision no. 9-12-6-56/92 dated 13 July 1992 on the termination of work of the SAO Herzegovina Government,

and SIPA Record of Interview of Witness Hata Mehremić no. 17-13/3-1-04-2-7/08 dated 15 January 2008.

d) The following witnesses were examined upon the proposal of the Defense for the First Accused:

9. Jovo Lalović, Jovo Čokorilo and Zdravko Pikula

e) The following expert witness presented his report upon the proposal of the Defense for the First Accused:

10. Mile Matijević

f) The Defense for the First Accused Krsto Savić presented the following documentary evidence during the main trial:

11. SIPA Record of Interview of Witness "B", Letter by the Nevesinje Municipality Veterans' Organization no. 81/08 dated 1 September 2008, Minister of Interior Mićo Stanišić's Letter no. 10-260/92 dated 24 August 1992 sent to the Security Services Center and the Public Security Stations, Instruction Regarding Treatment of Prisoners, Herzegovina Corps Command Regular Combat Report, strictly confidential, no. 147-273 dated 3 July 1992; Kalinovik SJB Report concerning the activities of the Kalinovik SJB in the period April-August 1992 (no. 17-16/01-211-579/92 dated 18 August 1992), Dr Mile Matijević's Report, Light Infantry Brigade Command Order, confidential, no. 44-30 dated 29 October 1992 to convey prisoners of war; List of persons released from the Foča KPD /Correctional Facility/ to be exchanged on 21 October 1992, Herzegovina Corps Command Authorization, strictly confidential, no. 76-647/1 dated 22 August 2008 to take over prisoners of war and a Certificate of takeover of prisoners of war of Croat ethnicity by Ranko Višnjevac; List of persons released from the Foča KPD to be exchanged, List of prisoners of war of Muslim ethnicity released from the Foča KPD to be exchanged for captured Serbs from Konjic, Light Infantry Brigade Command Order, confidential, no. 44-61 dated 5 December 1992 to transport 12 prisoners of war from Foča Garrison to Kalinovik Garrison; Herzegovina Corps Command-Intelligence and Security Section Dispatch Note, strictly confidential, no. 15-137 dated 4 October 1994; Report on the activities of the Trebinje CSB dated 20 August 1992 covering the period between 1 July 1992 and 15 August 1992, Serb Republic of BiH Ministry of Interior Letter, strictly confidential, addressed to the Chiefs of the CJBs (no. 10-14/92 dated 19 July 1992); Statement by Witness Bahrija Trebović given to ICTY investigators on 7 November 2001, Information about cases IT-04-82-Boškovski and Tarčulovski and IT-04-83 Rasim Delić, and Book of Rules on the Manner of Performing Public Security Service Affairs.

g) The following witnesses testified upon the proposal of the Defense for the Second Accused:

12. Mirsada Trebović and the Accused Milko Mučibabić

h) The Defense for the Second Accused presented the following documentary evidence during the main trial:

13. SIPA Record of Interview of Witness "B", MUP Sarajevo Decision no. 10-952 dated 1 April 1992 on Temporary Assignment of Milko Mučibabić as Police Officer at the Nevesinje SJB, Personal Questionnaire for Milko Mučibabić, Milko Mučibabić's Personal Questionnaire for Determination of the Rank of Authorized Official Person no. 17-4/09-111-13/35 dated 14 September 1995, List of employees of the CSB-Nevesinje SM /Police Station/ who performed duties in this police station in April and who received advanced payment for salary for the same month, Nevesinje SJB Duty Roster for 16 June 1992, Trebinje CSB Report no. 01-172/92 dated 30 July 1992 concerning the activities of members of the so-called paramilitary formations in the area of the SAO Herzegovina, Certificate of "Srndać" Hunting Club Nevesinje no. 195/08 dated 12 November 2008, SIPA Receipt Confirming Temporary Seizure of Objects no. 17-04/2-04-2-25/07 dated 7 September 2007, Law on Internal Affairs of the SR BiH, Book of Rules on Disciplinary Responsibility of Employees of the Serb Republic Ministry of Interior in Time of War.

3. Closing arguments

a) Prosecutor's Office of BiH

14. In their closing argument, the Prosecutor's Office of BiH first of all referred to the essential elements of the criminal offense of Crimes against Humanity: the existence of a widespread and systematic attack, direction of that attack against the civilian population, perpetrator(s) knowledge about the existence of such an attack and that his/their acts constitute part of or are linked to the attack. The Prosecutor's Office of BiH stressed that the evidence presented during the evidentiary procedure proved that the acts of the accused satisfied all the essential elements of the criminal offense in question.

15. The Prosecutor elaborated on the witness testimony and the documentary evidence in great detail, correlating them with the individual criminal acts set out in the Indictment and giving the final legal qualification of the individual factual accounts in the Indictment.

16. In its analysis of the witness testimony, the Prosecution did not put them in context with the corroborating evidence for the reason that the testimony, in the view of the Prosecutor, is credible and consistent to the extent not requiring corroboration while minor inconsistencies in the testimony are a logical consequence of the lapse of time and the trauma experienced by the witnesses.

17. Submitting that during the proceedings it successfully proved the thesis that the accused were knowing participants in a JCE undertaken with a view to

persecuting Bosniak and Croat civilians on discriminatory grounds, the Prosecution briefly referred to the evidence showing the inception of a persecution plan and the carrying out of persecution through specific acts of the accused.

18. As emphasized by the Prosecutor, the execution of the strategic plan defined by the leadership of the Bosnian Serbs included a permanent removal of the majority of non-Serbs – persecution with the use of force and fear, and the pivotal and crucial step towards the execution of that plan was the establishment of SAO Herzegovina. The first accused was the Minister of Interior and, as a Minister in SAO Herzegovina and Chief of the Trebinje CJB, he launched the persecution of non-Serbs through his subordinates in the SJBs that were under his control.

19. It clearly follows from the testimony of a large number of witnesses who have been examined that everything had been organized by and synchronized between the army and the police. In their testimony, the witnesses have unequivocally and categorically confirmed that the non-Serbs from Nevesinje and Gacko were detained by the police and then, under police escort, transported to the Bileća camp that was under the military jurisdiction; some of the witnesses were returned to the police.

20. It unequivocally follows from their testimony that the exchange was organized by the military, which additionally points to and confirms interaction and a level of organization of the process of persecution of the non-Serbs from the relevant area.

21. As argued by the Prosecutor, it clearly follows from the aforesaid that Krsto Savić held a high-ranking position and that his actions and the actions of his accomplices were discriminatory in their nature and rested on political, national, ethnic, cultural and religious grounds, thereby satisfying all the elements of persecution under Article 172(1)(h) of the CC BiH.

22. As noted by the Prosecutor, it unequivocally follows from the presented evidence that the Accused Milko Mučibabić did not play an insignificant and minor role as a police officer at the Nevesinje SJB if one bears in mind that at the relevant time he was one of the close aides of the Accused Savić and, as an experienced police officer, he was very much in a position to recognize that only Bosniaks and Croats were being arrested and ill-treated, that by no means can all members of one ethnic group be suspects, and that a regular police procedure did not include unselective arrests, ill-treatment and imprisonment without a decision, especially the murders that he witnessed until 16 June 1992. Notwithstanding all that, Mučibabić continued participating in the persecution of Muslims and Croats.

23. In their closing argument, the Prosecution elaborated on all three categories of JCE at length, submitting that the acts of the accused satisfied all three types.

24. Believing that intent, as an important *mens rea* element of the basic, systemic and extended forms of JCE has been proved, the Prosecution submitted that the

Accused Krsto Savić was responsible under the basic form of JCE with respect to Counts 3a, 3b, 3c, 3d, 3e, 3f, 4a, 4b, 4c, 4e, 4f, 4h and 4i of the Indictment, under the systemic form of JCE with respect to Counts 1, 2 and 3g of the Indictment and under the third form of JCE with respect to Counts 4d, 4g, 4j and 4k of the Indictment.

25. Regarding the *mens rea* element on the part of the Accused Milko Mučibabić in connection with the basic form of JCE, the Prosecution contended that it proved that all the acts of the accused evidently show his active participation. As the relevant acts cannot be considered as regular police work and as the accused was not obliged to execute orders that entailed the perpetration of a criminal offense, the only reasonable conclusion is that the accused, when carrying out these acts, shared the intent to commit the crimes; as a result, he is responsible under the basic form of JCE with respect to Counts II-1a, 1b, 1c, 1d, 1e, 1f and 1g of the Indictment.

26. Having analyzed the elements of individual criminal responsibility of the Accused Krsto Savić in terms of Article 180(2) of the CC BiH on the basis of the evidence presented, the Prosecutor's Office of BiH stressed that all the elements of his command responsibility have been satisfied. This form of responsibility is an aggravating circumstance on the part of the accused due to his high position.

27. Finally, based on the foregoing, giving consideration to the aggravating circumstances on the part of the First Accused, the Prosecutor's Office of BiH petitioned the Court to render a verdict finding the Accused Savić guilty and sentencing him to long-term imprisonment; as for the Second Accused, the Prosecutor's Office of BiH petitioned for a conviction and a sentence provided for by law.

d) Defense for the First Accused Krsto Savić

28. In the closing argument, Defense Counsel for the First Accused did not contest that crimes occurred in the municipalities of Nevesinje, Gacko, Bileća and Kalinovik, but he did contest the contribution of the First Accused to their perpetration.

29. Defense Counsel first complained about the application of substantive law, stressing that the case-law of the Court of BiH with respect to application of the criminal code is both unacceptable and unlawful.

30. Irrespective of the Decision of the Constitutional Court of BiH no. AP 1785/06, stipulating that the application of the CC BiH of 2003 does not amount to a violation of the European Convention that guarantees the application of the basic principle of *nullum crimen nulla poena sine lege*, the Defense does not alter its view regarding the mandatory application of a more lenient law to the First Accused. To that end, Defense Counsel notes that if the Trial Panel opts for a consistent observation of the principle of legality, it cannot avoid applying one of the basic principles of criminal law that is embodied in CC BiH Article 4 and that pertains to time constraints regarding applicability. This will be sufficient to hold that the principle of legality in

applying substantive law, as set forth under Article 3 of the CC BiH, has been observed.

31. In that case, the law to be applied is the Criminal Code of the former SFRY as the law that was in effect at the time of perpetration of acts qualified in the Indictment as the acts of perpetration of criminal offenses and charged against the Accused Savić. This law was applicable in the Republic of BiH following its recognition as an independent state.

32. As the death penalty was removed from the BiH system of penalties in 1993, pending the adoption of the new law in January 2003, the heaviest penalty was imprisonment for a term of 20 years, but not more than 20 years. The Defense also pointed out that the gravity of a law cannot be determined based only on the prescribed punishment; instead, that has to be done generally and the provision of Article 142 of the CC SFRY is in every respect more lenient to the perpetrators.

33. Similarly, the provision of Article 180(2) of the CC BiH, introducing the so-called command responsibility, makes the CC BiH more stringent and the CC SFRY more lenient. Referring to the direct application of Article 7 of the ECHR, Defense Counsel further noted that it is limited only to the charges, that is, the existence of a criminal offense in customary international law and it is silent on the point of punishments because this issue cannot be resolved by customary law.

35. In the view of the Defense, the Indictment is unclear and contains blanket statements that the accused planned, ordered, committed, instigated and aided, without providing detailed accounts of those acts and linking them to Articles 30 and 31 of the CC BiH.

36. Furthermore, the Accused Savić is charged under the Indictment with participating in a JCE although the general provisions of the CC BiH do not recognize the institution of JCE. A question then arises: are we dealing with a separate criminal offense or a form of criminal liability?

37. Even if one were to accept the concept of JCE as a form of perpetration of a criminal offense as alleged in the Indictment, without linking it to co-perpetratorship (since these two institutions exclude each other), it would still leave open the issue of proving facts wherefrom one would infer the existence of intellectual and voluntary elements on the part of the accused regarding their participation in the execution of a common plan, determination of a nexus with that plan and the occurrence of the projected consequences of the common plan.

38. Defense Counsel has argued that that the Accused cannot be found guilty under the so-called command responsibility referred to in Article 180(2) of the CC BiH since this form of criminal liability includes, at minimum, the fulfillment of the following requirements:

1. subordinate-superior relationship;
2. knowledge or reason to know that a subordinate is about to commit or has committed criminal offenses;
3. failure on the part of a superior to undertake necessary and reasonable measures to prevent such offenses or punish the perpetrators thereof;
4. the requirement not explicitly stipulated in Article 180(2) of the CC BiH (but must not be ignored) is the duty of a superior to act in accordance with the criminal code.

39. In order to apply the principle of a superior, the requirement is that a certain individual had effective control over the individuals who committed the original breaches of international humanitarian law, in terms that he had an actual possibility to prevent and punish the perpetrators of those offenses.

40. It unequivocally follows from the testimony of all witnesses that the Accused Savić did not exercise this type of control since none of the examined witnesses saw the Accused in the municipalities of Kalinovik, Gacko and Bileća at the relevant time while most of the witnesses heard about the Accused for the first time when they were served with the summons by the Prosecutor's Office.

41. Furthermore, it unequivocally follows from the presented evidence that the Prosecutor has failed to prove whether the Accused knew or had reason to know that his subordinates were about to commit or have committed a criminal offense, nor did the Prosecutor prove the Accused's intent as a subjective element required for perpetration of any crime.

42. The concept of effective control over a subordinate is a double threshold; consequently, one must first achieve the subordinate-superior relationship and then there must be a physical ability of a superior to determine the substance and limits of his duty to prevent or punish criminal conduct. As a superior cannot be asked to do more than what is within his power to do, the type and scope of measures to be applied ultimately depend on the degree of effective control over the conduct of his subordinates at the time when that superior is expected to act, because his duty obliges him to undertake only that which appears to be appropriate under the given circumstances; in other words, he cannot be expected to do the impossible.

43. Referring to individual counts of the Indictment, Defense Counsel maintained that the Accused is charged twice with the same offenses: for some offenses he is charged under individual responsibility and for some offenses under command responsibility. One can only speculate which of the two principles is applied to each of the individual acts of the Accused.

44. According to the Defense, the Indictment is characterized by general confusion and blanket statements, and one cannot determine with certainty the exact charges against the Accused. The Defense did not contest the fact that criminal

events occurred as alleged in the Indictment, but it did contest the Accused Savić's contribution to those offenses by his acts or omissions.

45. In the Defense's view, the relationship between the civilian and military authorities is relevant to all the events in the relevant area, emphasizing the fact that the police and civilian authorities were subordinate to the military authorities and pointing to jurisdiction-related problems and many other unresolved issues between the two structures. To that end, the Defense pointed to Prosecution Exhibit T-187, also tendered into evidence as Defense Exhibit O-16.

46. The Defense argued that the police had no authority to imprison and detain Bosniaks in camps and prisons, which is corroborated by MUP's Dispatch Note dated 24 August 1992 signed by Minister Mićo Stanišić (Defense Exhibit O-3). In the dispatch note, the Minister seeks delivery of information pertaining to the locations of the camps and prisons, the names of individuals who ordered the establishment of the camps and prisons, the names of individuals who ordered the taking of persons to the camps and prisons and the number of prisoners and their personal particulars.

47. Referring to the acts under Count 4 of the Indictment that covers a time period of about 15 days, Defense Counsel pointed to consistence and conformity in the witness testimony with regard to the inter-ethnic relations in Nevesinje until 16 June 1992. All the witnesses who have been examined have confirmed that there were no problems until 16 June 1992, that is, until the conflict and fighting started in the area of Podveležje, which had a direct effect on the inter-ethnic relations in Nevesinje.

48. It was a time when many dead and wounded were being brought to Nevesinje with many Serb refugees from the Neretva valley starting to arrive, which heightened tensions and strained inter-ethnic relations with even threats of retaliation.

49. The population was gripped by fear. No one dared help anyone.

50. The Defense does not contest the incident described under Count 4 of the Indictment, but claims that it did not occur as described therein. As stated by the witnesses, shots were fired from the direction of the house of the Trebović family where a water reservoir was situated so the police came there to check what really was going on there.

51. According to the account of witness Dušan Soldo, the police officers notified the Police Station that Redžo Trebović refused to go with them and that he sent word to the Accused Savić to come and bring him in.

52. Upon arrival at the scene, the Accused warned Redžo to stop. Redžo did not comply so the Accused fired, but not with an intention to murder him but just to scare him. However, the fire selector switch was in the full-auto position so several shots were fired automatically.

53. As the handgun was pointed at the ground (confirmed by the witnesses), the Accused is convinced that the injury was a result of a bullet ricochet. The Accused then asked Redžo's wife to bring a piece of cloth to strap down Redžo's leg. After that, he allowed that Redžo be taken to the hospital to receive proper medical treatment.

54. Witness Zdravko Pikula also confirmed that Redžo was alive when he was brought to the Health Center and that his death was most likely a result of blood loss.

55. For these reasons, the Defense submitted that only Count 4a) of the Indictment satisfied the elements of a criminal offense. However, it was not the offense with which the Accused Savić is charged but another offense for which he is yet to be held responsible. The Accused should be acquitted of all the other charges under the Indictment.

56. Finally, the Defense made the following submission: if the Court decides not to accept the qualification proposed by the Defense, Defense Counsel submitted that, taking into account particularly mitigating circumstances on the part of the Accused, there was room for mitigation of the sentence below the legal minimum and the mitigated sentence would achieve the purpose of punishment.

c) Accused Krsto Savić

57. In his closing arguments, the Accused Savić joined the allegations by his Defense Counsel and added that the Trebinje CJB was not fully established at the relevant time, that is, it was not operational until 1993. Expressing his remorse over the wounding and death of Redžo Trebović, the Accused pointed out that the case in question involved a warning shot in accordance with the conditions laid down in the Book of Rules and that it was not his intention to murder Redžo.

58. At the end, the Accused added that the Court, when rendering its decision, should bear in mind the fact that he had helped many people and that he saved many people from being executed.

d) Defense for the Second Accused Milko Mučibabić

59. In his closing arguments, Defense Counsel for the Second Accused first referred to the manner of establishment of facts by the Prosecutor by way of manipulation and erroneous interpretation of the statements/testimony of the witnesses that he proposed, attempting to prove the factual allegations in the Indictment. In the view of the Defense for the Second Accused, the witness statements/testimony are contradictory and contrary to other presented evidence, particularly the documentary evidence.

60. The documentary evidence unequivocally confirms that the Second Accused was an ordinary police officer who carried out orders of his superiors, that is, he brought in persons for interrogations, without exceeding the scope of legal powers of an ordinary police officer. Consequently, the Second Accused, acting on lawful orders of his superiors, brought in several persons for interrogation at the Nevesinje Police Station, but he did not deprive anyone of their liberty or detain them as claimed by the Prosecutor, because from the legal point of view the deprivation of liberty and detention are essentially different from bringing someone in for questioning. The Prosecutor deliberately ignores this distinction.

61. Consequently, the Accused was obliged to carry out lawful orders of his superiors; otherwise, he would have suffered consequences of his refusal.

62. Referring to the individual Counts of the Indictment, Defense Counsel noted that they were not proved. In particular, he stressed that relevant portions of the incriminating witness testimony differ substantially while other witnesses did not incriminate the Accused at all, that is, they did not corroborate the facts charging the Accused. Witness testimonies referring to the same event differ substantially, they are inconsistent and contradictory and some of them are even logically untenable.

63. Regarding Count 2 of the Indictment, Defense Counsel pointed out that the search of the house and buildings owned by the Accused and the seizure of the objects were all unlawful; therefore, a Court's decision cannot be based on the evidence obtained in this manner. Furthermore, Defense Counsel objected on the ground of the subject-matter jurisdiction of the Court of BiH with respect to this offense.

64. In order to realistically and objectively perceive all the charges against the Second Accused, one must bear in mind the general political, security and military situation and circumstances, that is, facts that the structure of the RS was being established at that time, the war in the Neretva valley, the buildup of a large number of military and paramilitary formations in Nevesinje and, finally, the military defeat in Podveležje with many dead, wounded and captured.

65. The activities undertaken by the police at the time was a response to those events that consisted of apprehensions, searches to find weapons, imprisonment for the purpose of exchange or protection from retaliation. The activities were not undertaken as a JCE to ethnically cleanse the area as insisted by the Prosecutor. In doing so, the Prosecutor copied portions of professional literature that dealt with JCE. JCE is not recognized by the national criminal legislation. Additionally, the Prosecutor did not prove the JCE and did not even define which of the three forms that have been developed in the judicial case law is applicable to the Second Accused.

66. It ensues from the Indictment that Milko Mučibabić committed the basic form of JCE, that is, he was a knowing participant in a JCE who acted with an intent to

achieve a common objective: persecution of non-Serbs on ethnic grounds. In other words, he acted with aggravated intent that includes not only the willingness and desire to commit a criminal offense but also the desire to achieve an objective through that offense.

67. In the opinion of Defense Counsel for the Second Accused, intent cannot be presumed; it needs to be clearly proved and the Prosecutor has failed to do that in the instant case. The Prosecutor has failed to prove the existence of other elements of the offense the Accused is charged with.

68. Finally, the Defense for the Second Accused submitted that it was successful in refuting the charges involving JCE and the offense against the Second Accused, and petitioned the Court to render a verdict acquitting the Accused of the charges. As for Count II Indictment, the Defense petitioned that the case be referred to the court with subject-matter and territorial jurisdiction.

d) Second Accused Milko Mučibabić

69. Second Accused Milko Mučibabić did not present his closing argument but stated that he agreed with his Defense Counsel.

4. Procedural decisions

a) Established facts

70. On 4 November 2008, the Prosecutor's Office of BiH filed a Motion to Accept Established Facts ("Motion") pursuant to Article 4 of the Law on the Transfer of Cases ("LOTIC"), seeking therein that the Court take judicial notice of facts established in the final judgment of the International Criminal Tribunal for the former Yugoslavia (ICTY) in the *Prosecutor v. Radoslav Brđanin* (IT-99-36) case (Trial Chamber's judgment in the *Brđanin* case).

71. Thereupon, on 12 November 2008 the Prosecutor's Office filed an amended motion to the Court to take judicial notice of facts established in the ICTY Trial Chamber and Appeals Chamber judgments in the *Prosecutor v. Radoslav Brđanin* (IT-99-36) case.

72. The Prosecutor's Office sought that the Court accept as proven a total of 32 facts established in the referenced judgments.

73. The Prosecutor submitted that the proposed facts pertained to the existence of a policy of persecution of non-Serb population hammered out by the self-proclaimed Serb Bosnia and Herzegovina and this policy was implemented through the "Strategic Objectives of the Serb People". As arguments in support of their motion, the Prosecutor's Office has invoked the principles of judicial economy and trial with

a reasonable time defined under Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (“ECHR”).

74. As regards possible implications on the rights of the accused in the event of acceptance of the Motion by the Court, the Prosecutor argued that the proposed facts related to the determination of existence of a persecution policy; that is, the facts did not touch upon the issue of awareness and knowledge of the accused about the existence of such a policy as a subjective element of the essence of the criminal offenses with which the Accused are charged under Count I of the Indictment. Finally, the Prosecutor has noted that some of the proposed facts were unsuccessfully challenged during the proceedings on appeal before the ICTY.

75. Commenting on the Prosecutor’s Motion, the Defense for the First Accused has submitted that the Motion was belated and briefly referred to the criteria applied by the Court when deciding on the acceptability of facts established in ICTY judgments. In its analysis of the criteria, the Defense particularly objected to the paragraphs of the second-instance judgment expressing Radoslav Brđanin’s opinion.

76. Furthermore, the Defense has submitted that witnesses have already been examined in connection with some of the proposed facts (fact no. 9).

77. During the final considerations, the Defense for the First Accused noted that it did not contest the fact that Serb Autonomous Districts were established. However, in their view, the Prosecutor’s aspiration to determine the existence of a widespread and systematic attack through these facts is unacceptable.

78. Krešimir Zubak, Defense Counsel for the Second Accused, has argued that some of the proposed facts benefited his client, however, he objected to the Prosecutor’s Motion for formal reasons. He found the arguments to support his position primarily in the terminology used. He further objected to not receiving an integral text of the judgments as attachment to the Prosecutor’s Motion.

79. Finally, Defense Counsel has pointed out that it was not disputable that Serb Autonomous Districts were established and that there was a persecution policy, but added that his client, as an ordinary police officer, did not participate in the implementation of that policy.

80. Defense for the First Accused filed two submissions containing their motions for the acceptance of established facts. In the first submission, the Defense petitioned the Court to accept as established the fact under paragraph 410 of the Trial Chamber’s Judgment in the *Prosecutor v. Milorad Krnojelac* (IT-97-25-A) case dated 15 March 2002. The second submission pertained to the facts, that is, legal interpretations of the Chambers in the *Prosecutor v. Naser Orić* (IT-03-68) and *Prosecutor v. Zejnil Delalić et al.* (IT-96-21-T) cases.

81. On 14 January 2009, the Court rendered a decision accepting in part the respective motions by the Prosecutor's Office and the Defense for the First Accused pursuant to Article 4 of the LOTC.

82. Of the facts proposed by the Prosecution, the Court accepted as proven 12 facts established in the proceedings before the ICTY:

1. During the second half of 1991, it already appeared increasingly unlikely that the SRBH would remain within the SFRY. The Trial Chamber is satisfied beyond reasonable doubt that during this period, the Bosnian Serb leadership, including the members of the Main Board of the SDS and other members of the SDS, as well as Bosnian Serb representatives of the armed forces, formed a plan to link Serb-populated areas in BiH together, to gain control over these areas and to create a separate Bosnian Serb state, from which most non-Serbs would be permanently removed ("Strategic Plan"). The Bosnian Serb leadership knew that the Strategic Plan could only be implemented by the use of force and fear. (paragraph 65)
2. On 19 December 1991, the Main Board of the SDS issued a document entitled "Instructions for the Organization and Activity of Organs of the Serb People in Bosnia and Herzegovina in Extraordinary Circumstances" ("Variant A and B Instructions"). These instructions provided for the conduct of specified activities in all municipalities in which Serbs lived, and essentially mapped out the take-over of power by Bosnian Serbs... (paragraph 69)
3. In early 1992, while international negotiations to resolve the question of the status of BiH were ongoing, the Bosnian Serb leadership enforced its plan to separate the territories claimed by them from the existing structures of the SRBH and to create a separate Bosnian Serb State. On 9 January 1992, the Serb BiH Assembly proclaimed the Serb BiH, which on 12 August 1992 was renamed Republika Srpska ("RS"). It was composed of so-called Serb autonomous regions and districts, which included the ARK (paragraph 71).
4. At the end of March 1992, the Bosnian Serb leadership, aiming to implement the Strategic Plan, took the necessary measures to separate the Bosnian Serb police forces from the non-Serb police forces and to put the Bosnian Serb police under the Bosnian Serb civilian command (paragraph 73).
5. On 27 March 1992, the Serb BiH Assembly established the Serb Ministry of Internal Affairs ("MUP"). On 16 April 1992, the Ministry of National Defense of the Serb BiH issued a decision on the establishment of the Territorial Defense ("TO") as an army of the Serb BiH, putting the command and control of the TO with municipal, district and regional staffs, as well as the staff of the Serb BiH TO (paragraph 73).

6. During the 16th session of the Serb BiH Assembly that took place on 12 May 1992, at a time when the armed conflict had already begun, Radovan Karadzic articulated the six strategic objectives of the Serb People of Bosnia and Herzegovina. The first and most fateful objective was the “separation from the other two national communities – separation of states”. The other objectives concerned the establishment of a corridor between Semberija and Krajina; the establishment of a corridor in the Drina Valley; the establishment of a border on the Una and Neretva rivers; the division of the city of Sarajevo into Serb and Muslim sectors; and, finally, securing access to the sea for the Serb BiH (paragraph 75).
7. In essence, these strategic objectives constituted a plan to seize and control territory, establish a Bosnian Serb state, defend the defined borders and separate the ethnic groups within BiH (paragraph 76)
8. The Trial Chamber is satisfied beyond reasonable doubt that the first strategic objective entailed the permanent removal of a significant part of the non-Serb population from the territory of the planned Bosnian Serb state (paragraph 77)
9. The 16th session of the Serb BiH Assembly represents the culmination of a political process. At this session, not only were the strategic objectives of the Serb people of Bosnia and Herzegovina articulated, but the Serb BiH Assembly also took a fundamental step towards the implementation of these objectives: the establishment of the Army of the Serb Republic of Bosnia and Herzegovina (“VRS”), which was put under the supreme command of the Presidency of the Serb BiH. General Lieutenant Colonel Ratko Mladić accepted the position as Commander of the Main Staff of the VRS, in the obvious knowledge that the policy expressed during the 16th session of the Serb BiH Assembly would necessarily involve the massive forcible permanent removal of the non-Serb population from the territory of the proclaimed Serb BiH, and accepting that the VRS would be instrumental in implementing this policy. In fact, he affirmed that he shared the views of the Bosnian Serb political leadership. General Lieutenant Colonel Ratko Mladić and his immediate subordinates transformed these political strategic objectives into operational imperatives for the VRS (paragraph 78)
10. In the autumn of 1991, four other Serb Autonomous Districts were created in SRBH. These were the Serb Autonomous District of Herzegovina, the Serb Autonomous District of Romanija-Birač, the Serb Autonomous District of Semberija and the Serb Autonomous District of Northern Bosnia (paragraph 167)
11. On 21 November 1991, the creation of the ARK and the other four Serb Autonomous Districts was ratified by the Serb BiH Assembly during its 2nd session. By virtue of this ratification, the ARK and the other four Serb

Autonomous Districts became constituent parts of the Serb BiH (paragraph 167)

12. The Trial Chamber is satisfied that the establishment of the ARK and the other Serb Autonomous Districts and their co-ordination by the authorities of the Serb BiH was a crucial and vital step towards the implementation of the Strategic Plan (paragraph 167)

83. Of the facts proposed by the Defense for the First Accused, the Court accepted as proven one fact that was established in a proceeding before the ICTY:

“The two detainees were taken by troops to Kalinovik in an army truck and were then separated from the other twelve and taken to the police station. There they were kept in the prison and required to drive vehicles for the detection of landmines” (paragraph 410)

84. Pursuant to Article 4 of the LOTC, at the request of a party or *proprio motu*, the Court may decide to accept as proven those facts that are established by legally binding decisions in any other proceedings by the ICTY. When accepting the facts, the Court was guided by, among other things, the case law of the ICTY pertaining to Rule 94(B) of the Rules of Procedure and Evidence of the ICTY (see Trial Chamber, *Prosecutor v. Momčilo Krajišnik*, Case No. IT-00-39-T, Decision on the Third and Fourth Prosecution Motions for Judicial Notice of Adjudicated Facts dated 24 March 2005, p. 8; *Prosecutor v. Zoran Kupreškić et al.*, Case No. IT-95-16-A, Appeals Chamber Decision on the Motions of Drago Josipović, Zoran Kupreškić and Vlatko Kupreškić to admit additional Evidence pursuant to Rule 115 and for judicial Notice to be taken pursuant to Rule 94(B)).

85. The Court has found that the accepted facts are concrete and identifiable and that they are general in their nature and do not attest to the criminal responsibility of the accused. Moreover, the facts are relevant to the case against the accused Krsto Savić and Milko Mučibabić before the Court of BiH as he is charged with criminal offenses committed as part of a widespread or systematic attack against the non-Serb population and linked to the implementation of the strategic objectives of the Serb people in Bosnia and Herzegovina in the areas of Gacko, Bileća, Kalinovik and Nevesinje municipalities.

86. The Court has found that judicial economy is achieved by taking judicial notice of facts established by the ICTY. That purpose is in line with the right of the accused to trial without delay guaranteed under Article 13 of the CPC BiH and Article 6(1) of the ECHR respectively. Notwithstanding the aforesaid, that purpose must be in line with, respectively, the principle of presumption of innocence and the right of the accused to a fair trial guaranteed under Article 6 of the ECHR.

87. When analyzing the motion by the Defense for the First Accused, it is noted that it is *conditio sine qua non* that it be a conclusion regarding the (non)existence of

certain relevant facts. Consequently, the paragraphs of the judgment discussing legal and other similar matters do not fall into this category.

88. Having found that the Motion by Defense Counsel for the First Accused dated 16 December 2008 referred to paragraphs containing legal views by the Chambers seized of the case(s), the Court has concluded that Article 4 of the LOTC cannot be applied to the cited paragraphs.

89. By applying the relevance criterion, the Court has refused to accept paragraphs 1, 2, 4, 7, 10, 11, 15 and 17 of the Trial Chamber's judgment in the *Prosecutor v. Radoslav Brđanin* case (IT-99-36-T) and portions of paragraphs 5 and 20¹.

90. Similarly, the Prosecutor's proposals to accept the facts set out in the second-instance judgment in the *Prosecutor v. Radoslav Brđanin* case (IT-99-36-T) were refused as well. What only follows from those facts is that the relevant portion of the first-instance judgment was contested and that the contestation was unsuccessful.

91. As regards the criterion that a fact formulated by the proponent must not be significantly different from its formulation in the original judgment, it should be noted that the fact proposed by the Defense for the First Accused in their submission dated 3 December 2008 was accepted by the Court as originally worded in the Trial Chamber's judgment in the *Prosecutor v. Milorad Krnojelac* (T-97-25-T) case.

b) Exceptions from the direct presentation of evidence

92. Witness Huso Tukelija died on 19 September 2008. To prove that, the Prosecutor supplied a letter of the State Investigation and Protection Agency (Prosecution Exhibit T-85) attaching thereto a death certificate to the name of Huso Tukelija. Article 273(2) of the CPC BiH was invoked and the investigative statement by Huso Tukelija dated 29 October 2007 was read out at the main trial on 3 December 2008.

93. The statement by witness Fehma Kadić was read out at the closed-session hearing of 16 October 2008. The reason for derogating from the principle of direct presentation of evidence is reflected in the fact that witness Fehma Kadić, in her response to the summons, notified the Court that she could not testify due to her health condition. To support her contention, she attached certain medical documents to her letter.

94. With a view to resolving the new situation in a practical manner, the Prosecutor proposed (with the agreement of the Defense) to read out the statement by witness Fehma Kadić without hiring an expert. As the Defense did not oppose this manner of presentation of the evidence and pointed out that it would not raise the issue on appeal, the Panel allowed that the statement by Fehma Kadić be read out.

¹ Numbers in the Prosecution Motion.

95. In addition to these two witnesses, the investigative statement by witness Hata Mehremić was read out and admitted into evidence. The reason behind the decision to act in this manner is reflected in the fact that Hata Mehremić is in a difficult health condition and her arrival at court would involve considerable difficulties.

96. As expert witness Davorin Kozomara confirmed these circumstances, the Panel has decided to accept the Prosecutor's proposal and allow the reading out of witness Hata Mehremić's investigative statement.

c) Manner of examination of witnesses and exclusion of public

97. In light of the Prosecutor's Office of BiH Motion no. KT-RZ97/06 dated 7 February 2008 and 11 February 2008, the Preliminary Proceedings Judge of this Court issued a Decision (X-KRN-07/400 dated 12 February 2009) assigning pseudonyms A, B, C, D, E, F, G, H and I to nine witnesses.

98. The Preliminary Proceedings Judge adopted this decision having concluded that the use of the personal particulars of the witnesses would compromise their and their families' safety.

99. Having considered the Prosecution motion, the Court rendered a decision on 19 February 2008 assigning pseudonyms A-1, B-1 and E-1 to the witnesses who were assigned pseudonyms A, B and E in case no. X-KR-07/419 (*Ratko Bundalo et al.*)

100. On 1 October 2008, witness A-1, when appearing at the trial, stated that he did not need any protective measures and noted that his identity is well-known in his community.

101. Thereupon, the Panel decided that witness A-1 (Dragan Cerovina) would not enjoy any protective measures while giving his testimony.

102. At the hearing of 15 October 2008, the Panel, having consulted a proposed witness and heard the positions of the Prosecution and Defense (bearing in mind that the Defense did not oppose), adopted a Decision assigning pseudonym "W" to the witness and ordering that the witness testify from behind a screen.

103. Aside from the two protected witnesses mentioned above, the Panel granted additional protective measures to other protected witnesses, including testifying behind a screen, exclusion of the public, prohibition from publishing photographs and image of the witnesses and discontinuation of the video streaming.

104. When rendering its decision on granting additional protective measures, the Panel has particularly taken into consideration the fact that the Defense did not oppose granting the additional protective measures.

d) Admissibility of certain evidence

105. The first time, during the cross-examination of witness Jovo Čokorilo, the Prosecutor used a photocopy of a notebook found on the official premises of the Trebinje CSB, certified by the ICTY. On that occasion, the Prosecutor claimed that the notebook contained minutes of meetings of the Chief of the Trebinje CSB and the chiefs of the CJBs in the area covered by the Trebinje CSB.

106. The defense teams for both accused have objected to this piece of evidence, arguing that the notebook did not have the form of a minute-book and that therefore it could not be regarded as an official record of the referenced meetings.

107. The notebook was subsequently admitted and marked as T-170.

108. The Panel has carefully analyzed the contents of the notebook and found that the notebook did not contain official minutes. As a result, the Panel analyzed this piece of evidence in the context of other evidence and allegations by witnesses who confirmed that the contents of the notebook were consistent with the facts.

5. Applicable law

109. Regarding the applicable substantive law, the Defense objected to the application of the Criminal Code of BiH, underscoring that the Criminal Code of the SFRY as the code in effect at the time of relevant events should be applied.

110. Moreover, the Defense was of the view that the application of any code other than the CC SFRY that was in force at the time period relevant to this case would amount to a violation of the principle of legality. To that end, the Defense referred to Article 7(1) of the ECHR and Article 15(1) of the International Covenant on Civil and Political Rights.

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

112. Article 7(1) of the ECHR also defines the principle of legality. According to Article II(2) of the Constitution of BiH, the European Convention for the Protection of Human Rights has priority over all other BiH law. This provision of the European

Convention further provides a general principle prohibiting the imposition of a heavier penalty than the one that was applicable at the time the criminal offense was committed, but it does not prescribe the application of the most lenient law.

113. Article 4a) of the CC BiH provides that CC BiH Articles 3 and 4 shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed “was criminal according to the general principles of international law”.

114. Article 7(2) of the ECHR provides the same exception, with paragraph 1 of this article reading “shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by civilized nations”. (see Article 15(1) of the International Covenant on Civil and Political Rights containing similar provisions. The State of Bosnia and Herzegovina, as a successor of Yugoslavia, ratified this Covenant).

115. This allows for a possibility to derogate, under the described circumstances, from the principles laid down in Articles 3 and 4 of the CC BiH (and Article 7(1) of the ECHR), from the application of the criminal code that was in effect at the time when the criminal offense was perpetrated and from the application of a more lenient law to the acts that were criminal according to international law.

116. When considering the Defense’s objection, it should be noted that no provision of the CC SFRY, the code that was in effect at the relevant time period, referred exclusively to crimes against humanity as is the case with Article 172 of the CC BiH. However, taking into consideration other provisions of the applicable substantive law and the general principles of international law, the Defense’s objection could not be accepted as being well-founded.

117. The Court notes that the criminal offenses of which the accused have been found guilty constitute criminal offenses according to customary international law and therefore fall within the “general principles of international law” prescribed under Article 4a) of the Law on Amendments to the CC BiH and “general principles of law recognized by civilized nations” prescribed under Article 7(2) of the ECHR; for that reason, the CC BiH can be applied in this case on the basis of these provisions.

118. Furthermore, the fact that the criminal acts listed in Article 172 of the CC BiH can be found in the code that was in effect at the relevant time period – the time of perpetration of the offense (Articles 134, 141, 142, 143, 144, 145, 146, 147, 154 and 186 of the CC SFRY) – implying that the acts charged were punishable under the then applicable criminal code – additionally supports the Court’s conclusion regarding the principle of legality.

119. The application of the CC BiH is additionally warranted by the fact that the imposed sentence is, at any rate, more lenient than the death penalty that was applicable at the time of perpetration of the offense, thereby satisfying the principle of time constraints regarding applicability, that is, the application of a law that is more lenient to the perpetrator in terms of prescribed punishment.

120. The above mentioned is in line with the view taken by Section I of the Appellate Division of the Court of BiH in its Verdicts in the *Abduladhim Maktouf* (KPŽ 32/05 dated 4 April 2006) and *Dragoje Paunović* (KPŽ 05/16 dated 27 October 2006) cases.

121. The Constitutional Court of Bosnia and Herzegovina has considered this matter in the appeal by A. Maktouf (AP 1785/06) and found in its decision dated 30 March 2007 as follows: “68. In practice, legislation in all countries of former Yugoslavia did not provide a possibility of pronouncing either a sentence of life imprisonment or a long-term imprisonment, as often done by the International Criminal Tribunal for the former Yugoslavia (the cases of *Krstić*, *Galić*, etc.)”

122. At the same time, the concept of the SFRY Criminal Code was such that it did not stipulate either long-term imprisonment or life sentence but death penalty in case of a serious crime² or a 15-year maximum sentence in case of a less serious crime.

123. Hence, it is clear that a sanction cannot be separated from the totality of objectives sought to be achieved by the criminal policy at the time of application of the law.

“69. In this context, the Constitutional Court holds that it is simply not possible to “eliminate” the more severe sanction under both earlier and later laws and apply only other, more lenient sanctions, so that the most serious crimes would in practice be left inadequately sanctioned.”

124. The Panel further holds that the principle of mandatory application of a more lenient law is not applied in trials for criminal offenses that at the time of their commission were absolutely foreseeable and known to be in contradiction with the rule of international law. In the instant case, it is considered as determined that the accused had reason to know that the application of international rules has priority in time of war or an armed conflict and that violation of the internationally protected values entailed severe consequences.

125. If one analyzes the provision of Article 172 of the CC BiH and its place in the CC BiH, it is evident that the essence of this criminal offense includes, among other things, elements of violation of international rules. The group of criminal offenses that includes crimes against humanity is characterized by not only perpetration of

² To clarify, the provision of Article 38(2) of the SFRY CC stipulated that a punishment of imprisonment for a term of 20 years may be imposed for criminal acts eligible for the death penalty, while a punishment of imprisonment for a term of 15 years was the **general maximum**.

one of the acts of a criminal offense but also by the required state of mind that the perpetration violates international rules.

126. The assumption that the accused must be aware that a period of war, conflict or hostilities is particularly sensitive and protected by the commonly known rules of international law is fully warranted, which is why one is mindful of the existence of awareness that all the perpetrated acts are even more significant and their perpetration entails even more severe consequences than is normally the case.

127. It should also be noted that the Defense sought that the CC SFRY be applied as a more lenient law in terms of form of criminal liability. The Defense has argued that the CC SFRY foresaw only two forms of criminal liability: perpetration of an offense and command responsibility. In contrast, in the view of the Defense, the application of the institution of JCE is unacceptable.

128. Regarding this objection, the Panel recalls that the ICTY has found in a number of its cases that the institution of JCE constitutes an integral part of customary international law and that this form of criminal liability existed at the time of commission of the offenses the accused is charged with, that is, it was defined during the concentration camp trials in the Nazi Germany.

129. The Appellate Division of the Court of BiH took the same position in the *Mitar Rašević and Savo Todović* case (Verdict no. X-KRŽ-06/275 dated 6 November 2008, p. 27).

130. An additional argument to apply international humanitarian law is reflected in the fact that at the time of commission of the offenses, Bosnia and Herzegovina (as a successor state of the SFRY) was signatory to all relevant international conventions on human rights, international humanitarian law and international criminal law³.

131. The customary status of punishability of crimes against humanity and the imputation of individual criminal responsibility for its commission in 1992 has been confirmed by the UN Secretary General⁴, International Law Commission⁵, as well as the case law of the ICTY and the International Criminal Tribunal for Rwanda (ICTR)⁶.

³ This in particular includes: Genocide Convention (1948), Geneva Conventions (1949) and Additional Protocols thereto (1977), Slavery Convention (amended in 1956), Racial Discrimination Convention (1966), International Covenant on Civil and Political Rights (1966), Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity (1968), Apartheid Convention (1973), Convention on the Elimination of All Forms of Discrimination against Women (1979), UN Convention against Torture (1984).

⁴ Report of the UN Secretary-General pursuant to paragraph 2 of Security Council Resolution 808 dated 3 May 1993, paragraphs 34-35 and 47-48.

⁵ International Law Commission, Commentary to the Draft Code of Crimes against the Peace and Security of Mankind (1996).

⁶ ICTY, Appeals Chamber, *Tadić* case, Decision on the Defense Motion for Interlocutory Appeal on Jurisdiction, 2 October 1995, paragraph 151; ICTY, Trial Chamber, judgment in the *Tadić* case dated 7 May 1997, paragraphs 618-623.

132. These institutions have established that the criminal liability for crimes against humanity represents an imperative standard of international law or *jus cogens*⁷, therefore there appears indisputable that in 1992 crimes against humanity were part of customary international law. This conclusion was confirmed by a Study on customary international humanitarian law⁸ prepared by the International Committee of the Red Cross.

133. According to that study, “violations of international humanitarian law constitute war crimes” (Rule 156), “individuals are criminally responsible for war crimes they commit” (Rule 151) and “States must investigate war crimes allegedly committed by their nationals or armed forces, or on their territory, and, if appropriate, prosecute the suspects. They must also investigate other war crimes over which they have jurisdiction and, if appropriate, prosecute the suspects” (Rule 158).

134. The principles of international law affirmed by Resolution 95(I) of the UN General Assembly (1946) and the International Law Commission (1950) pertain to “Charter of the Nuremberg Tribunal and the Judgment of the Tribunal” and, consequently, war crimes in general. “Principles of International Law Recognized in the Charter of the Nuremberg Tribunal and in the Judgment of the Tribunal”, adopted by the International Law Commission in 1950 and submitted to the General Assembly, provide in Principle 1 as follows: “Any person who commits an act which constitutes a crime under international law is responsible therefor and liable to punishment”.

135. Principle II provides: “The fact that international law does not impose a penalty for an act which constitutes a crime under international law does not relieve the person who committed the act from responsibility under international law”.

136. Therefore, the criminal offense of crimes against humanity should in any event be classified into “general principles of international law” referred to in Articles 3 and 4(a) of the CC BiH. For that reason, whether viewed from the aspect of customary international law, international contract law or the “principles of international law”, it is beyond dispute that crimes against humanity constituted criminal offenses at the relevant time period, that is, the principle of legality was satisfied in terms of *nullum crimen sine lege* and *nulla poena sine lege*.

137. Accordingly, the criminal offense of crimes against humanity, pursuant to Common Article 3(1)(a) and (c) of the Geneva Conventions and Article 27 of the Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949, should in any event be subsumed under “international law”, that is,

⁷ International Law Commission, Draft Articles on Responsibility of States for Internationally Wrongful Acts (2001), Article 26.

⁸ Jean-Marie Henchaerts and Luise Doswald-Beck, *Customary International Humanitarian Law*, ICRC, Cambridge University Press, 2005, pp. 568 ff.

“general principles of international law” referred to in Articles 3 and 4(a) of the CC BiH. Consequently, it is beyond dispute that crimes against humanity, irrespective of the form of criminal liability, constituted criminal offenses at the relevant time period.

6. Court’s findings

a) General considerations in terms of assessment of evidence

138. The Court has assessed the evidence in accordance with the applicable procedural law, namely the Criminal Procedure Code of Bosnia and Herzegovina. Furthermore, it applied the principle of presumption of innocence laid down in Article 3 of the CPC BiH, a fundamental principle of contemporary criminal legislation, so the burden of proving the guilt of the accused rested with the Prosecution.

139. When assessing witness testimony, the Panel took into consideration the deportment and conduct of the witnesses, their character (to the extent possible) as well as the logicity and consistency in their testimony. With respect to the witnesses, the Court also considered plausibility, consistency and other proofs, and the circumstances surrounding the case.

140. Moreover, throughout the proceedings the Court was aware of the fact that the credibility of the witnesses depended on their knowledge of the facts that they were testifying about, their integrity, sincerity and the fact that they undertook to tell the truth when taking the oath.

141. A sincere testimony of a witness is not enough. The real question concerning the testimony is not if they were sincere but if they were reliable as well. Throughout the proceedings the Trial Panel was aware that there is uncertainty in testimonies about facts that in some cases had occurred (many) years before the giving of the testimony as a result of human perception of traumatic events and memories of those events.

142. In particular, the Panel has assessed the testimony of witnesses who were under severe stress and trauma when witnessing the events they testified about. In the view of this Panel, certain deviations regarding the sequence and duration of events do not affect witness credibility to the extent of doubting whether such events occurred at all. The Panel was aware of a possibility that such witnesses could make mistakes while describing the presence and conduct of certain individuals. However, in cases when other evidence corroborated the presence of a certain individual, the Panel gave full credence to the accounts and details given by such witnesses.

143. As regards hearsay evidence, the Court notes that it has become an established practice to regard hearsay evidence as admissible evidence. In addition, pursuant to

Article 15 of the CPC BiH, the Court has discretion in assessing the evidence. It is the view of the Panel that it must be satisfied that the evidence is reliable; if that evidence is witness testimony, the testimony must be given voluntarily, it must be truthful and obtained in a lawful manner. Specifically, the probative value of a hearsay testimony depends on the context and nature of the testimony and/or whether the testimony is corroborated by other appropriate evidence.

144. The Panel holds that indirect evidence constitutes proof of facts, that is, events or a criminal offense wherefrom a relevant act logically ensues. As some of the relevant events by all accounts occurred at the time when there were not many witnesses and as the possibility of determining relevant facts through witness testimony and documentary evidence that directly confirm those facts was problematic or impossible, the indirect evidence could be a key element not only to the Prosecution but to the accused as well.

145. Such pieces of evidence, when viewed individually, could be insufficient on their own. However, if they are viewed as a whole, their collective and cumulative nature can be revealing and sometimes even crucial.

146. The sequence of and temporal connection between the events covered by the Indictment and the identical manner of their development were all of particular importance to the Panel.

147. In the instant case, there was ample documentary evidence of particular importance. During the trial, a number of documents that the Defense challenged were proposed to be admitted as evidence. In order to rule on their reliability and probative value, the Court has taken into consideration all other elements pertaining to such evidence.

148. The Defense has argued that some documents “with no proof of authorship or authenticity” are unreliable and could not be given any weight. The Defense also asserted that portions of certain documents were composed by both military and civilian authorities, but the Panel did not give any particular weight to this assertion. In the case in question, the Panel used that evidence to draw the conclusion on the existence of a communications and information flow system.

149. The fact that a document has not been signed or stamped need not necessarily mean that it is not authentic (especially if we are dealing with copies of documents sent via teletype writer). The Court holds that unsigned and unstamped documents are not *a priori* inauthentic. Bearing in mind the principle that the burden of proving the authenticity rested with the Prosecution, the Court has reviewed all the presented documents one by one and found that the Prosecution proved their authenticity beyond any reasonable doubt. In order to assess the authenticity of the documents, the Court has considered them in light of evidence such as other documentary evidence and witness testimony. In addition, even when the Court was satisfied that documents were authentic, it did not automatically accept the statements in such

documents as accurate portrayals of facts; instead, the Court assessed the authenticity of contents in each and every case in light of other evidence presented.

150. Moreover, Article 15 of the CPC BiH introduced the principle of free assessment of evidence, allowing the Court to freely assess (non)existence of facts. The assessment of (non)existence of a fact is not related or limited to special formal evidentiary rules. The value of evidence is not determined in advance, quality- or quantity-wise.

151. In terms of free assessment of evidence, the Court is obliged to thoroughly assess each and every piece of evidence individually and as a whole, and then draw a conclusion as to whether a certain fact was proved. Evidence assessment includes a logical and psychological assessment of the evidence.

152. Consequently, free assessment of evidence is limited solely by the principle of legality of evidence.

153. It is important to point out that Article 10 of the CPC BiH defines the notion of unlawful evidence in a way that sources of information obtained or presented in an unlawful manner are defined as legally invalid evidence. The evidence obtained through violation of fundamental human rights and freedoms or evidence obtained through essential violation of the procedural code is defined as unlawfully obtained evidence that constitutes legally invalid evidence, and a court's decision cannot be based on such evidence.

154. Furthermore, whether a document (whose contents are relevant in the probative proceedings) is an original or a photocopy is often an issue. Notwithstanding the principled position that the court receives original documents, this position *per se* does not exclude the possibility of using a photocopy of a document as lawful evidence. The same position is shared by courts in other countries of the former Yugoslavia. To wit, the Supreme Court of the Republic Croatia held in its Decision no. I Kž-645/01:

“The accused are correct in contending that all letters used as evidence are to be submitted in the original form, which was not the case with the record of interview of suspect N.Š. dated 8 May 1999 (pages 72-74 of the file). What is more, the first-instance court, despite its efforts, failed to obtain the originals during the proceedings. However, contrary to the allegations in the appeal, one cannot accept that this is unlawful evidence in terms of Article 9(2) of the CPC solely on the ground of this formal omission because the Accused Š. did not contest the authenticity of the record and because the record was not obtained through violation of rights of the defense guaranteed under the Constitution, law or international law. Furthermore, the accused, when presenting his defense at the main trial, stated that he stood by his averments. Thereupon, the record was read out and the accused stated that the contents of the record reflected his conversation with the police bodies. In addition, as

the Accused Š. denies committing the offense, it would not be acceptable to base the challenged verdict on that piece of evidence. Therefore, even if one were to accept that this is evidence in terms of Article 9(2) of the CPC, the appeals ground of unlawful violation under Article 367(2) of the CPC has not been met.”

155. As regards decisions of the European Court of Human Rights (“ECtHR”), a general rule stating that national courts assess evidence has been established. As the Convention does not contain an explicit provision to that effect, the ECtHR has not delved into setting up rules of evidence and it has taken a firm position that it was not its task to adjudicate whether evidence was properly accepted at trial – which is a matter principally regulated by national legislation – but to determine whether the judicial proceedings were fair as a whole.

156. Consequently, the ECtHR and the judiciary in the neighboring countries have all taken a position that the main objective of criminal proceedings is to establish the substantive truth. As a result, they determined that fairness of the criminal proceedings as a whole shall be the minimum threshold regarding the lawfulness of evidence, without limiting themselves to individual aspects of criminal proceedings.

b) General elements of Crimes Against Humanity

157. The accused are charged with the criminal offense of Crimes against Humanity under Article 172(1)(h) in relation to subparagraphs (a), (b), (d), (e), (f), (g), (h), (i) and (k) of the CC BiH, that is, in relation to subparagraphs (a), (b), (d), (e), (f), (h), (i) and (k) of the CC BiH.

158. In order to qualify a criminal offense as a crime against humanity, the law provides that the prosecutor, in addition to specific elements of individual offenses, must prove the general elements of a crime against humanity, as follows:

1. existence of a widespread and systematic attack directed against a civilian population;
2. awareness of the accused of the existence of such an attack;
3. awareness that the acts of the accused constituted part of that attack and that they were aware that their acts constituted part of that attack.

159. On the basis of documentary evidence and witness testimony, the Panel has found that there was a widespread and systematic attack of the military, police and paramilitary formations against the non-Serb population in the municipalities of Gacko, Bileća, Kalinovik and Nevesinje at the relevant time period.

160. The conclusion regarding the existence of a widespread attack clearly ensues from the fact that relevant events occurred in the areas of four municipalities in

eastern Herzegovina. In the Panel's view, events in Gacko, Bileća, Nevesinje and Kalinovik were linked and, notwithstanding the fact that they occurred successively, they form one entirety.

161. In addition, the Panel is of the opinion that the attack against the civilian population was systematic in its nature. It unequivocally follows from all the evidence adduced that the attack was carried out in a similar (if not identical) manner in all the municipalities, allowing for the most efficient use of available military, police and paramilitary forces. An additional argument supporting this view is reflected in the fact that concerns temporal and spatial connection between the attacks against particular settlements.

162. The attack was first carried out against the civilian population living in the easternmost municipality (Gacko), continuing towards the interior of Bosnia and Herzegovina (to the west), the municipalities of Bileća, Nevesinje and finally Kalinovik.

163. Regarding other required key elements of crimes against humanity, the Panel, having assessed the presented evidence individually and as a whole, has found beyond any reasonable doubt that the Accused Krsto Savić was the Chief of the Trebinje CSB at the relevant time (that is, since early May 1992 until the end of the same year) and that, while performing that duty as one of the members of the JCE, he participated in the persecution of the non-Serb population living in the referenced municipalities; by doing so he was aware that his acts constituted part of the attack whose aim was persecution.

164. What is more, notwithstanding the fact that the Prosecutor has failed to indicate explicitly in the Indictment that Krsto Savić was aware of a widespread and systematic attack, that conclusion can certainly be drawn from the overall wording of the Indictment's operative part. Specifically, if the operative part is taken as a whole, one can see that the Accused Krsto Savić is charged with being on top of the command chain in the SAO Herzegovina and with making decisions on whether or not a civilian population would be attacked and on the nature of those attacks.

165. Finally, in the Panel's view, the events with which Krsto Savić is charged (and found guilty of by this Panel) imply that his role was much bigger than that of an ordinary police officer or soldier. His role in these events was much larger; he was not only aware of the attack but he in a way initiated it and spearheaded it himself.

166. In contrast, regarding the Accused Milko Mučibabić, it is quite clear (ensuing also from the Indictment) that his knowledge of the attack against the civilian population in the municipalities of Gacko, Bileća and Kalinovik bears no relevance. His knowledge is limited solely to Nevesinje.

167. It clearly ensues from all the acts carried out by the Accused Mučibabić that he was aware of the attack and that his acts constituted an integral part of that attack.

Furthermore, with respect to the same issue, the Accused Mučibabić described the circumstances surrounding the forcible transfer of population during his testimony before the Panel and confirmed that the state of attack was a normal if not regular occurrence in Nevesinje at that time.

c) Legal standards applied to the established state of facts

168. When deciding how to qualify particular acts and facts [*translator's note: charged against*] the accused Krsto Savić and Milko Mučibabić, the Panel proceeded from the following definitions:

- murder means depriving another person of his life;
- deportation or forcible transfer of population means forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law;
- unlawful imprisonment and detention mean severe deprivation of physical liberty in violation of fundamental rules of international law;
- torture means the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under control of the accused; except that torture shall not include pain or suffering arising only from, or being inherent in or incidental to, lawful sanctions;
- rape and sexual slavery mean coercing another by force or by threat of immediate attack upon his life or limb, or the life or limb of a person close to him, to sexual intercourse or an equivalent sexual act or sexual slavery;
- persecution means the intentional and severe deprivation of fundamental rights, contrary to international law, by reason of the identity of a group or collectivity;
- enforced disappearance of persons means the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with an aim of removing them from the protection of the law for a prolonged period of time;
- other inhumane acts of a similar character mean acts intentionally causing great suffering, or serious injury to body or to physical or mental health.

169. In cases when there is room for possible doubt about the legal qualification of the established facts, the Panel will, when explaining each section of the Verdict, present reasons for inferring particular legal conclusions.

d) Discriminatory intent and persecution

170. In addition to the dilemma regarding the application of substantive law regulating this matter, the Panel has considered the issue of persecution as an offense charging the accused. In essence, the consideration was focused on the (non)existence of a specific discriminatory intent that needs to be proved in order to find a person guilty of persecution. The case law of the ICTY establishes that persecution requires proving that particular fundamental rights were denied for the purpose of discrimination on national, religious, ethnic, racial or political grounds. To that end, the case law establishes that ICTY chambers often drew the conclusion on the existence of such intent on the basis of indirect evidence (most frequently on the basis of the structure of victims and the time period during which fundamental human rights were denied).

171. This Panel acted in the same manner with respect to the Accused Krsto Savić and, bearing in mind the six strategic objectives of the Serb people (the Panel took a position to this effect when rendering the decision on the established facts), his position in the power structures of the Serb Republic of Bosnia and Herzegovina and the number and duration of crimes against humanity he has been found guilty of, drew the conclusion on the existence of discriminatory intent on the part of the Accused Krsto Savić beyond any reasonable doubt. This in particular because he attended a meeting in Banja Luka in February 1992 and took floor to discuss a plan of division of the MUP BiH and the names of persons to be assigned to certain posts (T-105). Moreover, this conclusion of the Panel is additionally supported by witness "F" who pointed out that Krsto Savić said that it would be a sin to send her to be exchanged and that he would rename her so that she could be "theirs".

172. In contrast, the Panel did not find that there was sufficient evidence of discriminatory intent on the part of the Accused Milko Mučibabić. In the view of the Panel, the Accused Milko Mučibabić carried out unlawful orders to bring in and imprison non-Serbs and took them out to be beaten and forcibly transferred. As these acts occurred within a relatively short period of time (the events in Nevesinje) when the Accused Milko Mučibabić helped some of his Muslim acquaintances to leave the area of Nevesinje to avoid the fate of other non-Serbs, the Panel has concluded that Milko Mučibabić was aware that the orders he was carrying out were unlawful and directed against the non-Serb population. On the basis of that, the Panel has found that Milko Mučibabić is responsible for aiding the persecution of the non-Serbs from the area of Nevesinje, that is, he is not responsible for carrying out the persecution but for aiding the persecution.

173. There was a possibility to find the Accused Milko Mučibabić guilty of the criminal offense of crimes against humanity without linking it to the charge of persecution, especially because the Panel could not conclude that the accused possessed discriminatory intent. However, bearing in mind the case law of the ICTY⁹ establishing that in cases when an accused did not possess discriminatory intent (as is the case with Milko Mučibabić) but knowingly gave a contribution to an offense,

⁹ Appeals Chamber judgment in the *Prosecutor v. Kvočka* case (IT-98-30/1-A) dated 28 February 2005, para. 110.

he may be found guilty of aiding a persecution. Consequently, the Panel concluded on the basis of the established state of facts that it would be most adequate to find Milko Mučibabić guilty of aiding the persecution.

174. Furthermore, as the acts Milko Mučibabić has been found guilty of did not make a decisive contribution to the perpetration of the offense (which in this specific case would be Persecution, as laid down in Article 29(1) of the CC BiH), the Panel could not find him guilty as an accomplice to the persecution on the basis of objective criteria either.

175. Consequently, bearing in mind the *means rea* element on the part of the Accused Milko Mučibabić and the significance of his acts in carrying out the persecution (that is, his degree of contribution to the persecution), the Panel has found that Milko Mučibabić is responsible for aiding the persecution of the non-Serb population from the area of the Nevesinje Municipality.

e) General features of the war crime against civilians

176. According to the Indictment, the accused is charged, *inter alia*, with committing the criminal offense of War Crime against Civilians under Article 173(1)(c), (e) and (f), reading as follows:

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

- a) Attack against civilian population, settlement, individual civilians or persons placed hors de combat, which results in the death, grave bodily injuries or serious damaging of people's health;*
- b) Attack without selecting a target, by which civilian population is harmed;*
- c) Killings, intentional infliction of severe physical or mental pain or suffering upon a person (torture), inhuman treatment, biological, medical or other scientific experiments, taking of tissue or organs for the purpose of transplantation, immense suffering or violation of bodily integrity or health;*
- d) Relocation or displacement or forced conversion to another nationality or religion;*
- e) Coercing another by force or by threat of immediate attack upon his life or limb, or the life or limb of a person close to him, to sexual intercourse or an equivalent sexual act (rape) or forcible prostitution, application of measures of intimidation and terror, taking of hostages, imposing collective punishment, unlawful bringing in concentration camps and other illegal arrests and detention, deprivation of rights to fair and impartial trial, forcible service in the armed forces of enemy's army or in its intelligence service or administration;*

- f) *Forced labor, starvation of the population, property confiscation, pillaging, illegal and self-willed destruction and stealing on large scale of property that is not justified by military needs, taking an illegal and disproportionate contribution or requisition, devaluation of domestic money or the unlawful issuance of money,*

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

177. As the accused are charged with the referenced subcategories of the criminal offense of the article cited above, one must prove the following general elements that ensue from the definition of the war crime against civilians, as follows:

1. an act of the perpetrator must be perpetrated in violation of international law;
2. the violation must be committed during a war, armed conflict or occupation;
3. the perpetrator's act must be linked to a war, armed conflict or occupation;
4. the perpetrator must order or perpetrate the act.

178. In relation to the criterion that a violation must be committed during a war, armed conflict or occupation, the following should be pointed out:

179. In the factual description of the offense with which Krsto Savić and Milko Mučibabić are charged under the Indictment, the Prosecutor failed to indicate that those offenses were committed during a war, armed conflict or occupation; therefore, regardless of the established state of facts, the Panel could not find the accused guilty of the war crime against civilians.

180. In that context, it should be noted that the Panel has analyzed the wording of the Indictment's operative part as a whole. However, notwithstanding this approach, the Panel has concluded that the Prosecutor failed to point out in the factual description of the offenses that they were committed during a war, armed conflict or occupation.

181. Consequently, the Panel has concluded that the scope of the Indictment would be exceeded if this aspect would be added; for that reason, the Panel did not consider the possibility to find either of the accused guilty of the war crime against civilians under Article 173 of the CC BiH.

182. In light of this position, the Panel finds it superfluous to elaborate on the general elements of the criminal offense of war crime against civilians.

f) Krsto Savić and Milko Mučibabić are charged with

The accused Krsto Savić

1. Gacko (Count I -1 of the Indictment)

183. A number of witnesses testified with regard to the events which occurred in Gacko in late May and early June of 1992. In the opinion of the Panel, the most important among these witnesses were Asaf Pošković, Ejub Krvavac and Šućrija Tanković, the witness W, Enesa Hasanbegović and the witness E1, who were additionally corroborated by documentary evidence: T-201, T-202; T-45, T-101 and T-102. The Panel gave full credence to the testimony by these witnesses since they corroborated each other or they at least confirmed the same pattern of behavior. Also, their testimonies were logical, without contradictions. The Panel took also into account the fact that all the witnesses said that they were not on bad terms with the Accused while some of them even stated that they did not know the accused at all.

184. The witness Asaf Pošković describes that as early as in late 1991 there were check points already introduced at certain locations in Gacko where regular and reserve police force were placed. These points were used to control the movement in the municipality of Gacko. The work obligation was in force as well and so there had to be known who was at work and also what happened to those who were not at work during certain periods of time. The witness Ejub Krvavac confirmed as well the existence of check points and that the checks were conducted.

185. The first arrests and detentions of Muslims, as stated by the witnesses, commenced in late April and early May 1992. The witness Ejub Krvavac was among the first detainees and, as he stated, he was captured by the Beli orlovi */Translator's note: White Eagles/*. However, of particular relevance to this case are the averments that he was held in the Police Station Gacko for seven days and that during his stay there he was almost regularly beaten up and that Vitomir Popić, Deputy Commander of the PS */Police Station/* Gacko, participated in that. An additional circumstance which was relevant to the Panel was that Ejub Krvavac was one of the most distinguished Muslims and that at that period of time he was a representative of the SDA */Party of Democratic Action/* in the SO */the Municipal Assembly/* in Gacko.

186. The atmosphere of constant fear against arrests and insecurity lasted up until 1 June 1992 when the witness Asaf Pošković was asked by the police to present his identity card, whereupon he was brought into the Gacko PS. In the opinion of the witness, there were approximately about one hundred men, all Bosniaks, gathered in front of the PS Gacko where, in his opinion, they were held until all the Gacko Bosniaks were arrested and thereupon they were loaded on the trucks and transferred to the school in Avtovac (the municipality of Gacko). They stayed there for three days and were guarded by the reserve police force. They lacked adequate conditions in terms of hygiene, water

and sleeping accommodation, and afterwards they were relocated to the basement of the Hostel for single persons in Gacko.

187. With reference to the Hostel for single persons, the witness clarified that there were about one hundred and fifty of them in the basement, in a stuffy room without daylight. While describing the conditions in the Hostel, the witness explained that the army stayed in the Hostel but the reserve policemen guarded the detainees, pointing out that he knew the person in charge of them well. This was confirmed by the witness Šučrija Tanković who was detained in the Hostel during the night of 18 to 19 June 1992. According to the Panel, the testimonies by these two witnesses are fully concurrent and they even complement each other where it concerns certain events of which the witness is also unclear. For example, the witness Šučrija Tanković states that there were soldiers stationed in the Elderly Persons' Home /Translator's note: rendered as in the original/ but that it was the police that guarded them. This witness appeared somewhat confused during the examination since it was obviously clear that such averment might at first seem contradictory. Unlike him, the witness Asaf Pošković was much more decisive and specific, explaining the circumstances related to the detention in the Hostel. This witness stated that he knew well the person responsible of guarding them and that it was a reserve police officer. Regarding the nighttime interrogations, both witnesses confirmed that at night there were entries on the premises where they were detained. According to one witness, those primarily concerned rounding up the detainees for interrogation, while the other witness placed the emphasis on the incidents occurring after the persons who would take them out entered the basement. In the opinion of the Panel, it is quite logical that certain differences exist especially in situations where the witnesses talk of something which they experienced 16 years before. In any case, the Panel, having given credence to the testimony by these witnesses, concluded beyond any reasonable doubt that a group of around one hundred and fifty men was detained in the basement of the Hostel in Gacko without legitimate legal grounds and that the detainees were held on inadequate premises and would be taken away for interrogation from where some of them never returned, including Miralem Voloder, Ziko Fazlagić, Arif Jaganjac, Mirsad Džeko, Edhem Šahović, Latif Halilović and others, while some of them would return all beaten up such as Asaf Pošković, including the witnesses Asaf Pošković and Šučrija Tanković themselves. In addition, the Panel found that there in the Hostel there were also various other incidents occurring on the premises where the detainees were held.

188. Based on the testimony by the witnesses Asaf Pošković and Šučrija Tanković, the Court concluded that Osman Osmanović was killed during an incident in the basement. Further, regarding the conditions and medical care, it should be pointed out that the Panel concluded that the detainees did not have an adequate medical care given that the witness Asaf Pošković himself requested medical assistance since he was sick but right after that he was beaten up with an explanation that this was a remedy for him.

189. The Panel concluded beyond any reasonable doubt that, in addition to Osman Osmanović who was killed in the basement, on or about 29 June 1992, at the time when the detainees were relocated to Bileća, while getting on the truck, also killed were Aziz Hasanbegović and Enver Redžović. These facts clearly ensue from the testimony by the examined witnesses Asaf Pošković and Šućrija Tanković, who clearly and in a convincing manner identically described the details of all that they had experienced and seen in the Hostel for single persons. They also described the details of their detention including the relocation to the camp in Bileća.

190. Regarding their taking away for interrogation, the Panel concluded, having in mind that, as a rule, the detainees brought back from interrogation were beaten up, including the fact that Latif Halilović died in the basement as a consequence of his being beaten up, which is stated in the testimony by Asaf Pošković as well */rendered as in the original/*. Also, based on the aforementioned testimony, the Panel determined beyond any doubt that none of the detainees was taken to any other location, having in mind the treatment of prisoners in general and the fact that there were lots of armed persons in the Hostel for single persons, and that the persons who did not return from interrogation had in fact been killed. Most certainly, the killed prisoners included the following: Miralem Voloder, Mirsad Džeko, Edhem Šehović, Aziz Fazlagić and Arif Jaganjac.

191. Therefore, based on all the foregoing, the Panel concluded that this specific case concerned the persecution of Muslims on political, national, ethnical, cultural and religious grounds by way of depriving other persons of lives (by murder), by detention contrary to the fundamental rules of international law and other inhumane acts of a similar character, committed with the aim to intentionally inflict great suffering or serious injury to the limb or to physical or mental health.

2. Bileća (Count I-2 of the Indictment)

192. With regard to the events in Bileća in 1992, the Panel gave full credence to the testimonies by Mensud Bajramović, Suad Bajramović and Enver Avdić because those testimonies were logical, consequent and they corroborate and support each other. In their testimonies these witnesses described in an identical manner the events in Bileća during the period from April to June 1992. Specifically, all three witnesses, although at that period of time employed by different companies, lost their jobs, that is, they were suspended because they refused to be mobilized. In addition, in their testimonies all three witnesses described the arrests of the majority of Muslims from the town of Bileća on 10 June 1992, and on 19 June 1992 as well, and that active and reserve policemen participated in these arrests including some persons, not known to them, who were dressed in uniforms, while during their confinement they were guarded by regular and reserve police. Not only did the police arrest them unlawfully and without any reasons, but they interrogated them, subjected them to physical abuse, held them until 5 October 1992 on inadequate premises which lacked adequate hygiene conditions and water, and then they deported them merely on the grounds of their belonging to a certain ethnic group, the Muslim one.

193. The witness Mensud Bajramović describes that he found out from his brother, who stayed in the town of Bileća, about the arrests of the non-Serb population occurring there on 10 June 1992. On that occasion, his brother, together with two other persons, managed to flee and reached the village of Orahovice and conveyed the information on the events in the town.

194. The averments by Mensud Bajramović pertaining to the arrests in the town were also confirmed by the witness Suad Bajramović who additionally described that precisely on the day of 10 June 1992 a group of Muslims, including himself, was first requested to present identity documents and was afterwards confined in the PS Bileća.

195. Witness Enver Avdić too described in a very convincing manner that he first heard that Bosniaks were arrested on 10 June 1992, which prompted him to hide in the woods with a group of Bosniaks. In the afternoon of the same day his whole group was deprived of liberty and detained on the first floor in the PS Bileća. Describing the room where they were detained, Enver Avdić confirmed almost completely the averments by the witness Suad Bajramović. In this regard it should indeed be noted that Suad said that he had been detained in the PS Bileća sometimes in the morning hours and that on the same day, at about six o'clock in the afternoon, all the prisoners were transferred to the *Ivo Lola Ribar* barracks. On this issue the witness Enver Avdić says that he was imprisoned in the PS Bileća sometimes at around 7 o'clock where he found an empty room but that he heard a story as well that a group of prisoners had just been transferred from there to the *Ivo Lola Ribar* barracks.

196. Regarding the number of Bosniaks who were imprisoned in the PS Bileća on 10 June 1992, the witness Suad Bajramović said that during his stay in the PS Bileća every half an hour some of the Muslims would be brought in, and that in the afternoon on the same day, at around 6 o'clock, two policemen made a list of their names whereupon approximately forty of them were loaded on the trucks and transferred to the *Ivo Lola Ribar* barracks. Witness Bajramović also said that on that day Ako Džapo was beaten up and maltreated in front of the PS Bileća.

197. Fearing arrest, the witness Mensud Bajramović described that he, together with a dozen other persons from Orahovice, after 10 June 1992 and in the days that followed hid in the woods some 200 meters from the village of Kalci. On 19 June 1992, together with two other individuals, he was arrested by the reserve police force without any legal grounds. Regarding the identity and the formation of the men who arrested them, it should be particularly noted that Mensud personally knew two of the reserve policemen who arrested him, stating that the name of one of them was Vukoje, Zvonko's son, and the other's Željko.

198. Mensud went on to describe how the commander of the PS Bileća, Miroslav Duka, requested that Ismet Bajramović – one of the prisoners, write down the names of all men who were not captured and state where they were in hiding. Mensud

Bajramović also described that during the night he was taken to the premises of the duty officers' room in the PS Bileća and was first interrogated there and then beaten up and eventually detained in the solitary confinement cell. Shortly thereafter he was beaten up on two more occasions in a similar manner. He spent seven days in detention in the PS Bileća whereupon he was transferred to another location.

199. Describing the conditions and the situation with food, all three witnesses confirmed that they would receive food from their families irrespective of where they were detained.

200. Witness Suad Bajramović confirmed that detainees in the PS Bileća were beaten repeatedly, and described in a very convincing manner that about twenty of them, including a few prisoners from the Students' Dormitory, were brought in to the PS Bileća and were beaten up there by the policemen of this PS.

201. The witness Mensud Bajramović described that, together with all the persons detained in the PS Bileća at that moment, he was transferred to the premises of the Students' Dormitory where the conditions were poor and where he stayed for fifteen more days. Describing the guards in the Students' Dormitory, Mensud said that, while he stayed there, two reserve policemen stood guard. He identified Branko Rogan and Mladen Mićunović as the guards whom he knew.

202. Mensud also said that, upon his departure, a number of detainees, together with their families, were deported to Montenegro, whereas a group of 37 prisoners remained in detention until mid-December 1992. The events pertaining to the deportation were described by the witness Suad Bajramović as well, who said that Miroslav Duka, the then commander of the PS Bileća, participated in escorting the column to the border with Montenegro. The averments by these two witnesses were confirmed by the witness Enver Avdić who also stated that a number of prisoners from the Students' Dormitory, together with their families, were deported to Montenegro, on which occasion they were not given an option to remain in Bileća.

203. Therefore, starting from the testimony by these three witnesses to which the Panel gave full credence because they are all logical, mutually corroborative and very convincing in view of the fact that the events which these witnesses spoke of took place more than fifteen years ago, the Panel concluded beyond any reasonable doubt that during the period from June to the end of 1992 the members of the Bileća PS participated in the persecution of Bosniak civilians of the Bileća municipality in the manner that they unlawfully arrested men fit for military service and they held them detained in the camps set up on the premises of the Bileća SJB and on the premises called the *Đački dom* /Translator's note: the Students' Dormitory/ where around one hundred and fifty of them were detained and held on inadequate premises, without proper conditions to meet basic hygienic needs, without appropriate medical care and sufficient water, while food was brought to them by their family members from their homes, and that they were subjected to beating by the Bileća SJB policemen, whereupon around 5 October 1992 approximately one half of the detainees and their

family members were deported to Montenegro under the police escort which satisfies the essential elements of the criminal offense of Crimes against the Humanity under Article 172, Paragraph 1, Sub-paragraph h) as read with Sub-paragraphs d),e) and k) of the CC BiH.

3. Kalinovik (Count I-3 of the Indictment)

a) Arrests of the Jeleč population

204. With regard to the fact that in early May 1992 members of the Kalinovik Police Station, together with members of military formations, surrounded and captured around 280 (two hundred and eighty) civilians from the Jeleč Local Community, Foča Municipality, testimonies were given by the witnesses Asim Zametica and Ahmo Mušanović as direct victims, as well as Danilo Đorem and Dragan Cerovina as policemen in the Kalinovik PS at the referenced period of time. The Panel gave full credence to their testimonies because they were clear, given in a convincing manner, and besides they were concurrent in respect of all the essential elements. Of course, certain differences exist which are understandable because of the time elapsed and the fact that, to a certain extent, the witnesses perceived the events they testified on in their own specific way.

205. The witness Ahmo Muanović, who originated from the village of Drači, Foča municipality, described in a very convincing manner that he was part of a refugee group consisting of about 280 civilians, mainly from Jeleč. He said that sometimes in early May, in the region of the Jažići village – Kalinovik municipality, more precisely near the Sreto's coffee bar, they were surrounded by the Serb forces – the army and the police, and that right there men were separated from women, children and elderly persons. The witness further described that they were transported to and detained at the *Miladin Radojević* Elementary School where they were guarded by the policemen. On 26 May 1992, the detained men, approximately 50 (fifty) of them, were transferred to Bileća. Witness Ahmo Mušanović clarified that he remained in the school owing to the intervention by Milivoje Sladoja.

206. The averments by this witness are in full agreement with the averments by the witness Asim Zametica, who is from Jeleč, and who described that he was detained in the *Miladin Radojević* Elementary School. He was not part of the refugee group described by the witness Mušanović but was detained at a later stage. These averments are fully congruent with the testimony by the witness Ahmo Mušanović precisely because Zametica pointed out that he found the Jeleč population detained in the school (referring to the civilians from the refugee group Ahmo Mušanović was part of). Zametica further noted that he, together with the other detained men, about forty five of them, was transferred to Bileća under the escort of certain Major Pavlović and a certain Elez. As stated by Zametica, they remained there almost throughout the entire May whereupon at one moment they were taken back to the *Miladin Radojević* Elementary School where they stayed for a day and a night and then they were transferred to the KPD Foča /*the Penal-Correctional Facility*/ under the escort of the reserve policemen. The majority of them were killed in the KPD Foča or

any trace of them has been lost from there. In the meantime, women, children and the elderly were transferred to the territory at the time controlled by the BiH Army. The averments by the witness Asim Zametica were confirmed by the witness Ahmo Mušanović who also stated that Zametica had been brought in at a later stage, that he was in Bileća and that in the end, together with a group of about 50 men, he was taken to Foča under the police escort. Ahmo Mušanović additionally noted that Asim Zametica was the most knowledgeable regarding all this since he had experienced it all.

207. Also, Witness Dragan Cerovina confirmed in all essential facts the averments by the witnesses Ahmo Mušanović and Asim Zametica, stating that he knew that the Muslims from Jeleč were grouped in the village of Jažići, the men were detained whereas the rest of the group left Kalinovik safely. Dragan Cerovina further confirmed that the men detained in the elementary school were relocated to Bileća whereupon they were brought back to the *Barutni magacin* /Translator's note: the Gunpowder magazine/, including the fact that later on Cerovina personally participated in escorting the male detainees to the KPD Foča from where they were allegedly supposed to be taken for prisoner exchange.

208. He additionally explained that the regular police force, just as Asim Zametica said too, opposed participating in escorting the men to the KPD but they still took part in it.

209. With regard to the lawfulness of detention, Dragan Cerovina stated that the civilians from Jeleč were grouped in order to be easier protected, which is in contravention of averments by other witnesses. The Panel took into account all the circumstances of detention and asked itself a question - if the civilians from Jeleč were grouped on one location (in the *Miladin Radojević* Elementary School) for their easier protection why were then on the following day the detained men transferred together with women, children and the elderly to the territory under the BiH Army control.

210. Therefore, starting first and foremost from the testimony by these three witnesses, the Panel, having given its credence to them, concluded beyond any reasonable doubt that the described actions satisfied the essential elements of the criminal offense of Crimes against Humanity referred to in Article 172, Paragraph 1, Sub-paragraph h) as read with Sub-paragraphs d) and e) of the CC BiH, that is, at the time of the widespread and systematic attack, the policemen of the Kalinovik SJB, knowing that their actions constituted part of the attack, participated in an unlawful confinement of around 280 civilians in the *Miladin Radojević* Elementary School in Kalinovik, from where on the following day the women, children and the elderly, having been separated first, were relocated, or more specifically, forcefully relocated to the territory under the control of the BiH Army whereas the men detained in the *Miladin Radojević* Elementary School were transported to Bileća whereupon on 1 June 1992 they were transferred to the Foča KPD where the majority of them were killed or from where any trace of them has been lost.

b) Arrest of men from Kalinovik and the neighboring villages

211. While rendering the Decision related to the sub-section b) of the operative part, first and foremost the Panel took into account the testimony given by the witnesses Fejzija Hadžić, Danilo Đorem, Milivoje Feladžić, Miloš Crnjak, Milan Lalović, Elvir Čusto, Džemila Redžović, Zlatka Hadžić, Rusmir Rogoj, Dika Suljić and Miloš Veletić. According to the Panel, the mentioned witnesses confirmed beyond any reasonable doubt that at the referenced period the members of the Kalinovik SJB organized and conducted the arrest of Bosniak men in Kalinovik and the neighbouring villages of Mjehovina, Jelašca and Vihovići, and detained the arrested civilians in the gym of the *Miladin Radojević* Elementary School where the civilians were guarded by the Kalinovik SJB policemen. The policemen organized the transfer of the detained Bosniaks from the *Miladin Radojević* Elementary School to the *Barutni magacin* camp, the military facility controlled by the army, from where all the detainees, at least 62 of them, were loaded onto trucks and transported under the police escort and executed at the place called Ratine and in the locality of the Miljevski tunnels.

212. The testimony by the witness Fejzija Hadžić was the most impressive and the most convincing. There is no lack of logic and consistency in the testimony by this witness when describing the circumstances in Kalinovik during the spring and summer in 1992 and this in fact is confirmed by testimonies of other witnesses too. Specifically, the witness describes that there first occurred a division among the police on ethnic grounds as a result of refusal to sign the statement of loyalty to the Serb Republic of Bosnia and Herzegovina. After that, the Muslim officials holding senior positions were removed from their posts while the Muslim policemen from the PS Kalinovik, together with their commander who too was a Muslim, stopped participating in the functioning of the station.

213. According to the Panel, the witness Fejzija Hadžić described in detail and in a convincing manner the events that followed and are of critical importance. According to his testimony, on 25 June 1992 the Muslim men from Kalinovik, who even prior to this were supposed to report to the Kalinovik PS, were served summonses to report to the Municipality in order to be assigned to work in the *Šumarstvo /the Forestry/*. This is corroborated too by Exhibit T-154. However, instead of setting the work schedule, they were surrounded by the policemen whereupon they were detained in the *Miladin Radojević* Elementary School. These averments were confirmed by the witness Milivoje Feladžić as well who stated that he was one of the policemen who distributed the summonses and that those individuals from Jeleč who responded to the summonses were detained in the *Miladin Radojević* Elementary School which was guarded by the policemen. Miloš Vasić also participated in these events in the absolutely identical manner as confirmed by that witness too. This witness, however, had the status of a reserve policemen.

214. After detaining the Muslims, namely those who responded to the summonses, the police conducted the operation to arrest the remaining Muslim men failing to respond to the summonses, from Jelašci, Vihovići and Mjehovine, which clearly and indisputably ensues from the testimony by a large number of witnesses, including Elvir Čusto, Zlata Hadžić, Rusmir Rogoj and Dika Suljić.

215. The chronology of these events was confirmed by the witness Dragan Cerovina as well, but his interpretation and views of these events were to a certain extent different in comparison to the averments by other witnesses. Certain parts of his testimony, particularly those related to the factual descriptions, were fully accepted by the Panel whereas there were certain reservations expressed on the part of the Panel in relation to his views and averments pertaining to the lawfulness of the actions by the police. Thus, the Panel could not accept the averments by the witness Dragan Cerovina that the Muslim men were grouped in front of the municipality hall and after that detained in the school building were in fact detained with the aim to be provided security. Specifically, it is utterly illogical that so much effort was made in order to provide security to the men whereas, on the other hand, no actions were taken regarding the security of women, children and the elderly Muslims, being the most vulnerable category of population.

216. In continuation of his testimony, the witness Fezija Hadžić confirmed that on 7 July 1992 the detained men were transferred to the *Barutni magacin* camp where they were under military authority and from where at around 5 August all the detained men (at least 62 of them) were taken away and executed.

217. This witness described in a convincing and impressive manner how the execution of the first group of 24 men had been carried out, with him being part of that group, and that the police participated in escorting the convoy of detainees from the *Barutni magacin* to the location at which the execution was carried out.

218. Although there do not exist witnesses or other pieces of evidence from which it directly follows that, in a similar manner, the police participated in the execution of the remaining 38 men at least, the Panel, having in mind the connection between the two locations in terms of time and territory, concluded beyond any reasonable doubt that the police, by escorting the convoy of men from the *Barutni magacin*, participated in the execution of at least 62 Muslim men.

219. Regarding the number of the killed men, given the fact that the Indictment alleges that there were more than eighty persons, it should be clarified that the Panel grounds its conclusion on the testimony by the witness Fezija Hadžić. He explained that there were eighty five of them in the *Barutni magacin* but that some of them had been taken out of the building beforehand, so that a group of men who were executed at Ratine and on the territory of Miljevinski tunnels included at least 62 persons.

220. Therefore, starting from the aforementioned, the Panel, having given credence to the testimonies by the mentioned witnesses and bringing them in connection with the admitted documentary evidence, concluded beyond any reasonable doubt that the described actions satisfied the essential elements of the criminal offense of Crimes against Humanity referred to in Article 172, Paragraph 1, Sub-paragraph h) as read with Sub-paragraphs a) and e) of the CC BiH, or more specifically, at the time of a widespread and systematic attack, the SJB Kalinovik policemen, fully knowing that their actions constituted part of the attack, conducted the arrest of the Bosniaks in Kalinovik and the neighboring villages of Mjehovina, Jelašca and Vihovići and held the detained civilians in the *Miladin Radojević* Elementary School in Kalinovik from where they were transferred to the *Barutni magacin* camp and whereupon on 5 August 1992, the detained men, at least 62 of them, were taken away and executed at the place called Ratine and at the locality of the Miljevinski tunnels.

c) Arresting the civilians from Gacko and Nevesinje

221. With regard to the events described in this sub-count of the Indictment and sub-section of the Verdict, testimony was given by the witness W, Danilo Đorem, Enesa Hasanbegović, Milan Lalović and the witness E1, while the statement by the witness Fehma Kadić was read out for the reasons as stated earlier in the Verdict. These witnesses described in detail in an identical manner the arrest of at least 200 (two hundred) Bosniak civilians, predominantly women and children, and a small number of men from the territory of the Gacko and Nevesinje municipalities, in which the members of the SJB Kalinovik police force participated, including the detention of these civilians in the school in Ulog where, together with the army, they were guarded by the SJB Kalinovik policemen and from where they were transferred to the *Miladin Radojević* Elementary School where they were placed on the ground floor of the school, namely in the gym, the staffroom and another classroom while the building where they were placed was guarded by members of the Kalinovik SJB.

222. The Panel gave full credence to their testimonies pertaining to the established state of facts under this Section of the Verdict while it exempted only those parts of the testimonies by the witnesses who at the referenced period of time were members of the PS Kalinovik which pertain to their positions in that Station.

223. The witness Fehma Kadić, Witness W, Enesa Hasanbegović and Witness E1, described in an identical manner that in early July 1992 they happened to be at the location of the Tuhobići village when a group of at least 200 civilians was arrested by the army whereupon they were loaded on trucks and detained in the school in Ulog.

224. Based on the testimony by the witness Fehma Kadić as well as the testimony by the witness Dragan Cerovina, the Panel concluded that the policemen too participated in guarding the civilians detained in the school in Ulog and that, as testified by the majority of witnesses, on the following day the detained civilians were transferred to the *Miladin Radojević* Elementary School in Kalinovik where they were guarded by the reserve and regular policemen.

225. The Panel grounds its conclusion regarding this sequence of events on the testimonies by the witness Fehma Kadić, Witness W, Enesa Hasanbegović and Witness E1, who are victims of the referenced criminal offenses but also on the testimony by the witnesses Danilo Đorem, Milan Lalović and Dragan Cerovina who also confirmed that, after the men who had been previously captured were relocated to the *Barutni magacin* camp, the civilians, mainly from Gacko, were brought in to the *Miladin Radojević* Elementary School. Witness Dragan Cerovina additionally pointed out that the civilians detained in the school were guarded by his police platoon.

226. Therefore, starting from the aforementioned, having given credence to the testimonies by abovementioned witnesses, the Panel concluded beyond any reasonable doubt that the described acts satisfied the essential elements of the criminal offense of Crimes against Humanity referred to in Article 172, Paragraph 1, Sub-paragraph h) as read with Sub-paragraph e) of the CC BiH, or more specifically, at the time of a widespread and systematic attack the SJB Kalinovik policemen, knowing that their actions constituted part of the attack, took part in an unlawful arrest of at least 200 Bosniak civilians from the territory of the Gacko and Nevesinje municipalities.

d) Attack on the village of Jelašca

227. The conclusion that the events described under Sub-count d) of the Indictment and the sub-section d) of the Verdict occurred as described, or more specifically, that the members of the Kalinovik SJB participated in the attack on the Bosniak civilian population of the village of Jelašca, Kalinovik Municipality, where at that time only women, children and a small number of the elderly could be found, and that the Kalinovik SJB policemen surrounded the village and captured the women and children which is when they set the Bosniaks' houses on fire while the members of the Serb army provided artillery support to the attack by opening fire from an anti-aircraft gun, on which occasion they killed Derviša Pervan in the hamlet of Karaula and wounded the girl Mirveta Pervan, and set on fire all the houses in the hamlet with incendiary bullets, and imprisoned all the captured civilians in the *Miladin Radojević* Elementary School, the Panel grounds primarily on the testimony by the witnesses Fezija Hadžić, Mirveta Pervan, Danilo Đorem, Milivoje Feladžić, Zlatka Hadžić, Dika Suljić as well as on Exhibits T-156 and T-200.

228. The Panel gave full credence to the testimony by the witness Danilo Đorem who described, in a very convincing manner, that, as a policeman, together with a group of other policemen, he participated in the arrest of the Muslim civilian population from Jelašca whom they escorted to the *Barutni magacin* camp where they loaded them on two trucks, transported and detained them in the *Miladin Radojević* Elementary School in Kalinovik.

229. This witness confirmed seeing the two Pervans' houses located in the Karaula hamlet burning. These averments were additionally corroborated by the witnesses Dragan Cerovina and Fezija Hadžić as well, stating that on 1 August they saw

houses burning in Jelašca. According to Fejzija's testimony, the houses were set on fire by the rounds fired from an anti-aircraft gun deployed at the location of the Badnjareve houses. Also, the witness Zlatka Hadžić confirmed to have heard the firing from Jelašca and to have seen the houses burning. This was also confirmed by the witness Dika Suljić.

230. Bringing the testimonies by these witnesses into connection, and having in mind Exhibit T-156 (photo documentation of the Jeleč settlement), including a chronological order of the events, the Panel concluded beyond any reasonable doubt that the police from Kalinovik participated in the attack on the village of Jelašca in a way that the police deprived of liberty the Muslim civilians from Jelašca and, in addition, they took part in setting on fire the houses in this village.

231. Further, the Panel gave full credence to the testimony by the witness Mirveta Pervan who described how, at the time of the attack on the village of Jelašca, her grandmother Derviša Pervan was killed whereas the witness herself was only wounded. She described that she had spent the night next to the dead grandmother whereupon on the following day she was found and first taken to the hospital where she was rendered medical assistance and after that, together with her aunt, she was detained in the *Miladin Radojević* Elementary School.

232. Although this witness was 5 or 6 years old at the referenced period of time, the Panel did not have any reason not to trust her testimony, all the more so since she was not the only witness giving testimony regarding these circumstances. The averments by this witness were corroborated by the witness Milivoje Faladžić who stated that on the day following the shooting in Jelašca he headed towards the village with a patrol, on which occasion he found a female child of 5 or 6 years old next to the body of a dead woman. They took the wounded child to be examined by the doctor first, where it was rendered assistance, whereupon they handed the child over to an aunt who was detained in the *Miladin Radojević* Elementary School.

233. In the opinion of the Panel, the different averments pertaining to the identity of the killed person are not of such relevance as to generally give rise to an issue of credibility of the testimony by these witnesses. It is, of course, quite logical that if one were to find a small child next to a female person one would think that she was the child's mother unless there exist obvious reasons to conclude otherwise. In this regard, the Panel gives full credence to the testimonies by both witnesses, whereas in respect of the identity of Derviša Pervan the Panel was satisfied with the testimony by Mirveta Pervan who, although only five years old at the referenced period of time, was closely related to the victim and on this ground it is certain that she may be more reliable to establish the victim's identity.

234. The only thing to be added in the end is that the witness Zlatka Hadžić confirmed that the civilians from Jelašca, who succeeded to find refuge against the attack, left the Kalinovik municipality in the course of the following night.

235. Therefore, starting from the established state of the facts, the Panel concluded that there exist all the elements of the criminal offense of Crimes against Humanity referred to in Article 172, Paragraph 1, Sub-paragraph h) as read with Sub-paragraphs a) and e) of the CC BiH.

e) Setting fire to the village of Sočani

236. In respect of this Sub-count, or specifically, the fact that the leadership of the Kalinovik SJB, together with the members of this Police Station, took part in setting fire to the Bosniak villages in the Kalinovik Municipality, namely, the villages of Sočani, Daganj, Bojići, Hotovlje, Luko, Kutine and others, on which occasion the police members set fire to the village of Sočani, while the army set fire to the other aforementioned villages, the Panel determined the course of events reliably and beyond any doubt, accepting in its entirety the testimony by the witness Dragan Cerovina examined at the main trial, whose testimony, together with the ample documentary evidence reviewed by the Panel, gave a full picture of those events.

237. The witness Dragan Cerovina, to whose testimony the Panel gave credence, described that the SJB Kalinovik policemen, led by the leadership from this Police Station, together with the army, took part in setting fire to the villages of Kutine, Dagan, Hotovlje, Luko, Sočani and Bojići in the manner that the policemen set fire to the village of Sočani while the army set fire to the other aforementioned villages.

238. This witness described in great detail that on one occasion the police of the SJB Kalinovik, led by the leadership from this Police Station, including Boško Govedarica, the Chief of the SJB Kalinovik, set Sočani on fire in the manner that they grouped in five teams whereupon they set the houses on fire.

239. The averments by the witness Cerovina are also corroborated by the photo documentation of the burned village Sočani (Exhibit T-18) and other aforementioned villages (T-19 and T-20).

240. Further, based on the testimony by the witness Dragan Cerovina and other witnesses, the Panel concluded that the aforementioned villages were Muslim villages and that they were set on fire precisely for that reason, without any real or militarily justified needs.

241. The witness Dragan Cerovina did not specify when the setting on fire took place. For this Panel, however, it was not of a particular relevance to determine the exact date of setting the houses on fire. It is of much greater relevance that the setting on fire occurred during July or August 1992, namely within the framework of all other events in Kalinovik occurring at the referenced period of time, including the fact that setting fire to these villages constituted a final step in the operation of the persecution of Muslims in the territory of the Kalinovik municipality.

242. Regarding the previous conclusions on the police participation in setting the houses of fire, the Panel considered a possible legal definition of the established state of facts and concluded that it was most appropriate to apply the direct definition of persecution referred to in Article 172, Paragraph 1, Sub-paragraph h), in accordance with the interpretation pursuant to Article 172, Paragraph 2, Sub-paragraph g) of the CC BiH.

243. According to this definition, persecution includes any form of an intentional and severe deprivation of fundamental rights, contrary to international law, by reason of the identity of a group or collectivity.

244. According to this definition, as confirmed by the case law as well, the deprivation of rights does not exclusively refer to the protection of integrity of an individual, but it may also include the deprivation of one kind or more kinds of rights so that in their entirety they reach the required degree of gravity by means of which the persecution may be conducted.

245. Pursuant to such definition, setting houses on fire, or more specifically, setting villages on fire, which is not justified by military targets or any other legitimate needs, that is, which is essentially unlawful and is conducted by reason of the identity of a certain ethnic group, may be considered as an act of persecution.

246. Setting houses on fire implies, of course, the deprivation of right to a home but it also violates the entitlement to private property. These two rights are placed almost on the top of the pyramid of all rights which an individual is entitled to, and in situations where they are violated in a widespread manner it leads beyond any doubt to a conclusion that it concerns an intentional and severe deprivation of fundamental rights, contrary to international law, by reason of the identity of a certain ethnic group or collectivity, which in this case was the Muslims.

247. Such legal interpretation of actions which constitute persecution may be found in the Verdict of the ICTY Trial Chamber in the case number IT-95-14-A, Prosecutor *vs* Tihomir Blaškić, Paragraphs 227 and 234.

248. Therefore, the presented evidence indicates that these villages were behind the line of separation, that is, beyond the zone of war operations and, starting from all the aforementioned, that is, from the conclusion that the SJB Kalinovik police, including their leadership, knowingly and intentionally participated in setting fire to the villages of Kutine, Daganj, Hotovlje, Luko, Sočani and Bojići, that is, they conducted the deprivation of fundamental rights, contrary to international law, by reason of the identity of a certain religious and ethnical group, the Panel concluded that there exist all the elements of the criminal offense of Crimes against Humanity referred to in Article 172, Paragraph 1, Sub-paragraph h) of the CC BiH.

f) Minesweepers

249. Regarding the events which occurred between May 1992 and late 1992 on the detention premises of the SJB Kalinovik where civilians Tahir Panjeta, Kasim Bojačić and others, including the hodža /*Translator's note: Muslim cleric*/ Jašar Vuk, were held without any legal grounds, while some of the detained civilians were used as drivers to detect mines by having the detainees drive a freight vehicle in front of the military convoys, most often using the road from Kalinovik to Miljevina under the escort of the Kalinovik SJB members, so Huso Tukelija came across the mines on at least three occasions when the vehicles he drove were destroyed but he managed to survive, the Panel grounds its position on the testimony by the witnesses Jašar Vuk, Danilo Đorem, Milivoje Feladžić, Miloš Veletić, Muradif Jašarević and on the documentary evidence Exhibits T-85 and T-86 (Record of examination of the witness Huso Tukelija, No. KT-RZ-80/05 dated 29 October 2007) and on the established state of facts referred to in Paragraph III of the operative part of the Decision by the Court, No. X-KR-07/400 dated 14 January 2009.

250. The witness Muradif Jašarević testified that he was captured on 30 June 1992, then he was placed in the Gornji logor camp /*Translator's note: the Upper camp*/ and eventually he was transferred to the SJB Kalinovik where he remained for 35 days. The witness Jašarević confirmed that while he was detained at the Station, together with him were Jašar Vuk – the *hodža* from Ulog, Tahir Panjeta and some other persons. In regard of Huso Tukelija, the witness Jašarević pointed out that he too was detained in the SJB Kalinovik and that he had a function of a “minesweeper”, although he did not know the exact meaning of the term.

251. Averments by the witness Jašarević are fully congruent with the averments by the witness Jašar Vuk, for which reasons the Panel could not draw any other conclusion but that their averments are true and correct.

252. Jašar Vuk confirmed that he too was detained in the SJB Kalinovik and that allegedly he was supposed to be exchanged for a priest who had also been captured. Regarding the manner in which he was detained, Jašar Vuk described that Ranko Elez, the reserve policeman at the time, transported him to the head of municipality where he was told that he would be exchanged, whereupon he was transferred to the SJB Kalinovik.

253. In the end, the averments by all these witnesses were also corroborated by the testimony of the witness Huso Tukelija given in the course of the investigation. He confirmed that on 14 June 1992, as a member of the BiH Army, he was captured and detained in the Kalinovik Police Station. Given the fact that he worked as a driver before the war and since the people from the PS Kalinovik knew that, he then began working as a “minesweeper”. In this regard, the witness confirmed in his testimony that he had known Neđo Zeljaja very well even before the war and that Neđo Zeljaja would usually see him prior to his departure for an assignment.

254. In this regard, a note is to be taken of the questions by the defense leading to the assertion that Tukelija was detained in the Kalinovik PS but that at the time of his

performing the tasks of a “minesweeper” he practically was under the military authority. To support this the Defense tendered Exhibit O1-11 from which it can be seen that it concerns a document by the military authorities and that, inter alia, it relates to Hamed Čelik and Goran Kukavica.

255. The Panel could not accept this argument by the defense because it cannot be seen in Exhibit O1-11 as to when and to which purpose it was produced.

256. On the other hand there exists evidence by the Prosecution (Exhibits T-148 and T-149) from which it can be seen that the Chief of the SJB Kalinovik issued a permit that Huso Tukelija be taken out from the SJB to work as a minesweeper on the Kalinovik-Miljevina-Foča road.

257. Tukelija confirmed in his testimony that he would drive in front of military convoys which, inter alia, transported soldiers, weapons and ammunition but that at all times there would be a police vehicle at the head of the convoy but behind the vehicle which Tukelija operated.

258. Therefore, it follows from the key findings that a certain number of persons were detained in the SJB Kalinovik and that some of them served as “minesweepers.” Huso Tukelija, one of the “minesweepers,” came across the mine on three occasions at least, which satisfies the elements of the criminal offense of Crimes against Humanity referred to in Article 172, Paragraph 1, Sub-paragraph h) as read with e) and k) of the CC BiH.

259. The Panel is fully aware of the fact that not all non-Serb population, or more specifically, the persons who were detained in the SJB Kalinovik, were under the same legal regime. This Panel, however, also holds that the treatment they had, including the role of minesweepers, was primarily determined by the identity of their religious and ethnic group.

260. Regarding the role of the *minesweepers*, the Panel analyzed all the aforementioned circumstances and concluded that in this specific case most appropriate is the legal definition provided in Article 172, Paragraph 1, Sub-paragraph k) of the CC BiH because it is absolutely clear that the minesweepers, while performing their tasks, were exposed to great psychological traumas and fear from possibly locating a mine. In addition, even in situations where they would locate a mine, the treatment of the *minesweepers* would remain the same, or more specifically, they would continue to perform the same tasks. Huso Tukelija may serve as an example of the psychological traumas caused by such sort of work, as he described that he came across mines on three occasions at least and that on one occasion the truck he drove was completely destroyed. In spite of that, and in as much as he was fortunate to survive, he continued to perform the tasks of a “minesweeper” up until he was exchanged.

g) The Miladin Radojević Elementary School

261. Regarding the conclusions on the key facts pertaining to the unlawful arrest of the Bosniak population by the SJB Kalinovik policemen who, during May 1992, together with the army and civil authorities, participated in setting up a prison in the *Miladin Radojević* Elementary School, which was also guarded by the SJB policemen who held them on inadequate premises without adequate accommodation, deprived of the possibility to satisfy their basic hygienic needs, without adequate medical care, with scarce daily meals, subjected them to everyday physical and mental abuse and humiliations by various soldiers which were allowed by the policemen to freely enter the premises, on which occasion in this prison Suad Hasanbegović was killed while taken out of the prison were Zulfo Kadrić, Murat Redžović, Mujo Pervan, Azemina Pervan, Fatima Pervan, a boy Almir Kadrić, and Edin Bičo, who are all still unaccounted for, while the women detained in this prison were raped and taken to Miljevina, Foča, the *Pavlovac* farm and a weekend cottage in the settlement of Mjehovina, where they were raped, the Panel primarily based such conclusions on the testimony by the witness Jašar Vuk, Mirveta Pervan, Witness W, Fehma Kadić, Enesa Hasanbegović, Miloš Crnjak, Milan Lalović, Witness E1, Džemila Redžović, Dika Suljić, Miloš Veletić and Dragan Cerovina and the documentary evidence Exhibits T-56, T-57, T-157, T-158, T-159, T-160, T-161, T-162, T-163, T-164, T-166 and T-153.

262. Ample evidence was presented pertaining to the circumstances of detention in the *Miladin Radojević* Elementary School. However, the key findings pertain to the character and mode of operation of this detention facility. Based on the testimony by the witnesses examined in relation to Count 3a, it is inevitable to draw a conclusion that the first persons (men from Jeleč) were detained in the *Miladin Radojević* Elementary School in early May 1992. After that, according to the testimony by the witnesses, other persons were detained in the school as well, including women and children. Dragan Cerovina who, as a policeman, was one of the guards at the time, confirmed in his testimony that there were situations where people would be taken away from the school, that the detained women would be raped, and that killings occurred as well. In addition, it follows from his testimony that during the whole period of time while the Bosniaks were detained in the school, both regular and reserve policemen were deployed to guard the detainees, but the policemen themselves behaved differently towards the detainees, or more specifically, towards other individuals who would come to maltreat and take the detainees out of the building. These allegations, apart from the testimony given by a number of witnesses, are also corroborated by the Prosecution Exhibit T-153, from which it ensues that there were Muslims in the school, and that both regular and reserve policemen were tasked to secure them. Also, this piece of evidence (a report) stated that there are Bosniak women, children and the elderly persons of over 60 years in age in the school, and that various soldiers come and maltreat them, despite the objections by the security (policemen) (“they would take out the young and good looking women and young girls, they would kill them, rape the underage girls and take away the gold jewelry and money”).

263. This piece of evidence, or more specifically, the analysis thereof, requires special attention and caution. The Panel, in principle, gave credence to the averments pertaining to certain events but at the same time expressed reservations regarding the parts where the role of the police pertaining to certain events is described. Specifically, it is quite clear that the report was drafted in a specific atmosphere where the persecution of the non-Serb population was practically a normal situation, in which the police participated as well. That the situation was such can clearly be seen from the part of the Report that states as follows: *“Due to the fact that at that time the Station was staffed with Bosniak policemen too, including both regular and reserve staff, the re-structuring of the Police Station resulted in the termination of employment of all Bosniak employees, both regular and reserve staff, and the positions in the Station were filled only by employees of Serb ethnicity.”*

264. An additional argument corroborating the conclusion pertaining to the atmosphere in which the report was drafted can be found in the following quotation: *“There began the robbery of Bosniak property such as cars and other agricultural machines, including the fact that apartments were broken into more frequently from which technical and other valuable items were misappropriated. Despite this, in respect of the security situation in Kalinovik, the following was written: “...Public law and order were still at a satisfactory level, and **there were no serious forms of disturbance of public law and order, nor criminal offenses except for petty thefts related to break-ins and one murder as a result of a quarrel occurring among Serb neighbours...**”*

265. Therefore, due to the aforementioned arguments, the Panel, as already noted, gave credence to Exhibit T-153 (Official Report by the Kalinovik SJB) pertaining to certain events, but at the same time it expressed strong reservations in respect of the interpretation of these events and the role of the police in such events.

266. Such conclusion is especially supported by the Prosecution Exhibit T-166 from which it can be seen that the SJB Kalinovik policemen were aware of the unlawfulness of their actions in relation to the events occurring in the *Miladin Radojević* school and they took initiative that such information be covered up.

267. In respect of the specific events stated in the operative part of the Verdict it should be noted that from the testimony by the witness Miloš Veletić it follows that the Commander of the PS Kalinovik, Neđo Zeljaja, was in the know that at least one individual had been raped in the school *Miladin Radojević*, which is supported by Exhibit T-153 and that there had been beatings. In addition, in respect of the enforced disappearance of persons it is important to note that this witness confirmed that the sisters Fatima and Azemina Pervan and the boy Almir Kadrić had been taken away.

268. Further, according to the Panel, regarding the events in the *Miladin Radojević* school, the testimony by the witness Džemila Redžović was especially useful and impressive and the Panel gave full credence to this testimony because of its consistency and agreement with all other pieces of evidence pertaining to this subsection of the Verdict. Džemila confirmed that certain Pero Elez, Zeko Zelović and Žaga had taken away three young girls who never returned and that she herself was

subjected to regular torture. She also confirmed that she had sustained at least seven knife stabs, that her chin and fingers were cut badly and that hot water was poured over her. The Panel defined all these circumstances as torture in light of the fact that it is quite clear that it concerned the intentional infliction of great bodily and mental suffering that was not a result of the enforcement of lawful sanctions.

269. Also, the Panel gave credence to the part of the testimony by this witness pertaining to Edin Bičo. The witness described that she saw Edin lying in the bathtub and that water was poured while he was being beaten up and the beating was the reason why the water around him was red with blood. Bearing in mind all the aforementioned circumstances, the Panel defined this event as a torture pursuant to Article 172, Paragraph 1, Sub-paragraph f) of the CC BiH.

270. Further, in respect of taking the women away for raping, the Panel took into account the testimony by the witness Dika Suljić who confirmed that there were horrible acts committed in the school and that some unknown persons would come to abuse and rape the women, but that she herself was taken to the Pavlovac farm. According to her testimony, during these events the policemen who were deployed to guard the school did not offer any resistance.

271. The averments by the witness Dika Suljić are fully congruent with the testimony by the Witness W who confirmed the circumstances pertaining to the raping that took place in the school, the beating up of Suad Hasanbegović and the taking away of the women to Foča, Mjehovina and Miljevina. This witness described the abuses which occurred in the school, including the rape of a twelve-year old girl, on which occasion the guards also did not react.

272. The Panel also gave its credence to the testimony by the witness Enesa Hasanbegović due to the fact that this testimony is consistent in its entirety and that in all the essential elements it is congruent with all other presented evidence. This witness confirmed as well that certain women would be taken away in the direction of Foča and that on those occasions they would be raped and some of them even beaten up.

273. Further, this witness confirmed also that on several occasions her husband Suad Hasanbegović would be taken away and brought back all beaten up, and on one occasion he was taken out and killed. She described how she had found out about the murder of her husband, specifically that together with a few other persons he was killed in the classroom which was on the first floor of the *Miladin Radojević* Elementary School.

274. According to this Panel, this proves the existence of the elements of the criminal offense of Crimes against Humanity referred to in Article 172, paragraph 1, Sub-Paragraph a) and k) of the CC BiH.

275. Regarding the taking away of the persons who never returned, the Panel started from the averments by the witnesses Milan Lalović, Džemila Redžović, Jašar

Vuk, Witness W, Fehma Kadić, Miloš Veletić and Witness E1, who confirmed that Edin Bičo, Almir Kadrić, Azemina Pervan, Fatima Pervan, Murat Redžović and Mujo Pervan, while detained in the elementary school *Miladin*, and while the police guarded them, were taken away never to return.

276. Therefore, based on all the aforementioned, it clearly follows that the civilians who were placed in the *Miladin Radojević* Elementary School were detained without any legal grounds and that they were not accommodated in the school in order to be provided security. Furthermore, in the school, as confirmed by almost all the witnesses, the detainees were deprived of adequate accommodation, hygiene conditions were bad, medical assistance was provided only to those persons that needed such assistance on condition that they leave their children behind in the school in order to prevent their possible flight, while the food that they received was insufficient compared to the needs of the detainees.

277. In addition, based on the aforementioned conclusions by the Panel, it clearly follows that the only criterion for the arrests was that it concerned the non-Serb population and that the detention itself was dictated by war operations in the territory of Kalinovik in a manner that the intensified war operations coincided with intensified detentions and an increasingly bad treatment of detainees.

278. Therefore, having in mind all the foregoing, or more specifically, the conclusion that the SJB Kalinovik, knowingly and deliberately, took part in setting up and running the detention facility in the *Miladin Radojević* Elementary School where the Bosniaks were detained and where the detainees were routinely killed, tortured, raped and subjected to inhumane acts committed intentionally to cause great suffering or serious injury to body or to physical or mental health and from where a certain number of persons were taken away whereupon every trace of them has been lost, the Panel concluded that those circumstances satisfied the elements of the criminal offense of Crimes against Humanity referred to in Article 172, Paragraph 1, Sub-paragraph h) as read with Sub-paragraphs a),e),f),g), i) and k) of the CC BiH.

4. Nevesinje (Count I-4 of the Indictment)

a) The Murder of Redžo Trebović

279. With regard to the events that occurred in front of the Trebović's house on which occasion the accused Krsto Savić led a group of the SJB Nevesinje policemen, where everyone was called to get out of the house, which they did, and then Krsto Savić took Redžo in the direction of the garage and fired from unidentified weapons at Redžo's lower limbs, as a consequence of which Redžo fell on the ground, and then, for a rather long period of time the Accused did not allow the others to approach and render assistance to Redžo; thereafter he allowed Redžo's brother Fadil and Redžo's wife Bahrija to drive Redžo to the Health Center in Nevesinje where they pronounced Redžo dead; Redžo Trebović's body has never been found and, when leaving the Trebovićs' courtyard, the police members set Redžo's house on fire and afterwards they deprived Bajro and Fadila of liberty and detained them in the

SJB Nevesinje. This clearly ensues from the testimony by a number of witnesses, primarily including Fadil Trebović and Bahrija Trebović to whose testimonies the Panel gave full credence.

280. Both these witnesses described that on 16 June 1992 a group of PS Nevesinje policemen came in front of their houses and called them to come out of the houses. On that occasion the accused Krsto Savić, carrying a sort of short rifle, went after Redžo Trebović towards the garage whereupon he fired at Redžo's lower limbs from the weapons he carried. In principle, all the evidence presented by both the Prosecution and the Defense is concurrent that the accused Krsto Savić fired at Redžo. However, there existed a disagreement pertaining to the circumstances which had led to the incident.

281. The Defense alleged that the night before the event some shooting was heard from the direction of Redžo Trebović's house and so the following day PS Nevesinje policemen arrived there in order to find the weapons which were fired the night before. Having in mind such circumstances, as alleged by the Defense, the accused Krsto Savić reacted first by shooting at Redžo, holding that Redžo was armed at the moment of turning towards him and fearing that Redžo would shoot him.

282. The Defense for Krsto Savić, intending to additionally corroborate this thesis, examined Mile Matijević as an expert witness whose findings pertained to the interpretation of legal provisions related to the use of weapons.

283. The second argument presented by the Defense for the first accused concerns the duration of time in which the accused Krsto Savić did not allow assistance to be rendered to the injured Redžo Trebović whereupon he allowed that he be transported to the Emergency Medical center and that assistance be rendered there.

284. Such assertions by the Defense particularly ensue from the evaluation presented by the expert witness Mile Matijević who founded his finding on the interpretation of legal provisions pertaining to the use of weapons.

285. This Panel, evaluating the opposing arguments and evidence by both the Prosecutor and the Defense, viewing them in accordance with the provision referred to in Article 281 of the CPC BiH, concluded beyond a reasonable doubt that on 16 June 1992 the accused Krsto Savić deprived Redžo Trebović of his life and afterwards he unlawfully detained Bajro Mahinić and Fadil Trebović.

286. Specifically, there does not exist a single piece of evidence suggesting that Redžo Trebović, prior to being fired at by the accused Savić, took any action which would justify the use of weapons. This conclusion is based on the testimony by the witness Fadil Trebović and Bahrija Trebović but also on all other indirect evidence which contravenes the assertions by the Defense. Namely, on the referenced occasion, the accused Krsto Savić led a fairly large group of policemen, which was not the case when the searches were conducted routinely with the aim of finding

weapons. Also, even in the case that Krsto Savić was convinced that Redžo Trebović was armed at the critical moment, still lacking is an answer as to why he opposed that Redžo, who was shot, be rendered assistance. Specifically, the moment after he fired at Redžo, if not beforehand, the accused Krsto Savić became aware that Redžo was not armed.

287. Regarding the period of time after which Redžo was rendered assistance, it is quite clear that there exist significant discrepancies in the testimonies by Bahrija Trebović and Fadil Trebović. As viewed by the Panel, such differences in testimonies are logical since this was a rather traumatic event and the circumstance itself as to the length of time elapsed after Krsto Savić had fired at Redžo is irrelevant. The only important matter for the Panel was that the accused Savić fired at Redžo and did not allow that assistance be provided to him, from which it can clearly be concluded that Krsto Savić, at the moment of committing this criminal offense, acted intentionally to deprive Redžo Trebović of his life.

288. Further, having analysed this circumstance, the Panel concluded that on the part of the Accused Krsto Savić, in respect of his being part of the joint criminal enterprise the objective of which was to conduct persecution of the non-Serb population from the territory of the municipalities of Nevesinje, Kalinovik, Gacko and Bileća, there existed an intent that, inter alia, the persecution be carried out by way of killing as well.

289. Having evaluated further theses by the defense, the Panel notes that no answer was provided to the question as to why, after the incident in front of the Redžo Trebović's house, Fadil Trebović and Bajro Mahinić were deprived of liberty and detained in the PS Nevesinje under the order by Krsto Savić.

290. Further, if everything had taken place in the manner as interpreted by the Defense, there would exist evidence that an adequate investigation was conducted pertaining to the referenced incident.

291. In addition to all the foregoing, it should be noted that, on the grounds of the evidence presented, the Panel concluded that on 16 June 1992, after Krsto Savić fired at Redžo Trebović, and after Fadil Trebović and Bajro Mahinić were detained in the PS Nevesinje, the SJB Nevesinje policemen set fire to Redžo's house. It would be greatly illogical to accept the Defense theses that Krsto Savić was acting in a putative necessary defense since in such situation the PS Nevesinje policemen would not have set Redžo Trebović's house on fire nor would have Krsto Savić ordered the arrest of Bajro Mahinić and Fadil Trebović.

292. Therefore, with regard to the state of facts established in such a manner, the Panel, beyond any reasonable doubt, concluded that the described acts on the part of the accused Krsto Savić satisfied the elements of the criminal offense of Crimes against Humanity referred to Article 172, Paragraph 1, sub-paragraph h) as read with sub-paragraphs a) and e) of the CC BiH.

b) Detention in the SJB Nevesinje

293. In respect of the fact that in June 1992 Krsto Savić was in charge of the attack by the Nevesinje SJB police force against the Bosniak civilian population in the Nevesinje Municipality, on which occasion a large number of civilians were unlawfully arrested while the civilians brought in by the police, military and paramilitary formations were separated in front of the SJB building; the men were detained on the SJB premises and women were separated and detained on the premises of the tools factory called *Alatnica*; the men detained in the SJB were subjected to physical abuse by being hit with different objects all over their bodies, and on that occasion Mujo Ćupina, Meho Ćatić and Adem Mrndžić were excessively bleeding in the region of their heads; Nafija Ramović tried to escape and in doing so he was killed in the vicinity of the Nevesinje SJB, while on the days that followed the other detained men, around 20 (twenty) of them, were transported under the escort of the Nevesinje SJB policemen to the Bileća camp and detained there; a large number of witnesses were examined including Fadil Trebović, Bahrija Trebović, Fahira Ramović, Zumreta Humo, Mirsad Bajgorić, Esad Humić, Salko Trnovac, Mirsad Bajgorić aka *Didan*, Witness A, Witness B, Šaćir Kljako, Witness G, Emir Kljako, Maida Ćupina, Miralem Trebović, Witness H, Željko Pašajlić, Željko Kovačević, Dušan Soldo and Milan Đerić whose testimonies were generally given credence by the Panel, but there were significant reservations on the part of the Panel with regard to the witnesses who at the referenced period of time were policemen and who have a strong interest to diminish the degree of criminal responsibility of their fellow colleagues including the fact that they gave incomplete testimony regarding the role of the police force in relation to the referenced events.

294. The witnesses Fahira Ramović and Zumreta Humo, who were very close to Nafija Ramović (Zumreta is his sister while Fahira is his wife), described that on 16 June 1992 there came a group of policemen, including Mile Mučibabić, and they searched their house, whereupon, without any written decision or any other decision by the relevant authority, they detained Nafija Ramović in the PS Nevesinje.

295. The witness Mirsad Bajgorić also described that on 16 June 1992 there came a group of persons, including Mile Mučibabić, who took him to the PS Nevesinje where he was held for a certain period of time and was beaten up, and then he was released from the Station with the explanation that he would be needed at a later stage.

296. Witnesses Esad Humić and Salko Trnovac also described that on 16 June 1992 they were deprived of liberty and detained in the Nevesinje PS. Witness Mirsad Bajgorić aka *Didan* also described that he had been brought in the Nevesinje PS where he was beaten up by the person whose nickname was *Jogi*. Having been beaten up, he was detained in the solitary cell which was within the PS and then, during the night, two other persons came together with the accused Milko Mučibabić. One of them, whose nickname was *Tatica* /Translator's note: *Daddy*/, beat him up.

297. Witness H also confirmed that on 16 June 1992 an attack was launched on the territory of Bakračuše where about fifteen of them were captured and transported to the PS Nevesinje where Krsto Savić issued an order that they be taken to the *Alatnica* on which occasion the men were taken off the truck.

298. *Didan* confirmed the averments of Fadil Trebović and Bahrija Trebivić regarding the presence of Mujo Ćupina, Meho Ćatić and Adem Mrndžić in the PS Nevesinje where they heard their cries and were in a situation to see that they were in a very bad condition. In this regard it should be noted that the witness Fadil Trebović confirmed that on that occasion Mujo Ćupina was bleeding in the region of his head. Having in mind these circumstances, or more specifically, the fact that there were visible signs of severe abuse on these three persons and that, after they had been placed on the pinzgauer, every trace of them has been lost, the Panel found that all this satisfied the elements of torture and enforced disappearance in relation to Mujo Ćupina, Meho Ćatić and Adem Mrndžić.

299. In this regard it should be clarified that primarily based on the testimonies by the three above listed witnesses it clearly and indisputably ensues that at the referenced period of time Krsto Savić was able to see for himself the condition of Mujo Ćupina, Meho Ćatić and Adem Mrndžić and, instead of securing the provision of medical assistance to them, he said that they should be taken out of the building while still alive, from which it clearly follows that there existed an intent on the part of Krsto Savić that the persecution of the non-Serb population in the municipalities of Nevesinje, Kalinovik, Bileća and Gacko, inter alia, be conducted by torture and enforced disappearance.

300. Further, with regard to the criminal offense of murder, starting from the testimonies by almost all the witnesses examined in relation to the events in the Nevesinje PS at the referenced period of time, which are concurrent and corroborated in all essential elements, including even the policemen Dušan Soldo, Željko Kovačević and Željko Pašajlić, the Panel concluded that Nafija Ramović was murdered while attempting to flee the PS Nevesinje, where he was unlawfully detained.

301. Therefore, starting from the state of facts established in such a manner, the Panel, beyond any reasonable doubt, concluded that the described acts satisfied the elements of the criminal offense of Crimes against Humanity referred to in Article 172, Paragraph 1, sub-paragraph h) as read with sub-paragraphs a),e),f),i) and k) of the CC BiH.

c) Attack on Čanje

302. When establishing key facts in connection with the events occurring in June 1992 – when officers of the Nevesinje SJB participated in an attack on the village of Čanje, Nevesinje Municipality, that resulted in the deaths of nine (9) Bosniak

civilians: Ibro Kevelj, Munta Šarančić, Bega Kljako, Suad Šarančić, Bajro Šarančić, Fadil Šarančić, Nefa Šarančić, Mujo Mutilović and Avdija Mutilović. The survivors were all captured and imprisoned in Nevesinje: the men were held in a movie theater where they were physically mistreated and then transported to the Bileća camp, while the women and children were imprisoned in the tools factory called "Alatnica". Nevesinje SJB police officer Željko Pašajlić used a construction machine to bury the bodies of the nine inhabitants of Čanje in a single grave – the Panel proceeded from the testimony of witnesses Esad Šarančić, Mušan Šarančić, Milovan Milović, Šućro Šarančić, Senad Šarančić, Witness "I", Željko Pašajlić, Dušan Soldo and Milan Đerić, and documentary evidence T-37 and T-34. The Panel generally gave credence to these pieces of evidence¹⁰.

303. The testimonies of all the referenced witnesses relating to the attack on the village of Čanje on 16 June 1992 are almost fully consistent. According to witness Esad Šarančić's testimony, he left Čanje on 16 June 1992 together with a group of about 30 persons on a tractor and someone stopped them at a checkpoint. As regards the men who stopped them, it should be noted that the witness believed that they were *Šešeljevci* /Šešelj's men/ and they escorted them to the movie theater (JNA Social Center) in Nevesinje. There they separated women and children and took them to "Alatnica". Witness Esad Šarančić was imprisoned in the Nevesinje PS wherefrom he was transferred to Bileća on the following day.

304. The remaining inhabitants of Čanje, including Mušan Šarančić, Šućro Šarančić, Senad Šarančić and witness "I", did not leave Čanje with the aforementioned group but remained in the village until around the commencement of the attack on the village in the early evening of 16 June 1992. The testimonies of the referenced witnesses fully correspond and supplement one another, giving a clear picture of the situation before, during and immediately after the attack. Witnesses Šućro and Senad Šarančić have both confirmed that men wearing blue police uniforms took part in the attack on their village.

305. The accuracy of this allegation is confirmed by a high level of coordination (ensuing from the testimony of all the referenced witnesses) between the military (which took part in the attack as well), the police and paramilitary formations (that brought the first group of inhabitants of Čanje to the front of the military HQ; the women and children were taken to "Alatnica" while the men were imprisoned in the Nevesinje SJB). Additionally, the inhabitants of Čanje who had managed to hide and flee from the assailants surrendered on the following day whereupon the police escorted them (in the company of their neighbors Milovan and Anđelko Milović who tried to protect them) to the front of the JNA Social Center (where the military HQ was quartered) where the captured inhabitants of Čanje were brought into the Center and beaten up, while the women and children were separated to go to "Alatnica".

¹⁰ It was previously noted on several occasions that the allegations of the witnesses who were police officers at the relevant time were accepted by the Panel with a qualification, for the reason that they were strongly motivated to give a distorted picture of certain facts with a view to avoiding their and the responsibility of their colleagues.

306. During the separation, which arises out of the testimony of all the witnesses who were brought in on the following day (17 June 1992) to the front of the JNA Social Center, the Accused Krsto Savić decided who would go to "Alatnica" and Bileća respectively. Savić, at the request of Milovan Milović, decided that Muamer Šarančić (who was sick at the time) be separated to go "Alatnica" instead of being taken to Bileća.

307. The fact that the inhabitants of Čanje were beaten up ensues unequivocally from the testimony of almost all the witnesses-Čanje inhabitants who were examined. Additionally, witness Milan Đerić has confirmed that he was in the Command (JNA Social Center) when a group came from Čanje and sought his help.

308. Furthermore, in connection with the events in Čanje in the evening of 16 June 1992, it should be noted that the inhabitants who did not manage to hide or flee were killed. This stems from the testimony of witnesses Mušan Šarančić, Milovan Milović, Senad Šarančić and Željko Pašajlić as well as documentary evidence T-34 and T-37. Specifically, it stems from the cited evidence that Ibro Kevelj, Munta Šarančić, Bego Kljako, Suad Šarančić, Bajro Šarančić, Fadil Šarančić, Nefa Šarančić, Mujo Mutilović and Avdija Mutilović were killed during the attack on Čanje. Police officer Željko Pašajlić buried their bodies in the harem in Čanje by using an excavator.

309. Finally, it should be noted that the Panel did not receive any evidence suggesting a conclusion that a military unit or any other military facility to be considered as a legitimate target of the attack was quartered in Čanje. As a result, the only possible conclusion regarding this attack (taking into consideration the treatment of the prisoners) is that it was an unlawful attack against the civilian population.

310. Consequently, in light of the decisive facts established in this manner, the Panel has concluded that the elements of the criminal offense of Crimes against Humanity under Article 172(1)(h) in relation to subparagraphs (a), (e) and (k) of the CC BiH have been satisfied.

d) Ismet Duraković, Mirzo Čustović and Rašid Toporan

311. It is on the basis of the testimony of witnesses Behidža Čustović, Kemo Bulić, "D", Emir Kljako, Witness "C" and Željko Kovačević as well as documentary evidence T-41 that the Panel unequivocally established the facts related to the events in June 1992 pertaining to the unlawful imprisonment of civilians Ismet Duraković, Mirzo Čustović and Rašid Toporan in the Nevesinje SJB who were brought there from their homes. SJB Nevesinje members handed over Ismet Duraković and Rašid Toporan to unknown members of paramilitary formations, knowing that they were thus exposing them to mortal danger, violence and mental suffering. The members of the paramilitary formations took Ismet Duraković to the Boračko lake where he died as a result of beating; his body was recovered from and identified at the *Borisavac* pit

in the Konjic Municipality. Rašid Toporan has not been found to date and remains unaccounted for. Mirzo Čustović was last seen in the Nevesinje SJB and he remains unaccounted for.

312. It ensues from the testimony of witnesses Behidža Čustović, witness "D" and Emir Kljako that Mirzo Čustović, Rašid Toporan and Ismet Duraković were unlawfully deprived of liberty and imprisoned in the Nevesinje SJB. These witnesses have confirmed that Ismet Duraković and Mirzo Čustović were deprived of liberty by men wearing uniforms. Witness Emir Kljako has confirmed that Rašid Toporan came to the Nevesinje SJB voluntarily in order to receive his salary. Instead, all three of them were detained in the SJB and, unlike other men who were taken to Bileća, Mirzo Čustović, Ismet Duraković and Rašid Toporan remained in the Nevesinje SJB.

313. It ensues from the testimony of witness "C" (who was at the Boračko lake for a while) that Rašid Toporan and Ismet Duraković were there as well. Witness "D" corroborated all the relevant aspects of these allegations, pointing out that he learned from witness "C", Jasminka and Fatima Šipoković that Ismet Duraković was seen at the Boračko lake and that one man nicknamed "Zmija" told Jasminka and Fatima that Ismet died as a result of beating.

314. Unlike Ismet Duraković and Rašid Toporan who were imprisoned in the Nevesinje SJB (ensuing from the allegations of the majority of witnesses who were examined with respect to this count of the Indictment) for a certain period of time (in the period 19-24 June 1992) and then handed over to paramilitary formations (a man nicknamed "Zmija" was a member of a paramilitary formation from Serbia, which ensues from the testimony of a number of witnesses from Nevesinje) that took them to the Boračko lake. Mirzo Čustović was last seen in the Nevesinje SJB and remains unaccounted for.

315. By giving credence to the testimony of the cited witnesses and bearing in mind Exhibits T-38, T-39 and T-41 that fully corroborate the allegations of the cited witnesses, the Panel has established the aforementioned decisive facts beyond reasonable doubt and concluded that the elements of the criminal offense of Crimes against Humanity under Article 172(1)(h) in relation to subparagraphs (e) and (i) of the CC BiH have been satisfied.

e) Attack on Šarica

316. Witnesses Kemo Bulić and "G" have testified that about 30 inhabitants (men, women and children) of the hamlet of Šarica, Zijemlje MZ /Local Community/, who had been captured by members of paramilitary formations, were imprisoned on the premises of the Nevesinje SJB toward the end of June 1992, held on unsuitable basement premises for two days and then transported to and handed over in the Bileća camp. As their testimonies were consistent and logical, the Panel decided to give credence to them in their entirety. Both witnesses have confirmed that men wearing military uniforms attacked their village on or about 24 June 1992. Witness

Kemo Bulić has given details concerning his deprivation of liberty and witness "G" confirmed them by stating that the local Muslim population was rounded up and taken to two Serb houses in Šarica where the people living in those houses were called to help determine the identity of the prisoners (because the soldiers had a list) and provide other necessary information.

317. After some of the prisoners were subjected to ill-treatment and beating, most of them were taken to the Nevesinje SJB and imprisoned on the basement premises where they were guarded by SJB members. Both witnesses have confirmed that the group comprised about 30 civilians and that there were no legitimate military targets in their village.

318. Both witnesses have further confirmed that men, women with children and the elderly were imprisoned in the SJB, but they were kept separately. After approximately two days, all the inhabitants of Zijemlje (Šarica) were loaded onto a truck and transported to Bileća.

319. In light of the established facts, proceeding from the conclusion that there were no legitimate military targets in Šarica (which did not prevent the military from attacking the village), that the soldiers unlawfully brought all the Muslim residents to the front of the Nevesinje SJB where they were imprisoned and then taken to Bileća two days later, the Panel has concluded that the elements of the criminal offense of Crimes against Humanity under Article 172(1)(h) in relation to subparagraph (e) of the CC BiH have been satisfied.

f) Emir Kljako-bayonet

320. The Panel based its factual conclusions concerning an event that occurred at the Nevesinje SJB building in mid-June 1992 (the Accused Krsto Savić was interrogating an imprisoned civilian Emir Kljako, bayoneting him and making threats) solely on the convincing testimony of witness Emir Kljako. Moreover, this witness did not display any tendentiousness and his testimony was consistent in its entirety. For those reasons, the Panel gave full credence to his testimony.

321. Emir Kljako has confirmed that during his imprisonment on the premises of the Nevesinje SJB he was brought to an office where the Accused Krsto Savić interrogated him.

322. Emir Kljako's account of the manner of interrogation and the atmosphere in which the interrogation was being carried out led the Panel to conclude that the elements of the criminal offense of Crimes against Humanity under Article 172(1)(h) in relation to subparagraph (k) of the CC BiH have been satisfied, that is, Krsto Savić carried out the interrogation with an intention to inflict great suffering or serious injury to body or to physical or mental health of Emir Kljako.

323. Admittedly, the Panel did not have a clear picture of the physical suffering sustained by the aggrieved party Emir Kljako. However, the Panel's conclusion regarding the legal qualification of this count/section of the Indictment/Verdict is based on the witness's account of his, first of all, mental condition. In response to the Prosecutor's question regarding the intensity of the injuries caused by the Accused Krsto Savić during the interrogation, Emir Kljako stated as follows: "... I think it did not hurt me at the time, he could try to rip my arm, it may have been intense, but I felt no pain at the time. I simply did not feel any pain; I probably felt as good as dead, for me it was all over".

324. Although the feeling of fear and the experienced psychological trauma are of subjective nature, it is quite obvious that the Accused Krsto Savić was aware of Emir Kljako's condition; what is more, he abused the aggrieved party's mental state during the interrogation.

325. This factual conclusion clearly stems from the witness's account of the words of the Accused Krsto Savić who threatened him by saying: "... he said if I did not bring it, I will send you home to bring back weapons, I will skin you alive in public at the Blagoje Parovića Square".

326. Consequently, based on the foregoing, that is, the factual conclusion that the Accused Krsto Savić, by using a bayonet and making serious threats, intended to inflict serious injuries (first of all, mental injuries and traumas) on Emir Kljako during the latter's interrogation, the Panel has concluded that the elements of the criminal offense of Crimes against Humanity under Article 172(1)(h) in relation to subparagraph (k) of the CC BiH have been satisfied.

g) Imprisonment of Osman Abaz, Jozo Jarak and witness "F" in the Nevesinje SJB

327. It is on the testimony of witnesses Irfan Čatić, Kemo Bulić and "F" as well as documentary evidence T-38, T-39, T-42 and T-43 that the Panel based the key determinations in connection with the event that occurred in late June 1992, which is when police officers of the Nevesinje SJB imprisoned the civilians Osman Abaz, Jozo Jarak and "F" on the basement premises of the Nevesinje SJB and, after several days of imprisonment, handed them over to unknown members of paramilitary formations, knowing that they were exposing them to mortal danger, violence and mental traumas. Those civilians were taken to the Boračko lake, Konjic Municipality, where they were killed. The bodies of Osman Abaz and Jozo Jarak were exhumed from and identified at the *Borisovac* pit whereas "F" was held in sexual slavery with a changed identity and she managed to survive the war.

328. All these witnesses have confirmed the presence of Osman Abaz and Jozo Jarak on the premises of the Nevesinje SJB. Admittedly, witnesses Irfan Čatić and "F" did not state that Jozo Jarak was imprisoned in the Nevesinje SJB but **one** Marko who was later on taken to the Boračko lake together with witness "F" and Osman Abaz.

329. Bearing in mind this circumstance, as well as the fact that it is evident that witness Kemo Bulić, when compared to Irfan Ćatić and witness “F”, knew Jozo Jarak much better and that the body of Jozo Jarak was found together with the body of Osman Abaz, the Panel has concluded that, despite the claims by witness “F” and the young boy Irfan Ćatić who was close to her, the person referred to as Marko by “F” and Irfan was in fact Jozo Jarak.

330. Moreover, the three referenced witnesses gave testimony about all other relevant facts and their testimonies are consistent and corroborative to the largest extent possible. Witness Kemo Bulić described that Jozo Jarak and Rašid Toporan remained in the Nevesinje SJB after he left for Bileća. Witness “F” corroborated these allegations, clarifying that she found Jozo Jarak and Marko during her imprisonment in the Nevesinje SJB¹¹.

331. In addition, “F” has confirmed seeing Krsto Savić in the Nevesinje SJB. Irfan Ćatić confirmed that as well, noting that he was present when the Accused Savić slapped his brother Đemo in the face.

332. Witness “F” has further confirmed that at the moment when she was brought to the Nevesinje SJB and interrogated, the Accused Krsto Savić entered the office. He put a question to witness “F” and said his name was Krsto Savić, adding: “It would be sin to sent this to be exchanged, we will not send this to be exchanged, this will be ours, we will rename her, we will name her Mileva and this will be ours”.

333. Everything that Krsto Savić announced on that occasion when he implied that she would have some kind of a subordinate status (“this will be ours”) came true several days thereafter when “F”, together with Jozo Jarak and Osman Abaz, was transported to the HQ of Red Berets at the Boračko lake in a refrigerated trailer truck. There she remained in sexual slavery for seven and a half months with changed identity.

334. On the other hand, bearing in mind that able-bodied men were routinely transported to Bileća, while Jozo Jarak and Osman Abaz were taken away by members of paramilitary formations, the Panel has assessed that it was evident that they would at minimum be removed from the protection of law. In that way, elements of the criminal offense of Crimes against Humanity under Article 172(1)(h) in relation to subparagraph (i) of the CC BiH have been satisfied.

335. In light of these established facts and bearing in mind all other circumstances and events that occurred in the area of Nevesinje Municipality at the relevant time, the Panel has concluded that the Accused Krsto Savić, at the time when he uttered the cited words, claimed that “F” would be in sexual slavery solely on account of her religious, national and ethnic affiliation; for that reason, it is clear that there was intent on the part of the Accused Krsto Savić to carry out persecution of the non-Serb

¹¹ The explanation of the Panel’s conclusion that it was not a certain Marko but Jozo Jarak has already been provided.

population from the municipalities of Nevesinje, Gacko, Bileća and Kalinovik also by means of rape.

336. Consequently, based on the established key facts mentioned above, the Panel has concluded that elements of the criminal offense of Crimes against Humanity under Article 172(1)(h) in relation to subparagraphs (e), (g) and (i) of the CC BiH have been satisfied.

h) Imprisonment of women and children in the Nevesinje SJB

337. In late June and early July 1992, three boys with the last name of Ćatić (aged eight, ten and twelve respectively), three older women, Nura Mičijević and Izeta Hajdarević from Rabina and her four children (aged between six months and five years) were all imprisoned on the detention premises of the Nevesinje SJB for a number of days. Nura Mičijević and Izeta Hajdarević were handed over to unknown members of paramilitary formations who took them to the Boračko lake, Konjic Municipality, wherefrom the two of them managed to return to Nevesinje with the help of a soldier. The remaining civilians, having spent a number of days in imprisonment, were transported to the separation line in Stolac where they managed to cross the separation line and arrive in Stolac risking exposure to mortal danger. The Panel based the finding of these facts on the testimony of witnesses "B", Irfan Ćatić, Nura Mičijević, "F", Željko Kovačević and Dušan Soldo and generally gave credence to these pieces of evidence in their entirety¹².

338. In the Panel's assessment, witnesses "F" and Nura Mičijević were key witnesses in connection with this section of the Verdict. These witnesses stated that there were two separate groups that were imprisoned and joined together in the Nevesinje SJB. Witness "F" stated that she and the three Ćatić children were imprisoned in the SJB and that those three children remained in the station after she was taken to the Boračko lake.

339. According to Nura Mičijević's account, the second group that comprised witness Nura Mičijević and her two children, three old women and Izeta Hajdarević with her two children came after witness "F" and the three Ćatić children.

340. Irfan Ćatić, a young boy at the time, has confirmed these allegations with one inconsistency: two and not three old women were brought in Nura Mičijević's group. In the Panel's view, this departure in the testimony does not substantially question the credibility of the testimony of witness Irfan Ćatić because he was but a young boy at the time.

341. Furthermore, as noted above, the testimonies of both witnesses ("F" and Nura Mičijević) correspond and supplement one another in all key segments, which was of exceptional importance when assessing the credibility of their testimony. Both of

¹² The explanation of the reasons why the Panel accepted the testimony of witnesses who were police officers at the relevant time with a qualification has already been provided.

them stated that they were brought to the SJB with their children and then separated: "F" was taken to the Boračko lake several days thereafter whereas Nura Mičijević and Izeta Hajdarević were taken to Borike one hour later. On the following day, after the children and the old women were transferred to the opposing side, Nura Mičijević and Izeta Hajdarević were returned from Borike to the Nevesinje SJB whereupon they, too, crossed the separation line in the area of Stolac.

342. The testimony of police officer Dušan Soldo corroborates the testimony of all the referenced witnesses to a considerable extent. He pointed out that there were two groups of children in the Nevesinje SJB: one group comprising three children with the last name of Čatić while another group was found during the sweeping of the terrain in the village of Rabina (Nura Mičijević was living in that village in 1992).

343. Finally, the fact that the then police officer Đuro Ivković helped the children imprisoned in the Nevesinje SJB, on its own, is not of particular importance. However, the Panel took this fact into consideration when assessing the credibility of testimonies given by other witnesses with respect to this Count of the Indictment.

344. Consequently, based on the key facts established in this manner, the Panel has found that elements of the criminal offense of Crimes against Humanity under Article 172(1)(h) in relation to subparagraph (e) of the CC BiH have been satisfied.

i) Torture of Esad Čopelj

345. The Panel based its factual findings about the physical ill-treatment of the civilian Esad Čopelj (members of the military and police ill-treated Esad Čopelj in front of the Nevesinje SJB and cut off his ear; thereupon, they handed him over to unknown members of paramilitary formations who brought him to the Boračko lake and killed him there) on the testimony of witness "C" and documentary evidence T-38, T-39 and T-40 and gave credence to them in their entirety.

346. Witness "C" stated that she, together with a group comprising women and children, was imprisoned in the town's boiler-house in Nevesinje and they were held there for four days without food or water with no one coming to visit them during that time period.

347. According to the account of witness "C", after those four days, soldiers came during the night (around 11 o'clock), took out of the building witness "C", Mirsada Mahinić, Fadil Mahinić, Jasminka Šipković and Fatima Šipković and took them to the Boračko lake.

348. In that regard, the testimony of witness "C" was very convincing and logical because in response to the Prosecutor's question about the names of persons who were transported to the Boračko lake together with her, she replied that she was alone in the vehicle while the other women were transported by other vehicles. These allegations are entirely consistent with the portion of the testimony of witness "C" in

which she stated that at the moment when she came to the Boračko lake (stopping first in front of the Nevesinje SJB), she alone was locked up in a lumber room. After that, she was taken out and raped and then returned to a room where, among others, Mirsada Mahinić and Fadila Mahinić were held (the other two women who were taken from the boiler-house to the Boračko lake).

349. The key portion of the testimony of witness “C” pertaining to this Count of the Indictment involves a scene that she witnessed in front of the Nevesinje SJB at the moment when the refrigerated trailer truck (which the witness was in) stopped in front of the Nevesinje SJB and she saw members of the police and military beating up Esad Čopelj. When Esad turned around, she saw blood on his ears.

350. In the Panel’s view, the injuries sustained by Esad Čopelj at that time, when linked to the fact that police officers and soldiers continued beating him up in front of the Nevesinje SJB, have the character of torture. In other words, it is quite clear that it was a matter of infliction of severe bodily pain not permitted under international law.

351. The witness further clarified that she knew Esad Čopelj and that the truck stopped in front of the Nevesinje SJB so that the driver could take something. Mile Pejić aka “Zmija” was next to her in the truck, but she could not say if he was in the truck or not when the truck was parked in front of the Nevesinje SJB.

352. The credibility of witness “C” was not undermined during the cross-examination. On the contrary, her credibility was additionally strengthened, especially by the question of Defense Counsel Prodanović who asked witness “C” to clarify her ability to see what was going on in front of the Nevesinje SJB and her reply that she was sitting in the driver’s cab. This allegation is entirely consistent and logical in relation to the previous part of the testimony because it is quite clear that “Zmija”, a man often mentioned as one of the most prominent members of paramilitary formations, would not be riding in the refrigerator trailer.

353. Based on the key facts established in this manner, the Panel has concluded that by the acts described above elements of the criminal offense of Crimes against Humanity under Article 172(1)(h) in relation to subparagraph (f) of the CC BiH have been satisfied.

j) Alatnica

354. When arriving at conclusions concerning the events in the Tool Factory in Nevesinje known as “Alatnica” (on the orders of the Accused Krsto Savić, women, children and the elderly were separated and taken to “Alatnica” where they were held by unknown paramilitary formations in inhumane conditions and subjected to physical and mental ill-treatment. Zejna Šarančić and Sabira Šarančić were taken away from there. Sabira Šarančić’s body was recovered later on while Zejna Šarančić disappeared without trace and remains unaccounted for. Hata Mehremić was forced

to cross the combat lines into the territory controlled by the Army of BiH in order to arrange an exchange of imprisoned women for Serb soldiers who were killed), the Panel proceeded from the testimony of witnesses Esad Humić, Aiša Kazazić, Emir Voloder, "H", Mušan Šarančić, Milovan Milović, Senad Šarančić, Aleksa Kravić, "I", Dušan Soldo, the Accused Milko Mučibabić and documentary evidence T-6, T-89, T-90, T-168 and T-205. All these pieces of evidence confirm that women and children were imprisoned in the Tool Factory.

355. The testimonies of all the witnesses who testified with respect to this Count of the Indictment are corroborative and in complete correspondence. All of them, including the then police officers, have confirmed having certain information about the stay of women and children in "Alatnica". It ensues from Emira Voloder's testimony that she did not know the men who were members of the unit headquartered in "Alatnica" and that they were not from the area of Nevesinje. Witnesses Aleksa Kravić and Dušan Soldo clarified that it was a unit called "Vukovarci" /Vukovar men/.

356. Moreover, the Accused Krsto Savić played an important role and he was evidently active in establishing this detention camp, which clearly ensues from the testimony of a number of witnesses who identified Krsto Savić as a man who decided who would be imprisoned in "Alatnica". The best example for this is the testimony of witness Milovan Milović who said that Krsto Savić made a division by saying that the women were to go to "Alatnica". The allegations by witness Milovan Milović are fully consistent with the testimony of witness Senad Šarančić who, too, claimed that Krsto Savić ordered that Muamer Šarančić (who was sick) be taken to "Alatnica" together with the women and children.

357. In addition, with respect to the enforced disappearance of persons from "Alatnica", it should be added that witnesses "H", Mušan Šarančić, Senad Šarančić and "I" have confirmed that Zejna and Sabira Šarančić were taken away from "Alatnica"; the body of Sabira Šarančić was recovered many years later whereas Zejna's body has not been recovered to this day.

358. Finally, with respect to the negotiations and organization of exchange, it should be noted that the Panel relied on the statement by Hata Mehremić given to the State Investigation and Protection Agency, the testimony by the Accused Milko Mučibabić and the testimony by witness "H". Mučibabić and "H" have also stated that Krsto Savić was looking for someone who would go to the opposing side and organize an exchange, and Hata Mehremić was used for this purpose.

359. Bearing in mind the fact that it is quite clear that there was a high degree of mistrust between the warring sides and that for that reason the parties could not arrange an exchange in direct negotiations, the Accused Krsto Savić requested that Hata Mehremić arrange the exchange.

360. Given the concatenation of circumstances, knowing that he was exposing her to a great risk and even death because at a certain point in time there would be a strong likelihood of an exchange of fire in the area where Hata Mehremić was supposed to cross the separation line, and because obviously there was no accurate and reliable information as to the location of minefields, the Panel has concluded that Krsto Savić acted intentionally to cause great suffering, or serious injury to body or to physical or mental health.

361. Consequently, based on the key facts established in this manner, the Panel has concluded that elements of the criminal offense of Crimes against Humanity under Article 172(1)(h) in relation to subparagraphs (e), (i) and (k) of the CC BiH have been satisfied.

k) Forcible transfer of civilians from Nevesinje

362. When establishing key facts in connection with the event that occurred in June 1992 - officers of the Nevesinje SJB used a megaphone to call the remaining Bosniaks in Nevesinje to gather in front of the old municipality building. When they gathered there - most of them being women, children and the elderly - they were loaded onto buses and trucks and escorted by police officers of the Nevesinje SJB in the direction of Mostar, Busak area, to an area in between the combat lines, with their lives being endangered as a result of opening fire at the combat lines. On that occasion, Duda Tanković, Bećir Šikalo (stepped on a mine), Husref Handžar, Dragica Rotim and Šerifa Eminović were killed while a number of civilians were wounded (Mejra Pendar remains unaccounted for). When crossing the combat lines, three women were separated and at least one of them was raped on that occasion by Serb soldiers - the Panel first of all took into consideration the testimony by witnesses Bahrija Trebović, Emira Voloder, "D", Maida Čupina, Aleksa Kravić, Željko Pašajlić, Hasan Tanković and the Accused Milko Mučibabić as well as documentary evidence T-15, T-16, T-134, T-91 and T-92. The Panel generally gave credence to these pieces of evidence in their entirety¹³.

363. All the witnesses who have testified with respect to this Count of the Indictment have confirmed that a convoy to transport the civilians who desired to go to the opposing side was organized. These facts were additionally corroborated by the Accused Milko Mučibabić and Željko Pašajlić who read out a proclamation while Aleksa Kravić has confirmed being in the convoy's escort.

364. The Panel has paid due consideration to the role of the police in the organization and escorting of the convoy to the combat lines. In the Panel's view, when determining the role of the police in these events, it is necessary to set out from the basic tasks of law enforcement agencies in civilized countries. The primary role of the police in those countries is to look after the safety of citizens and their property.

¹³ It was noted on several occasions that the Panel accepted the testimony of witnesses who were police officers at the relevant time with a qualification, especially the portions that could directly incriminate their fellow police officers.

Unlike the task of the police in civilized countries, police officers of the Nevesinje SJB at the relevant time, without valid legal grounds, deprived the non-Serbs of their liberty and took direct part in the destruction of their property.

365. In such concatenation of circumstances, when the non-Serbs in the area of Nevesinje Municipality felt insecure and were afraid to become the target of an attack at any time (which happened in a number of cases), the Nevesinje police, together with the local authorities, organized at least two convoys in which persons who “wished” to leave Nevesinje could do so and cross over to the opposing side.

366. It ensues from the testimony of witnesses Emira Voloder and Maida Ćupina that at least two convoys were organized.

367. Emira stated that a convoy comprising two buses transported her to the area of Busak wherefrom she crossed over to the opposing side on foot, whereas Šerifa Eminović (with whom she came) remained in the area of Busak in between the separation lines because she was unable to move.

368. This portion of Emira Voloder’s testimony is fully consistent with the testimony of Maida Ćupina who was obviously transported to the area of Busak in a subsequent convoy. As Maida pointed out, she saw Šerifa Eminović in Busak where she had come with a previous convoy.

369. Furthermore, Bahrija Trebović, Emira Voloder, witness “D” and Hasan Tanković have testified with respect to the events in Busak at the relevant time. They have confirmed that there was shooting in Busak at the moment when they were there and that some civilians were wounded. Šerifa Eminović, Duda Tanković, Husref Handžar, Mejra Pendar, Bećir Šikalo (stepped on a mine) and Dragica Rotim remained in Busak and their bodies (with the exception of Mejra Pendar) were subsequently exchanged and buried.

370. On the basis of the testimony of witnesses Maida Ćupina and “D”, the Panel has concluded that in addition to the deaths of these civilians in the area of Busak, at the time when the escort from Nevesinje was present, three women (including Maida Ćupina) were singled out from the column and on that occasion Maida Ćupina was raped, at the least. She subsequently managed to cross over to the opposing side whereas the remaining two women have never been found.

371. Based on the key facts established in this manner, the Panel has concluded that elements of the criminal offense of Crimes against Humanity under Article 172(1)(h) in relation to subparagraphs (a), (d) and (k) of the CC BiH have been satisfied.

II

Milko Mučibabić

1)

a) Deprivation of liberty of Fadil Trebović

372. The Panel has based the conclusions of the facts relative to this count/section of the Indictment/Verdict on the testimony of witnesses Fadil Trebović and Bahrija Trebović, and gave full credence to their testimony¹⁴.

373. Both of these witnesses have described the circumstances surrounding Redžo Trebović's death; a large group of police officers of the Nevesinje SJB, including the Accused Krsto Savić and Milko Mučibabić, came sometime in the early afternoon of 16 June 1992; Krsto Savić led and commanded this group of police officers and fired in the direction of Redžo's limbs and Redžo succumbed to the wounds.

374. However, with respect to the Accused Milko Mučibabić, the Panel has found that the conduct of the accused following the incident in front of Redžo Trebović's house has relevance.

375. Both of the witnesses, Fadil Trebović and Bahrija Trebović, have confirmed that Milko Mučibabić, having escorted them to the front of the hospital in Nevesinje, went to the police station and then returned to the hospital where he deprived Fadil Trebović of liberty.

376. The Accused Milko Mučibabić gave an identical account of these events, noting on at least three occasions that Bahrija Trebović correctly described everything.

377. Furthermore, what is particularly relevant to the Panel is that the Accused Milko Mučibabić, although he was aware of the conditions in Nevesinje on 16 June 1992 (that is, that the war had in fact commenced), deprived Fadil Trebović of liberty on order from the duty operations officer, after escorting Redžo Trebović to the hospital.

378. Consequently, in light of the conclusion that the Accused Milko Mučibabić had reason to know that Fadil Trebović could not be suspected of wounding/murdering Redžo Trebović and that in spite of that he deprived him of his liberty on orders from the duty operations officer (consequently, knowing that such an act was not warranted by valid legal grounds but that the reason for the arrest was the fact that Fadil Trebović was a Muslim), the Panel has found that the Accused committed the criminal offense of Crimes against Humanity under Article 172(1)(h) in relation to subparagraph (e) of the CC BiH.

b) Deprivation of liberty of Nafija Ramović

¹⁴ The previous paragraphs contain a note that the Panel has given credence to the testimony of these witnesses regarding certain events. However, the Panel has accepted their perception of duration of certain events with a qualification and provided adequate reasons to that effect.

379. The Panel has based the conclusions relative to this count/section of the Indictment/Verdict on the testimony of witnesses Fahira Ramović, Zumreta Humo and the Accused Milko Mučibabić. Both of these witnesses, including the accused, have confirmed that Milko Mučibabić and a group of police officers came to Nafija Ramović's house on 16 June 1992 at about 18.00 hrs and searched it.

380. Moreover, both of the witnesses (including the Accused Milko Mučibabić) have confirmed that during the search Mučibabić found a piece of paper containing an Arabic text, deprived Nafija Ramović of his liberty (as confirmed by Fahira Ramović and Zumreta Humo) and then took him to the Nevesinje SJB.

381. The accused himself stated when testifying in his defense that he had participated in the search, noting that he could not say if he deprived Ramović of his liberty or not (he did not rule out that possibility).

382. In light of these allegations of the witnesses that have been given full credence by the Panel and bearing in mind all the other evidence depicting the situation in Nevesinje in June and July 1992, the Panel has concluded that the Accused Milko Mučibabić, acting on order from his superiors at the Nevesinje SJB and knowing that such an order was unlawful, deprived Nafija Ramović of his liberty and handed him over to the Nevesinje SJB. In that manner, elements of the criminal offense of Crimes against Humanity under Article 172(1)(e) of the CC BiH have been satisfied.

383. Finally, it is important to note at this point that the Panel did not find sufficient evidence of Milko Mučibabić participating in any way in the murder of Nafija Ramović.

c) Participation of Milko Mučibabić in the arrest of non-Serbs in Nevesinje

384. A number of witnesses testified with respect to this Count of the Indictment, notably Fadil Trebović, Esad Humić, Salko Trnovac, Mirsad Bajgorić, Mirsad Bajgorić aka "Điđan", witness "A", witness "B", Behidža Čustović, Šaćir Kljako, Kemo Bulić, Emir Kljako and Miralem Trebović. The Panel gave credence to their testimony.

385. In light of the contents of testimony of majority of these witnesses, and the allegations that Milko Mučibabić was present in the Nevesinje SJB during the relevant days of June 1992, brought persons to the SJB, released them and took them out for interrogation when the prisoners would be beaten up, the Panel could not conclude beyond any reasonable doubt that Milko Mučibabić participated in any way in the torture of the prisoners, in particular the torture of Mujo Ćupina, Meho Ćatić and Adem Mrndžić.

386. Furthermore, on the basis of the testimony of witnesses Esad Humić, Šaćir Kljako, Kemo Bulić and Emir Kljako, the Panel has concluded that the Accused Milko Mučibabić, together with other police officers of the Nevesinje SJB, participated in

the arrest and imprisonment of non-Serbs of the Nevesinje Municipality that took place on 16 June 1992 and on the days that followed.

387. All these witnesses have confirmed that Milko Mučibabić either personally deprived them of their liberty or participated in their deprivation of liberty and their bringing in to the Nevesinje SJB. Witness Esad Humić has additionally confirmed that **he was released by Milko Mučibabić** after he was detained in the Nevesinje SJB and that Mučibabić told them to leave Humić alone.

388. Finally, in light of the testimony of the majority of cited witnesses (Kemo Bulić in particular), the Panel has concluded that Milko Mučibabić took non-Serb prisoners out of the premises they were held for interrogation, and that those prisoners were beaten up during the interrogation.

389. In light of the established facts pertaining to the beating, having found that by his acts Milko Mučibabić made a significant (but not a decisive) contribution to the ill-treatment and abuse, the Panel found him guilty of aiding the persecution, that is, committing the criminal offense of Crimes against Humanity under Article 172(1)(h) in relation to aiding in subparagraph (k) of the CC BiH.

390. Consequently, based on the facts established in this manner, the Panel has concluded that elements of the criminal offense of Crimes against Humanity under Article 172(1)(h) in relation to subparagraph (e) and in relation to aiding under subparagraph (k) of the CC BiH have been satisfied.

d) Ismet Duraković

391. With respect to the acts charging Milko Mučibabić with regard to Ismet Duraković, the Panel has found that there is sufficient evidence to infer beyond any reasonable doubt that Milko Mučibabić participated in the arrest of Ismet Duraković and his imprisonment in the Nevesinje SJB.

392. The Panel based this conclusion on the testimony of witnesses Kemo Bulić, "D" and "C".

393. Witness "D" has confirmed seeing Milko Mučibabić together with three men wearing uniforms who entered the apartment of Ismet Duraković and deprived him of his liberty. In addition, it ensues from the indirect information obtained by this witness that the Accused Milko Mučibabić participated in the deprivation of liberty of Ismet Duraković. Admittedly, as alleged by witness "D", Mediha Čupina is the source of information that Ismet Duraković was taken away by unknown individuals and Milko Mučibabić in the direction of "Alatnica" and then imprisoned in the Nevesinje SJB. These allegations were not of particular importance to the Panel with the exception of the contention and corroboration of the testimony of witness "D" that Mučibabić was subsequently seen in the company of individuals who entered the apartment and deprived Ismet Duraković of his liberty.

394. Based on the foregoing, it is quite clear that Milko Mučibabić was in the company of those unidentified individuals and participated in the deprivation of liberty of Ismet Duraković. Witness Kemo Bulić has confirmed that Ismet Duraković was present in the Nevesinje SJB.

395. In relation to all the other subsequent events involving Ismet Duraković, it should be noted that the Panel did not find evidence incriminating Milko Mučibabić beyond any reasonable doubt; for that reason, the Panel has concluded that his acts satisfied elements of the criminal offense of Crimes against Humanity under Article 172(1)(h) in relation to subparagraph (e) of the CC BiH.

e) Beating of Mirsad/Sulejman/Bajgorić

396. Witnesses Mirsad Bajgorić, "A" and the Accused Milko Mučibabić testified with respect to this section/Count of the Verdict/Indictment.

397. When drawing its conclusion of decisive facts pertaining to the beating of Mirsad Bajgorić, the Panel has given credence to the witness testimonies and refused the averments of the Accused Mučibabić in their entirety.

398. Mirsad Bajgorić and witness "A" have both described Milko Mučibabić and two men coming during the night to the room where the two of them were imprisoned in the Nevesinje SJB. The Accused Mučibabić first spoke to Mirsad Bajgorić and asked him why he, too, did not like Yugoslavia. The other two men (one of them was nicknamed "Tatica") then beat up Mirsad Bajgorić.

399. Witness Bajgorić gave a convincing account of the beating, describing how they, among other things, used a piece of wood that resembled a tool handle to beat him up. At one point, realizing that they would beat him unconscious, he pretended to be dead.

400. After a while, since these two were not sure if Mirsad Bajgorić lost consciousness or was dead, one of them pressed his foot against Mirsad's neck to check his condition whereupon they left the cell.

401. Witness "A" has corroborated all these allegations as well, providing a detailed description of the piece of wood used to beat up Bajgorić. In addition, it should be noted that both of these witnesses have confirmed that on the relevant day Mirsad Bajgorić spoke to the Accused Milko Mučibabić prior to the beating, that is, two soldiers came escorted by the Accused Milko Mučibabić.

402. In light of the established facts, the Panel, having concluded that the Accused Milko Mučibabić made a significant (but not decisive) contribution to the beating of Mirsad Bajgorić, found him guilty of the criminal offense of Crimes against

Humanity under Article 172(1)(h) in relation to aiding in subparagraph (k) of the CC BiH.

f) Organization of the convoys

403. It should be noted that the Panel gave a clarification of the role of the police in organizing the convoys in late June 1992 to transport the non-Serbs who wished to leave Nevesinje while presenting reasons under Count k) concerning the Accused Krsto Savić.

404. The only matter that was relevant in relation to the Accused Milko Mučibabić is that he was one of the police officers who were reading out a proclamation (ensuing from the testimony of witness Emira Voloder and the Accused Milko Mučibabić) on the organization of convoys, and that he was aware of a feeling of general insecurity for the non-Serbs in Nevesinje.

405. The Panel clarified the then prevailing situation in several sections of this Verdict, and the accused's awareness of the situation ensues unequivocally from the fact that he helped his non-Serb acquaintances leave Nevesinje. The Panel has assessed this to be a mitigating circumstance.

406. On the face of it, the Panel's position to charge Milko Mučibabić with the forcible transfer of non-Serb population by way of reading out a proclamation while assessing his helping his acquaintances leave Nevesinje as a mitigating circumstance may appear to be contradictory. However, in the case of reading out a proclamation, the Panel has proceeded from the fact that the non-Serb population was being persecuted from Nevesinje at the relevant time, which included forcible transfers in convoys. Therefore, in the Panel's view, Milko Mučibabić, knowing that the actions of the police, military and civilian authorities in the area of Nevesinje resulted in a feeling of insecurity and that it was quite clear that the non-Serbs would take an opportunity to leave the area, being aware of all that, aided the forcible transfer of the non-Serb population by reading out the proclamation.

407. On the other hand, in the case of the Accused Milko Mučibabić helping his non-Serb acquaintances leave Nevesinje (a mitigating circumstance), the Panel has dealt only with the position of the Accused Mučibabić and the manners in which he helped the non-Serbs. Therefore, in this case the Panel has dealt exclusively with the Accused Milko Mučibabić and his individual acts as a citizen and person who could help his acquaintances in trouble. For those reasons, the Panel has assessed such actions as mitigating circumstances.

407. Consequently, based on the foregoing and bearing in mind that the reading out of the proclamation on the organization of convoys made a substantial (but not decisive) contribution to the forcible transfer of the non-Serbs, the Panel has found Milko Mučibabić guilty of the criminal offense of Crimes against Humanity under Article 172(1)(h) in relation to aiding under subparagraph (k) of the CC BiH.

2) Possession of a firearm

408. It ensues from ample evidence (primarily, exhibits T-27, T-28, T-30 and T-31, and the statement by witness Mdžid Smajkić) that a firearm was found during the search of the house owned by Accused Milko Mučibabić.

409. It ensues from all the referenced pieces of evidence that a firearm, a certain amount of ammunition and explosive substances were found during the search of Milko Mučibabić's house, as indicated in the Verdict's operative part.

410. Regarding this circumstance, the Defense has argued that the ammunition was the hunting ammunition that the Accused Milko Mučibabić is allowed to have because he is a member of a hunting club.

411. Consequently, Attorney Krešimir Zubak objected on the grounds that the search was conducted in an unlawful manner.

412. The Panel refused all the objections raised by the Defense for the Second Accused regarding the manner of conducting the search and finding of the firearm and ammunition on the grounds that neither the Second Accused nor his Defense Counsel petitioned for an expert analysis of the items in question to corroborate their contention.

413. Consequently, in a situation when the Panel had at its disposal the testimony of witness Medžid Smajkić and other cited pieces of evidence that a semi-automatic rifle, two mines and a substantial quantity of ammunition were found during the search of Milko Mučibabić's house (with only the Defense's contention that the ammunition is a hunting ammunition), the Panel has concluded beyond any reasonable doubt that elements of the criminal offense of Illegal Manufacturing and Trade of Weapons or Explosive Substances under Article 399(1) of the CC RS have been satisfied.

7. Joint Criminal Enterprise

414. According to the charges under the Indictment of the Prosecutor's Office of BiH, the Accused Krsto Savić acted as a knowing participant in a JCE in pursuance of a common purpose of persecution of Bosniak and Croat civilians by planning, ordering, committing, instigating, aiding and abetting the persecution of that population in the municipalities of Gacko, Bileća, Kalinovik and Nevesinje; the persecution was carried out in the manner set out in Counts I 1, 2, 3 and 4 of the Indictment.

415. According to the charges against the Accused Milko Mučibabić, he acted as a knowing participant in a JCE in pursuance of a common purpose of persecution of Bosniak and Croat civilians by committing and aiding the persecution of that population in the Nevesinje Municipality; the persecution was carried out in the manner set out in Count II 1 of the Indictment.

416. Having examined the validity of the Indictment in this part, the Court has first of all considered the legal nature of JCE, existence of the JCE and its application to the facts and circumstances set out in this Verdict's operative part. Thereupon, the Court drew conclusions regarding the existence of individual criminal liability of the Accused Krsto Savić for the criminal offense in question and the inapplicability of JCE to the Accused Milko Mučibabić.

a) Legal nature of JCE

417. JCE is an institution of customary international law. Customary international law, together with international treaties and general principles recognized by all civilized nations, constitute a source of international law. That a rule has become part of customary international law can be seen in the case-law of international courts and the case-law of national courts that apply international law.

418. A doctrine identical to the doctrine of JCE within customary international law was developed and applied in the trials of war criminals who were in charge of the concentration camps of Dachau, Mauthausen, Belsen and Auschwitz. The tribunals that conducted the trials convicted most of those individuals under that doctrine.

419. Furthermore, JCE also has its footing in Article 7 of the ICTY Statute, which has a customary status. In that way, JCE as a type of individual criminal liability was applied when determining the criminal liability of the accused in numerous judgments of the ICTY¹⁵. Similarly, the Appellate Panel of the Court of Bosnia and Herzegovina accepted JCE (as a type of individual criminal liability) as an institution of customary international law in the *Mitar Rašević and Savo Todović* case. The verdict in the referenced case alleges three types of JCE: "basic", "systemic" and "extended".

420. Moreover, the Court took into consideration that the wording of Article 7(1) of the ICTY Statute is identical to the wording of Article 180(1) of the CC BiH. In effect, the rules on criminal liability that stem from international criminal law (hence, rules on JCE) and the ICTY Statute have been incorporated into the criminal legislation of BiH. In this way, the spectrum of possible acts of perpetration and complicity in committing the criminal offenses listed in this provision of the CC BiH has been considerably "broadened".

421. In that regard, the Court finds that JCE, as an institution of customary international law, was applied not only at the time when the offenses charged against

¹⁵ ICTY Appeals Chamber judgment in the *Tadić* case dated July 1999 contains a detailed analysis of the concept of JCE and its place in customary international law.

the accused were committed but also long before that. The Court therefore did not accept the objections raised by the Defense for the Accused Krsto Savić that the application of JCE amounted to a violation of the principle of legality.

422. This in particular because the rules of customary international law are binding on BiH (and previously on the SFRY). The Constitution of BiH¹⁶ (and previously the Constitution of the SFRY) prescribes a direct application of ratified treaties, including the Geneva Conventions and Additional Protocols thereto and the Martens Clause that provides for the protection of citizens and combatants in accordance with customary international law. Consequently, the Court finds that the accused may be charged, that is, they may be criminally liable under JCE because customary international law prescribing JCE and the CC BiH (specifically, Article 180, paragraph 1 incorporating the JCE concept) are applicable to them.

423. The case-law of international courts (trials of war crimes committed during World War II and the ICTY) and of the Court of BiH (Verdict no. X-KRŽ-06/275 dated 6 November 2008) recognizes three types of JCE: “basic form”, “systemic form” and “extended form”.

424. The existence of the basic form of JCE requires the existence of the following elements:

- a plurality of persons;
- the existence of a common project, objective or purpose which amounts to or involves the commission of a crime. There is no necessity for this project, objective or purpose to have been previously arranged or formulated but can be improvised on the spot;
- participation of the accused in the common purpose or objective by committing a specific crime or assisting or contributing to the execution of the common design, purpose or objective.

425. In order for the accused to be criminally liable under the basic form of JCE, it is necessary to determine that the accused and other participants possessed an intent to commit a criminal offense (referred to in Article 7, paragraph 1 of the Statute or Article 180, paragraph 1 of the CC BiH) that represents their common objective.

426. Systemic form of JCE is a variant of the basic form, requiring (in addition to the referenced elements) the existence of an organized system of ill-treatment, knowledge of the accused about that system and the intent of the accused to further that system.

¹⁶ Article III(3)(b) of the BiH Constitution provides that “the general principles of international law shall be an integral part of the law of Bosnia and Herzegovina and the Entities”.

427. The extended form of JCE exists when (in addition to the elements in the basic form) one or more perpetrators commit an offense or acts exceeding the scope of a common objective but which are still a natural and foreseeable consequence of the common objective realized.

428. In order for any of the referenced forms to exist, it is necessary that the accused, as noted above, participates in implementing a common objective by committing a specific criminal offense or otherwise helping or contributing to the execution of a common objective. The main feature of JCE's legal nature is reflected in this component common to all three types of JCE.

429. Therefore, an accused will be found guilty if it is proved that he, as a participant in a JCE, contributed to the execution of a common objective with the intent to realize that criminal objective. That contribution needs not be decisive-substantial to incur criminal liability, which makes a distinction between the acts of the accused on the one hand and aiding and co-perpetratorship on the other (judgments of the ICTY Appeals Chamber in the following cases: *Kvočka et al.*, paragraphs 97, 98 and 188; *Vasiljević*, paragraph 102. Trial Chamber 's judgments in the following cases: *Vasiljević*, paragraph 102; *Stakić*, paragraphs 440 and 490).

430. Therefore, co-perpetratorship, in terms of Article 29 of the CC BiH, requires a decisive contribution to the commission of an offense. On the other hand, the contribution of a participant in a JCE is greater, it has a greater "weight" than the acts of an accessory. An accessory only knows the perpetrator's intent whereas a participant in a JCE shares that intent with the principal perpetrators, the intent to realize a common objective: to commit criminal offenses.

431. Consequently, this leads to the conclusion that a JCE "rooted" in customary international law (and incorporated in Article 7, paragraph 1 of the ICTY Statute and Article 180, paragraph 1 of the CC BiH) constitutes a form of criminal liability of persons-accomplices who, by sharing the common intent, undertake such criminal activities that contribute to the realization of a common criminal objective.

432. Consequently, criminal liability for grave breaches of international humanitarian law will exist not only with respect to those participants in a JCE who plan, instigate, order, physically commit or otherwise aid and abet the planning, preparation or perpetration of a crime but also those who, as noted above, make a contribution to implement a criminal objective by their acts (that contribution needs not be substantial). In this respect, "there is no need to demonstrate that the accused's perpetration the crimes could or would not have been committed. In practice, the significance of the accused's contribution will be relevant to demonstrating that the accused shared the intent to pursue the common purpose"¹⁷. Moreover, "it is not required that an accused be physically present when the crime is being committed"¹⁸.

¹⁷ Appeals Chamber judgment in the *Kvočka et al.* case, para. 97.

¹⁸ *Ibid*, para. 112; Appeals Chamber judgment in the *Krnjelac* case, para. 81.

433. Furthermore, in light of the JCE's legal nature, most important is to point out that criminal liability for grave breaches of international humanitarian law of the accused who did not commit the acts of perpetration of the crimes referred to in Article 7(1) of the ICTY Statute and Article 180(1) of the CC BiH is based on JCE. Therefore, "in order to be liable for a systemic JCE, the accused needs to give a contribution to a criminal system but needs not physically commit any part of the *actus reus* of the crime involved"¹⁹.

434. In that regard, the following is noted in the Trial Chamber's judgment in the *Krstić* case: "General Krstić did not conceive the plan to kill the men, nor did he kill them personally. However, he fulfilled a key coordinating role in the implementation of the killing campaign. He thus must be considered a principal perpetrator of these crimes"²⁰. Moreover, "the participant in a joint criminal enterprise need not physically commit any part of the *actus reus* of the crime involved. Nor is the participant in a joint criminal enterprise required to be physically present when and where the crime is being committed"²¹.

b) Joint criminal enterprise and criminal liability of the Accused Krsto Savić

435. The Indictment does not explicitly specify the type of JCE the accused are charged with. Admittedly, in his closing argument the Prosecutor took the view that the accused are criminally liable under all three types of JCE. However, this concept of existence of all three types is not contained in the Indictment or corroborated by the presented evidence. The Court finds that all elements of the basic form of JCE ensue unequivocally from the contents of the Indictment and the presented evidence that confirmed those contents. Based on that, the Accused Krsto Savić is liable for the criminal offenses referred to in the Verdict's operative part (Sections I 1, 2, 3 and 4) as a participant in the JCE.

436. The Prosecution evidence also corroborates the allegations made in the Indictment that the common objective-purpose, as an element of the basic form of JCE, is the commission of the crime of persecution (Article 172, paragraph 1, subparagraph (h) of the CC BiH) of Bosniak and Croat civilian population of the municipalities of Gacko, Bileća, Kalinovik and Nevesinje in relation to particular criminal acts referred to in the same article.

437. In light of the referenced conclusions, the Court first of all took into consideration the established facts in this case. The established facts that the Court took into consideration, in conjunction with the Prosecution evidence, are relevant to the assessment of the existence of a JCE and the participation of the Accused in that enterprise. It is essential to note that the Court limited the determination of existence

¹⁹ Appeals Chamber judgment in the *Kvočka* case, para. 112.

²⁰ Trial Chamber's judgment in the *Krstić* case, para. 644.

²¹ Appeals Chamber judgment in the *Kvočka* case, paras. 112 and 251.

of a JCE and its participants to a certain territory, namely Kalinovik, Nevesinje, Bileća and Gacko municipalities, as alleged in the Indictment.

438. According to the established facts, in the second half of 1991, the leadership of the Bosnian Serbs (including members of the Main Board of the SDS and representatives of the armed forces of the Bosnian Serbs) devised a "Strategic Plan" to link up the BiH territories inhabited by Serbs, gain control over those territories and establish a separate state of Bosnian Serbs wherefrom the majority of non-Serbs would be removed on a permanent basis.

439. Under the established facts, the key and crucial step towards the implementation of the Strategic Plan was the establishment of five Serb autonomous districts-regions in November 1991, one of them being the Serb autonomous district of Herzegovina. In addition, the leadership of the Bosnian Serbs implemented a plan to separate the territories they considered to be theirs from the existing structures of the SR BiH and create a separate state of Bosnian Serbs, the Serb Republic of Bosnia and Herzegovina (renamed the Republika Srpska on 12 August 1992) to include the referenced autonomous districts-regions.

440. According to the established facts, the implementation of the Strategic Plan implied the separation of the police forces of Bosnian Serbs from non-Serb police forces (which took place in late March 1992) and placing the police forces of Bosnian Serbs under the civilian command of Bosnian Serbs. The Serb Ministry of Interior was established on 27 March 1992.

441. According to the established facts, the strategic objectives of the Serb people in Bosnia and Herzegovina were articulated at the 16th session of the Assembly of the Serb Republic of BiH held on 12 May 1992 (the first one implying a permanent removal of a substantial part of the non-Serb population from the territory of the envisaged state of Bosnian Serbs) and the Army of the Serb Republic of Bosnia and Herzegovina was established. Lieutenant-General Ratko Mladić, Commander of the Main Staff of the VRS /Army of the Republika Srpska, Bosnian Serb Army/, and his immediate subordinates transformed the political-strategic objectives into the operational imperatives of the VRS. Finally, according to the established facts, the referenced strategic objectives represented a plan of takeover and control of territories, establishment of a state of Bosnian Serbs, defense of defined borders and separation from the other ethnic communities in BiH.

442. The Strategic Plan and the strategic objectives (particularly the first one), as described in the established facts, can also be seen in the factual accounts of the relevant criminal offenses in Sections I 1, 2, 3 and 4 of the Verdict's operative part.

443. The acts of perpetration of those offenses in the municipalities of Kalinovik, Bileća, Gacko and Nevesinje at the relevant time were undertaken in an identical manner, which in most cases included a severe deprivation of physical liberty of Bosniak and Croat civilians followed by the burning of their houses, temporary

detention in certain buildings (schools, police premises, industrial facilities) where they were subjected to murder, torture and other inhumane acts and, finally, imprisonment in detention camps (including the camps in Bileća and Foča), or execution, enforced disappearance or deportation to another country or forcible transfer to the territory controlled by the BiH Army. Consequently, the acts of perpetration of particular criminal offenses are in connection with the crime of persecution, and constitute a deliberate and severe denial of fundamental rights of the Bosniak and Croat population in violation of international law (above all, the right to freedom, the right to life and the right to a home) on political, national and religious grounds.

444. The fact that the persecution of the non-Serb population in connection with the referenced acts of perpetration was carried out in an almost identical manner, with comparable consequences and within a relatively short period time in the areas of several municipalities, suggests a logical conclusion that the persecution was planned and included a number of participants who planned, carried out or otherwise contributed to the persecution, which constituted one of the elements of a JCE, while the crime of persecution was a common objective of all the participants in the enterprise. Moreover, all the acts of perpetration described in the operative part herein point to a permanent removal of the non-Serb population from the referenced municipalities, which, as noted in the established facts, included the aforementioned Strategic Plan.

445. In addition, the referenced municipalities were part of the Serb autonomous district of Herzegovina (SAO Herzegovina). The SAO Herzegovina, together with four other districts, represented “a crucial step towards the implementation of the Strategic Plan” with the Accused Krsto Savić as the Minister of Interior in the SAO Herzegovina Government. This is clearly confirmed by the consistent Prosecution exhibits T-130, T-112, T-114, T-132 and T-204 as well as witnesses Vukan Bratić and Ejub Krvavac. The execution of the Strategic Plan, as noted in the established facts, implied the separation of the Bosnian Serb police forces from the non-Serb police forces and placing the Bosnian Serb police forces under the civilian command of the Bosnian Serbs.

446. The Accused Krsto Savić has given a substantial contribution to this as the SAO Herzegovina Minister of Interior, as indicated by Prosecution Exhibit T-95. According to this Exhibit (alleged to have been signed by the Accused Krsto Savić), meetings of Serb employees from this area were organized within the SAO Herzegovina Ministry of Interior, as well as planning for the activation of more than half of the reserve component of the police force without the consent of the then MUP BiH. During that time period, special police units of the SAO Herzegovina were formed, the work of Muslim employees in the SJB was blocked and the orders and decisions of the official MUP seated in Sarajevo were not carried out, in preparation for the final separation from the MUP BiH and a new organization of the Serb Ministry and establishment of a CSB seated in Trebinje. It further ensues from the same piece of evidence that in February and March the separation of the Mostar

CSB was planned and implemented, and Serb employees were persuaded to work in the Trebinje CSB. Finally, it ensues from this piece of evidence that the reserve and active components of the police force (Muslim and Croat employees and senior staff) were disarmed in all the SJBs covered by the SAO Herzegovina in late March 1992.

447. The Court gave credence to the contents of this piece of evidence since it was not challenged by any serious argument. In addition, this piece of evidence is consistent with the other presented evidence, particularly Exhibit T-114 indicating that the Accused Krsto Savić signed the dispatch note as the SAO Herzegovina Minister of Interior to mobilize the alleged special police unit of the SAO Herzegovina without the consent of the MUP of the Socialist Republic of BiH. In other words, he mobilized “paramilitary forces” and was suspended for that.

448. Furthermore, the cited pieces of evidence are also consistent with Prosecution Exhibit T-105. According to this Exhibit, a meeting of police employees was held in February 1992. At this meeting, the Accused Krsto Savić notified the attendees that “we are already forming the Serb Mostar SJB” on the left bank of the Neretva River. “A Serb collegium comprising Serb employees at senior positions within the MUP SR BiH” was formed at the meeting, and its basic task was to “carry out the necessary preparations for the functioning of the Serb MUP following the adoption of the Constitution of the Serb Republic of BiH”, establishing the MUP’s entire organizational structure from the security service centers to municipal secretariats of interior. In addition, it was agreed at the meeting that the inscription “milicija” /police/ in Cyrillic be imprinted on all vehicles, that emblems of the Serb MUP be provided and that “our” police officers be trained and armed.

449. Moreover, some of the persons who attended the meeting later on became senior executives in the Serb MUP and chiefs of CSBs (as confirmed by Exhibit T-104), including Krsto Savić. Mićo Stanišić, who attended the meeting, became the Minister of Interior of the Serb Republic of BiH. He said during the meeting that “we have to work on the organization of the Serb MUP, from the municipal to the regional levels and further on to the Serb Ministry, and the Serb employees in the MUP must be means to staff the Serb MUP”.

450. Furthermore, it follows from the referenced evidence that Mićo Stanišić, too, played a considerable role in this planning and organization (the Court has concluded that Stanišić, in addition to the Accused Krsto Savić, is one of the participants in the JCE). This conclusion stems from Exhibits T-104 and T-132. According to Exhibit T-132, Mićo Stanišić, as the Minister of the MUP of the Serb Republic of BiH, notifies the Chiefs of the CSBs who were present that “the Government is working on a new political and territorial division of the Serb Republic of BiH in order to avoid the previously necessary forms of Serb autonomous districts and regions... this requires adjustments of the MUP to the organization... the MUP can survive or disappear, depending on whether the state will exist”.

451. Prosecution Exhibit T-153 (signed by Boško Govedarica, the Chief of the Kalinovik SJB), not seriously challenged by the defense for the accused, confirms that, in addition to the Accused Krsto Savić, some members of the senior staff in the SJBs and members of municipal leaderships participated in the JCE. This piece of evidence pertains to the report on the activities of the Kalinovik SJB for the period 1 April-15 August 1992 and it was delivered to the Kalinovik Municipal Assembly, the MUP and the Trebinje CSB. According to this Exhibit, the municipal and military authorities in Kalinovik have adopted a Decision that “the able-bodied Muslims be brought in and placed in the elementary school in Kalinovik”.

452. Acting on this order, the SJB started bringing in those people. On 6 July 1992, those people were transferred from the elementary school (guarded by SJB members) to a military prison, where the military command of the Kalinovik Tactical Group took over the guarding of those Muslims. It also follows from this piece of evidence that “there was a reorganization carried out in this SJB; Muslim employees stopped working and their posts were filled up by Serb employees only” and that the Chief of the CSB Krsto Savić paid a visit to the SJB during the aforementioned period.

453. Furthermore, numerous presented pieces of evidence confirm the participation and cooperation of some SJBs within the Trebinje CSB with the military structures in the area. According to Exhibit T-95, plans to activate more than half of the reserve component of the police force and place it under control of the military were adopted at the meetings of Serb employees from the area of Herzegovina held as early as October 1991. The same document confirms the number of days and members of the police from the area covered by the CSB taking part in combat operations and refers to joint meetings between representatives of the Trebinje CSB and representatives of the Army of the Serb Republic.

454. Moreover, it ensues from Prosecution Exhibit T-132 that the Minister of the MUP RS BiH Mićo Stanišić notified the Chiefs who were present (including Krsto Savić) that “as early as May 1992 they adopted Order no. 01-1/92 dated 15 May 1992 to organize the police and other services of the MUP in the war units for the needs of defense of the Serb Republic, which the MUP was practically doing from the beginning”. These facts are also corroborated by Prosecution Exhibits T-104 and T-99; according to T-99, “the entire reserve component of the police and part of the active component of the police from all CJBs in the area covered by the Trebinje CSB was on the frontline” on a number of occasions. Similarly, it ensues from Prosecution Exhibit T-153 that the military command issued an order deploying a police platoon (25 men) to the frontline.

455. In addition, it ensues from Prosecution Exhibits T-116 through T-126 that the Accused Krsto Savić, as Chief of the Trebinje CSB, received detailed information about the military and combat operations in the area covered by the CSB and that he sent reports to the MUP RS BiH about those activities on a regular basis. On the other hand, one can see that the military leadership notified their immediate superiors about the combat operations and the security situation in the area covered by the

Trebinje CSB. This conclusion is additionally supported by Prosecution Exhibit T-93. According to this document, Commander of the Herzegovina Corps Radovan Grubač (the person indicated to have signed the document) delivered a combat report to the Main Staff of the Army of the Serb Republic of BiH; the report, among other things, indicates that “according to the data obtained from the Nevesinje command, 47 Muslims (mostly women and children) were killed in the Nevesinje tool factory in the night of 2/3 July 1992”.

456. All the referenced evidence confirms coordination between the police and the military, allowing officers of SJBs from the area covered by the CSB to carry out acts of perpetration described in the operative part above. Based on this evidence and the mentioned facts, the unequivocal conclusion is that the military leadership in the area planned and ensured the coordination; at the relevant time, Radovan Grubač (Commander of the Herzegovina Corps) and Novica Gušić (Commander of the Nevesinje Brigade) were the military leadership and, as noted in the established facts, “as subordinates of the Commander of the VRS Main Staff, they transformed the political-strategic objectives into VRS’s operational imperatives”. Consequently, the Court has inferred that, in addition to the Accused Krsto Savić, Radovan Grubač and Novica Gušić too were participants in the JCE and they, in light of the aforesaid and their commanding positions in the military, also contributed to the realization of that common objective of the JCE.

457. Therefore, the conclusion that the separation of Serb police officers from Muslim and Croat police officers in the municipalities of Gacko, Bileća, Kalinovik and Nevesinje (constituting part of the Strategic Plan that, as noted in the established facts, implied “linking Serb-populated areas in BiH, gaining control over these areas and creation of a separate Bosnian Serb state, from which most non-Serbs would be permanently removed”) was planned and organized follows from the referenced Prosecution evidence. According to Prosecution Exhibit T-95 (signed by Krsto Savić), “over 95% of the Serb employees from the area covered by the Trebinje CSB joined the Serb MUP by 15 April 1992 and pledged their loyalty”. In parallel with the separation, the Serb MUP and, within it, security service centers were established. In addition to Mićo Stanišić, the Accused Krsto Savić played a considerable role in the planning and organization: first as the Minister of Interior of the SAO Herzegovina (to become part of the Serb Republic of BiH) and later on as the Chief of the Trebinje CSB.

458. This is of particular importance for the reason that the Court has unequivocally found that Serb officers of the public security services in Gacko, Bileća, Kalinovik and Nevesinje participated in the persecution of the Bosniak and Croat civilian population, the persecution representing a common objective of the JCE. The Court has already advanced reasons in support of this decisive finding and these pieces of evidence corroborate such finding. In that regard, one should bear in mind the Court’s view that these officers, although being direct perpetrators of particular

criminal offenses, were not participants in the JCE and “a JCE exists even when a not a single direct perpetrator of the crime participates in the JCE”²².

458. As noted above, the existence of a JCE requires the accused’s participation in the realization of a common objective: the objective is reflected in the commission, aiding or contribution of the accused that needs not be substantial. The Court has already adduced reasons to draw the conclusion that the Accused Krsto Savić was a direct perpetrator of the criminal offenses referred to in Section I 4) a) and f) of the operative part herein, leading the Court to assess these acts of perpetration as acts of participation of the accused in the realization of the criminal objective, that is, carrying out of the persecution.

459. However, bearing in mind that the common objective was the persecution of the non-Serb civilians described in the operative part herein and carried out in the areas of the referenced municipalities, the Court has drawn the conclusion on the basis of the presented Prosecution evidence that the Accused Krsto Savić contributed to the implementation of the criminal objective in other manners - through other activities that do not constitute acts of perpetration.

460. The Court has drawn the conclusion regarding the accused’s contribution on the basis of the Prosecution evidence corroborating as follows: the accused’s position at the time when the common objective was realized in the municipalities concerned, particularly his position relative to the specific perpetrators of particular criminal offenses, his efforts to prevent or impede criminal activities, his interaction with other participants in the JCE and the evidence showing that officers of the public security stations under his control were used for carrying out criminal activities that constituted a common objective of the JCE. In parallel with assessing these circumstances on the basis of the presented evidence, the Court was drawing conclusions as to whether the Accused Krsto Savić shared the intent common to all participants in the JCE to commit the crime of persecution, that is, a common intent to realize the common objective.

461. The Court has already provided reasons for finding that the Accused Krsto Savić was an active participant in the establishment of the MUP of the Serb Republic of BiH. The Ministry of Interior headed by the Accused Krsto Savić played a special role in the establishment of the Serb MUP and the implementation of the referenced Strategic Plan. First of all, according to Prosecution Exhibit T-110, the political leaders of the then political party SPO /Serb Renewal Movement/ threatened to dismiss the then Chief of the Nevesinje SJB Žarko Laketa because he did not attend the meeting of the “crisis staff” for eastern Herzegovina in order to give his consent to distributing weapons to the Serbs; for that reason, the Accused Krsto Savić was nominated for the post of Chief of the Nevesinje SJB.

462. Prosecution Exhibit T-114 confirms that the Accused Krsto Savić was chosen Chief of the Nevesinje SJB, but was suspended by the Minister of Interior of the

²² Trial Chamber’s judgment in the *Krajišnik* case, para. 883.

Socialist Republic of BiH because the accused, as the SAO Herzegovina Minister of Interior, exceeded his authority when mobilizing the special police unit of the SAO Herzegovina. Moreover, Prosecution Exhibit T-67 confirms that the Accused Krsto Savić was appointed Chief of the Trebinje Security Services Center on 1 April 1992 by the Minister of the MUP of the Serb Republic of BiH Mićo Stanišić, whereas Prosecution Exhibit T-68 confirms that the accused was appointed member of the Staff of the MUP of the Serb Republic of BiH to command and control the entire forces of the MUP.

463. At the relevant time, the Accused Krsto Savić effectively commanded the Trebinje CSB, with the municipalities of Kalinovik, Nevesinje, Bileća and Gacko being under the jurisdiction of this CSB. Public security stations for particular municipalities (including the referenced ones) were operating at the relevant time as part of the Trebinje CSB. At the referenced time, the accused had the authority to remove from office chiefs of SJBs as particularly confirmed by Exhibit T-95. According to this exhibit, chiefs of the public security stations in Nevesinje, Gacko and Trebinje were all removed from office since June 1992.

464. In addition, Prosecution Exhibit T-98 (a report sent to the MUP of the Serb Republic and the political leadership of the Republic) confirms that the activities of the Trebinje CSB were carried out through particular SJBs and that meetings of department heads in the CJB and the chiefs of public security stations were taking place. It also ensues from this piece of evidence that 200 Muslims and Croats were identified as preparing an armed mutiny and that criminal reports would be filed against them.

465. According to this piece of evidence, it ensues from Prosecution Exhibit T-95 (signed by Krsto Savić) that the Trebinje CSB had meetings with the chiefs of the public security stations from the area covered by the Center every 15 days and that 55 police officers were involved in guarding "collection centers and other similar establishments". Moreover, it ensues from Prosecution Exhibit T-94 that one of the two "collection centers-camps" was situated on the premises of the Bileća SJB and the *Đački dom* /pupil's hostel, dormitory/ and that the Chief of the Bileća SJB notified representatives of the Ministry of Justice of the Serb Republic of BiH that 140 Muslims from the area of Bileća municipality were held in that camp and "isolated for security reasons".

466. According to the foregoing evidence, it ensues from Prosecution Exhibit T-104 that a meeting of senior executives chaired by the Minister of MUP of the Serb Republic of BiH took place on 20 August 1992. At that meeting, the Accused Krsto Savić notified the attendees that "140 able-bodied Muslims" were arrested in Bileća "and that the problem was that the CSB did not have conditions for guarding and accommodating those people".

467. Aside from the fact that at the relevant time the Accused Krsto Savić was both *de iure* and *de facto* the Chief of the Trebinje CSB (this CSB had jurisdiction over the

territories of municipalities where officers of SJB committed the crime of persecution), the Court has found that the accused had detailed information about the conditions of the Bosniak and Croat civilians in the areas of the referenced municipalities when the Serb leadership took power pursuant to the Strategic Plan. Moreover, the accused knew that officers of the SJBs in their respective municipalities were used for acts of perpetration described in the operative part herein. Furthermore, the Accused Krsto Savić was aware of these acts of perpetration and he, as noted above, directly participated in some of them.

468. Not only did the accused, as Chief of the Trebinje CSB, fail to undertake any action to prevent criminal activities he was aware of but, as noted above, he also personally participated in particular acts of perpetration described in the operative part herein. Witnesses Fadil Trebović, Bahrija Trebović and Dušan Soldo have consistently confirmed that the Accused Krsto Savić fired at Redžo Trebović on the relevant occasion and the latter succumbed to the wounds.

469. Furthermore, witness Fadil Trebović first heard cries; thereupon, he saw Mujo Ćupina, Meho Čatić and Adem Mrndžić being taken out. The Accused Krsto Savić said that those three men be taken out, to be seen alive and not to die in the station. Witnesses "A" and Kemo Bulić have consistently claimed that they were transferred to the Nevesinje SJB following their arrest and there they were interrogated by the Accused Krsto Savić. They stated that they were beaten during the interrogation.

470. Witness Šaćir Kljako has alleged that he was taken to the Nevesinje SJB following his arrest; he stayed there for two days and was then transferred to the Bileća camp (the Accused Krsto Savić was present in the SJB the whole time). Witnesses Miralem Trebović, "H", Dušan Soldo, Milovan Milović, Senad Šarančić and Emira Voloder have consistently confirmed that the Accused Krsto Savić decided who of the arrested civilians would be transferred to "Alatnica" and who would be taken to Bileća; in most cases, the women and children were taken to "Alatnica" while the men were taken to Bileća.

471. Therefore, the Accused Krsto Savić, as Chief of the Trebinje CSB, was aware that officers of the SJBs in Kalinovik, Nevesinje, Bileća and Gacko were carrying out acts of perpetration described in the operative part herein in the respective municipalities, and the Court legally qualified these acts as the crime of persecution that constituted a common objective of the JCE. The result of those acts is consistent with the contents of the Strategic Plan as described in the established facts and the strategic objectives visible in Exhibit T-186 (decision of the Assembly of the Serb people dated 12 May 1992) where the first strategic objective was separation as a state from the other two ethnic communities.

472. In addition, on the basis of the evidence depicting the activities undertaken by the accused even prior to his appointment to the post of Chief of the Trebinje CSB, the Court has inferred that the accused actively participated in the planning of the criminal offense in question (being the common objective of the JCE) and that he

desired its commission. This in particular because the accused not only failed to prevent or make difficult or obstruct the commission of the crime of persecution but he also directly participated in and was present when police officers under his control were undertaking particular acts of perpetration as described. In that context, the Accused Krsto Savić, as a participant in the JCE in the capacity of Chief of the Trebinje CSB, used officers of SJBs in the referenced municipalities as a means to achieve “separation as a state from the other two ethnic communities” by persecuting the other two ethnic communities in the manner described in the operative part above.

473. All the referenced circumstances pertaining to the contribution and knowledge of the Accused Krsto Savić (that is, his awareness and desire to commit the relevant offense) point to the Court’s conclusion that the Accused Krsto Savić possessed intent, that is, he shared the intent with the other participants in the JCE to commit the crime of persecution as described in the operative part above.

c) Milko Mučibabić and JCE

474. According to the Indictment dated 20 February 2008 (and the Indictment dated 26 February 2009), the Prosecution charged Milko Mučibabić with being a member of a JCE together with Krsto Savić and other individuals.

475. In order to defend this thesis, the Prosecution must, as noted above, have proof of:

- a plurality of persons;
- the existence of a common project (design), plan or purpose which amounts to or involves the commission of a crime. There is no necessity for this design, plan or purpose to have been previously arranged or formulated but can be improvised on the spot;
- participation of the accused in the common purpose by committing a specific crime or assisting or contributing to the execution of the common plan or purpose.

476. However, according to the Indictment and the manner in which it is worded, it is unlikely that Milko Mučibabić participated in the JCE in the municipalities of Gacko, Bileća, Kalinovik and Nevesinje.

477. Specifically, Milko Mučibabić performed the duties of an ordinary police officer at the Nevesinje SJB at the relevant time and the Prosecutor has failed to present sufficient evidence to conclude beyond any reasonable doubt that the police officers of this SJB participated in the persecution activities in the areas of Gacko, Bileća and Kalinovik municipalities.

478. Furthermore, the Prosecutor has failed to present evidence to conclude that Milko Mučibabić knew, that is, was aware of the events in Bileća, Kalinovik and Gacko; consequently, the Panel has refused the theory that Mučibabić, together with Krsto Savić, was a member of the JCE whose objective was to persecute the non-Serb population from the areas of Gacko, Bileća, Nevesinje and Kalinovik municipalities.

479. In that regard, the case law has established that it is not sufficient to prove that the accused was aware that his acts constitute an integral part of a JCE; instead, it must be proved that the accused carried out those acts with an intent to contribute to the execution of a common plan.

480. Consequently, in a situation when the Prosecutor has failed to prove that the Accused Milko Mučibabić was aware of the events outside the Nevesinje Municipality or that the Accused Mučibabić carried out acts intending to contribute to the execution of the JCE plan, the Court could not accept the Prosecutor's concept; instead, the Court found Milko Mučibabić guilty of aiding the persecution in accordance with Article 31 of the CC BiH.

8. Meting out/reduction of the punishment

1. Accused Krsto Savić

481. When meting out the punishment, the Panel first took into consideration the seriousness of the offense Krsto Savić has been found guilty of, followed by the degree of criminal liability and, finally, applied the criteria pertaining to the individualization of punishment.

482. As noted above, Krsto Savić was found guilty of persecution by way of murder, deportation and forcible transfer of population, imprisonment and other severe deprivation of liberty, torture, rape, enforced disappearance and other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to physical or mental health. This, on its own, implies a punishment beyond the legal minimum.

483. In addition to the type of the offense Krsto Savić was convicted of, it should be noted that the persecution plan related to four municipalities (Gacko, Bileća, Kalinovik and Nevesinje) and that the plan was essentially executed.

484. The consequences of those acts are still visible and their intensity has slightly subsided when compared to their level immediately after the commission of the crime, but the key issue is that those consequences will never be overcome.

485. Regarding the degree of criminal liability of the Accused Krsto Savić for perpetrating specific crimes, the Panel took into consideration that Savić (with the exception of Nevesinje) was not a direct perpetrator of the acts he was found guilty

of. In that way, the degree of his criminal liability is diminished to a certain extent but it is not excluded (as reasoned in the section dealing with the membership of the Accused Savić in the JCE).

486. Moreover, the Accused Savić played an important and, at certain times, crucial role in the persecution of the non-Serb population in the area of eastern Herzegovina because only the MUP of the Serb Republic of Bosnia and Herzegovina had an uninterrupted continuity from the spring of 1992 until the end of that year.

487. Finally, regarding the personal situation of the Accused Savić pertaining to the individualization of punishment, the Panel took into consideration the accused's conduct on the occasion when he placed Muamer Šarančić (who was sick) in "Alatnica" together with the women and children at the request of Milovan Milović.

2. Accused Milko Mučibabić

488. When meting out the punishment for the Accused Milko Mučibabić, the Panel first took into consideration the degree of his criminal liability, followed by the purpose of punishment and, finally, applied the criteria pertaining to the individualization of punishment.

489. As for the degree of criminal liability, it was pointed on a number of occasions that the Panel did not receive sufficient evidence to find beyond any reasonable doubt that there was discriminatory intent on the part of Milko Mučibabić. At that time, he was a police officer at the Nevesinje SJB and, during the social turmoil followed by the assumption of full-scale control in Nevesinje, the Accused Milko Mučibabić acted on the orders of his superiors.

490. Furthermore, it was already noted that he had sufficient information at his disposal; thus, he was aware that the orders were unlawful and directed against the non-Serb population of Nevesinje.

491. On the other hand, Prosecution and Defense witnesses confirmed on a number of occasions that Milko Mučibabić, when he had an opportunity (it was usually when not patrolling with other police officers and/or soldiers), used such opportunities to help his acquaintances and non-Serb neighbors.

492. Regarding the purpose of punishment, based on the foregoing, the Panel believes that the imposed sentence of imprisonment achieves that purpose, particularly because in this way the distinction is being made between those who were in such a position by a combination of circumstances and conditionally speaking reluctantly participated in the commission of crimes on the one hand, and those who played leading roles on the other.

493. Furthermore, the Panel has also taken into consideration his age (almost 58 years old at the time of pronouncement of the sentence) and his proper conduct throughout the proceedings.

494. Consequently, in the Panel's view, when all these circumstances are summed up, they constitute particularly mitigating circumstances in terms of Article 49(2) of the CC BiH; therefore, the Panel is satisfied that the imposed sentence of imprisonment for a term of five years and three months (meted out under the rules of concurrence of criminal offenses) is an adequate punishment for the Accused Milko Mučibabić.

9. Decision on security measures and costs of the criminal proceedings

495. In light of provision set forth in Article 74 of the CC BiH stipulating forfeiture of objects used in the perpetration of a criminal offense, the Panel, as noted in Section II 2 of the operative part, ruled that the following objects shall be seized from the Accused Milko Mučibabić: a PAP /semi-automatic/ rifle (serial no. 594416), an empty clip for an automatic rifle, 206 rounds of ammunition for a 7.62 mm rifle, 12 rounds of 7.99 mm ammunition, two defensive hand grenades (serial nos. 8608 and 8142), two empty clips for an automatic rifle, a rifle kit with four empty clips, two empty clips for a "Scorpion" and 84 rounds of 7.62 mm pistol ammunition, six rounds of 7.65 mm ammunition, two rounds of 9 mm ammunition, three rounds of 9 mm pistol ammunition, 11 rounds of 7.65 mm pistol ammunition and two rounds of 6.35 mm pistol ammunition.

496. Given that Article 188(1) stipulates that the persons found guilty by the Court shall reimburse the costs of the criminal proceedings and as the case file does not contain data based on which the amount of costs would be determined, the Panel has decided to issue a separate decision concerning the costs of the proceedings to be reimbursed by the accused Krsto Savić and Milko Mučibabić upon obtaining necessary data, in accordance with Article 186(1) and (2) of the CPC BiH.

497. Based on the foregoing, the decision as worded in the operative part above was rendered by applying the cited legal provisions.

/signature/
Emil Pinkas
Minutes-taker

/signature/
Judge Minka Kreho
PANEL PRESIDENT

/Round stamp of the Court of BiH duly affixed/

LEGAL REMEDY: An appeal from the present Verdict may be filed with the Appellate Division of the Court, within fifteen (15) days after the service of the Verdict in writing.

